

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas L. Hughston, Jr., Circuit Court Judge
Trial Court Case No. 2020-CP-08-01232

Appellate Case No. 2023-001703
Court of Appeals Opinion Number 2026-UP-307
(Filed June 24, 2026, rehearing denied August 24, 2026)

Mia Anderson, on Behalf of the Estate of Jessie Heyward
a/k/a Jessie Bell Anderson,Respondent,

v.

Richard Miles Thompson, M.D. and ACS Primary Care
Physicians – Southeast, P.C., Petitioners.

PETITION FOR WRIT OF CERTIORARI

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September 23, 2026

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QUESTIONS PRESENTED FOR REVIEW

This petition asks the Court, for the first time, to interpret the novel question of the interplay of Electronic Filing Rule 4(d) (which requires Clerks of Court to review electronic filings for compliance with filing requirements and provides a methodology for correcting filing errors) with Rule 41.2 of the South Carolina Rules of Civil Procedure (which states that clerks of court will not review filings for redactions) and its counterpart in Electronic Filing Rule 10(b), where Appellant did not avail herself of the remedies provided by those rules. Since the Clerk of Court properly rejected the attempted filing and service of Appellant's motion for a new trial, since Appellant did not avail herself of the remedies of Section 4, SCEF or of Rule 41.2, SCRCP, and since the notice of appeal was filed more than thirty (30) days after entry of the order ending the case, the Court of Appeals did not have jurisdiction to consider this appeal, and the appeal should be dismissed.

If this Court concludes that Section 4, SCEF does not authorize – does not require – clerks of court to reject filings containing personal identifying information, then the second issue for review is whether this five-day medical malpractice jury trial should be retried despite the fact that Appellant never asked the trial judge to make a final ruling on whether to interview or replace a juror in light of allegations of improper conduct, whether Appellant decided to roll the dice on the juror rather than ask for such an interview late in the trial, whether one party may rely on another party's objection, whether taking the trial court up on its offer to reconsider a matter would have been futile as a matter of law, and whether the trial court abused its discretion by choosing to interview the clerk of court rather than the forelady or someone else.

STATEMENT OF THE CASE

Early Procedural History

This appeal follows a verdict for the defense in a weeklong medical malpractice jury trial for wrongful death and survival. Suit was commenced in the Berkeley County Court of Common Pleas on June 9, 2020 by Mia Anderson as the Personal Representative of the Estate of Jessie Heyward Anderson a/k/a Jessie Bell Anderson (“Ms. Anderson”) against Richard Miles Thompson, M.D. (an emergency room physician) and Respondent ACS Primary Care Physicians – Southeast, P.C. (his employer). Other parties were dismissed from the case before trial. The defense was essentially that Dr. Thompson did not commit malpractice. The case was tried before The Hon. Thomas Hughston and a jury on September 11 - 15, 2023. (R. pp. 4 - 7). The jury returned a verdict for Defendants on Friday, September 15, 2023 (*id.*) and was discharged that afternoon. (R. p. 819, lines 18 - 19).

Shortly after the jury returned its verdict, the trial court granted Appellant ten (10) days to make post-trial motions. (R. pp. 160 - 161). The following Monday, September 18, 2023, the trial court entered into the South Carolina Electronic Filing System a Form 4 Order Ending the Case. (R. pp. 4 - 7).

When the trial court entered the Order Ending Case that Monday, the E-Filing System automatically generated a Notice of Electronic Filing (“NEF”) and transmitted it to all counsel of record (R. p. 7), dated September 18, 2023. The entry of the order and the transmission of the NEF served as written notice to counsel of the filing of the order ending the case. Section 4(e), SCEF.

Facts Related to the Late Filing of the Notice of Appeal

At 7:55 PM on Monday, September 25, 2023, Appellant transmitted to the trial court a motion for new trial (with memorandum and exhibits) using the E-Filing System. (R. p. 199). Appellant did not separately email the motion to defense counsel. Had defense counsel checked the Clerk's website for the motion that night, nothing would have been there because filings are not made available until they have been accepted by the clerk. Section 4(d), SCEF.

