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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

Jonathan Bean,

Respondent,

v.

Mark Edelmayer,

Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

Respondent's own testimony tells the story of this case and created the errors that led to this appeal. He testified that he saw traffic slowing and had already begun braking before the white Jeep ever changed lanes. The vehicle directly ahead of his tractor-trailer, Appellant's vehicle, stopped for that same traffic without striking anyone. Respondent, hauling approximately 79,000 pounds, did not.

Yet Appellant was prohibited from examining Respondent as an adverse party, while Respondent's counsel was permitted to lead him through every element of his defense. The resulting verdict raises a troubling question. During deliberations, the jury asked how "bad judgment" differs from "negligence." It then answered "No" to the very negligence question it had sought to understand. The record thus presents two fundamental concerns: a trial in which Appellant was denied the proper means to examine the opposing party, and a verdict returned after the jury expressly revealed its uncertainty about the governing standard.

II. ARGUMENT

C. Respondent's own testimony shows that any "emergency" was one he helped create, so the sudden emergency doctrine could not defeat a directed verdict on negligence.

Respondent is correct that this Court should not reweigh credibility or choose between competing accounts. Appellant asks it to do neither. Here, the question is whether Respondent's account, viewed in Respondent's favor, legally supports applying the sudden emergency doctrine. It does not. The doctrine protects only a driver confronted with "a sudden emergency brought about by the negligence of another and not by his own negligence." *Clark v. Cantrell*, 339 S.C. 369, 391-92 (2000). "The doctrine does not apply when a party's own negligence creates the very emergency in which she finds herself." *Id.* at 392.

The sudden emergency doctrine requires two distinct inquiries, and Respondent's brief addresses only the second. The Supreme Court has long held that a driver confronted with an emergency created by another is excused only "[i]f he has used due care to avoid meeting such an emergency *and* after it arises, he exercises such care as a reasonably prudent driver would use under the attendant circumstances." *Melton v. Ritch*, 231 S.C. 146, 152 (1957) (emphasis added). Respondent's evidence that he braked hard, left skid marks, and "did all [he] could do" addresses only the second inquiry: whether he responded reasonably once the emergency arose. (Trial Tr. 111:11-19). It says nothing about the first part, whether he used due care to avoid ending up in that position.

This Court applied that first step in *Singletary v. South Carolina Department of Education*, 316 S.C. 153 (Ct. App. 1994). There, a school bus stalled on a foggy highway and was struck from behind, and the Department argued its driver faced a sudden emergency as a matter of law. But the driver testified that about two-tenths of a mile before the stop she noticed her headlights looked dim, and that she "had plenty of space to pull over to the side of the road as a precautionary measure, but did not feel she had any reason to do so." *Id.* at 156. The driver also testified that the bus had stalled the same way before. *Id.* This Court rejected the sudden emergency defense. It held that "the question of whether there was actionable negligence on the Department's part" could not be resolved in the Department's favor and affirmed the denial of the directed verdict. *Id.* at 157. The stall was sudden. What took away the protection of the doctrine was the driver's earlier awareness of a warning sign and her choice not to leave herself a margin of safety.

The Supreme Court reached the same result in *Goss v. Mitchell*, 265 S.C. 431 (1975). The driver there claimed an oncoming truck straddling both lanes forced him to brake, but he "first saw the truck when it was only 35 to 50 feet in front of him," while traveling 40 to 45 miles per hour.

Id. at 433. He also "knew that the car pulled to the left when the brakes were applied." *Id.* The Court held that, "even if the jury should conclude that a sudden emergency did exist, ... it could have reasonably concluded that Mitchell's negligence contributed to its creation or that his conduct in light of the emergency was negligent," because "[o]ne operating a vehicle on a public highway owes an urgent duty to keep a proper lookout and to keep the vehicle under proper control." *Id.* The same distinction applies here: even if the Jeep's maneuver created an emergency for Appellant, it does not mean that Respondent's own conduct played no part in the emergency confronting him.

Respondent's brief treats the Jeep's maneuver as the beginning of the emergency. But Respondent concedes that he "had already begun slowing down for this slower moving traffic before the white Jeep merged over and cut off the Appellant." Resp. Br. at 2 (citing Trial Tr. 105:19–106:10). At trial, he described the sequence himself: "as I got in the lane, I looked up, and that's when we started seeing the slowdown. So I let off the accelerator then, then started seeing the brake lights. Then I stayed on the brake. And that's when the white Jeep come over and cut him off." (Trial Tr. 105:24-106:3). He was checking his mirrors and "had a lot to look at," and he did not see the traffic ahead until he had completely merged into the right lane. *Id.* 95:13-96:5. He acknowledged that his tractor-trailer and its load weighed approximately 79,000 pounds and that a vehicle of that weight needs more distance to stop. *Id.* 77:1–78:2. He did not have enough time to stop before striking Appellant's vehicle. *Id.* 94:1–25.

