

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge

Appellate Case No. 2026-001663
Court of Common Pleas Case No. 2024-CP-32-02759

Mark Edelmayer,

Appellant,

v.

Jonathan Bean,

Respondent.

BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying Appellant's motion for directed verdict, renewed motion for directed verdict, and post-trial motion for JNOV on the issue of Respondent's negligence where Respondent, while operating a loaded tractor-trailer, rear-ended Appellant after failing to stop for visible congested traffic ahead?
2. Did the trial court err in denying a new trial after preventing Appellant from examining Respondent Bean as an adverse party?
3. Did the trial court err in denying a new trial where, during deliberations, the jury asked for a dictionary to determine the difference between "bad judgment" and "negligence," demonstrating confusion over the controlling legal standard, and the court supplied a dictionary rather than clarifying the law?

STATEMENT OF THE CASE

This appeal arises from a rear-end collision on Interstate 26 in Lexington County on October 26, 2022. Ans. at ¶ 2. Appellant filed the Summons and Complaint in the Lexington County Court of Common Pleas on June 27, 2024, listing Respondent Jonathan Bean and Kendall Rolan as defendants. Respondent and Defendant Rolan filed an Answer on January 17, 2025. This is a negligence action arising from a rear-end collision. Appellant alleged that Respondent negligently operated his tractor-trailer, including by failing to maintain a proper lookout, following distance, and speed, and by failing to stop before striking Appellant's vehicle. Respondent denied negligence and asserted, among other defenses, that the collision resulted from a sudden emergency. This case was tried before the Honorable R. Keith Kelly and a Lexington County jury on the week of May 18, 2026. Before the trial, Kendall Rolan was dismissed from the Action.

Appellant Mark Edelmayer was slowing for traffic when he was rear-ended by Respondent. Trial Tr. at 122:25-123:10. Respondent testified that the combined weight of the tractor-trailer and its load of sand was “right at 79” thousand pounds. He also acknowledged that a vehicle carrying that much weight takes longer to stop. *Id.* at 77:1-25, 78:1-2.

Respondent testified that he merged into the right lane, he saw brake lights when he merged onto the interstate as traffic slowed, and “that’s when the accident happened.” *Id.* at 92:1-21. According to Respondent, a Jeep merged in front of Appellant’s vehicle and “slammed on” its brakes. *Id.* at 94:2-4. Appellant was able to brake, but Respondent “just didn’t get completely stopped.” *Id.* at 94:1-16. Respondent acknowledged that he was aware of traffic ahead and had stopped accelerating, yet he did not have enough time to stop before striking Appellant’s vehicle. *Id.* at 94:17-25.

At the close of Appellant's case, Appellant moved for a directed verdict on the narrow issue of Respondent's negligence. *Id.* at 258:4-6-13. Appellant argued that the only reasonable inference was that Respondent merged a loaded tractor-trailer onto I-26, saw brake lights and building traffic only after merging, and failed to give himself enough distance to stop given his speed. *Id.* at 258:7- 259:14. Appellant argued that Respondent's actions were "the definition of following too closely" because a driver merging onto a congested highway who cannot stop before striking the vehicle ahead is traveling at a speed or following at a distance that does not allow him to stop. *Id.* at 250:5-11.

Respondent opposed the motion, arguing that a directed verdict was inappropriate given the sudden emergency. *Id.* at 259:15-20. The trial court denied the motion, concluding that questions of fact remained for the jury. Appellant renewed this motion three more times, and each time it was denied.

The trial court also prevented Appellant from cross-examining Respondent despite calling him to the stand. When Appellant began asking basic questions about Respondent's operation of the tractor-trailer, defense counsel objected that Appellant was asking leading, "cross-examination questions" because Respondent had been called during Appellant's case-in-chief. *Id.* at 74:22-24.

Appellant explained that the rules permit leading questions when examining an adverse party or a witness identified with an adverse party, regardless of whether the examination occurs during the calling party's case-in-chief. *Id.* at 75:5-9. The trial court nevertheless ruled: "We did away with hostile witnesses a long time ago" and sustained the objection. *Id.* at 75:10-11. Appellant was not allowed to cross-examine Respondent.

