

**RECEIVED**

**Oct 13 2026**

**SC Court of Appeals**

IN 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

---

Mark Edelmayer .....Appellant,

v.

Jonathan Bean .....Respondent.

---

**INITIAL BRIEF OF RESPONDENT**

---

Timothy J. Caiello, Esquire  
S.C. Bar No. 103792  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, SC 29260  
(803) 782-4100  
tcaiello@murphygrantland.com  
Attorney for Respondent

## **TABLE OF CONTENTS**

|                                                                                                                                                                                                                                                     |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Table of Authorities .....                                                                                                                                                                                                                          | ii |
| Statement of Issue on Appeal .....                                                                                                                                                                                                                  | 1  |
| Statement of the Case.....                                                                                                                                                                                                                          | 1  |
| Factual and Procedural Background .....                                                                                                                                                                                                             | 2  |
| Standard of Review .....                                                                                                                                                                                                                            | 5  |
| Argument .....                                                                                                                                                                                                                                      | 5  |
| I.    The Circuit Court correctly denied Appellant’s Motions for directed verdict and judgment notwithstanding the verdict on the issue of negligence, as there was at least some evidence to support the jury’s finding of a sudden emergency..... | 6  |
| II.   The Circuit Court properly denied Appellant’s Motion for a New Trial based on the procedural form of questions his counsel was permitted to ask during direct examination of Mr. Bean.....                                                    | 10 |
| A. This ground is not preserved for appellate review.....                                                                                                                                                                                           | 10 |
| B. Even if this ground was preserved for appellate review, Appellant is not entitled to a new trial because he cannot show prejudice resulting from this restriction on the procedural form of questions.....                                       | 13 |
| III.  The Circuit Court properly denied Appellant’s Motion for a New Trial based on the agreed-to response to the jury’s question.....                                                                                                              | 17 |
| A. This ground is not preserved for appellate review.....                                                                                                                                                                                           | 17 |
| B. Even if this ground was preserved for appellate review, Appellant’s current objections to the Circuit Court’s handling of the jury’s question are not a valid basis for a new trial.....                                                         | 17 |
| Conclusion .....                                                                                                                                                                                                                                    | 19 |

## TABLE OF AUTHORITIES

Page Number

### CASES

|                                                                                                                                   |       |
|-----------------------------------------------------------------------------------------------------------------------------------|-------|
| <i>Alston v. Blue Ridge Transfer Co.</i> , 308 S.C. 292, 297, 417 S.E.2d 631, 634 (Ct. App. 1992) ...                             | 7,15  |
| <i>Belue v. City of Greenville</i> , 226 S.C. 192, 203, 84 S.E.2d 631, 636 (1954) .....                                           | 13    |
| <i>Burke v. AnMed Health</i> , 393 S.C. 48, 57, 710 S.E.2d 84, 89 (Ct. App. 2011).....                                            | 13    |
| <i>Camden v. Hilton</i> , 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App. 2004) .....                                              | 5     |
| <i>Carson v. CSX Transportation, Inc.</i> , 400 S.C. 221, 242 (2012) .....                                                        | 19    |
| <i>Chakrabarti v. City of Orangeburg</i> , 403 S.C. 308, 313, 743 S.E.2d 109, 112 (Ct. App. 2013) ....                            | 7     |
| <i>Chapman v. Associated Transport, Inc.</i> , 218 S.C. 554 (1951) .....                                                          | 10    |
| <i>Commercial Credit Loans, Inc. v. Riddle</i> , 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999)<br>.....                  | 17    |
| <i>Estate of Doe 202 by Doe MM v. City of N. Charleston</i> , 441 S.C. 131, 140, 893 S.E.2d 319, 323<br>(2023) .....              | 18    |
| <i>Fettler v. Genter</i> , 396 S.C. 461 (Ct. App. 2012).....                                                                      | 9     |
| <i>Gastineau v. Murphy</i> , 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998) .....                                                  | 7     |
| <i>Johnson v. Sonoco Prods. Co.</i> , 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).....                                          | 17    |
| <i>Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.</i> , 359 S.C. 105, 113, 597 S.E.2d 145, 149<br>(2004) .....             | 17    |
| <i>Mills v. S.C. State Ports Auth.</i> , 435 S.C. 213, 227, 865 S.E.2d 910, 917 (Ct. App. 2021).....                              | 13    |
| <i>R &amp; G Const., Inc. v. Lowcountry Reg'l Transp. Auth.</i> , 343 S.C. 424, 431, 540 S.E.2d 113, 117<br>(Ct. App. 2000) ..... | 6     |
| <i>RFT Mgmt. Co. v. Tinsley &amp; Adams L.L.P.</i> , 399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012)....                            | 6-7   |
| <i>South Carolina Dep't of Transp. v. First Carolina Corp. of S.C.</i> , 372 S.C. 295, 302, 641 S.E.2d 903,<br>907 (2007) .....   | 13    |
| <i>State v. Dunbar</i> , 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) .....                                                   | 13,17 |
| <i>State v. Guillebeaux</i> , 362 S.C. 270, 274 n.1, 607 S.E.2d 99, 101 n.1 (Ct. App. 2004) .....                                 | 11    |

