RECEIVED
Oct 16 2026
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2025-001491

James Dustin Lucas, Appellant,

v.

Andre Knox, Respondent.

INITIAL BRIEF OF RESPONDENT

---

s/Jeanmarie Tankersley Ethridge
Jeanmarie Tankersley Ethridge
Haynsworth Sinkler Boyd, P.A.
Bar No.: 101068
ONE North Main, 2nd Floor
Greenville, South Carolina 29601
Phone: (864) 240-3200
Email:
jtankersley@hsblawfirm.com
Attorney for Respondent

October 16, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES……...……...iv

STATEMENT OF ISSUES ON APPEAL……...……1

STATEMENT OF THE CASE……...….2

STATEMENT OF FACTS……...4

ARGUMENT……...…7

I. A Majority of Appellant's Arguments are not Preserved for Appellate Review……...7
- A. Appellant did not appeal orders on post-trial motions…….7
- B. Appellant's attempts to include unsupported assertions should be rejected
- C. Appellant's argument about ADR requirements is improper and is not preserved for appeal…….8
- D. Appellant's assertion that his constitutional right to a fair trial was denied is not preserved for appeal……10

II. The Trial Court Properly Denied Appellant's Motions to Reconsider Post-Trial Motions and Defendant's Motion for Costs…….……11
- A. Standard of Review…….…….11
- B. The trial court did not abuse its discretion in denying Appellant's Motion to Reconsider Post-Trial Motions…….11
- C. The trial court did not abuse its discretion in denying Appellant's Motion to Reconsider the Defendant's Motion for Costs……..12

III. The Trial Court Properly Denied Appellant's Motion for New Trial Absolute.….13
- A. Standard of Review……..……..13
- B. The trial court did not abuse its discretion in denying Appellant's Motion for New Trial Absolute based on undue prejudice…….……13
- C. The trial court did not abuse its discretion or err in its rulings regarding evidence of speed…….…..20
- D. The trial court properly ruled with regard to witness testimony……21

IV. The Trial Court Properly Denied Appellant's Motion for J.N.O.V. and Motion for New Trial Pursuant to the Thirteenth Juror Doctrine…….23
- A. Standard of Review……23
- B. The trial court properly denied Appellant's Motion for J.N.O.V. and Motion for New Trial pursuant to the Thirteenth Juror Doctrine as the evidence supported the jury's verdict……24

V. The Trial Court Properly Admitted Criminal History
- A. Standard of Review…….26

B. The circuit court did not abuse its discretion in allowing in evidence pursuant to Rule 609, SCRE……..26

VI. The Trial Court Properly Instructed the Jury on the Law…….28
A. Standard of Review…….28
B. The trial court did not commit reversible error in instructing the jury……28

CONCLUSION…….30

TABLE OF AUTHORITIES

CASES

Aakjer v. Spangnoli, 291 S.C. 165, 177, 352 S.E.2d 503, 511 (Ct.App. 1987)……15

Bailes v. Young, 315 S.C. 166, 432 S.E.2d 481 (1993)……..7

Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003)……...11

Belue v. City of Greenville, 226 S.C. 192, 84 S.E.2d 631 (1954)…….29

Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5, 26 (2010)……...14

Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct.App. 2001)…….28, 29

Buff v. S.C. Dep't of Transportation, 342 S.C. 416, 537 S.E.2d 279 (2000)……..20

Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 714 S.E.2d 869 (2011)……..7

Durr v. McElrath, 299 S.C. 30, 382 S.E.2d 20 (Ct.App. 1989)…….28

Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct.App. 2003)……...24

Elam v. S.C. Dep't of Transp. 361 S.C. 9, 602, S.E.2d 772 (2004)……11

First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994)……..24, 27

Folkens v. Hunt, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990)……...23

Gadson v. ECO Servs. of S.C., Inc., 374 S.C. 171 (2007)…….23

Garrison v. Target Corp., 435 S.C. 566, 869 S.E.2d 797 (2022)……...23

Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 83, 529 S.E.2d 6, 8 (2000)…...7

Howle v. PYA/Monarch, Inc., 288 S.C. 586, 599, 344 S.E.2d 157, 164 (Ct. App. 1986)..19

Liteky v. U.S., 510 U.S. 540, 555 (1994)……15

Lucas v. State Farm Mut. Auto. Ins. Co., No. 2023-000870, 2025 WL 101161 (Ct. App. 2025)……9

MacKenzie v. C&B Logging, 436 S.C. 122, 871 S.E.2d 185 (Ct.App. 2022)……26

Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002)…….23

Poulos v. James, 254 S.C. 156, 174 S.E.2d 152 (1970)……..…29

Repko v. County of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018)……10

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.LP., 399 S.C. 322, 732 S.E.2d 166 (2012)…….23

Robert E. Lee & Co. v. Comm'n of Pub. Works, 250 S.C. 394, 158 S.E.2d 185 (1967)…..9

Rouvet v. Rouvet, 388 S.C. 301, 696 S.E.2d 204 (Ct.App. 2010)……..11

RRR, Inc. v. Toggas, 378 S.C. 174, 662 S.E.2d 438 (Ct.App. 2008)…….11

S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007)…….22

S.C. State Hwy. Dep't v. Clarkson, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976)……23

State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999)……...…19, 20

State v. Austin, 306 S.C. 9, 17; 409 S.E.2d 811, 815 (1991)……13, 22

State v. DeBerry, 250 S.C. 314, 157 S.E.2d 637, 641 (1967)……14

State v. Galbreath, 359 SC 398, 597 S.E.2d 845 (2004)……20

State v. Gaster, 349 S.C. 545, 564 S.E.2d. 87 (2002)……11

State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997)……...…14

State v. Johnson (363 S.C. 53, 609 S.E.2d 520 (Ct.App. 2005)……..27, 28

State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct.App. 2011)……24

Still v. Blake, 255 S.C. 95, 177 S.E.2d 469 (1970)……29

Watts v. Chastain, 438 S.C. 597, 885 S.E.2d 398 (Ct.App. 2022)…….13

Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994)……22

Y*oumans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 271, 670 S.E.2d 1, 4–5 (Ct. App. 2008)……...…23

RULES

Rule 208, SCACR…….....2, 8, 24

Rule 210, SCACR……8

Rule 222, SCACR……....3

Rule 269, SCACR……..10

Rule 54, SCRCP……..3

Rule 60, SCRCP……11

Rule 68, SCRCP……..3

Rule 608, SCRE…….21

Rule 609, SCRE……...……21, 26, 27, 28

Rule 611, SCRE…….15

Rule 8, SCRADR…….2

STATUTES

S.C. Code Ann. § 15-37-10……3

STATEMENT OF ISSUES ON APPEAL

1. WHETHER A MAJORITY OF APPELLANT'S ARGUMENTS ARE NOT PRESERVED FOR APPELLATE REVIEW?

2. WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO RECONSIDER POST-TRIAL MOTIONS AND MOTION TO RECONSIDER DEFENDANT'S MOTION FOR COSTS?

3. WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION FOR NEW TRIAL ABSOLUTE?

4. WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION FOR JNOV AND MOTION FOR NEW TRIAL PURSUANT TO THIRTEENTH JUROR DOCTRINE?

5. WHETHER THE TRIAL COURT PROPERLY ADMITTED LIMITED CRIMINAL HISTORY?

6. WHETHER THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON THE LAW?

STATEMENT OF THE CASE

This appeal follows a trial which resulted in a defense verdict on June 12, 2025.[1] The underlying case stems from a motor vehicle accident which occurred on June 17, 2017. Appellant's Complaint was filed against Respondent Andre Knox and Defendant Meghan Seely on June 7, 2020. (Complaint). Appellant alleged he was riding as a passenger in a vehicle driven by Defendant Seely, and when Defendant Seely was turning left, she collided with a vehicle driven by Respondent Knox. (Complaint ¶ 8). Respondent Knox denied the allegations and alleged the damages were caused by some other person. (Knox Answer). Three years after the original Complaint was filed, Appellant filed an Amended Complaint against Respondent Knox alleging negligence relating to the motor vehicle accident. (Amended Complaint). Respondent Knox timely filed his Answer to the Amended Complaint, denying the allegations and raising a number of affirmative defenses. (Answer to Amended Complaint). Defendant Seely settled prior to the case being amended and was no longer a party to the lawsuit at the time of trial. (Transcript, pg. 30).

Following discovery and numerous motions, the case was tried in front of a jury from June 9, 2025 until June 12, 2025. The Honorable Perry H. Gravely presided over the trial. Respondent Knox disputed fault for the motor vehicle accident, arguing that he was driving straight down his lane of travel when the driver of Appellant's vehicle, Defendant Seely, turned left in front of him. The jury returned a defense verdict. (Verdict

[1] Appellant's Statement of the Case contains contested matters outside the scope of Rule 208(b)(1)(C). Respondent disputes and objects to the recitation of facts and inclusion of argument irrelevant to this appeal. Further, Appellant's Statement of the Case includes information which is protected by confidentiality and should not be included in the brief pursuant to Rule 8(a), SCRADR.

Form). Appellant made verbal post-trial motions including a motion for a new trial pursuant to the Thirteenth Juror Doctrine, Judgment Not withstanding the Verdict, and a motion for new trial based on undue prejudice. (Transcript, pgs. 547-548)[2]. The trial court denied the motions. (June 12, 2025 Order). Appellant then filed a Motion to Reconsider Post-Trial Motions in which he argued for a New Trial Absolute, a new trial pursuant to the Thirteenth Juror Doctrine, and judgment in his favor notwithstanding the verdict. (Motion to Reconsider Post-Trial Motions). The trial court denied the motion on the grounds that no basis has been presented to alter or amend the court's decision, and further holding it is improper to argue a new matter in a Motion to Reconsider. (June 23, 2025 Order). Following the resolution of Appellant's post-trial motions, Respondent Knox filed a Motion for Costs, requesting costs be awarded pursuant to Rules 54 and 68, SCRCP, S.C. Code Ann. § 15-37-10, and Rule 222, SCACR. (Motion for Costs). The trial court denied in part and granted in part the Motion for Costs. (July 5, 2025 Order). Appellant then filed a Motion to Reconsider the Defendant's Motion for Costs, which was denied by the trial court as no basis had been presented to alter or amend the Order. (July 28, 2025 Order).

Appellant initially served a Notice of Appeal on July 22, 2025, appealing "the Order of the Honorable Perry H. Gravely, dated June 24, 2025." The Amended Notice of Appeal, served July 28, 2025, added the "July 28, 2025 order" to the appeal. The two Orders at issue in this appeal are the Order denying Appellant's Motion to Reconsider

[2] Appellant agrees with footnote 6 of Respondent's Amended Initial Brief in that there are a number of transcription errors in the trial transcript, including on page 548 cited here, it reads "January 13th, juror" when it should say "Thirteenth Juror." Although "JNOV" is not included in the transcript in the oral post-trial motions, Respondent will assume for purposes of this brief that it was said verbally but incorrectly transcribed.

Post-Trial Motions and the Order denying Appellant's Motion to Reconsider the Defendant's Motion for Costs.

STATEMENT OF FACTS

On June 17, 2017, Respondent Andre Knox ("Respondent" and/or "Knox") was working as an employee for Southern Lawn Care, a landscaping business. (Transcript, pgs. 132, 198). Throughout that Saturday, Knox was operating his boss, Coddy Miller's, Ford F-250 which they used for the landscaping business. (Transcript, pg. 132). The truck weighed at least a couple thousand pounds (Transcript, pgs. 132, 140). That day, the truck was pulling a trailer which had a riding lawn mower on it. (Transcript, pgs. 133, 199). Knox was fully trained to operate the truck with the trailer. (Transcript, pgs. 133-134, 158). Sometime shortly before 4:55 pm, Knox dropped Mr. Miller off at his shop, and continued to drive toward Wade Hampton Boulevard down a road called Tappan Drive to go to the next job site. (Transcript, pgs. 186, 199). By the time of his deposition and trial (six and eight years later, respectively), Knox could not recall the exact speed he was going down the road, but believes it was around the speed limit, before applying his brakes. (Transcript, pgs. 148, 152, 215, 234).

On the same day, Appellant James Lucas ("Appellant" and/or "Lucas") went to a friend's house with his then-girlfriend, Meghan Seely ("Seely"). (Transcript, pgs. 274, 312). While there, they met two people who agreed to pay Lucas and Seely gas money if they took them to Walmart. (Transcript, pg. 313). Seely drove Lucas' vehicle, with the two strangers and Lucas as passengers, because Lucas was not "feeling too well."