After the evidence closed and the jury was charged, the jury sent a note asking the distinction between "bad judgment" and "negligence." *Id.* at 469:4. Rather than reinstructing the

jury on the legal definition of negligence and the applicable principles governing control, lookout, following distance, and sudden emergency, the trial court responded by sending the jury a dictionary. *Id.* at 469:13-15.

The jury thereafter returned to the courtroom and answered the threshold liability question “No,” finding that Respondent was not negligent. *Id.* at 470:1-17. The result was a defense verdict notwithstanding Respondent’s testimony that he was operating a 79,000-pound commercial vehicle, knew it required greater stopping distance, encountered slowing traffic, did not see the brake lights until after completing his merge, and did not have enough time to stop.

Appellant timely sought post-trial relief, moving for judgment notwithstanding the verdict or, alternatively, for a new trial absolute. The trial court denied the motion by Form 4 order dated June 29, 2026. This appeal followed. The appeal concerns liability only; the amount of damages is not at issue. The Notice of Appeal was filed on July 24, 2026.

STANDARD OF REVIEW ON APPEAL

A motion for directed verdict and a motion for judgment notwithstanding the verdict are reviewed under the same standard. *Allegro, Inc. v. Scully*, 418 S.C. 24, 32 (2016). In reviewing the denial of either motion, this Court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Id.* On appeal from the denial of a directed-verdict or JNOV motion, the court applies the same standard as the circuit court. *Gause v. Smithers*, 403 S.C. 140, 149 (2013).

This standard does not require every disputed narrative to be submitted to the jury. The question remains whether a verdict for the nonmoving party is reasonably possible under the evidence, not whether the nonmoving party can describe the same facts in a more favorable way. *Wright v. Craft*, 372 S.C. 1, 18 (Ct. App. 2006). When the evidence yields only one inference, a directed verdict is proper; when it yields more than one reasonable inference or the inference is doubtful, the issue is for the jury. *Allegro*, 418 S.C. at 32.

That principle is especially important here because Respondent himself supplied the material facts underlying the negligence claim. Similarly, a party cannot create a jury issue by “speculation, theory, or hypothetical possibilities unsupported by the evidence.” *Wright*, 372 S.C. at 22. Although courts cannot resolve credibility issues on a directed-verdict motion, an issue of fact may be submitted to the jury only when the evidence could establish that issue in the mind of a reasonable juror.” *Id.*

The cross-examination issue is governed by a separate standard of review. The scope of cross-examination is within the trial court’s discretion. *Yoho v. Thompson*, 345 S.C. 361, 364–65 (2001). This Court will reverse for an abuse of that discretion when the ruling results in prejudice. *Strange v. S.C. Dep’t of Highways & Pub. Transp.*, 307 S.C. 161, 163 (1992). An abuse of

discretion occurs when the trial court's ruling is based upon an error of law. *Yoho*, 345 S.C. at 365. Likewise, Rule 61 of the South Carolina Rules of Civil Procedure provides that an error in the admission or exclusion of evidence, or any other error, is not grounds for disturbing a judgment unless refusal to take such action appears to the court inconsistent with substantial justice.

ARGUMENT

I. The trial court erred in denying Appellant's Motion for a Directed Verdict and JNOV.

This case should not have been submitted to the jury on the narrow threshold question of Respondent's negligence. In rear-end collision cases, South Carolina courts have not hesitated to remove the issue of negligence from the jury where the following driver's own testimony establishes the failure to keep a proper lookout or maintain control. *See, e.g., Fettler v. Genter*, 396 S.C. 461 (Ct. App. 2012) (reversing trial court's denial of directed verdict where the defendant rear-ended the plaintiff's vehicle and admitted to failing to keep a proper lookout).