The following morning the Clerk of Court complied with her duty and authorization under the Electronic Filing Rules to "promptly review" this electronic filing "to determine whether it compl[ied] with applicable filing requirements." Section 4(d), SCEF. She easily saw that the electronic filing violated SCRCF 41.2(a), which reads: "A person filing a document in paper or electronic format shall not include, or will redact where its inclusion is necessary, the following personal identifying information." The Rule goes on to define personal identifiable information as including social security numbers and dates of birth. *Id.* The Rule is consistent with S.C. Code § 30-2-330(A), which makes including a social security number in the official records of the clerk of court a crime.

Consequently, at 9:16 AM, the Clerk rescinded her NEF as follows:

**The Notice below is RESCINDED
The filing was not filed.**

(R. p. 200).

The Court can see that this sort of information was redacted when the motion, brief and exhibits were properly filed the following day. (R. pp. 191-197). This was not a rejection based on the use of a wrong form or bad formatting but was a rejection required by law.

Because of the rescission, under Section 4(d)(2), SCEF, Appellant's motion for new trial submitted on October 25, 2026, did "not become part of the court record," and it is not part of the Record on Appeal in this case.

Appellant did not exercise her right under Rule 41.2(e) to ask the Clerk of Court to remove the personal identifying information, she did not file an amended motion as contemplated by Section 10(b)(2), SCEF, and she did not "seek appropriate relief from the court upon cause shown," as allowed by Section 4(d)(2), SCEF (such as a claim that the clerk did not have authority to reject a filing based on ostensible or perceived failures, such as use of improper formatting, or such as the use of an improper form).

Instead, at 12:51 PM on September 26, the eleventh day after the jury was discharged, Appellant submitted to the Clerk through the E-Filing system a new motion for new trial with a supporting memorandum and exhibits, with personal identifying information redacted. (R. p. 202; R. pp. 191 - 197). The Clerk then marked the motion as having been filed at 12:51 PM on September 26. *Id.*

The motion was based in relevant part on alleged juror misconduct as described below. *Id.*

Despite having lost jurisdiction at the end of the day of September 25 (as discussed in our Argument section below), on October 2 the trial court denied the Motion for New Trial, stating:

This case is before me on Plaintiff's Motion for a New Trial following a jury trial and a verdict for the Defendants. This was a well-trying case in which the attorneys did an excellent job of presenting their side. I have carefully considered the motion of the Plaintiff and respectfully decline to grant it. It is so ordered.

(R. pp. 10 - 11).

Monday, October 18 came and went. October 18 was the thirtieth day after entry of the September 18 order ending the case. (R. pp. 4 - 7).

On October 31 Appellant served a Notice of Appeal. The Notice of Appeal reads:

Appellant ... appeals from a jury verdict entered in favor of Respondents Richard Miles Thompson, M.D. and ACS Primary Care Physicians – Southeast, P.C. on September 15, 2023. Pursuant to Rules 50 and 59, SCRCP Appellant filed post-trial motions on September 25, 2023, which the Hon. Thomas L. Hughston, Jr. denied in a Form 4 order on October 2, 2023. This appeal covers the jury verdict and the order referenced above.

(R. pp. 204 - 205).

Defendants moved to dismiss this appeal on the basis that a late-filed post-trial motion does not stay the time to appeal and the notice of appeal was not served timely. On April 16, 2024, the Court of Appeals denied the motion, with leave to the parties to include the issue in their appellate briefs.

After full briefing on the issues of the timeliness of the appeal and how the trial court dealt with the allegations of juror misconduct, the Court of Appeals reversed and remanded the case for a new trial.

The Court of Appeals rejected Defendants' arguments regarding the timeliness of the appeal by citing *Barnes v. State*, 433 S.C. 399, 859 S.E.2d 260 (2021), SCRCP 41.2, and *In re S.C. Elec. Filing Poly's & Guidelines*, 415 S.C. 1, 16, 780 S.E.2d 600, 607 – 608 (2015).