(Transcript, pg. 313). Seely was an unlicensed driver[3] who was blind in one eye. (Transcript, pgs. 335, 389). Additionally, Lucas admitted to consuming marijuana and heroin in the 24 hours prior to the accident, admitted that Seely was a habitual drug user at the time of the accident, and that drugs were being consumed at the party they attended immediately prior to the accident. (Transcript, pgs. 22-27, 53, 303-306; Lucas Depo., pgs. 58-60, 76-77, 141-142).[4]

About three minutes into Knox's drive, he saw Seely in the oncoming lane of travel. As Knox continued down his lane, where he had the right-of-way, Seely turned left in front of him, across his lane of travel and double yellow lines, causing a collision. (Transcript, pgs. 208, 213, 317, 393). Knox instinctively hit his brakes, stopping the wheels of the truck, but the truck continued to slide forward into Seely's vehicle, due to the weight of the truck, trailer, and lawnmower. (Transcript, pgs. 135-136, 214-215). Knox's truck pushed Seely's vehicle into a third vehicle which was stopped and waiting to exit the Walmart parking lot. (Transcript, pgs. 226, 395). After the impact, Knox called his boss, Coddey Miller, who came to the scene. (Transcript, pgs. 118, 220-221). At the scene, Appellant Lucas blamed Seely for the accident. He believed she did not see the vehicle because of her limited sight. (Transcript, pg. 337; Lucas deposition, pg. 97).

> Q: …How the F did you not see that vehicle? Like, what are you doing? You remember testifying to that?"
>
> A: I really don't remember. This was a while ago…but I'm not going to say I do not believe you.
>
> Q: Okay. It's in the deposition transcript?
>
> A: Yes, ma'am.

---

[3] The fact that Seely did not have a license was not presented to the jury but is relevant later in this brief.

[4] Evidence of Seely's and Lucas' drug usage was not allowed into evidence but is relevant later in this brief.

> Q: All right. What did she say in response to you?
>
> A: She was, like, I'm sorry. You know, I have – my right eye, I can't – I can't see out of it. And I was like, what? (Transcript, pg. 336; Lucas deposition, pg. 96)
>
> …
>
> Q: …Did she ever notice the other vehicle before turning…
>
> A: I said, "No, ma'am. Sorry. No ma'am. She – I don't think she ever saw him due to her eye." (Transcript, pg. 337; Lucas deposition, pg. 97).

Seely took responsibility for causing the accident. (Transcript, pgs. 396-397; Seely Depo., pgs. 54-55). She also testified that she does not remember if she stopped before turning left, confirmed that nothing was blocking her view of oncoming traffic, and stated that she could not base Knox's speed off of the split second she noticed him. (Transcript, pgs. 393-394).

Lucas had a laceration above his eye, but no other injuries at the scene. (Transcript, pg. 348). He was coherent and able to put himself on the gurney. (Transcript, pg. 346). He was taken to the hospital after the collision and received sutures above his eye. (Transcript, pg. 290). He received no additional treatment. He did not have a concussion or a traumatic brain injury. (Transcript, pgs. 291, 352, 365). Lucas testified that he had a resulting scar which affected his appearance, his confidence, his dating life, his mental health, caused recurring night terrors, made him reclusive, and kept him from going to work. (Transcript, pgs. 293, 297, 354, 359). However, he also testified that he did nothing to minimize the scar, that he had numerous other issues which impacted his mental health, and that he was unemployed at the time of the accident. (Transcript, pgs. 351, 355-359). After hearing testimony from Lucas, Seely, the investigating officer, Coddy Miller, and Knox, the jury in this case found in favor of Knox. (Verdict Form).

ARGUMENT

I. A Majority of Appellant's Arguments are not Preserved for Appellate Review

A. Appellant did not appeal orders on post-trial motions

As an initial matter, many of the assertions and arguments made by Appellant are not preserved for appellate review. First, Appellant has only appealed the Orders denying his two Motions to Reconsider. Appellant did not appeal the Order denying post-trial motions or the Order denying in part and granting in part the Motion for Costs. Accordingly, the only question properly before this court is whether the Orders denying the Motions to Reconsider were proper. The Court's jurisdiction is confined to the rulings identified in the Notice of Appeal, and the unappealed orders are the law of the case. *See Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 83, 529 S.E.2d 6, 8 (2000); *Bailes v. Young*, 315 S.C. 166, 432 S.E.2d 481 (1993); *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 714 S.E.2d 869 (2011). However, out of an abundance of caution, Respondent will address the post-trial motions and orders which were not included in the Notice of Appeal as well.

B. Appellant's attempts to include unsupported assertions should be rejected

Appellant makes a number of factual assertions, which are noted herein, for which there is no evidence in the Record to support. These include:

- Statements about offers and conduct at mediation. (App. Br. pgs. 2, 23)
- That all vehicles involved in the collision were "totaled." (App. Br. pg. 3)
- That the court used a harsh tone when addressing Appellant's counsel in the presence of the jury. (App. Br. pg. 9)
- Assertations regarding sidebar discussions which are not on the record.

(App. Br. pgs. 11, 14, 18)

- That the investigating officer recorded Defendant traveling 10 miles over the speed limit. (App. Br. 16)[5]
- That the trial court sustained an objection because of leading questions during a deposition. (App. Br. pg. 22).

As these assertions are not supported by the Record in this appeal, they should be rejected and cannot serve as a basis for overturning the trial court. See Rule 210(h), SCACR. The statements cited above should be disregarded by this Court. "The appellate court will not consider any fact which does not appear in the Record on Appeal." *Id. And see* Rule 210(h), SCACR ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal"). Accordingly, the Appellant's attempt to inject unsupported facts into the record in an effort to overturn the trial court's decision is impermissible.

C. Appellant's argument about ADR requirements is improper and is not preserved for appeal

Appellant's Statement of Issues on Appeal # 4 regarding ADR requirements is not properly before this Court and should be disregarded. First, Appellant's argument is directed against State Farm. State Farm is not now and never has been a party to this case, despite Appellant's repeated and improper attempts throughout litigation to make a simple contested motor vehicle accident case about State Farm. (*See* Complaint;

[5] In fact, the officer did not believe Knox was speeding but put 35 mph incorrectly on the report. (Morton Depo., pgs. 10-11; 27-28).