|                                                                                         |       |
|-----------------------------------------------------------------------------------------|-------|
| <i>State v. Hale</i> , 284 S.C. 348, 351, 326 S.E.2d 418, 420 (Ct. App. 1985) .....     | 13    |
| <i>State v. Harris</i> , 340 S.C. 59, 64, 530 S.E.2d 626, 628 (2000) .....              | 18    |
| <i>State v. Holland</i> , 385 S.C. 159, 172, 682 S.E.2d 898, 905 (Ct. App. 2009) .....  | 12-13 |
| <i>State v. Johnson</i> , 248 S.C. 153, 159–60, 149 S.E.2d 348, 351 (1966) .....        | 11    |
| <i>State v. McHoney</i> , 344 S.C. 85, 99, 544 S.E.2d 30, 37 (2001) .....               | 15    |
| <i>State v. Murphy</i> , 216 S.C. 44, 48, 56 S.E.2d 736, 737 (1949).....                | 11    |
| <i>State v. Outen</i> , 237 S.C. 514, 521, 118 S.E.2d 175, 178–79 (1961).....           | 11    |
| <i>State v. Roper</i> , 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) .....               | 11    |
| <i>State v. Santiago</i> , 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) .....   | 11    |
| <i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991) .....                     | 11,14 |
| <i>State v. Williams</i> , 427 S.C. 148, 157, 829 S.E.2d 702, 706–07 (2019) .....       | 8,18  |
| <i>Sumner v. Pruitt</i> , 281 S.C. 63, 67, 314 S.E.2d 150, 152–53 (Ct. App. 1984) ..... | 14-15 |
| <i>Welch v. Epstein</i> , 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).....   | 6     |
| <i>Yoho v. Thompson</i> , 345 S.C. 361, 548 S.E.2d 584 (2001) .....                     | 12,15 |

### **STATEMENT OF ISSUES ON APPEAL**

- I. Whether the Circuit Court abused its discretion by denying Appellant's motions for directed verdict and JNOV on the issue of negligence where there was some evidence to support the jury's finding of sudden emergency/unavoidable accident caused by a third-party driver.
- II. Whether the Circuit Court properly denied Appellant's Motion for a New Trial based on the procedural form of questions his counsel was permitted to ask during direct examination of Respondent where there was no showing of prejudice before the Circuit Court.
- III. Whether the Circuit Court properly denied Appellant's Motion for a New Trial based on the agreed-to response to the jury's question during deliberations.

### **STATEMENT OF THE CASE**

Through this appeal, Appellant attempts to set aside a defense verdict from a jury that unanimously found Respondent not at fault for an auto accident after less than an hour of deliberation. There was evidence at trial from both Respondent and Appellant that a third-party driver of a white Jeep quickly switched lanes on the interstate, cutting off the Appellant, and causing Appellant and Respondent to brake hard to attempt to avoid a collision. The South Carolina sudden emergency defense and unavoidable accident doctrine were at the heart of Respondent's trial presentation on liability, and the jury concurred. After this adverse outcome, Appellant moved for judgment notwithstanding the verdict ("JNOV") on the issue of negligence. Appellant also moved for a new trial on the basis of the procedural form of the questions he was permitted to ask Respondent. However, Appellant presented no evidence of prejudice to the Circuit Court on this basis. As another ground for a new trial, Appellant challenged the Circuit Court's response to a jury question – a response to which all parties contemporaneously agreed. The Circuit Court denied Appellant's Motion for JNOV and New Trial.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Factual Background**

This case arose out of a low-speed highway collision caused by a third-party motorist driving a white Jeep who cut off and “brake checked” Appellant before leaving the scene. (Trial Tr. 94:2-6; 94:25-95:8; 102:22-103:7). Mr. Bean was traveling in the same lane behind the Appellant. The white Jeep’s maneuver forced both Appellant and Mr. Bean to suddenly hit their brakes and resulted in incidental contact between Appellant’s and Mr. Bean’s bumpers at low speed. (*Id.* at 110:1-13; 144:18-145:6). Appellant himself testified that the white Jeep came from the middle lane to the right lane in front of him and described the white Jeep’s maneuvering as “he jumped out in front of me.” (*Id.* at 144:22-145:5).

At the time of the accident, Mr. Bean had just merged on to Interstate 26 with traffic flowing. (*Id.* at 90:13-25). He was still in the most righthand lane and had not gotten up to speed when he noticed a slowdown ahead. (*Id.* at 91:4-19; 92:2-20). He had already begun slowing down for this slower moving traffic before the white Jeep merged over and cut off the Appellant. (*Id.* at 105:19-106:10). Mr. Bean testified that he could not have avoided the collision because “[i]t just happened all of a sudden.” (Trial Tr. 97:10-16). Mr. Bean testified that he was placed in a sudden emergency situation by the maneuver of the Jeep driver, who left the scene. (*Id.* at 111:7-112:1; 113:17-18). He also testified that he did everything he could to respond to this sudden emergency and to try to prevent a collision:

Q. Okay. Did you do everything you could to respond to that emergency?

A. Yes.

Q. Did you take your foot off the accelerator?

A. Yes.

Q. Did you hit the brakes as hard as you could?

A. Yes.

- Q. Did you leave skid marks on the highway?
- A. Yes.
- Q. Did you slow down almost to a stop before the tap occurred?
- A. Yes.
- Q. Do you think there was anything else you could have done to respond to this sudden emergency on the highway?
- A. No, I did all I could do.