Facts Related to the Allegations of Juror Misconduct

Appellant points to three episodes during the trial for which she contends she is entitled to a new trial: An alleged insult the forelady is said to have made to the trial judge (R. pp. 104 *et seq.*); a comment made by an unknown juror suggesting he might discuss the case (*Id.*); and eyerolling and eye daggers said to have been shot at all counsel by the forelady (R. pp. 119 *et seq.*).

Alleged Insult: After the luncheon recess on the third day of the trial, the trial court reported:

THE COURT: There was some negative reaction from some of the jurors, rather inappropriate language and so forth, contrary to my instructions, you know. *** But apparently the jury does not like the fact that I told them not to discuss the case, even

amongst themselves, you know. I should have told them that at the very start of the case, but I told them, of course, not to discuss it with anybody, you know, at home or anything like that. But I should have included that instruction earlier, but I know I didn't at some point in time tell them not even amongst themselves.

Of course, the reason for that is they haven't heard everything, and they shouldn't be trying to make a decision based on part of the testimony or evidence. Of course, they ought to consider it, take it in and listen to it, retain and everything, evaluate and everything. But as far as making any decisions are concerned, that's for them to do at the conclusion of the case when they've heard from everybody.

(R. p. 105, line 4 – p. 106, line 5).

The trial court then called the Clerk of Court to the stand.¹ She testified:

THE COURT: All right: And tell us what's been reported to you by people that are associated with the court operation.

THE WITNESS: Your Honor, at the lunch break, my courtroom manager came to me, and she reported to me something she thought I needed to be aware of, that the officer in the courtroom overheard.

THE COURT: And tell us what that was.

THE WITNESS: That when you dismissed them for a break, the forelady stood up. You admonished them to not discuss the case, she stood up and said –

THE COURT: She said something about the ...

THE WITNESS: She said, "F you" in the courtroom. The officer overheard her, and they went in the jury room

¹ The Court of Appeals would later reverse the trial court, ruling that it should have called the **forelady** to the stand. We submit that is splitting the proverbial hair, when what the parties are entitled to is a fair trial, not a perfect one. *Smoak v. Seaboard Coast Line Railroad Co.*, 259 S.C. 632, 193 S.E.2d 594 (1972) ("Hardly any case is completed without some flaw. If a new trial was required every time a flaw or mere possibility of prejudice occurred, litigation would be unduly prolonged. Our Court has held many times that such matters are basically for the sound discretion of the trial judge.")

(R. p. 107, lines 1 - 17) (truncated to separate the insult from the comment about juror discussions).

The Clerk reported that the Courtroom Officer said the insult was addressed to the trial judge. (R. p. 109, lines 1 – 5).

Alleged comment about juror discussing the case: As part of the same testimony, the Clerk of Court went on to say (with some overlap for context):

THE WITNESS: *** The [courtroom] officer overheard her, and they went in the jury room and someone -- one of the jurors in the jury room was heard, "I'll discuss this case, if I want to. What is he going to do to me, throw me in jail?" And I felt that it was important, I needed to bring it to your attention.

(R. p. 107, lines 16 – 22).

The Clerk was unable to say whether the person who made the comment in the jury room was male or female (R. p. 109, lines 7 – 12), since the Clerk said she heard it from the Courtroom Manager, who said she heard it from the Courtroom Officer (R. p. 107, lines 6 – 9), who apparently did not say whether the speaker was male or female.²

The trial court decided to treat the issue with the same noncommittal level as counsel had: The court told counsel it intended to admonish the jury "again about discussing the case, even amongst themselves, in as strong a language that I can ... *and see where it goes from there.*" (R. p. 109, lines 15 – 20). (emphasis added).

² Despite no one knowing which juror allegedly made this comment, the Court of Appeals would reverse on the grounds that the trial court should have questioned the forelady. The Court of Appeals did not state why it felt the trial court should have questioned the forelady about a statement made by an unknown person.

