RECEIVED
May 20 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2025-002523

Charles Shabazz .... Appellant,

v.

Brian Cox .... Respondent.

INITIAL BRIEF OF RESPONDENT

Michelle N. Endemann (SC Bar #79894)
Jeffrey M. Crudup (SC Bar #100281)
Clarkson, Walsh & Crudup, P.A.
497 St. Andrews Blvd
Charleston, SC 29407
T: 843.981.5180

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. STATEMENT OF THE ISSUES ON APPEAL 1

IV. STATEMENT OF THE CASE 2

V. STATEMENT OF THE FACTS 2

VI. STANDARD OF REVIEW 3

VII. ARGUMENT 4

A. The Trial Court Correctly Allowed Respondent to Argue Comparative Negligence. 4

B. The Trial Court Correctly Excluded Charging the Life Expectancy Table. 7

C. The Circuit Court Correctly Denied Appellant's Motion for New Trial Nisi Additur or New Trial Absolute. 9

VIII. CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Abofreka v. Alston Tobacco Co., 288 S.C. 122, 341 S.E.2d 622 (1986) 9

Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993) 11

Bailey v. Peacock, 318 S.C. 13, 455 S.E.2d 690 (1995).. 4

Baughman v. American Tel. and Tel. Co., 306 S.C. 101 (1991).. 7

Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 687 S.E.2d 54, 56 (Ct. App. 2009)...................... 11

Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000).. 4

Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30 (2008) 4

Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997)...................... 7

Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 778 (S.C. 2004)............................ 11

Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80(2008) 4

Gastineau v. Murphy, 323 S.C. 168, 473 S.E.2d 819, 827 (Ct.App.1996).................................. 3

Gethers v. Bailey, 306 S.C. 179, 410 S.E.2d 586 (1991) 9

Gillespie v. Ford, 222 S.C. 46, 71 S.E.2d 596 (1952) 6

Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514S.E.2d 570 (1990).................. 4

La Salle Bank Nat'l Ass'n v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009)........................... 5

McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995)............ 4

Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991).. 6

O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993) 4

Pittman v. Stevens, 364 S.C. 337, 613 S.E.2d 378 (2005) 5

Stephens v. Draffin, 327 S.C. 1, 488 S.E.2d 307 (1997) 6

Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 549-50, 593 S.E.2d 504, 506 (Ct. App. 2004). 11

Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) 3

Visual Graphics Leasing Corp. v. Lucia, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993) 5

Weaver v. Lentz, 348 S.C. 672, 684, 561 S.E.2d 360, 367 (Ct. App. 2002) 6

Wells v. Halyard, 341 S.C. 234, 533 S.E.2d 341 (Ct. App. 2000) 5

Statutes

Section 56-5-2330(c) 8

I. STATEMENT OF THE ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY ALLOW RESPONDENT TO ARGUE COMPARATIVE NEGLIGENCE?

II. DID THE CIRCUIT COURT CORRECTLY EXCLUDE CHARGING THE LIFE EXPECTANCY TABLE?

III. DID THE CIRCUIT COURT CORRECTLY DENY APPELLANT'S MOTION FOR NEW TRIAL NISI ADDITUR OR NEW TRIAL ABSOLUTE?

IV. STATEMENT OF THE CASE

This lawsuit arises out of an automobile accident that occurred on or about March 22, 2023, in Oconee County, whereby Respondent Brian Cox ("Respondent or Cox") allegedly struck the Appellant Charles Shabazz ("Appellant or Shabazz") while attempting to cross Highway 130 (the "Accident"). As a result of the Accident, Shabazz allegedly suffered injuries to his left wrist, knee, left ankle, and neck.

Shabazz filed his Summons and Complaint in the Oconee County Court of Common Pleas on March 1, 2024 against Brian Cox. [Complaint]. The Complaint alleged a cause of action for negligence against Brian Cox. Cox filed an Answer on March 24, 2024, asserting affirmative defenses, including comparative fault. [Answer].

The case was tried October 27, 2025 through October 28, 2025, before the Honorable R. Lawton McIntosh. At the conclusion of the trial, the jury found Respondent negligent but returned a verdict finding Appellant 45% comparatively negligent [Verdict Form].

On November 7, 2025, Shabazz filed a Motion for a New Trial Absolute and Motion for a New Trial Based on the Thirteenth Juror Doctrine. [Motion for a New Trial]. In his Motion, Shabazz argued that Cox was barred from arguing comparative fault at trial and that the Court erred in declining to charge the jury with the life expectancy table. [Motion for a New Trial]. On November 20, 2025, the trial court denied Shabazz's Motion. [Order Denying Appellant's Motion for a New Trial]. This appeal followed.

