

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Appellant Case No. 2023-001703
Unpublished Opinion No. 2026-UP-307

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SC Court of Appeals

108637

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

v.

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

RESPONDENTS' PETITION FOR REHEARING

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Pursuant to Rule 221(a), SCACR, Respondents, Richard Miles Thompson, M.D. and ACS Primary Care Physicians – Southeast, P.C., respectively request that this Court grant rehearing.

On June 24, 2026, this Court reversed the trial court following a jury verdict for Respondents. Counsel respectfully submits that:

a) This Court misapprehended the arguments of Respondents and applied the general rule prohibiting clerks of court from rejecting improper paper filings (Rule 41.2, SCRCP) when it should have applied the newer, more specific rule for electronic filings (Electronic Filing Policies and Guidelines 4(d)), which requires clerks of court to review electronic filings for compliance with the law and requires clerks of court to reject them for nonconformance).

b) The Court overlooked the argument of Respondents that the trial court never made a final ruling on holding an evidentiary hearing regarding the forelady's alleged misconduct.

c) The Court overlooked the argument of Respondents that any error in failing to remove a juror or conduct a hearing was not preserved, the error being that Appellant did not ask for any sort of inquiry with sufficient specificity.

d) The Court overlooked the argument of Respondents that it was Respondents (rather than Appellant) who asked for a final ruling on removing the juror.

e) The Court overlooked the argument of Respondents that the trial court did not abuse its diction in not replacing the juror or "checking in" with her.

Late Filing

This is a medical malpractice case that resulted in a jury verdict for Respondents. The trial court allowed Appellant to file her motion for a new trial on the tenth day after discharge of the jury. Appellant did not attempt to serve her motion on the tenth day at all but instead merely submitted it to the clerk of court for ruling under the state's electronic filing policies and

guidelines. The submitted papers contained personally identifiable information prohibited by law to be included in court filings. The following morning the clerk of court, as required by Rule 4(d) of the Electronic Filing Policies and Guidelines, promptly reviewed the submission to determine whether it conformed to applicable filing requirements. Applicable filing requirements require that filers redact personally identifiable information. Since the clerk found the filing violated law, she rejected the filing, whereupon under Rule 4(d)(2) the filing did not become part of the court record and it was not served on Respondents. Following the procedures of Rule 4(d)(2), the Clerk of Court notified Appellant of the rejection and the reason for the rejection. The following day – the eleventh day after discharge of the jury – Appellant properly filed her motion for a new trial.

This Court, citing Rule 41.2 of the South Carolina Rules of Civil Procedure and *Barnes v. State*, 433 S.C. 399, 859 S.E.2d 260 (2021), held the clerk did not have the authority to reject the filing. We submit that the Court overlooked our argument that Rule 4(d) is the applicable rule to be considered.

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 personally 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 that 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 in 2008, when the Supreme Court delivered its opinion in *Miller v. State*, and none of that was contemplated when SCRCP 41.2 (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). *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 overlooked the fact that our 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."

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.

Possible Juror Misconduct

Error Preservation

In *State v. Simmons*, 423 S.C. 552, 816 S.E.2d 566 (2018), the Supreme Court ruled, "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

We submit that the Court overlooked our argument that the trial court never made a final ruling on whether to "check in on" the juror. Twice the trial court encouraged Appellant to renew her motion later in the case, and she chose to roll the dice.

The first time the 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 court ruled:

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 Respondents (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 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. And nothing in the record suggests that making such a motion would have been futile or would have constituted harassment of the trial court.

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, this Court 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 this Court overlooked our argument that it is not fair to trial courts for counsel to make a weak,

imprecise objection and hold 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); *Cox v. S.C. Educ. Lottery Comm’n*, 441 S.C. 209, 893 S.E.2d 342 (Ct. App. 2023).

Another Party’s Objection

We also submit that the Court overlooked our argument 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 her while also keeping an ace up her sleeve.

This Court’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* do not apply.

No Abuse of Discretion

We submit that the Court overlooked our argument that the trial court did not abuse its discretion in declining to replace the juror or to hold a hearing. 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 holding any sort of inquiry about the juror; 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"; and 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 Respondents move this Court for rehearing so the trial court's orders can be affirmed.

All of which is respectfully submitted.


/s/ Robert P. Wood

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July 7, 2026

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PROOF OF SERVICE OF PETITION FOR REHEARING

Robert P. Wood certifies that he is counsel for Respondents and that he served the document listed below upon the follow counsel of record by the following means on the date identified below.

Document: Respondents' Petition for Rehearing

Counsel Served: Brooks R. Fudenberg, Esq.
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Date: July 7, 2026


Robert P. Wood

July 7, 2026

Robert P. Wood

From: Robert P. Wood
Sent: Tuesday, July 7, 2026 2:37 PM
To: Brooks R. Fudenberg (brooks.r.fudenberg@fudenberglaw.com)
Cc: lynn@seithellaw.com; Frederick John Jekel (fritz@j-dlaw.com); Joanne Allen
Subject: Anderson v. Thompson - Petition for Rehearing
Attachments: Petition for Rehearing - Anderson v. Thompson (Appellate Case 2023-001703; Op. No. 2026-UP-307).pdf

Mr. Fudenberg, attached is our petition for rehearing, which I herewith serve upon you. I will be filing this with the Court of Appeals in a few minutes.
Please let me know if you can't open this.
Bob



Robert P. Wood
Member

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