Appellant responded with the following:

MR. JEKEL³: If they have begun deliberating or discussing the case, I think that's completely inappropriate. Either way, they might be in our favor; they might be in their favor. But I don't think you can go on with the jury, if they've already started deliberating.

THE COURT: Well, I appreciate that, but I'm going to admonish them and hopefully remove that from any further anticipation in the case. I'm going to do the best I can to keep this trial going.

MS. SEITHEL⁴: Your Honor, I'm wondering if there's anything that you can do to try to [ferret] out who the other juror was, or if it was the forelady. I mean, I think it's completely inappropriate for anyone on that jury to use "F you," especially towards Your Honor.

MS. MASON⁵: We would agree.

MS. SEITHEL: You and I have not been on the same page, and I never once ---

THE COURT: I don't want to say anything about that, but anyway I appreciate that, you know. But I'm going to bring the jury out here, and I'm going to see if we can go on, you know. **You can renew your motions; you can make more motions, if you want to, you know, later on in the case, you know,** but I'm going to see if I can keep it going at this point.

(R. p. 109, line 23 – p. 110, line 23) (emphasis added).

The court then admonished the jury not to discuss the case until instructed to do so. (R. p. 111, line 8 – p. 113, line 13).

Later in this petition we will discuss what did *not* happen at that point.

Alleged eyerolling and eye daggers: After the witness completed his testimony, Appellant's counsel reported that she had "a **small issue** that we would like to address with you--."

(R. p. 117, lines 10 – 11). She reported that she and counsel for Defendants were in agreement that while the court was giving its instructions and as the witness was called back to the stand,

³ Counsel for Plaintiff/Appellant

⁴ Also counsel for Plaintiff/Appellant

⁵ Counsel for Defendants

“The foreperson gave a big roll of her eyes at, I’m not sure if it was you, [an expert witness], myself, or [defense counsel]. But – and then also as [other defense counsel] proceeded with her question, and I did with mine, honestly, I don’t think she wants to be here at all, Your Honor, because she shot the same daggers at both of us.” (R. p. 117, line 25 – p. 118, line 10). Counsel for Defendants agreed. (R. p. 118, line 11). Counsel for Appellants then said, “And it’s very – I think it taints the entire jury; I think that it taints the entire process.” (R. p. 118, lines 12 – 14). Defense counsel and she agreed it was “Very disruptive” and “distracting.” (R. p. 118, lines 16 – 19). Defense counsel agreed to release the forelady, “if the court – if Your Honor agrees.” (R. p. 118, lines 20 – 23) (emphasis added).

The trial court then asked:

So, as I understand – what you’re telling me is both of y’all want me to remove the foreperson from the jury?

(R. p. 118, line 24 – p. 119, line 1). And of utmost importance is the response of Appellant’s counsel, who wanted to keep her options open. She said, “Or check in with her, because something is different today with her than yesterday and the day before.” (R. p. 119, lines 2 – 4).

The trial court responded by noting from his own observation that the forelady was “paying particular attention,” was “very attentive,” and was taking notes. (R. p. 119, lines 5 – 10). In fact, the trial court said, referring to the forelady, “She tried to ask a question at one point, and then when I asked her about it later on, she said her question had been answered.” (R. p. 119, lines 10 – 14). The trial court then said it was:

Not making a final decision about it at this point, but I’m not going to take her off right now and everything, I’m going to again at the end of – later on, again admonish the jury about what they are to do and not do and so forth and everything, you know. And I certainly will take that into consideration before we submit the case to the jury after closing and everything, and will make a final decision about that then. But right now, I’m not going to take her off right now.

(R. p. 120, lines 6 – 16).

And here we list **what did not happen** as a result of either episode:

Appellant did not object to anything the trial court did or said and certainly did not object clearly. The closest Appellant came to complaining about an alleged insult occurred when she said:

I mean, I think it's completely inappropriate for anyone on that jury to use "F you," especially towards Your Honor."