(*Id.*). Appellant also testified that if he had not hit his brakes hard when the white Jeep driver came over, he would have crashed. (*Id.* at 144:24-145:10; 147:8-17). Mr. Bean tried to wave down the driver of the white Jeep after the accident, but that driver did not stop. (*Id.* at 103:16-18).

With this minor collision, no airbags deployed and no ambulances were called to the scene. (*Id.* at 114:4-23; 124:5-6; 127:19-22). Appellant drove his vehicle from the scene. (*Id.*). Despite the foregoing, Appellant testified that the collision was “10/10” in severity and asked the jury for millions of dollars in damages from Mr. Bean. (*Id.* at 148:3-17).

## **II. Procedural Background**

The trial took place from May 18, 2026, to May 21, 2026. The jury deliberated for less than an hour and returned a unanimous defense verdict finding Defendant Bean not negligent. (Jury Verdict). Appellant then filed a post-trial Motion. (Pl.’s Post-trial Motion). In that Motion, Appellant sought judgment notwithstanding the verdict on the issue of negligence. (*Id.* at pp. 2-3). He also sought a new trial on the basis of: (1) the procedural form of questions he was permitted to ask Mr. Bean at trial; and (2) the Circuit Court’s handling of a jury question. (*Id.* at pp. 4-8). The Circuit Court denied Appellant’s post-trial Motion, and this appeal followed.

### **A. Non-Leading Questions**

During the trial, Appellant called Mr. Bean as the first witness in his case-in-chief. (Trial Tr. 73:18-19). The Circuit Court required Appellant’s counsel to ask Mr. Bean non-leading questions.

(*Id.* at 74:3-81:1; 90:6-100:9; 115:13-25). Despite this directive, Appellant's counsel asked Mr. Bean several leading questions. (*Id.*). The Circuit Court placed no time restrictions on Appellant's questioning of Mr. Bean or on the scope of the questions, other than prohibiting questions about insurance. *See (id.* at 74:3-115:25). Appellant never asked to make a proffer of his leading questions and Mr. Bean's responses. *See (id.)*. At the end of Mr. Bean's testimony, Appellant did not move for a mistrial on the basis of being limited to non-leading questions. *See (id.* at 116). During the course of the trial, Appellant never moved for a mistrial on this basis. *See (Trial Tr.)*.

Only after the jury came back with an unfavorable verdict did Appellant file a Post-Trial Motion for New Trial with this as one of the asserted bases. (Pl.'s Post-trial Motion, pp. 4-5). Appellant's Motion identified no prejudice to him resulting from this procedural restriction on his examination of Mr. Bean. (*Id.*). In its June 29, 2026 Order, the Circuit Court recognized that it should have permitted Appellant to ask Mr. Bean leading questions. (June 29, 2026 Order, pp. 3-4). However, the Circuit Court did not grant Appellant a new trial on this basis, finding such error to be harmless. As the Circuit Court explained in its Order:

Plaintiff called Defendant Jonathan Bean as his first witness. Plaintiff asserts that he was not allowed to cross-examine and ask Defendant Bean leading questions. Upon defenses objection, this Court ruled that Plaintiff's counsel could not cross-examine Defendant since Plaintiff was the party who called him. Plaintiff's counsel had ample opportunity to examine Defendant Bean. The only substantial constraints imposed by the Court on Plaintiff's counsel's examination of Defendant Bean at trial stemmed from Plaintiff Counsel's improperly conducted and repeated attempts to introduce insurance evidence to the jury. Plaintiff has not identified any prejudice derivative from Defendant's examination.

Therefore, the Court admits the error but finds it harmless error where, as here, the Court did not prevent Plaintiff's counsel from examining the Defendant and the record will show counsel asked many leading questions denied Appellant a new trial on this basis.

(*Id.*). Thus, the Circuit Court held that it committed harmless error by limiting Appellant counsel's use of leading questions. (*Id.*).

## **B. Jury Charge and Instructions**

Prior to charging the jury, the Circuit Court held a charge conference with all parties present. (*Id.* at p. 4). Neither party raised objections to the Circuit Court's instructions, including the instructions on negligence, sudden emergency, and unavoidable accident. (*Id.*). "Accordingly, no objection to those jury instructions was preserved at the time of the charge." (*Id.*).

After the charge conference, the Circuit Court charged the jury with those agreed upon charges. (Trial Tr. 444:1-466:3). During jury deliberations, the Court received a written communication from the jury foreperson inquiring about the distinction between "bad judgment" and "negligence." (Court's Ex. 1, Jury Note). As a result, the Court held a bench conference. (Trial Tr. 469:4-15). During the bench conference, counsel consented to providing the jury with a dictionary. (June 29, 2026 Order, p. 4). "With the consent of all counsel, the Court then provided the jury with a dictionary." (*Id.*). Thereafter, the jury deliberated for less than an hour and returned a unanimous defense verdict finding Defendant not negligent. (Jury Verdict).