Transcript, pgs. 35, 43)[6]. Second, Appellant's arguments about ADR were previously made in multiple motions, and the Orders denying those motion are not a part of this appeal. (Motion to Adhere to ADR Rules; Memorandum in Opposition; Order signed December 29, 2021; Motion for Rule to Show Cause; Order signed March 24, 2023). Third, the issue Appellant is attempting to argue in this appeal has already been argued and adjudicated by Appellant in *Lucas v. State Farm Mut. Auto. Ins. Co.*, No. 2023-000870, 2025 WL 101161 (S.C. Ct. App. Jan. 15, 2025). *See Robert E. Lee & Co. v. Comm'n of Pub. Works*, 250 S.C. 394, 158 S.E.2d 185 (1967) (holding the decision in a former appeal is the law of the case). The issue of whether a "deal to get out of default" existed and was violated, and whether the discussions at mediation were confidential were all ruled upon in that separate appeal. (App. Br. pg. 23). The Court of Appeals ruled that the alleged agreement was not binding, that mediation communications were confidential, and that no exception to confidentiality applied. *See Lucas*. Fourth, the argument regarding ADR is not preserved for appeal. Appellant did not include an argument about ADR in his post-trial motions or in his Motion to Reconsider Post-Trial Motions. (Transcript, pgs. 547-548; Motion to Reconsider Post-Trial Motions). Appellant's only reference to the record regarding ADR is on page 58 of the transcript, at which time the parties were discussing a prior motion, not one that was in front of the Court at that time. (Transcript, pgs. 57-58). Appellant does mention mediation in his Motion to Reconsider the Defendant's Motion for Costs, but only as part of the background discussion in what appears to be another poorly veiled attempt to bring the

[6] Respondent cites only to the Complaint and Transcript as examples in an attempt to keep the Record on Appeal from containing too many unrelated filings, but notes that Appellant discussed State Farm in upwards of six court filings.

issue of insurance back up to the court. The information discussed about ADR in the Motion is not used as support for any argument that the Order should be reconsidered. Further, as it was not argued in response to the original motion, it could not be considered by the court as it is improper to argue a new matter in a Motion to Reconsider. *See Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018). Finally, Appellant's inclusion of Statement of Issues on Appeal # 4 regarding ADR requirements is in direct contradiction of this Court's Order granting Respondent's Motion to Strike. Appellant initially included in his Designation of Matter a "Transcript from Court where opposing counsel acknowledged she violated ADR rules." Appellant argued at length in his Return in Opposition to Respondent's Motion to Strike about mediation being relevant and appropriate in this appeal, but this Court granted the Motion to Strike and Appellant was instructed to file an amended initial brief "striking references to Items 2, 3, and 11" which included the "Transcript from Court where opposing counsel acknowledged she violated ADR rules." Although the transcript was removed from the Amended Designation of Matter, Appellant's initial brief still contains the section "Respondent willfully violated ADR requirements prior to trial" (App. Br. pg. 23), in violation of Rule 269, SCACR.

D. Appellant's assertion that his constitutional right to a fair trial was denied is not preserved for appeal

Appellant argues that he did not receive the right to a fair trial because his right to due process was violated. (App. Br. pgs. 4-5). However, that argument was never presented to or ruled upon by the lower court. Appellant did not argue about the Constitution or due process in his directed verdict motion, his post-trial motions, or his Motion to Reconsider Post-Trial Motions. (Transcript, pgs. 547-548; Motion to Reconsider). As the issue of whether a Constitutional right was violated was not raised

and ruled upon by the lower court, it is not preserved for appeal. An issue cannot be raised for the first time on appeal. *See Elam v. S.C. Dep't of Transp.* 361 S.C. 9, 602, S.E.2d 772 (2004) ("It is axiomatic than an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review" quoting *Wilder Corp v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *State v. Gaster*, 349 S.C. 545, 564 S.E.2d. 87 (2002)(holding an argument that due process was violated was not preserved for appeal as the constitutional issue was not raised to or ruled upon by the trial court). A due process claim raised for the first time on appeal is not preserved. *See Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003). Although this issue is not preserved for appeal, Respondent will respond to Appellant's arguments made in support of his contention *infra*.

II. The Trial Court Properly Denied Appellant's Motions to Reconsider Post-Trial Motions and Defendant's Motion for Costs

A. Standard of Review

The standard of review for motions pursuant to Rule 59 and 60 is abuse of discretion. Whether to grant or deny the motion lies within the sound discretion of the judge. *RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438 (Ct.App. 2008). The circuit court's decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Id*.; *Rouvet v. Rouvet*, 388 S.C. 301, 696 S.E.2d 204 (Ct.App. 2010).

B. The trial court did not abuse its discretion in denying Appellant's Motion to Reconsider Post-Trial Motions

The first Order at issue in this appeal is the trial court's Order signed June 23, 2025 which denied Plaintiff's Motion to Reconsider Post-Trial Motions. Lucas made verbal post-trial motions, in which he argued that the weight of the evidence showed

Knox's negligence and that there was undue prejudice which entitled him to judgment notwithstanding the verdict, as well as a new trial based on the thirteenth juror doctrine. (Transcript, pg. 547-548). Those motions were denied on the grounds that there was clearly a factual issue of whether Knox was negligent and whether any negligence caused Lucas' injury, and that there was no unfair prejudice or bias by the court. (Transcript, pgs. 548-549; Order signed June 12, 2025). In Appellant's Motion to Reconsider Post-Trial Motions, Lucas reiterates his arguments that the evidence showed negligence on the part of Knox, and further states that "the Court's rulings on objections and the admissibility of certain evidence were erroneous…resulting in prejudice to the plaintiff's case," but he does not provide specific instances of rulings or evidence being either allowed in or excluded. Appellant also argues that the inclusion of a "sudden emergency jury instruction" was confusing, which is an argument he did not raise during his verbal post-trial motions. (Motion to Reconsider). At no point in his motion did Lucas present any reason why the original Order should be altered or amended or any grounds pursuant to Rule 60, SCRCP. Accordingly, it was not an abuse of the judge's discretion to deny Lucas' Motion to Reconsider Post-Trial Motions.

C. The trial court did not abuse its discretion in denying Appellant's Motion to Reconsider the Defendant's Motion for Costs

The second Order included in the Notice of Appeal is the trial court's Order signed July 28, 2025, which denied Appellant's Motion to Reconsider the Defendant's Motion for Costs. Appellant does not provide any grounds as to why the Order granting in part and denying in part Defendant's Motion for Costs should be altered or admitted, or even by what amount the court should reduce the award for costs. Accordingly, the denial of the motion did not constitute abuse of discretion. Regardless, Appellant did not

raise any argument related to the July 28, 2025 Order or the motions and orders regarding costs which came before it in his initial brief. Any argument regarding this Order has been waived. *See State v. Austin*, 306 S.C. 9, 17; 409 S.E.2d 811, 815 (1991) (holding an exception not argued in the brief is deemed abandoned on appeal).

III. The Trial Court Properly Denied Appellant's Motion for New Trial Absolute

A. Standard of Review

The standard of review for a motion for a new trial absolute is abuse of discretion. "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support. In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Watts v. Chastain*, 438 S.C. 597, 885 S.E.2d 398 (Ct.App. 2022) (quoting *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996).