V. STATEMENT OF THE FACTS

The record supports the jury's verdict and the trial court's decisions. The verdict rendered was consistent with the evidence presented. Shabazz filed a lawsuit against Cox in connection with a motor vehicle accident that occurred on or about March 22, 2023. Cox, who was operating his

motor vehicle, was stopped at a stop sign, waiting to turn left across a highway. As Cox attempted to make his turn, Cox's vehicle collided with the Shabazz's vehicle. Shabazz suffered injuries to his left wrist, knee, ankle, and neck. From the beginning, one of Cox's defenses was that there was comparative fault on the part of Shabazz.

Additionally, Shabazz attempted to argue that he sustained a permanent injury in the accident. However, no expert testimony was presented to substantiate this claim. As such, the trial court declined to charge the jury on the life expectancy table.

Cox properly argued for comparative negligence at trial, an affirmative defense he had pled in his Answer in March 2024. Based on the jury's award, the jury agreed with the defense regarding the comparative fault of Shabazz, assigning him 45% of the fault for the accident, and that there was no permanent injury sustained by Shabazz in the accident. Irrefutably, the jury returned a verdict that supported the defense's theory that Mr. Shabazz was partially at fault for the accident.

VI. STANDARD OF REVIEW

Under the "thirteenth juror" doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. Gastineau v. Murphy, 323 S.C. 168, 473 S.E.2d 819, 827 (Ct.App.1996). The grant or denial of new trial motions rest within the discretion of the trial judge, and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

The trial judge alone has the power to grant a new trial nisi when he finds the amount of the verdict to be inadequate or excessive. McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995). The denial of a motion for a new trial nisi is within the trial judge's discretion and will not be reversed on appeal, absent an abuse of discretion. O'Neal v.

Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993). This Court has a duty to review the record and determine whether there has been an abuse of discretion amounting to an error of law. Bailey v. Peacock, 318 S.C. 13, 455 S.E.2d 690 (1995).

An appellate court may reverse the trial court's decision regarding jury instructions upon a showing of an abuse of discretion. Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30 (2008); Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000); see also Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514S.E.2d 570 (1990) ("'In reviewing jury charges for error, [the appellate court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.). The appellant bears the burden of demonstrating the trial court's jury instructions were erroneous and prejudicial. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80(2008); see also Pittman v. Stevens, 364 S.C. 337, 613 S.E.2d 378 (2005).

This Court may reverse when trial defects result in such error that is "material and prejudicial." Visual Graphics Leasing Corp. v. Lucia, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993); *see also* Wells v. Halyard, 341 S.C. 234, 533 S.E.2d 341 (Ct. App. 2000); La Salle Bank Nat'l Ass'n v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009).

VII. ARGUMENT

A. The Trial Court Correctly Allowed Respondent to Argue Comparative Negligence.

On March 1, 2024, Shabazz initiated the present action. On March 24, 2024, Cox filed an Answer. In his Answer, Cox admitted that Shabazz was travelling southbound on Highway 130 and maintained the absolute right of way to proceed through the intersection free of obstruction. Under Section 56-5-2330(c), when a driver is involved in a collision in an intersection after driving past a yield sign without stopping, the collision constitutes *prima facie* evidence of the failure to yield the right-of-way. However, courts require separate proof of negligence and causation beyond

establishing the statutory violation. In Gillespie v. Ford, the South Carolina Supreme Court emphasized: "The erroneous notion seems to be prevalent that, if one has the right of way, as it is called, he may proceed without regard to circumstances, conditions, or consequences. Even when one has the right of way, he is still bound to exercise due care for his own safety, and to prevent injury to others." Gillespie v. Ford, 222 S.C. 46, 71 S.E.2d 596 (1952). This principle demonstrates that right-of-way status is merely one factual element in determining negligence, not a dispositive factor for liability. Therefore, Respondent did not admit liability by acknowledging that the Appellant had the right-of-way.

However, even if Cox did admit liability (negligence), such an admission would not preclude Cox from arguing that Shabazz was comparatively negligent. Under the version of comparative negligence judicially adopted in South Carolina, “a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant. The amount of the plaintiff's recovery [is] reduced in proportion to the amount of his or her negligence.” Weaver v. Lentz, 348 S.C. 672, 684, 561 S.E.2d 360, 367 (Ct. App. 2002) citing Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991). In Stephens v. Draffin, 327 S.C. 1, 488 S.E.2d 307 (1997), the South Carolina Supreme Court addressed a negligence action in which both plaintiff and defendant admitted negligence. The court proceeded to analyze the apportionment of fault between both parties without any suggestion that the defendant's concession of negligence foreclosed the comparative fault inquiry. This confirms that even where a defendant does not contest his own negligence, the plaintiff's comparative fault remains an issue for the jury to consider. In Creech v. South Carolina Wildlife & Marine Resources Department, the South Carolina Supreme Court approvingly quoted a trial judge's observation that "because this was a comparative negligence case, even if the plaintiff's testimony amounted to an admission of

negligence, it was a question of fact for the jury to compare the plaintiff's negligence with that of the defendant." Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997). The court then reaffirmed the foundational rule that "[c]omparison of a plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." Id. This language is equally applicable to the converse scenario. A defendant's admission of negligence no more eliminates the comparative fault inquiry than a plaintiff's admission of negligence does.