(R. p. 110, lines 11 – 13).

The closest Appellant came to complaining about the comment made back in the jury room occurred when her lawyer said:

If they have begun deliberating or discussing the case, I think that's completely inappropriate. Either way, they might be in our favor; they might be in their favor. But I don't think you can go on with the jury, if they've already started deliberating."

(R. p. 110, line 23 – p. 111, line 3). (emphasis added.)

Appellant did not ask for an evidentiary hearing or for a factual determination of whether the jury had begun deliberating, and she did not object to how the trial court, exercising its discretion, decided to deal with the issue (with an admonition not to discuss the case, even among themselves, until they had heard all the evidence, seen everything present, heard the lawyers with their opening statement, their argument to the jury, and the court's instructions on the law). (R. 111, line 22 – p. 112, line 3).

Appellant never asked that the forelady be dismissed. When the court asked if "both of y'all want me to remove the foreperson from the jury," she did not say, "Yes, Your Honor. We move that the foreperson be removed from the jury." Instead she said:

MS. SEITHEL: Or check in with her, because something is different today with her than yesterday and the day before.

(R. p. 119, lines 2 - 4).

Appellant then withdrew her concerns about the presence of the forelady on the jury when she said, “We just wanted to bring that to your attention.” (R. p. 120, lines 19 – 20).

Appellant never asked the court for a final ruling after the court had said it was “not making a final decision on it at this point.” (R. p. 120, lines 6 – 16).

Appellant did not ask the trial court to state what it heard regarding the alleged insult.

Appellant never asked the court to ask the Clerk of Court any additional questions (other than whether the person who uttered the insult was the same person who said she would discuss the case if he or she wanted to).

Appellant did not object to the court’s curative instructions.

Appellant did not offer her own proposed curative instructions.

Appellant never asked for an evidentiary hearing where the Courtroom Officer or the Courtroom Manager could be questioned under oath about their first-hand knowledge of any alleged insult or the suggestion that a juror might discuss the case.

Appellant never asked that the forelady be questioned during an evidentiary hearing about any alleged juror misconduct.

Appellant never moved for a mistrial, only coming close when, as we stated before, her lawyer said, “I don’t think you can go on with the jury “[if] they have begun deliberating” or if they’ve already started deliberating.” (R. p. 110, lines 1 – 3, emphasis added.)

Appellant never asked anybody (the trial court, the Clerk of Court, the Courtroom Manager, the Courtroom officer, or any juror) whether the juror in question had actually discussed the case with anyone. In fact, there is no evidence at all that this unknown juror did actually discuss the case with anyone prematurely.

At the end of the testimony *the defense* renewed its motion to remove the forelady (R. p. 157, lines 4 – 7), but Appellant did not join in the motion (*id*). Appellant did not take the court up on its offer to reconsider the continued participation of the forelady after closing arguments. (See R. p. 158, line 13, p. 159, line 6). The alternates were excused (R. p. 159, line 7) and a verdict returned by the original jury. (R. p. 159, lines 15 – 20).

Despite the foregoing, the Court of Appeals concluded that the record had been preserved and that the trial court abused its discretion by failing to question the forelady.

Defendants’ Petition for Rehearing was filed on July 7, 2026, and the Court of Appeals denied it on August 24, 2026.

ARGUMENT

Timeliness of Appeal

Back in 2008 the Supreme Court reminded us, “It is not the Clerk of Court’s authority to request to perform her duty based on her opinion that a filing lacks merit or is untimely. *Miller v. State*, 377 S.C. 99, 659 S.E.2d 492 (2008).

That general policy remained in effect with the promulgation of Rule 41.2 of the South Carolina Rules of Civil Procedure on April 15, 2014. That Rule requires parties and their counsel to redact personal identifiable information and states that clerks of court will not review filings for redactions.