B. The trial court did not abuse its discretion in denying Appellant's Motion for New Trial Absolute based on undue prejudice

Initially, Appellant's post-trial motion made after the jury was discharged argued for a new trial because "the overwhelming weight of the evidence, we had admission of policy violation, admission of negligence. We had evidence of damages, and we showed…that it's mathematically impossible for the wreck to happen, but for the statute violation of the defendant." (Transcript, pgs. 547-548). Additionally, Appellant argued "the prejudice to the plaintiff from the objections, the ruling on the objections, and the way transcript we think will show that the trial was borne, we move for undue prejudice and a new trial based on that as well." Then, in Appellant's Motion to Reconsider, he

asks for a new trial absolute on the grounds that the evidence does not support the trial verdict, a jury instruction was confusing, and the admissibility of certain evidence was erroneous which resulted in prejudice to his case.

The trial court did not abuse its discretion in denying Appellant's Motion for New Trial based on undue prejudice. Appellant's argument that his constitutional right to due process was violated is not preserved for appeal (as noted *supra*), nor is it persuasive. Appellant first argues that he did not receive a fair trial because the trial court "repeatedly and unjustifiably admonished Appellant's counsel in front of the jury," prevented the admission of evidence, and "openly favored the defense." (App. Br. pg. 5). However, at no point during the four-day trial did Appellant make a motion for a curative instruction, for the recusal of the judge, or for a mistrial. Although Appellant argued in post-trial motions that there was undue prejudice based on objections and rulings on objections, he never specified which rulings caused the undue prejudice. *See State v. Ivey*, 325 S.C. 137, 481 S.E.2d 125 (1997) (holding that specific grounds for objection are needed to preserve issue for appeal).

The trial court did not abuse its discretion or commit an error of law as Appellant argues, but rather simply presided over the trial and ruled on objections. A trial judge has "inherent authority to manage and conduct a trial." *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5, 26 (2010). Further, a trial judge "is vested with a wide discretion in the conduct of a trial. He has the duty to see that the trial proceeds in an orderly fashion and should prevent unnecessary repetition, working to the end that the time of the court be preserved." *State v. DeBerry*, 250 S.C. 314, 157 S.E.2d 637, 641 (1967). The trial court is tasked with exercising reasonable control "over the mode and order of

interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth; (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." See Rule 611(a), SCRE. A trial judge must manage the trial, which certainly includes ruling on objections, and may include admonishing parties, witnesses, and counsel. The law provides that "[l]itigants…are entitled to fair trials but not perfect trials. 'If a new trial was required every time a flaw or mere possibility of prejudice occurred, litigation would be unduly prolonged.'" *See Aakjer v. Spangnoli*, 291 S.C. 165, 177, 352 S.E.2d 503, 511 (Ct.App. 1987) (quoting *Smoak v. Seaboard Coast Line Railroad Company,* 259 S.C. 632, 193 S.E.2d 594 (1972)). "Judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *See Liteky v. U.S.*, 510 U.S. 540, 555 (1994). Further, "expressions of impatience, dissatisfaction, annoyance, and even anger" do not establish bias or partiality in a judge's efforts at courtroom administration. *Id*.

The record demonstrates the trial judge's conduct in the management of trial was appropriate. Appellant first points to his examination of Coddy Miller. He states the trial court sustained a number of objections, but fails to explain how the rulings were improper. Appellant's counsel continuously asked leading questions throughout the trial including the examination of Mr. Miller, despite a number of objections. (Transcript, pgs. 96-101; 112-113, 387). Appellant argues the objections prevented him from getting in evidence of policy violations. To the contrary, not only were questions about policy violations asked of Mr. Miller, but Appellant believes the alleged evidence of the violations is so strong that he cites it as support for a new trial in his post-trial motions.

(Transcript, pgs. 112-115, 127). Further, Appellant argues he was unable to ask questions about phone records. Rather, Appellant was prevented from implying that the defense was somehow failing to disclose evidence of texting. (Transcript, pgs. 102-106). Appellant was able to ask if Mr. Miller and Knox were talking on the phone or texting each other at the time of the collision, which was denied. (Transcript, pg. 102, 118, 135, 173).

Appellant argues he was prevented from asking questions of Knox regarding mathematical calculations. However, the record is clear Appellant was able to ask Knox multiple mathematical questions.[7] (Transcript, pgs. 152-157, 162). Appellant argues that he was prevented from demonstrating the distance of 30 feet in the courtroom, when the record is clear the opposite is true. Appellant was prevented from asking Knox to guess when he got to 30 feet, but Appellant's counsel was allowed to demonstrate 30 feet himself. (Transcript, pg. 161). Appellant goes on to argue he was not allowed to ask questions about the use of Knox's phone, Seely's turn, and whether Knox applied his brakes. Again, the record is clear that Appellant's counsel was able to ask multiple questions on those topics. (Transcript, pgs. 170-174, 183-186). He was prevented from calling someone at the scene incapacitated because that was not in evidence, as getting into an ambulance does not equate to be incapacitated. (Transcript, pg. 176).[8] Appellant's counsel repeatedly asked questions that implied facts that were not in evidence, including the presence of pedestrians and babies, the use of Respondent's phone while driving, and

[7] In fact, Appellant argued in closing "this is something that it's probably seared in y'all's memories now because I've said it so many times. It's illegal on Tappan drive to go faster than 36 feet per second." (Transcript, pg. 450).

[8] Appellant argues in his brief that Respondent admitted to seeing two people put into an ambulance, which is incorrect. The Respondent specifically stated he did not see that, in response to Appellant's counsel's question. (Transcript, pg. 176).

other parties' injuries. (Transcript, pg. 168, 173, 178, 184).[9] Additionally, Appellant continually asked Knox questions implying that he was going 35 mph or 50 mph, when that number was not yet in evidence, despite the trial court's prior rulings. (Transcript, pgs. 155-157, 162-163). Appellant's general disregard of the trial court's rulings resulted in multiple objections by Knox's counsel. (Transcript, pgs. 370, 376, 506, 515). The trial court also had to remind counsel not to make faces after rulings. Rather than objecting or asking for a mistrial, the Appellant agreed by saying "Yes, your honor." (Transcript, pg. 112). The court had to again remind Appellant's counsel, outside the presence of the jury, to end his hostility. (Transcript, pg. 309).

Additionally, argument that Appellant was not treated fairly in the trial judge's rulings on evidence is unsupported in the record. Appellant prevailed on many objections, particularly the critical ones. Respondent initially argued that Appellant was comparatively negligent in this case because he got into a vehicle driven by Seely who he knew was unlicensed, blind, and potentially under the influence of drugs. (Transcript, pg. 17). The trial court excluded evidence that Seely was an unlicensed driver, and excluded evidence of her prior traffic tickets. (Transcript, pgs. 18-19, 53). Further, the court did not allow in any evidence of her habitual drug use and possible drug use on the day of the accident. (Transcript, pgs. 22, 53). Most notably, the court did not allow in evidence of Appellant's admitted marijuana and heroin use in the 24 hours prior to the accident. (Transcript, pg. 24). As a result of these rulings, Respondent had to withdraw his comparative negligence defense. (Transcript, pg. 401). The trial court also overruled objections made by Knox's counsel on a number of occasions. (Transcript, pgs. 102, 123,

[9] Respondent believes the court's ruling on page 168 line 19 of the transcript is incorrectly transcribed, but agrees that the objection was sustained.