Further, Shabazz argues that Cox's answers to interrogatories also result in a waiver of the defense of comparative negligence. Discovery is deemed ongoing throughout trial. The South Carolina Supreme Court clarified that "absent any specification, the interrogatory should be construed as seeking current information as of the time the question is asked and answered," while acknowledging "a continuing duty to supplement responses with new information concerning the identity of persons having knowledge of discoverable matters and persons expected to be called as expert witnesses." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Here, Cox consistently pled comparative fault. Even if discovery responses changed throughout litigation, Cox alerted the Appellant to maintaining his argument at the beginning of, and throughout, trial.

In Mr. Cox's deposition, he testified that he believed Mr. Shabazz was responsible for the accident.

> Q: I – I jut want you to tell me whose fault the accident was. It's – I mean, was there anybody else there that was responsible for it?
> A: I – I – again, I guess then you can say that the other person was.
> Q: My client was responsible for the accident, is what you're –
> A: I guess, if that's what you want me to say.

[Deposition Transcript p. 32 lines 16-23]

Appellant requested Mr. Cox to read his previous Interrogatory Answer where Mr. Cox had stated he did not make the contention that Plaintiff was liable for the accident. Mr. Cox acknowledged the previous Interrogatory Answer but stated he believed Mr. Shabazz was responsible for the accident. [Deposition Transcript p. 33 Line 1 – p. 34 Line 22]. Therefore, Appellant was aware of the argument of comparative negligence and that Mr. Cox believed Appellant was responsible for the accident.

Finally, Appellant argues that Respondent's position and argument of comparative negligence resulted in a "trial by ambush" and should be prohibited. Appellant argues that Respondent introduced the argument of comparative fault on the day of trial, 15 minutes before jury selection. This is incorrect. Respondent affirmatively pled comparative negligence in his Answer filed on March 24, 2024, and reaffirmed this belief during Mr. Cox's deposition on November 21, 2024. Appellant was on notice of this defense for approximately nineteen (19) months before trial, which can hardly be considered late notice. Therefore, the Court properly allowed Respondent to argue comparative negligence at trial.

B. The Trial Court Correctly Excluded Charging the Life Expectancy Table.

The second issue on appeal is Appellant's position that the Court erred by failing to charge the jury on the life expectancy table. However, Shabazz did not present evidence of a permanent injury, meaning that such a jury instruction was not warranted in this trial. The South Carolina Supreme Court established the requirement for admitting life expectancy tables in Abofreka v. Alston Tobacco Co., 288 S.C. 122, 341 S.E.2d 622 (1986). In Abofreka, the court held that "it is proper to charge the mortality tables in a personal injury action when there is evidence of permanent injury." Id. This standard requires sufficient evidence of permanence to warrant jury instruction, with the ultimate determination of permanency left to the jury's factual findings.

Medical expert testimony represents the most common and persuasive method of proving permanent injury. In Gethers v. Bailey, an orthopedic surgeon testified that the plaintiff "was assessed an impairment rating, in my opinion, of five percent of her lower extremity" and stated this meant it was a "permanent injury." Gethers v. Bailey, 306 S.C. 179, 410 S.E.2d 586 (1991). The Court of Appeals found this testimony sufficient to establish permanence for purposes of charging life expectancy tables. However, where all medical testimony is equivocal or where no expert opined on permanency, the table is correctly withheld. See Fishburne v. Short, 268 S.C. 546, 235 S.E.2d 118 (1977). Moreover, even if the refusal to charge the table was error, an error in charging instructions is only reversible if the appellant demonstrates prejudice. Id.

Here, the Appellant testified that he had pain in his left ankle after the accident. [Trial Transcript P. 148, lines 10-14]. However, as demonstrated in trial, the Plaintiff has at least three prior incidents with an injury to his left ankle. [Trial Transcript p. 150 line 2 – p. 151 line 24]. When asked on cross-examination, the Appellant testified that he refrained from several physical activities due to the fear of hurting his wrist again. [Trial Transcript p. 144 line 17 – p. 145 line 14]. The Appellant did not testify that these activities did cause pain in his wrist. On July 12, 2023, he told his physical therapist that he was back to a normal level of function, and he had no pain with any use of his wrist. [Trial Transcript p. 160 lines 2-24]. Further, there was testimony presented that the Appellant dropped a crate of parts at work on his wrist approximately seven weeks after the accident, resulting in a separate, unrelated injury. [Trial Transcript p. 156 lines 10-19].