But the Supreme Court chose to expand the duties of Clerks of Court a year later (on October 28, 2015) in the limited realm of electronic filings. Certainly it could have left the general policy in place and adopted the federal rule (which treats defective filings as “cured” retroactively), but it chose not to. Instead, it **not only gave express authority to clerks** to review electronic filings but **it requires them to:**

4(d) Clerk Review. The Clerk of Court **shall promptly review** an Electronic Filing to determine whether it conforms to applicable filing requirements.

(1) Acceptance. If the Clerk of Court accepts the document

(2) Rejection: If the Clerk of Court rejects the document, the document **shall not become part of the court record**. The Clerk of Court will notify the E-Filer of the rejection and the reason for rejection, which the E-Filer may access in the E-Filing System under the "My Filings" Tab. In the event an NEF was transmitted at the time of submission, a new NEF will be sent to all E-Filers in the case informing them that the document was rejected by the Clerk of Court, **and the previous NEF shall not be effective as proof of service**.

The "Rejection" subparagraph goes on to provide a remedy to a party whose filing was erroneously rejected or where the rejection was based on improper formatting.

This new and more specific rule trumps the old, general rule in matters of electronic filings. Now, Clerks of Court are **required to review** electronic filings for conformity to applicable filing requirements, they are **required to reject them** if not, and the Notice of Electronic Filing **shall not be effective as proof of service**. None of that was contemplated when Rule 41.2, SCRCP (Privacy Protection for Filings) became effective in 2014.

The Supreme Court did not change any of this in 2021 with its opinion in *Barnes v. State*, 433 S.C. 399, 859 S.E.2d 260 (2021), a case cited by the Court of Appeals. *Barnes* is a post-conviction relief case where the *pro se* petitioner did not use the electronic filing system at all. Hence, the authority granted to clerks of court to deal with electronic filings did not apply to that case, and the general limitations on the authority of clerks of court did apply.

In short, neither SCRCP 41.2 nor *Barnes v. State* applies when determining the authority of a clerk of court to review and reject an electronic filing.

We also submit the Court of Appeals overlooked the fact that the Supreme Court rejected the federal rule that allows defective filings to be cured retroactively. The Supreme Court rejected it because:

1) The state's system "was not capable of substituting one document for another and retaining the same date and time stamp";

2) "It was believed that attorneys would be strongly opposed to granting Clerks of Court the power to alter a time stamp"; and

3) Such a system ensures that documents that are timely submitted are deemed timely served and filed, regardless of whether they are reviewed and formally accepted by the clerk of court that day or on a subsequent day.

See FAQs at www.sccourts.org/efiling/FAQs.cfm under "Summary of E-Filing Public Comments and Responses."

Rule 41.2(e), SCRCP, affords a remedy for filers who include data that should have been redacted: The filer may in a signed writing specify to the clerk the document and page number needing the redaction. But Appellant never did that.

In addition, Section 4, SCEF, allows a party to "seek appropriate relief upon good cause shown." But she never did that.

She did not even file an amended motion as allowed by Section 10(b)(2), SCEF.⁶ Instead, she simply filed a new motion. (R. p. 202).

Because the electronic filing did not occur until the eleventh day after the jury was discharged, it was late and did not stay the time to appeal. The time to appeal expired on October 18, 2023, so the Court of Appeals did not have jurisdiction to hear the appeal when the Notice of Appeal was served on October 31.

⁶ We do not concede that the filing date of an amended motion would relate back to the date of the original motion, since such would conflict with the policy reasons why the Supreme Court elected not to follow the federal rules, as discussed above.

Alleged Juror Misconduct

Error Preservation

In *State v. Simmons*, 423 S.C. 552, 816 S.E.2d 566 (2018), the Supreme Court held, "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (Internal citations omitted.)

Not Finally Ruled Upon

The Court of Appeals dealt with the fact that the trial court never made a final ruling on whether to "check in on" the juror by finding that asking again would have been futile. But the transcript shows otherwise.

Twice the trial court encouraged Appellant to renew her motion later in the case, and she instead chose to roll the dice with the juror.