125, 174, 177, 181, 183, 190, 251, 296, 298, 305, 351, 369, 389, 391, 431).

Appellant argues that the trial court's bias was most noticeable during closing argument. What Appellant fails to mention is that prior to closing arguments, in an attempt to avoid interrupting Appellant's counsel with objections, the parties had a conference with the judge to discuss possible issues. (Transcript, pgs. 430-440). Despite the court's prior rulings and the pre-closing discussion, Appellant made multiple inappropriate references and arguments in his closing in violation of the South Carolina Rules of Evidence. For instance, he referenced school busses, elderly people, children, a hospital, and mothers, none of which existed in this case or were presented in evidence. (Transcript, pgs. 442-444, 448-449, 468, 511, 518). Appellant went so far to say, "[t]his case is really about the danger presented by this conduct versus the people of the community." (Transcript, pg. 461). There was a motion in limine regarding insurance, and discussions during trial. (Transcript, pg. 30, 35, 44-46, 434-436). Despite that, Appellant's counsel continuously implied the existence of insurance by mentioning vehicles being "totaled," and telling the jury not to consider where the verdict money is going to come from. (Transcript, pgs. 444, 447, 467). Appellant claims he was unable to argue to the jury that they had to follow the law, that they are appraisers of damages, that punitive damages are meant to punish and to deter, from showing the facial scar, from telling the jury Appellant could not recover in the future, and from discussing his mental health. In reality, he was allowed to cover the applicable law, to discuss punitive damages, his client's physical and mental damages[10], and that trial was Appellant's opportunity to recover. (Transcript, pgs. 456-461, 465, 467, 513, 517, 524). What

[10] The objection to PTSD was in reference to what was included in the Appellant's power point presentation at that moment.

Appellant was instructed not to do was discuss an "illegal verdict form," introduce new evidence during closing, imply the existence of insurance or that Knox was not responsible for the verdict[11], or argue facts that were not in evidence. (Transcript, pgs. 452, 456, 463, 506, 511-512, 515, 517). *See Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 599, 344 S.E.2d 157, 164 (Ct. App. 1986)("It has long been settled that closing arguments and objections thereto are left largely to the sound discretion of the trial judge 'who is on the scene and in much better position than an appellate court to judge as to what is improper argument under the circumstances.'") Appellant argues that the court was more permissive in Respondent's closing, but Appellant fails to note that he never raised an objection during Respondent's closing. *See State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (holding a contemporaneous objection is required to preserve an issue for appellate review).

Rather than the trial court exhibiting bias as Appellant claims, it is apparent that the trial court was acting with an even temperament and fair rulings, in a trial where Appellant repeatedly disregarded the court's rulings and asked numerous leading questions, questions which called for speculation, questions which lacked foundation, and made statements implying the existence of insurance or facts not in evidence. (Transcript, pgs. 282, 448, 461, 467-468). The trial court instructed the jury about the purpose of objections and of conferences outside the presence of the jury, and instructed them "…if there is anything I said or did that makes you think I have an opinion about the facts, please disregard that." (Transcript, pgs. 63, 526). In fact, the trial court even told the jury

[11] This conduct was particularly egregious in this case where Appellant's counsel had made multiple references throughout the case that Knox would be responsible for the verdict, including garnishing his wages and putting a lien on his home. (Transcript, pgs. 30, 509).

to blame him for scheduling, corrected himself on a ruling, and told the jury a break was taken so the jurors would not assume the parties had been arguing with the court about a ruling. (Transcript, pgs. 93, 283, 527, 512). There is a presumption that the jury understood and followed the court's instructions to disregard anything that made them think he had an opinion about the facts. *See Buff v. S.C. Dep't of Transportation*, 342 S.C. 416, 537 S.E.2d 279 (2000).

Appellant's suggestion that the result of the trial would have been different had the trial judge conducted himself differently is pure speculation. There is no evidence that the jury's ultimate verdict was affected by the judge's conduct. Without a showing of prejudice from the alleged improper conduct of the judge, the Appellant has no basis for overturning the jury's verdict. *See State v. Galbreath*, 359 SC 398, 597 S.E.2d 845 (2004).

C. The trial court did not abuse its discretion or err in its rulings regarding evidence of speed

Appellant asserts he was not able to impeach Respondent about his speed, specifically regarding Knox's testimony about how he normally drives other people's vehicles. (Transcript, pg. 216). Knox also testified he would not have been speeding as he was approaching a traffic light which would typically be red. (Transcript, pg. 216). As an initial matter, Appellant did not object to that testimony at the time. *See State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999). Rather, he waited to bring it to the court's attention after cross-examination was finished. (Transcript, pg. 235). Appellant attempted to bring into evidence Knox's prior traffic tickets, but traffic tickets had been ruled inadmissible upon Appellant's own motion in limine (Transcript, pgs. 18-19). Appellant did not present certified records showing Knox had been convicted of the prior traffic tickets, nor

did any possible conviction rise to the level of violation admitted pursuant to Rule 609, SCRE. (Transcript, pgs. 236-240). Additionally, the existence of traffic tickets alone did not meet the standard required under rule 608, SCRE. Appellant failed to cite any other Rule or case which would allow the admission of the traffic tickets. (Transcript, pgs. 239-243). Regardless, there was no prejudice as Appellant spent the majority of Knox's direct examination asking him about his speed and arguing that he was contradicting his own testimony. If the point Appellant was trying to make was that Knox was speeding at the time of the accident, or that Knox's testimony was inconsistent, Appellant made that point to the jury. (Transcript, pgs. 146-157). Additionally, Appellant repeatedly argued that Seely previously made the same turn on multiple occasions without causing an accident, and Respondent was not allowed to bring in evidence of Seely's prior traffic convictions to impeach her. (Transcript, pgs. 236, 275, 298, 379-380).

D. The trial court properly ruled with regard to witness testimony

Appellant called the investigating officer, Jon Christopher Morton, for direct examination. Throughout his, often leading, questioning, Appellant had Corporal Morton confirm the damages he saw at the scene, and confirm that the impact caused specific damages,

> "Q: …does that door appear to you to be stuck on that Ford because of the impact of the collision?
> A: Yes." (Transcript, pg. 255-256).