Appellant has also argued that Dr. Murphy opined that there was permanent injury, meaning the trial court should have charged the life expectancy table. In fact, Dr. Murphy testified in her deposition that she believed the bone was fully healed in July 2023. [Deposition Transcript

p. 18 lines 7-10]. Further, Dr. Murphy testified that she released the Appellant completely due to the injury being resolved. [Deposition Transcript p. 19 line 5 – p. 20 line 7]. When asked, Dr. Murphy did opine that edema can be permanent. [Deposition Transcript p. 14 lines 10-20]. Dr. Murphy did not offer any testimony, however, that the edema that Mr. Shabazz claimed was permanent. As such, the trial court was correct in ruling that there had been no medical testimony that supported a permanent injury and denying an instruction regarding the life expectancy table. The Appellant was still awarded $45,000, resulting in an amount of $24,750.00 once the apportionment of fault is calculated, which is approximately $5,000 more than his medical damages, showing that he was not prejudiced by the life expectancy table not being charged.

C. The Circuit Court Correctly Denied Appellant's Motion for New Trial Nisi Additur or New Trial Absolute.

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 778 (S.C. 2004). "A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate." Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 687 S.E.2d 54, 56 (Ct. App. 2009). "[W]hen the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by granting of a new trial nisi remitter." Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993).

The central principle is that determination of the respective degrees of negligence attributable to the plaintiff and the defendant "presents a question of fact for the jury, at least where conflicting inferences may be drawn." Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 549-50, 593 S.E.2d 504, 506 (Ct. App. 2004). A jury's comparative fault finding will not be disturbed—and a new trial under the thirteenth juror doctrine will not be warranted—so long as the evidence on the

comparative fault issue is conflicting, such that the jury could have drawn more than one reasonable inference. Id.

Appellant argues that the jury's award of 45% comparative negligence on the part of the Appellant is contrary to the fair preponderance of the evidence. Here, there is substantial evidence in the record to support the jury's verdict. First, evidence was presented that Mr. Shabazz suffered short-term injuries and did not have any long-term pain. [Trial Transcript p. 155 lines 1-4; p. 160 lines 2-11]. Mr. Shabazz testified that he does not participate in several physical activities due to the fear of pain, not because he has any continual pain from the accident. [Trial Transcript p. 144 line 17 – p. 145 line 14]. As such, there was ample evidence in the record which could have led a jury to believe that there were no significant injuries due to the accident.

Moreover, there were several inconsistencies in Appellant's testimony that could have led a jury to question the credibility of the witness. During trial, Shabazz testified that he had pulled in the left lane from the right lane, and then Cox's vehicle pulled out in front of him. [Trial Transcript p. 153 lines 1-16]. However, as proven on cross examination, Shabazz had previously testified that Cox already pulled out to make his turn before Shabazz switched lanes. [Trial Transcript p. 154 lines 2-22]. Therefore, the jury could have drawn more than one reasonable inference on the cause of the wreck. Further, the jury heard testimony from Cox that Shabazz collided with the Cox's vehicle. [Trial Transcript p. 110 lines 3-7]. Cox testified that the lane closest to him had stopped to let him cross and that as he inched forward, he did not see another car in the second lane. [Trial Transcript p. 113 line 13 – p. 114 line 9]. As he completed the turn, Shabazz's vehicle collided with Cox's vehicle.

Therefore, the jury weighed the probability of the testimony and the credibility of the witnesses, and had not only the right, but good reason, to find that Shabazz was comparatively at fault for the accident.

VIII. CONCLUSION

The trial court properly denied Shabazz's Motion for a New Trial Absolute and Motion for New Trial Nisi Additur and properly found that the jury's verdict was reasonable based on the evidence presented. Therefore, Respondent respectfully requests that the trial court's November 20, 2025 Order denying the Motion for a New Trial be affirmed and that the jury's verdict be upheld.

Respectfully Submitted by:

CLARKSON WALSH & CRUDUP, P.A.

s/Michelle N. Endemann
Michelle N. Endemann (SC Bar # 79894)
michelle.endemann@clarksonwalsh.com
Jeffrey M. Crudup (SC Bar #100281)
Jeff.crudup@clarksonwalsh.com
497 St. Andrews Blvd
Charleston, SC 29407
T: 843.981.5180

Attorneys for Respondent

On this 20th day of May
Charleston, SC