## **STANDARD OF REVIEW**

The judgments appealed are: (1) denial of a directed verdict motion/JNOV motion; and (2) denial of a motion for new trial. The applicable standards of review are set forth below in their respective argument sections.

## **ARGUMENT**

The jury found for the Respondent on the issue of negligence. Implicit in their finding is a determination that the driver of the white Jeep created a sudden emergency to which Respondent responded as an ordinary prudent person in the same or similar circumstances (i.e., without much time to react). A jury's verdict should be upheld whenever possible so as to carry into effect the jury's clear intentions. *See, Camden v. Hilton*, 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App.

2004). Applying the appropriate standard of review, the Circuit Court properly denied Appellant's Motions for directed verdict and judgment notwithstanding the verdict on the issue of negligence. There was at least some evidence to support the jury's finding of a sudden emergency.

The Circuit Court also properly denied Appellant's Motion for a New Trial on the basis of: (1) the procedural form of questions Appellant was permitted to ask Mr. Bean; and (2) the agreed-to response to the jury's question. The first basis is not preserved for appellate review. Appellant failed to move for a mistrial on this ground, failed to make a proffer of his leading questions and Mr. Bean's responses, and failed to make any showing of prejudice before the Circuit Court. Additionally, even if preserved for review, Appellant could not show the prejudice required to warrant reversal on this basis. The second basis is also not preserved for appellate review. Appellant made no contemporaneous objection to the proposed response and, in fact, agreed to the Circuit Court's response. Moreover, the Circuit Court's response is not a valid ground for a new trial. Therefore, the Circuit Court should be affirmed and the jury verdict upheld.

**I. The Circuit Court correctly denied Appellant's Motions for directed verdict and judgment notwithstanding the verdict on the issue of negligence, as there was at least some evidence to support the jury's finding of a sudden emergency.**

"A motion for a JNOV is merely a renewal of the directed verdict motion." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012). When considering directed verdict and JNOV motions, "[t]his Court will reverse the trial court *only when there is no evidence* to support the ruling below." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000) (emphasis added); *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 431, 540 S.E.2d 113, 117 (Ct. App. 2000) (same). In ruling on such motions, the Court must view "the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *RFT Mgmt. Co.*, 399 S.C. at 331–32, 732 S.E.2d at 171. "In deciding such motions, neither

the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *Id.* at 332, 732 S.E.2d at 171. “The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt.” *Id.* “Moreover, ‘[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.’” *Id.* (quoting *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)). In ruling on these motions, the “court is ***concerned only with the existence or non-existence of evidence***”, not its weight. *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 313, 743 S.E.2d 109, 112 (Ct. App. 2013) (emphasis added).

Appellant moved for a directed verdict on negligence and renewed that motion through a JNOV motion after the defense verdict. The Circuit Court properly denied those motions because there was at least some evidence that Mr. Bean was not negligent and was placed in a sudden emergency to which he reasonably responded. “Where a motorist is suddenly placed in an emergency situation, through no fault of his own, and is compelled to act instantly to avoid a collision, he is not negligent if he makes a choice that a person of ordinary judgment might make if placed in the same emergency situation.” *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 297, 417 S.E.2d 631, 634 (Ct. App. 1992).

After the close of evidence, the Circuit Court – without any objection by Appellant – charged the jury on the law governing unavoidable accidents:

The defendant claims that he should not be held responsible for the plaintiff's injuries because the accident was unavoidable. The operator of a motor vehicle is not responsible for unavoidable or inevitable conditions. The mere fact that an accident occurs which results in injury, death, or property damage, does not make the defendant responsible. The plaintiff must prove that the defendant was negligent. An unavoidable accident is an accident which, under the circumstances and conditions, could not have been foreseen or anticipated in the exercise of ordinary care and skill....

(Trial Tr. at 451:2-14). The Circuit Court likewise charged the jury, without objection, regarding sudden emergency as a complete defense to negligence claims in South Carolina:

The defendant claims that he should not be held responsible for the plaintiff's injuries because of a sudden emergency. If a driver is confronted with a sudden emergency, the driver is not guilty of negligence. The driver must first show that an actual or apparent emergency existed, which was not reasonably anticipated. Next, the emergency must not have been caused by the defendant's own conduct. The emergency must have been created by the negligence of another person. The defendant must have been faced with deciding between two or more courses of action because of the emergency, without time to think about which course of action to follow. And, finally, it must be shown that the decision must be one which would have been made by an ordinary prudent person in the same or similar circumstances. It does not have to be the wisest decision.

(*Id.* at 451:15-452:6). These unappealed jury instructions became the law of this case. *See State v. Williams*, 427 S.C. 148, 157, 829 S.E.2d 702, 706–07 (2019) (explaining that unappealed jury instructions “become the law of this case”).

Mr. Bean testified that he was placed in a sudden emergency situation by the maneuver of the Jeep driver, who cut off the Appellant and then left the scene. (Trial Tr. 111:7-112:1; 113:17-18). He also testified that he did everything he could to respond to this sudden emergency and to try to prevent a collision:

- Q. Okay. Did you do everything you could to respond to that emergency?
- A. Yes.
- Q. Did you take your foot off the accelerator?
- A. Yes.
- Q. Did you hit the brakes as hard as you could?
- A. Yes.
- Q. Did you leave skid marks on the highway?
- A. Yes.
- Q. Did you slow down almost to a stop before the tap occurred?
- A. Yes.
- Q. Do you think there was anything else you could have done to respond to this sudden emergency on the highway?