Chapman v. Associated Transport, Inc., 218 S.C. 554 (1951), is particularly instructive on this issue because it involved a heavily loaded commercial truck. In *Chapman*, the truck driver testified that he was unable to stop his loaded truck when the plaintiff's vehicle ahead of him braked. *Id.* at 557. The Supreme Court held that the evidence supported an inference that the truck driver failed to maintain a proper lookout and did not have proper control of his truck under the circumstances. *Id.* at 558-61.

The similarity to this case is striking. Respondent attempts to characterize the collision as the result of the Jeep ahead of Appellant suddenly "slamming on" its brakes. Trial Tr. at 94:2-4. But that is not materially different from the truck driver's contention in *Chapman* that he did not see the signals or brake lights from the vehicle ahead. In both cases, the vehicle ahead slowed, the following commercial truck failed to stop, and the defendant sought to attribute the collision to what happened ahead of him. Yet *Chapman* makes clear that the driver's duty does not disappear simply because the vehicle ahead slows or stops. The relevant inquiry remains whether the commercial driver maintained a proper lookout and sufficient control of his vehicle to respond to the traffic conditions confronting him.

Indeed, the facts here are stronger for Appellant than those in *Chapman*. Respondent admitted that he was operating a tractor-trailer weighing approximately 79,000 pounds and that such a vehicle requires greater stopping distance. Trial Tr. at 77:1- 78:1. He further admitted that he was aware of traffic ahead, that traffic was slowing after he merged, and that he did not have enough time to stop. *Id.* at 90:19-91:24, 94:10-11.

Nor does the fact that a vehicle ahead allegedly “slammed on” its brakes transform ordinary traffic into a sudden emergency. Traffic slowing or stopping on a congested interstate is an ordinary and foreseeable condition of driving, not an extraordinary event that relieves a following driver of the duty to maintain a proper lookout, proper control, and sufficient stopping distance. *Chapman* is instructive because the truck driver likewise confronted a vehicle ahead that slowed and stopped, yet the Supreme Court still determined that the driver did not exercise proper lookout and control. 218 S.C. at 558-61. Here, Respondent’s own testimony establishes that he knew traffic was slowing. He knew the limitations of the heavily loaded vehicle he was driving. He nevertheless failed to leave himself enough time and distance to stop. That is not a sudden emergency; it is precisely the circumstance for which a following driver must maintain a proper lookout and operate at a safe speed with sufficient following distance.

The relevant point remains that Respondent was the following driver of a loaded tractor-trailer, and he admitted he could not stop in time. The testimony about the Jeep did not create a reasonable basis for finding that Respondent exercised reasonable care or permit a reasonable jury to find Respondent was not negligent at all. Accordingly, the trial court erred in denying Appellant’s directed-verdict motions and post-trial JNOV motion. This Court should reverse and direct entry of judgment as a matter of law on Respondent’s negligence, leaving any remaining issues for further proceedings.

II. The trial court erred in denying a new trial after preventing Appellant from examining Respondent Bean as an adverse party.

Cross-examination is “the greatest legal engine ever invented for the discovery of truth.” *State v. Hill*, 382 S.C. 360, 366 (Ct. App. 2009). Rule 611(c), SCRE, provides the related black-letter rule: when a party calls “a hostile witness, an adverse party, or a witness identified with an adverse party,” interrogation may be by leading questions. Despite this express rule, the trial court prevented Appellant from examining Respondent Bean as an adverse party concerning the central liability issue in the case. That was an error of law that prejudiced Appellant.

Yoho v. Thompson, 345 S.C. 361 (2001) illustrates why. There, the trial court permitted some general cross-examination of a defense expert concerning potential bias but barred the plaintiff from questioning the expert about his specific relationship with the insurer. *Id.* at 364. The Supreme Court reversed and remanded for a new trial, holding that the excluded examination was “qualitatively different” from the examination the plaintiff was permitted to conduct. *Id.* at 366-67, 548 S.E.2d at 586-87. The fact that the plaintiff was permitted to ask some questions about bias did not render the error harmless because the prohibited examination would have developed materially different and more probative evidence. *Id.*

The same principle controls here. The question is not whether Appellant was allowed to ask Respondent some questions. The question is whether Appellant was allowed to conduct the qualitatively different examination Rule 611(c) expressly permits when the witness is the adverse party. Leading examination of Respondent would have allowed Appellant to control the sequence of questions, isolate his admissions, and confront him directly with the facts undermining his sudden-emergency defense.