Appellant further asked him specifically about speed:

> Q: …Is it fair to say that from what you observed in arriving on the scene and observing the door struck at the truck and – and all that kind of stuff that there was evidence from a significant impact; is that fair to say:?
> A: Yes.
> Q: There was evidence of – there was evidence of velocity and speed?
> A: I cannot comment on the exact speed of the truck, but yes, there was –

there was velocity." (Transcript, pg. 262).

Similarly then, on cross-examination, Respondent asked Corporal Morton about his observations at the scene.

> Q: …when you investigated the accident, did you see any evidence at the scene that my client was speeding.
> A: I did not see anything that showed he was going drastically over the speed limit. (Transcript, pg. 267).

Appellant did not object to the line of questioning. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007)(holding an issue must be raised in a timely manner); *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994)(finding a contemporaneous objection must be made to preserve argument for appellant review). At no point did Respondent attempt to introduce the collision report into evidence in violation of the court's ruling on the motion in limine (Transcript, pg. 16).

Appellant argues he was not allowed to testify as to evidence of Respondent Knox's speed. However, Appellant shows in his own brief that the evidence was allowed in, and the trial court informed the jury that the initial ruling had been reversed. (App. Br. pgs. 19-20; Transcript, pgs. 284-285). Appellant also argues he was unable to impeach Seely with her deposition transcript, but provides no citation to the transcript showing an objection or motion at trial regarding that issue. *State v. Austin*, 306 S.C. 9, 17; 409 S.E.2d 811, 815 (1991) (holding an exception not argued in the brief is deemed abandoned on appeal).

IV. The Trial Court Properly Denied Appellant's Motion for J.N.O.V. and Motion for New Trial Pursuant to the Thirteenth Juror Doctrine

A. Standard of Review

Appellate courts apply the same standard that governs the trial court when reviewing a J.N.O.V. motion. That is, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The motion must be denied if the evidence yields more than one reasonable inference or its inference is in doubt. A motion for J.N.O.V. may be granted *only* if no reasonable jury could have reached the challenged verdict. The trial court's ruling will be reversed only if no evidence supports the ruling below. In deciding the rulings, neither the trial court or appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *See RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.LP*., 399 S.C. 322, 732 S.E.2d 166 (2012) (emphasis added); *Garrison v. Target Corp*., 435 S.C. 566, 869 S.E.2d 797 (2022); *Gadson v. ECO Servs. of S.C., Inc*., 374 S.C. 171 (2007).

A trial judge's denying a new trial will be upheld unless the order is "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Norton v. Norfolk S. Ry. Co.,* 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002); *Folkens v. Hunt,* 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990); *S.C. State Hwy. Dep't v. Clarkson,* 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976). The appellate court's "review is limited to consideration of whether evidence exists to support the trial court's order." *Folkens,* 300 S.C. at 255, 387 S.E.2d at 267. In an appeal of an order regarding a new trial pursuant to the Thirteenth Juror Doctrine, the appellant "bears the heavy burden of demonstrating to the court that it clearly appeared that the judge's exercise of discretion was controlled by a manifest error of law." Y*oumans ex rel. Elmore v. S.C.*

Dep't of Transp., 380 S.C. 263, 271, 670 S.E.2d 1, 4–5 (Ct.App. 2008) (quoting *Gray v. Davis*, 247 S.C. 536, 148 S.E.2d 682 (1966)).

B. The trial court properly denied Appellant's Motion for J.N.O.V. and Motion for New Trial pursuant to the Thirteenth Juror Doctrine as the evidence supported the jury's verdict

Appellant's argument for judgment notwithstanding the verdict focus on evidence of Knox's speed and violation of policy.[12] Appellant reiterated the history of his JNOV motions in his initial brief, but provided no additional argument or citation of authority. (App. Br. pgs. 22-23). *See* Rule 208(b)(1)(E) (which requires citation to authority in an appellant's brief); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding that appellant abandoned an issue where he failed to provide arguments or supporting authority for his assertion); *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct.App. 2011); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct.App. 2003). Regardless, the verdict in favor of Knox was supported by the evidence presented at trial.

Knox denied causing the collision. (Transcript, pg. 160, 234). Seely admitted to causing the collison. (Transcript, pgs. 396-397; Seely Depo., pgs. 54-55). There was ample evidence presented at trial that supported the argument that either Knox was not speeding, or his speed did not contribute to the accident. Knox testified that he did not believe he was speeding because he was driving his boss' truck and he was approaching a light that he knew would be red. (Transcript, pgs. 216, 232-233). He was not in a rush as

[12] Lucas initially attempted to move for directed verdict at the close of his own evidence on the issue of liability on the grounds that it was uncontroverted that Defendant violated the speed limit, violated policy, and that the collision caused the injury. (Transcript, pgs. 401-402). After Defendant rested, Lucas attempted to renew the directed verdict motion and argued "[f]or the reason I stated earlier, there's no evidence of – and she's withdrawn comparative fault." (Transcript pg. 404).

argued by Appellant. (Transcript, pg. 232). Even if Knox had been speeding, he would not have been able to avoid the accident. (Transcript, pg. 150). He disagreed with the mathematical "proof" presented by Appellant. (Transcript, pg. 153). Appellant argued that the damage done to the involved vehicles was evidence of Knox's speed, when in reality the damage was simply evidence of the weight of the truck and trailer. (Transcript, pgs. 119, 135-236). Appellant tried to argue that Knox was distracted while driving, but the evidence from multiple witnesses confirmed Knox was not using his phone at the time of the collision. (Transcript, pgs. 118, 135, 191, 205, 217). Appellant also claimed evidence that Knox violated company policy was uncontroverted, but Mr. Miller himself testified that Knox did not violate company policy and that he was a good employee. (Transcript, pg. 136).

The only evidence presented that Knox was speeding was Lucas' testimony at trial that Knox was going 50 mph. However, as discussed during cross-examination, that was inconsistent with his prior testimony. Lucas had a number of issues with his credibility, including admitting that he was living with Seely but did not know her vision was limited, changing his testimony about never seeing Knox's vehicle before the collision or any other cars coming in the opposite direction, changing his testimony about where he was looking while they were making the turn, and changing testimony about the distance between his vehicle and Knox's vehicle prior to impact. (Transcript, pgs. 312, 320-327). Lucas openly admitted that he was dishonest in his prior testimony. (Transcript, pg. 345).

There was also ample evidence at trial to support the argument that most of Lucas' alleged damages were not related to the collision, further damaging his credibility.