A. No, I did all I could do.  
(*Id.*). Mr. Bean also testified that he was keeping careful watch on the roadway, looking in his mirrors, and being vigilant to stay in the flow of traffic as he drove. (*Id.* at 95:15-20).

Likewise, Appellant himself testified that the white Jeep came from the middle lane to the right lane in front of him and described the white Jeep's maneuvering as "he jumped out in front of me." (*Id.* at 144:22-145:5). Appellant also testified that if Appellant had not hit his brakes hard when the white Jeep driver came over, he would have crashed. (*Id.* at 144:24-145:10; 147:8-17).

Thus, there was some evidence regarding sudden emergency and unavoidable accident from which the jury could find that Mr. Bean was not negligent. Again, when considering directed verdict and JNOV motions, the question is whether there is any evidence to support the ruling below – not the weight of the evidence or credibility of the witnesses.

Appellant's Brief demonstrates a lack of understanding of this standard of review and seeks to have the Court weigh the evidence and credibility of the witnesses, which it is not permitted to do. *See* (Appellant's Br., pp. 11-12). Appellant cites only two cases in support of his argument, both of which are inapplicable and readily distinguishable. *See (id.)*. First, Appellant states:

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).

(Appellant's Br., p. 11). In *Fettler*, both the defendant driver and his wife admitted that he failed to keep a proper lookout. 396 S.C. at 467, 722 S.E.2d at 30. Here, Mr. Bean never admitted that he failed to keep a proper lookout. In fact, he testified that he was keeping a proper lookout at the time of the accident. (Trial Tr. 95:10-20; 102:22-103:2; 105:21-106:3). Thus, the only way the *Fettler* case could

be applicable is if the Court was weighing the evidence or credibility of the witnesses, which it is not permitted to do.

The only other case Appellant cites in support of this argument is *Chapman v. Associated Transport, Inc.*, 218 S.C. 554 (1951), which involved a verdict for the plaintiff and no motions by the plaintiff for directed verdict or JNOV. (Appellant's Br., pp. 11-12). Instead, the *Chapman* court viewed the facts in the light most favorable to the plaintiff, as it was required to do on the defendant's JNOV motion regarding punitive damages. *Id.* at 558, 63 S.E.2d at 467. Moreover, in addition to an opposite procedural posture, the *Chapman* case included dispositively different facts. Unlike the white Jeep here, there was no third-party vehicle in *Chapman* that swerved into the defendant's lane of travel creating a sudden emergency. *See id.* at 557, 63 S.E.2d at 466. The only emergency in *Chapman* was created by the defendant driver's own actions in failing to notice the plaintiff's brake lights, failing to keep a proper lookout, and traveling in excess of the speed limit. *Id.* at 561, 63 S.E.2d at 468. None of these factors are present here, especially when viewing the evidence in the light most favorable to the Respondent, as this Court is required to do. Therefore, *Chapman* has no application to this case.

Applying the proper directed verdict and JNOV standards, the Circuit Court correctly denied Appellant's directed verdict and JNOV motions. As shown above, there was some evidence of sudden emergency and unavoidable accident to support the jury's finding that Respondent was not negligent. Therefore, the Circuit Court should be affirmed.

**II. The Circuit Court properly denied Appellant's Motion for a New Trial based on the procedural form of questions his counsel was permitted to ask during direct examination of Mr. Bean.**

**A. This ground is not preserved for appellate review.**

This ground is not preserved for appellate review because Appellant never moved for a mistrial on this ground. If a party believes that “his cause [is] injured” by the form of the questions permitted, then he “should have moved for a mistrial upon such ground” before the verdict. *See State v. Outen*, 237 S.C. 514, 521, 118 S.E.2d 175, 178–79 (1961), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Murphy*, 216 S.C. 44, 48, 56 S.E.2d 736, 737 (1949). “[A] mistrial and a new trial are not the same thing in name or effect.” *State v. Guillebeaux*, 362 S.C. 270, 274 n.1, 607 S.E.2d 99, 101 n.1 (Ct. App. 2004) (citation omitted). “A mistrial results where, before a trial is completed and judgment rendered, the trial court concludes that there is some error or irregularity that prevents a proper judgment being rendered, in which event a mistrial may be declared.” *State v. Johnson*, 248 S.C. 153, 159–60, 149 S.E.2d 348, 351 (1966). Here, Mr. Bean was the first witness called by either party. (Trial Tr. 74:17-19). However, at the close of his testimony, Appellant never moved for a mistrial on the ground that his counsel was restricted to asking Mr. Bean non-leading questions on direct examination. *See* (Trial Tr. 115:25-116:8). In fact, at no point during the trial did Appellant ever move for a mistrial on this ground. *See* (Trial Tr.). Only after the jury came back with a verdict against him, did Appellant assert this ground as a purported basis for a new trial in his post-trial Motion. Therefore, this ground is not preserved for appellate review.

This ground is also not preserved for appellate review because Appellant never made a proffer of his leading questions and Mr. Bean’s responses. “[A] proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been.” *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006); *see State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) (“It is well settled

that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been.”).