Respondent’s own testimony demonstrated why cross-examination was important. He testified that as he merged onto I-26, “traffic was flowing,” and as he got into his lane, “the traffic

started slowing down, and that's when the accident happened." Trial Tr. at 92:1-5. That is the language of normal traffic, not an unavoidable emergency. Had Appellant been permitted to press Bean on this testimony, the jury could have evaluated for itself whether the traffic presented a true emergency or simply the ordinary slowing of interstate traffic.

Bean's testimony concerning why he did not see the traffic ahead sooner was particularly important. When asked about brake lights and traffic stalling ahead, he answered: "As I was getting on, I'm trying to check my mirror to make sure I don't hit nothing to the side of me too. So I was -- had a lot to look at." Trial Tr. at 95:15-17. He then admitted he was "looking all around," and that he did not see the traffic ahead until after he had completely merged into the right lane. *Id.* at 95:20, 96:1-5.

That testimony was critical. "Had a lot to look at" did not establish a sudden emergency. Instead, it established that Respondent was dividing his attention while merging a heavily loaded tractor-trailer into interstate traffic. Checking mirrors and observing surrounding traffic are necessary parts of merging, but they do not relieve a driver of the simultaneous duty to maintain a proper lookout for traffic. Appellant should have been permitted to develop that sequence through leading questions and walk Respondent through his own admissions: traffic was flowing; traffic then slowed; Bean was checking his mirrors; he had "a lot to look at"; he was looking "all around"; he did not see the traffic ahead until after he merged completely; and, by then, he did not have enough time to stop. Instead, the court restricted Appellant's examination and let Respondent testify unfettered. Respondent's testimony went to his sole liability defense for why he rear-ended Appellant.

The trial court's harmless-error reasoning overlooks the nature of the error. The fact that Appellant was permitted to ask Respondent some questions does not establish that Appellant was

afforded the examination Rule 611(c) permits. As *Yoho* makes clear, permitting some examination does not cure the error when the excluded examination would have been qualitatively different and materially more probative.

Here, the excluded examination went directly to the central issue submitted to the jury: whether Bean was negligent. It would have allowed Appellant to test Respondent's sudden-emergency narrative against his own admissions. The trial court therefore committed an error of law by restricting the examination Rule 611(c) expressly permits. That error was prejudicial because it prevented Appellant from meaningfully examining the adverse party concerning the central liability issue. The order denying a new trial should therefore be reversed, and the case remanded for a new trial.

III. The trial court erred in denying a new trial after the jury's dictionary request showed confusion over the controlling legal standard.

South Carolina law requires a new trial when jury confusion concerning the law affects the verdict. "[W]hen a verdict is so confused that the jury's intent is unclear, the safest and best course is to order a new trial." *Johnson v. Parker*, 279 S.C. 132, 135 (1983) (remanding for a new trial where the jury returned a written verdict stating, "We find for the defendants guilty," in a civil case). That principle applies with particular force when the jury's confusion concerns the governing law and affects the outcome. *Berberich v. Jack*, 392 S.C. 278, 285 (2011). Further, "[w]hen a jury sends a note which demonstrates that it is confused, the trial court must not allow that confusion to persist." *Est. of Jane Doe 202 v. City of N. Charleston*, 441 S.C. 131, 140 (2023)(citations omitted). The trial court must dispel that confusion "with concrete accuracy." *Id.*

Carson v. CSX Transportation, Inc., 400 S.C. 221, 242 (2012) illustrates the consequence when a jury's question during deliberations reveals confusion concerning the governing law. There, during deliberations, the jury asked whether a finding that the decedent was more than fifty percent negligent would preclude an award of damages in the survival action. *Id.* After the trial judge answered the question, the jury returned a zero-dollar verdict on the survival claim despite uncontroverted evidence of conscious pain and suffering and funeral expenses exceeding \$7,000. *Id.* The Supreme Court reversed and remanded for a new trial, finding that "[i]t is evident to us that the jury was confused in rendering its damages award" and that the award "was not 'merely inadequate,' but was legally incorrect." *Id.*