The first time the trial court announced:

I don't want to say anything about that, but anyway I appreciate that, you know. But I'm going to bring the jury out here, and I'm going to see if we can go on, you know. **You can renew your motions; you can make more motions, if you want to, you know, later on in the case, you know,** but I'm going to see if I can keep it going at this point.

(R. p. 109, line 23 – p. 110, line 23) (emphasis added).

Later the trial court stated on the record:

Not making a final decision about it at this point, but I'm not going to take her off right now and everything, I'm going to again at the end of – later on, again admonish the jury about what they are to do and not do and so forth and everything, you know. And **I certainly will take that into consideration before we submit the case to the jury after closing and everything, and will make a final decision about that then.** But right now, I'm not going to take her off right now.

(R. p. 120, lines 6 – 16) (emphasis added).

At the end of the testimony Defendants (who had never asked for an inquiry) asked the trial court to remove the juror and replace her with one of the remaining two alternates. (R. p. 157, lines 4 – 7 and 17 – 22). But Appellant herself remained silent, never joining in the request that the forelady be replaced and never renewing her request that the court “check in on her,” or otherwise conduct any sort of inquiry. (R. p. 721). The Court of Appeals’ decision to forgive error preservation issues on futility grounds simply does not hold water under the facts of this case.

Not Specific Enough

The specificity of Appellant’s request of the trial court fell well short of the requirements of *State v. Hurd*, 325 S.C. 384, 480 S.E.2d 94 (Ct. App. 1996). There, the Court of Appeals ruled that a request was sufficiently specific where counsel asked the court to “remove a juror” or “bring him in and question him.” Here, all Appellant did was to ask the trial court to “Check in with her.” (R. p. 119, lines 2 – 4). Nowhere did she ask the trial court to conduct an evidentiary hearing, much less the “probing and tactful inquiry” she could have chosen to ask for under *Hurd*. We submit that the Court of Appeals failed to honor this Court’s displeasure with the trial tactic of making a weak, imprecise objection and then holding it as “an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Another Party’s Objection

We also submit that the Court of Appeals failed to recognize the rule that an appellant has not preserved an issue for appeal if it was another party who raised the objection. *See Tupper v. Dorchester County*, 326 SC 318, 487 S.E.2d 187 (1997) (citing *Brock v. Board of Adjustment*, 308 S.C. 539, 419 S.E.2d 773 (1992), and 4 C.J.S. *Appeal and Error* § 251 (1957) and explaining that

an appellant cannot bootstrap an issue for appeal by way of a co-defendant's objection). *See also State v. Lemire*, 406 S.C. 558, 753 S.E.2d 247 (Ct. App. 2013); and *State v. Ward*, 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007). As noted, it was Respondents and not Appellant who objected to the continued presence of the forelady at the very end of the trial. (R. p. 157, lines 4 – 7 and lines 17 – 22). As indicated, Appellant was apparently willing to take her chances with the forelady while also keeping an ace up her sleeve.

The Court of Appeal's reliance on the general rule in *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000) (as to futile actions) is, we submit, inadequate to explain why *Tupper* and *Brock* (as to the party who made the objection) do not apply.

No Abuse of Discretion

We submit that the Court of Appeals should not have replaced the trial court's discretion with its own regarding the trial court's decisions to replace the juror or to question the Clerk of Court rather than the forelady. The trial court showed that it was keenly aware of the juror's attentiveness in the trial. (R. pp. 118 – 119 and p. 157, lines 8 – 16).

CONCLUSION

The order of the lower court ending the case should be affirmed because the Notice of Appeal was filed late; no final ruling was made about questioning the forelady; no appealable issue was raised to the trial court with sufficient specificity; Appellant did not herself renew her vague request to remove the juror or "check in with her"; neither side renewed anybody's request for an inquiry into the juror; Appellant did not herself make the motion at the end of the trial; and the trial court did not abuse its discretion.

Appellant got her fair trial, and Petitioners ask this Court to review the opinion of the Court of Appeals, reverse it, and affirm the trial court's order affirming the jury's verdict.

All of which is respectfully submitted.

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