In his Brief, Appellant premises his entire “form of question” argument on a single case – *Yoho v. Thompson*, 345 S.C. 361, 548 S.E.2d 584 (2001). Specifically, Appellant cites *Yoho* for the proposition that it can be harmful error to prohibit questions when “the ***prohibited examination would have developed materially different and more probative evidence.***” (Appellant’s Br., pp. 13, 15) (emphasis added). However, in *Yoho*, the appellant made a proffer to the trial court of the bias evidence she sought to elicit that would have been “materially different and more probative” than what she was actually permitted to elicit from the witness. 345 S.C. at 364, 548 S.E.2d at 585. She did this through submitting: (1) the witness’ “deposition testimony from another case”; (2) evidence that “ten to twenty percent of Dr. Brannon's practice consisted of reviewing records for insurance companies”; and (3) evidence that his yearly salary was based on his insurance consulting work. *Id.* at 364, 548 S.E.2d at 585. Here, Appellant did not even ask to make a proffer of his leading questions and Mr. Bean’s responses, much less actually make one. *See* (Trial Tr. 258-267). Consequently, this ground is not preserved for appellate review. There is no record of what leading questions Appellant intended to ask or Mr. Bean’s responses to such questions.

Furthermore, this ground is not preserved for appellate review because Appellant never set forth any showing of prejudice for the Circuit Court. Appellant’s Motion for New Trial failed to set forth any purported prejudice Appellant suffered as a result of the procedural restriction on the form of questioning. *See* (Motion for New Trial, pp. 4-5). The Circuit Court’s Order noted this lack of evidence of prejudice: “Plaintiff has not identified any prejudice derivative from Defendant’s examination.” (June 29, 2026 Order, p. 4). Consequently, Appellant cannot now set forth evidence of prejudice for this Court, which is required for the granting of a new trial on this basis. *See State v.*

*Holland*, 385 S.C. 159, 172, 682 S.E.2d 898, 905 (Ct. App. 2009) (“[H]e did not raise this specific ground before the trial court. Therefore, this specific argument is not preserved for this Court’s review.”); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”); *South Carolina Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (stating that to be preserved for appellate review an issue must have been “raised to the trial court with sufficient specificity”).

**B. Even if this ground was preserved for appellate review, Appellant is not entitled to a new trial because he cannot show prejudice resulting from this restriction on the procedural form of questions.**

“When considering the trial court’s ruling on motions for a new trial or new trial nisi remittitur, this court ‘employ[s] a highly deferential standard of review.’” *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 227, 865 S.E.2d 910, 917 (Ct. App. 2021) (quoting *Burke v. AnMed Health*, 393 S.C. 48, 57, 710 S.E.2d 84, 89 (Ct. App. 2011)). The law gives the trial judge wide discretion when ruling on an objection to a question on the ground that it is leading. *See State v. Hale*, 284 S.C. 348, 351, 326 S.E.2d 418, 420 (Ct. App. 1985) (stating that “[t]he law gives the trial judge wide discretion when ruling on an objection to a question on the ground that it is leading” and reversal is only proper “if there has been a clear abuse of discretion **resulting in prejudice to the objecting party**”) (emphasis added); *Belue v. City of Greenville*, 226 S.C. 192, 203, 84 S.E.2d 631, 636 (1954) (“During the examination of respondent’s witnesses, counsel for appellant interposed frequent objections to the form of the questions asked by respondent’s counsel; and these objections were, in most instances, sustained, the court cautioning opposing counsel against leading his witnesses. Even where the trial court has permitted leading questions, reversal for that cause rarely follows, and then only when it

appears that the judicial discretion within which such matters appropriately rest, has been abused, ***and that prejudice has resulted.***) (emphasis added). When questioning of a witness is restricted, the appealing party is required to show that “he was ***prejudiced by the trial judge's ruling.***” *State v. Torrence*, 305 S.C. 45, 51, 406 S.E.2d 315, 319 (1991) (holding trial court erroneously restricted line of questioning, but appellant was not entitled to relief on this ground because “appellant has failed to demonstrate that he was prejudiced by the trial judge's ruling”) (emphasis added).

The Circuit Court held that it was harmless error to limit Appellant’s questioning of Mr. Bean to non-leading questions. (June 29, 2026, Order, pp. 3-4) (“[T]he Court admits the error but finds it harmless error where, as here, the Court did not prevent Plaintiff’s counsel from examining the Defendant and the record will show counsel asked many leading questions”). As the Circuit Court correctly recognized, no time restrictions or scope restrictions were placed on Appellant’s questioning of Mr. Bean, other than “improperly conducted and repeated attempts to introduce insurance evidence to the jury.” (*Id.*). Moreover, as the Circuit Court recognized and the trial transcript demonstrates, Appellant’s counsel asked Mr. Bean “many leading questions.” (*Id.*); (Trial Tr. 74:3-81:1; 90:6-100:9; 115:13-25). Thus, as the Circuit Court found, “Plaintiff’s counsel had ample opportunity to examine Defendant Bean.” (June 29, 2026 Order, p. 3).