Appellant claimed he was incapacitated at the scene, but previously testified he was coherent. (Transcript, pg. 346). He testified he had ongoing issues, but confirmed he had not seen a doctor since 2017. (Transcript, pg. 353). He argued he had ongoing mental health problems caused by the accident, but the jury was presented with testimony that those problems could be pre-existing or caused by other life stressors. (Transcript, pgs. 357, 361, 362). The record is replete with examples of Lucas changing his testimony, which provided more than enough support for the jury to believe he was lying about Knox's speed. The verdict was not wholly unsupported by evidence and there was no manifest error of law. According, the trial court properly denied Appellant's Motion for JNOV and Motion for New Trial pursuant to the Thirteenth Juror Doctrine.

V. The Trial Court Properly Admitted Criminal History

A. Standard of Review

The standard of review for whether or not evidence should be admitted or excluded is abuse of discretion. The court's decision will not be reversed on appeal unless it appears the trial court clearly abused its discretion and the objecting party was prejudiced by the decision. *MacKenzie v. C&B Logging*, 436 S.C. 122, 871 S.E.2d 185 (Ct.App. 2022).

B. The circuit court did not abuse its discretion in allowing in evidence pursuant to Rule 609, SCRE

Rule 609, SCRE provides for impeachment by evidence of a criminal conviction. The relevant portion of the Rule for this case is 609(a)(1) which reads,

> "evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the

> probative value of admitting this evidence outweighs its prejudicial effect to the accused…"

Appellant argues the criminal convictions should not have been allowed into evidence, but fails to provide any support to authority as to why. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding that appellant abandoned an issue where he failed to provide arguments or supporting authority for his assertion). Respondent limited questioning of Appellant's criminal records to only those crimes which for which Appellant had been convicted of in the past 10 years that were punishable by imprisonment in excess of one year. (Transcript, pgs. 27-29; 357-358). The ultimate issue in the case for the jury to decide was whether Knox was speeding and caused the collision. His testimony was that he believes he was going the speed limit. (Transcript, pg. 234). Lucas, on the other hand, testified that Knox was driving 50 mph over the speed limit. (Transcript, pg. 285). As there were no independent witnesses to testify regarding speed, the jury was tasked with judging the credibility of the witnesses. The fact that Lucas was convicted of three crimes that took place during the time frame of the collision and his alleged recovery period, was extremely relevant to the case and directly on point on the issue of his credibility. Accordingly, Rule 609, SCRE allowed for the introduction of the arrests in evidence. (Transcript, pgs. 306-309). The line of questioning regarding the arrests was brief, and Appellant had already alluded to the arrests during his direct examination. (Transcript, pg. 299). *See State v. Johnson* (363 S.C. 53, 609 S.E.2d 520 (Ct.App. 2005) (finding harmless error and minimal impact of criminal convictions in evidence where the convictions were introduced on direct examination). Appellant has not shown how the questions or admission of the evidence were unduly prejudicial. Furthermore, Appellant did not make a contemporaneous

objection when the questions regarding prior convictions were asked. *See State v. Johnson* (363 S.C. 53, 609 S.E.2d 520 (Ct.App. 2005) (finding that an argument regarding the introduction of criminal convictions was not preserved for appeal where there was not a contemporaneous objection). Accordingly, there is no evidence or argument showing the court abused its discretion in allowing in limited evidence of criminal convictions pursuant to Rule 609, SCRE.

VI. The Trial Court Properly Instructed the Jury on the Law

A. Standard of Review

In reviewing jury charges for error of law, the appellate court construes the trial court's charge as a whole in light of the evidence and issues presented at trial. There is no reversible error if the jury instructions, construed as a whole, correctly state the law. An appellant is not entitled to reversal unless the trial court's instructions are both erroneous and prejudicial. The "enumeration of hypercritical exceptions will not suffice to overthrow a jury's verdict." *See Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct.App. 2001).

B. The trial court did not commit reversible error in instructing the jury

The trial court properly instructed the jury on the law. Appellant argues the trial court rejected his argument about charging on duties for non-parties, but fails to explain which jury instruction he is referencing. Further, Appellant did not specify which charge he was objecting to at trial, but merely stated "it was inappropriate to charge about duties related to a non-party. (Transcript, pg. 545). *See Durr v. McElrath*, 299 S.C. 30, 382 S.E.2d 20 (Ct.App. 1989) (holding "no party may assign as error the giving of…an instruction unless he objects thereto before the jury retires to consider its verdict, stating

directly the matter to which he objects and the grounds for his objection." Quoting *Belue v. City of Greenville,* 226 S.C. 192, 84 S.E.2d 631 (1954)). Assuming, *arguendo,* Appellant is referencing the charge regarding failure to yield, then that charge was properly given. The court told the jury, "[t]he driver of vehicle intending to turn left within an intersection or into an alley, private road, or drive – driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close there to as to constitute an immediate hazard." (Transcript, pg. 533). The law regarding yielding to oncoming traffic was referenced throughout trial by Appellant. (Transcript, pg. 183, 258-260, 269, 443, 451). It was appropriate to instruct the jury on that law, and Appellant has not shown how the jury instruction was erroneous or prejudicial. Consequently, the jury instruction was proper.

The court also properly instructed the jury on the doctrine of sudden emergency. Appellant argues the charge on sudden emergency should have been excluded. He does not argue the court incorrectly instructed the jury on the law of sudden emergency, or that there was any resulting prejudice. As a charge must be both erroneous and prejudicial, reversal is not appropriate. *See Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct.App. 2001). However, it is clear that the charge on sudden emergency was proper. Seely turned left in front of Knox, causing a sudden emergency which resulted in Knox braking and attempting to avoid a collision. *See Poulos v. James*, 254 S.C. 156, 174 S.E.2d 152 (1970) (finding a sudden emergency instruction was proper where party was entitled to presume that other vehicle would operate in compliance with the law and in the exercise of due care); *Still v. Blake*, 255 S.C. 95, 177 S.E.2d 469 (1970) (discussing sudden emergency where the appellant turned left in front of the respondent, causing the

collision). Accordingly, the jury instruction was proper.

CONCLUSION

For the reasons stated herein, Respondent requests this Court affirm the trial court's denial of Appellant's Motion to Reconsider Post-Trial Motions, Motion to Reconsider Defendant's Motion for Costs, and Post-Trial Motions.

Respectfully submitted,

s/Jeanmarie Tankersley Ethridge
Jeanmarie Tankersley Ethridge
Haynsworth Sinkler Boyd, P.A.
Bar No.: 101068
ONE North Main, 2nd Floor
Greenville, South Carolina 29601
Phone: (864) 240-3200
Email: jtankersley@hsblawfirm.com
Attorney for Respondent