The same problem occurred here, and the jury's question directly concerned the legal standard governing the only issue it needed to decide to reach a defense verdict. The jury's question revealed confusion concerning the legal standard for negligence. "Bad judgment" is not an element of ordinary negligence. South Carolina defines negligence objectively. "[N]egligence is the failure to use due care," meaning "that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances." *Berberich*, 392 S.C. at 287. A person therefore can be negligent without making a conscious or subjectively "bad" decision.

That distinction matters here. If Respondent failed to act as a reasonably prudent tractor-trailer driver would have acted under the circumstances, he was negligent regardless of whether his conduct was intentional or the product of a consciously "bad" decision. Ordinary negligence frequently is inadvertent. A driver may fail to keep a proper lookout, fail to appreciate slowing traffic, or fail to leave enough stopping distance without deliberately making a bad decision. That is still negligence if it falls below the objective standard of due care.

The jury's request for a dictionary demonstrates that it was struggling with this distinction. By asking for the difference between "bad judgment" and "negligence," the jury appears to have been struggling with whether Respondent's conduct had to constitute "bad judgment" before it could be negligence. It did not. Negligence is measured by an objective standard of reasonable care. The trial court therefore needed to correct the jury's apparent misunderstanding by providing the governing legal definition. Instead, the court supplied a dictionary. A dictionary could provide lay definitions of "bad judgment" and "negligence," but it could not tell the jury when a tractor-trailer driver's failure to maintain a proper lookout, appreciate slowing traffic, or maintain sufficient stopping distance constitutes negligence under South Carolina law. Those are questions governed by the court's legal instructions, not by lay definitions.

Unlike cases in which a court must infer confusion from an ambiguous verdict after the fact, no such inference is needed here. The jury told the trial court that it was confused before it rendered its verdict. The court was therefore on notice of the problem and had an opportunity and a responsibility to correct it. It did not. The trial court should have reinstructed the jury on negligence, or at minimum direct the jury back to the legal definition of negligence and the related instructions governing ordinary care, sudden emergency, and unavoidable accident.

The resulting verdict demonstrates that the error was not harmless. The jury answered "No" to the threshold question of whether Respondent was negligent. Thus, the jury's confusion concerned the precise legal issue that determined the outcome of the case. Nothing in the record establishes that the jury applied the correct objective standard of negligence. To the contrary, the jury's question, followed by the court's dictionary response and then a defense verdict on negligence, demonstrates a substantial possibility that the jury evaluated Bean's conduct under a legally incorrect standard.

South Carolina law does not permit a verdict reached under such circumstances to stand. The jury expressly revealed confusion concerning the controlling legal standard; the trial court responded with a dictionary rather than a legal clarification that dispelled that confusion with “concrete accuracy.” The jury thereafter returned a defense verdict on the very issue about which it had expressed confusion. Because the confusion concerned the dispositive issue of negligence and there is a substantial possibility that it affected the verdict, a new trial is required.

CONCLUSION

Wherefore, based on the foregoing, the trial court’s decision should be reversed because: (1) the trial court erred in denying Appellant’s motions for directed verdict and judgment notwithstanding the verdict on the issue of Respondent’s negligence; (2) the trial court erred in denying a new trial after preventing Appellant from examining Respondent Bean as an adverse party under Rule 611(c), SCRE; and (3) the trial court erred in denying a new trial after the jury revealed confusion over the controlling legal standard by asking for a dictionary to distinguish “bad judgment” from “negligence,” and the court provided a dictionary rather than clarifying the law. Therefore, Appellant respectfully requests that this Court reverse the trial court’s ruling and remand for further proceedings consistent with this Court’s opinion.

Respectfully submitted,

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