In a similar case, *Sumner v. Pruitt*, the “trial judge refused to permit her [plaintiff’s] counsel to ask leading questions of [defendant] Dr. Pruitt, whom Mrs. Sumner called to testify in her case in chief.” 281 S.C. 63, 67, 314 S.E.2d 150, 152–53 (Ct. App. 1984). As this Court noted, “Dr. Pruitt was undoubtedly an ‘adverse’ witness because he was an adverse party in the litigation.” *Id.* at 67, 314 S.E.2d at 153. Nevertheless, this Court held that there was no prejudice to the plaintiff “because throughout direct examination Dr. Pruitt answered questions willingly and thoroughly.” *Id.* Likewise, here, Appellant called Mr. Bean during his case in chief and was not permitted to ask Mr. Bean leading

questions. However, Mr. Bean answered Appellant's questions willingly and thoroughly, including many of which were leading questions. *See* (Trial Tr. pp. 73-114). Therefore, like in *Sumner*, this "form of question" error was not prejudicial.<sup>1</sup>

Moreover, in their trial testimony, Appellant and Respondent both testified to the same operative facts preceding the accident – slowing traffic in the right lane of the interstate, Mr. Bean in a tractor trailer behind Appellant's vehicle in that lane, a white Jeep driver who abruptly comes into the right lane from the middle lane, the Jeep driver hitting his brakes hard, the Jeep driver causing Appellant to hit his brakes, and Appellant slowing down considerably in front of Mr. Bean. (Trial Tr. 102:22-103:2; 111:7-10; 144:15-145:10). Whether these events created a sudden emergency for Mr. Bean was a question for the jury. *See Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 297, 417 S.E.2d 631, 634 (Ct. App. 1992) ("The question of whether a sudden emergency existed is normally a question for the jury...."); (Appellant's Br., p. 14 (noting that the jury is to "evaluate[] for itself whether the traffic presented a true emergency")). Thus, other testimony from Mr. Bean would not have changed the jury question of whether these agreed-to facts preceding the accident created a sudden emergency.

---

<sup>1</sup> The only case Appellant cites in support of his argument that he is entitled to a new trial on this basis is *Yoho v. Thompson*, 345 S.C. 361, 548 S.E.2d 584 (2001). (Appellant's Br., pp. 13-15). *Yoho* is readily distinguishable from the present case. *Yoho* addresses the prohibition of any question pertaining to certain bias evidence. Here, the Appellant was free to question the Respondent on whatever he wished, and did so at length, with only mere limitation on the form of the questions asked. In *Yoho*, the court found prejudice because the plaintiff was not permitted to ask any questions about a particular subject matter. Here, Appellant was not restricted from addressing a topic necessary to his negligence case. In fact, Appellant's Brief states that he successfully obtained the "admissions" he sought. (Appellant's Br., pp. 13-15). His only complaint is that he could not "control the sequence of questions, isolate [Mr. Bean's] admissions, and confront [Mr. Bean] directly" without the use of leading questions. (*Id.* at p. 13). This is vastly different from the trial court making a particular subject matter entirely off limits. Furthermore, to the extent Appellant was seeking additional testimony about these purported "admissions", there is no prejudice when a party is prevented from asking cumulative questions. *See State v. McHoney*, 344 S.C. 85, 99, 544 S.E.2d 30, 37 (2001).

In his Brief, Appellant argues that permitting leading questions “would have allowed Appellant to test Respondent’s sudden-emergency narrative against his own admissions.” (Appellant’s Br., p. 15). Appellant argues that these “admissions” are that Mr. Bean was checking his mirrors when he was merging onto the interstate and that traffic started to slow down:

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.

....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....

That testimony was critical. “Had a lot to look at” did not establish a sudden emergency.

(*Id.* at pp. 13-14). However, Mr. Bean has never argued that his merging onto the interstate or traffic slowing created the sudden emergency. Mr. Bean has always testified that the white Jeep abruptly coming from the middle lane, cutting off the Appellant, and “brake checking” the Appellant caused the sudden emergency. (Trial Tr. 111:7-10). Therefore, Appellant fails to show how pressing Mr. Bean on these “admissions” would have undermined his testimony about a sudden emergency.

For each of the foregoing reasons, the Circuit Court correctly denied Appellant’s Motion for a New Trial on this basis. Ultimately, the discretion of the trial judge – determining that there was no prejudice to Appellant from the procedural form of questions permitted – is precisely the kind of discretion to which the applicable standard of review pertains. The trial judge was in the room, heard the testimony of all parties, discoursed with the jury, and watched proceedings carefully. His holding of harmless error should be affirmed.

**III. The Circuit Court properly denied Appellant's Motion for a New Trial based on the agreed-to response to the jury's question.**

**A. This ground is not preserved for appellate review.**

"An issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). An issue raised for the first time in a motion to reconsider is not preserved for appellate review. *Id.*; *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999). "An issue that was not preserved for review should not be addressed by the Court of Appeals...." *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694.

In its Order, the Circuit Court set forth the procedural history of how this jury question came to be and was addressed:

After the Court concluded charging the Jury, the Court received a written communication from the jury foreperson inquiring about the distinction between "bad judgment" and "negligence." A bench conference was held, during which counsel agreed that a dictionary could be provided to the jury. **With the consent of all counsel**, the Court then provided the jury with a dictionary.

(June 29, 2026 Order, p. 4) (emphasis added). In his Brief, Appellant does not contest the Circuit Court's statement of this procedural history. *See* (Appellant's Br., pp. 5-8). Appellant does not allege that he contemporaneously objected to the Court's proposed response – much less set forth record evidence of such objection. *See (id.)*. Thus, the undisputed fact is that both parties consented without objection to sending the jury a dictionary in response to their question. (June 29, 2026 Order, p. 4). Thereafter, Appellant could not raise this issue for the first time in his Post-Trial Motion as a basis for a new trial. His attempt to do so does not preserve this issue for appeal.

**B. Even if this ground was preserved for appellate review, Appellant's current objections to the Circuit Court's handling of the jury's question are not a valid basis for a new trial.**

Appellant’s Brief conflates his own personal disagreement with the jury’s verdict for jury confusion. First, Appellant misstates the facts of the proceedings – at no point did the jury request a dictionary from the Court. (Appellant’s Br., p. 17 (“The jury’s request for a dictionary demonstrates that it was struggling with this distinction.”)). Instead, the jury foreman sent out a question regarding “the difference between bad judgment and negligence”, and the suggestion of the Court – consented to without objection by all parties – was to send the jury a dictionary in response. (June 29, 2026 Order, p. 4). This does not constitute evidence that the jury was confused as to the law. On the contrary, the jury charge on sudden emergency stated:

If a driver is confronted with a sudden emergency, the driver is not guilty of negligence.... it must be shown that the decision must be one which would have been made by an ordinary prudent person in the same or similar circumstances. **It does not have to be the wisest decision.**

(Trial Tr. at 451:15-452:6). Again, these unappealed jury instructions became the law of this case. *See Williams*, 427 S.C. at 157, 829 S.E.2d at 706–07 (explaining that unappealed jury instructions “become the law of this case”). Thus, the jury asking a question about the difference between negligence and bad judgment reflects careful deliberations regarding the charged law. *See State v. Harris*, 340 S.C. 59, 64, 530 S.E.2d 626, 628 (2000) (“There is a wealth of cases addressing jurors' use of dictionaries. Courts have almost uniformly found no prejudice to the defendant when the dictionary definition did not vary from the ordinary meaning of the words or from the meaning contained in the trial court's instructions.”).

Appellant cites to *Estate of Doe 202 by Doe MM v. City of N. Charleston*, 441 S.C. 131, 140, 893 S.E.2d 319, 323 (2023). (Appellant’s Br., p. 15). In that case, the Court stated that “[i]f confronted with an ambiguous jury question” and “the parties do not agree how the trial court should respond to the question, the trial court must seek clarification from the jury.” 441 S.C. at

140, 893 S.E.2d at 323. Here, the parties agreed on how the trial court should respond to the jury question. (June 29, 2026 Order, p. 4). Thus, this case is inapplicable.

Appellant also cites the inapplicable case of *Carson v. CSX Transportation, Inc.*, 400 S.C. 221, 242 (2012). (Appellant's Br., p. 16). In that case, the court held that a new trial was justified because the jury verdict itself demonstrated jury confusion where "the jury's failure to award damages in the survival action was inconsistent with its liability allocation." Here, the jury did not reach inconsistent verdicts on the verdict form. The jury simply found Mr. Bean not negligent and in doing so, impliedly found that he acted as "an ordinary prudent person in the same or similar circumstances" responding to a sudden emergency.

In South Carolina, the threshold for setting aside a jury verdict is very high. The jury question is not per se evidence of confusion of the charged law nor is the fact that the jury disagreed with Appellant's theory of the case. The parties in this case were not in the jury room, were not privy to the course their deliberations took, and do not know how the jury undertook their analysis. Therefore, Appellant's assertion that the jury was confused as to the charged law is mere speculation at best. Consequently, this is not a proper basis for a new trial.

### **CONCLUSION**

Applying the proper standards of review, the Circuit Court correctly denied Appellant's Motions for directed verdict and judgment notwithstanding the verdict on the issue of negligence. There was at least some evidence to support the jury's finding of sudden emergency, particularly when viewing the evidence in the light most favorable to Respondent, as the Court was required to do. The Circuit Court also properly denied Appellant's Motion for a New Trial based on the procedural form of questions. This ground was not preserved for appellate review. Appellant failed to move for a mistrial on this ground, failed to make a proffer of his leading questions and Mr.

Bean's responses, and failed to make any showing or prejudice before the Circuit Court. Additionally, even if preserved for review, Appellant could not show the prejudice required to warrant reversal on this basis. Finally, the Circuit Court properly denied Appellant's Motion for a New Trial based on the agreed-to response to the jury's question. This ground was not preserved for appellate review. Appellant made no contemporaneous objection to the proposed response and, in fact, agreed to the Court's response. For the above-stated reasons, Respondent respectfully requests that this Court affirm the jury verdict and the Circuit Court's rulings on Appellant's post-trial Motion.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

*s/Timothy Caiello*  
Timothy J. Caiello, Esquire  
S.C. Bar No. 103792  
PO Box 6648  
Columbia, South Carolina 29260  
(803) 782-4100  
tcaiello@murphygrantland.com  
Attorney for Respondent

Columbia, South Carolina  
October 13, 2026