Those facts are not in dispute, and they lead to only one reasonable inference. The hazard Respondent faced was congested traffic he could see, and it existed before the Jeep did anything. The Jeep did not enter Respondent's lane in front of him. It cut in front of Appellant. Appellant was "already applying [his] brakes to slow down for the congestion in front of [him]" and stopped short of the Jeep "[b]ecause I applied my brakes and I gave myself enough room." *Id.* 145:1-6;

168:13-18. The vehicle directly behind the Jeep stopped. *Id.* 94:2-5. The vehicle behind that one, a fully loaded tractor-trailer that was already braking for visible congestion, did not. *Id.* Whatever "emergency" Respondent faced was the distance he had left himself, given his speed, his weight, and how late he saw the traffic. *Clark* confirms that a driver cannot invoke the sudden emergency doctrine when his own negligence creates the peril. There, the defendant's "allegedly excessive speed created the emergency," and the trial court properly refused to charge the doctrine. *Clark*, 339 S.C. at 392.

Respondent's argument that he "has never argued that his merging onto the interstate or traffic slowing created the sudden emergency" does not help him. (Respondent's Br. p. 16). What a defendant chooses to call the emergency does not control. The doctrine asks whether his own conduct contributed to it, not how a defendant describes it. A driver who is already braking for visible congestion, and who has not left enough distance to stop his loaded truck for that congestion, cannot claim that a lane change two vehicles ahead was the sole cause of a collision he was already on course to have.

Respondent distinguishes *Fettler v. Genter*, 396 S.C. 461 (Ct. App. 2012), by noting Respondent did not expressly admit that he failed to keep a proper lookout. But *Fettler* did not turn on magic words. The *Fettler* court found "no evidence to provide a jury with any reasonable inference other than [the defendant] was negligent" based on his own testimony about his distance behind the lead car and the fact that he took his eyes off his direction of travel. *Id.* at 468-69. Here, Respondent was checking his mirrors and "had a lot to look at," meaning that he was not looking at the cars in front of him. (Trial Tr. 95:13-96:5). Respondent testified that he was looking in several directions while merging, did not see slowing traffic until after he completed the merge, and then could not stop. *Id.* 95:15-17; 90:23-25; 97:10-16. That is a failure of lookout established

by his own words, whether or not he used the legal label. Not using “magic words” does not create a jury question when his account of the facts contradicts it. Respondent points to his testimony that he was keeping a careful watch. That is the same kind of conclusion, and the specific facts he described undercut it.

Chapman v. Associated Transport, Inc., 218 S.C. 554 (1951), remains instructive despite its different procedural posture and the absence of a third-party vehicle. Respondent tries to distinguish *Chapman* by noting that the emergency came from the driver's own failure to notice brake lights ahead and to keep a proper lookout. Resp. Br. at 10. That describes this case too. The only third-party vehicle here cut in front of a different driver, while Respondent was already reacting to congestion he had seen late. Respondent does not hit the third-party; he hits Appellant. It does not create a reasonable inference that his own conduct played no part.

The jury charge confirms the point. The jury was told that "the emergency must not have been caused by the defendant's own conduct." The jury was also told that a driver "must account for traffic conditions that are visible or should be visible to a reasonably attentive driver, and must take appropriate action, including reducing speed and increasing distance, to avoid a collision." Measured against those instructions, Respondent's own testimony left no reasonable basis to find that the emergency was entirely external to his conduct.

Because the evidence supported only one reasonable inference, the trial court should have granted Appellant's motion for directed verdict on negligence. Sending the question to the jury was not a harmless detour. When "the issue of [a defendant's] negligence should have been decided as a matter of law, the irrelevant and inapplicable principles of negligence had the strong possibility of confusing the jury and affecting the outcome of the trial." *Fettler*, 396 S.C. at 470. The jury's question about the difference between "bad judgment" and "negligence" shows that risk

materializing. This Court should reverse the denial of Appellant's directed verdict and JNOV motions and remand for entry of judgment on negligence and a trial on the remaining issues.

B. The adverse-party examination issue is preserved, and the error was prejudicial.

The trial court's ruling was not a discretionary call about the form of particular questions. It was a legal ruling that ignored Rule 611(c), SCRE. This Rule provides that "[w]hen a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions." The trial court eliminated the category the Rule expressly provides. "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *Yoho v. Thompson*, 345 S.C. 361, 365 (2001).

1. The issue is preserved.

Respondent argues that this issue was not preserved. It was.

First, no mistrial motion was required. In *Dunn v. Charleston Coca-Cola Bottling Co.*, the Supreme Court explained that once the trial court has ruled on an issue, counsel need not repeatedly raise it to preserve the error: "The judge had fair opportunity to rule upon the issue and did so. It was not incumbent upon defense counsel to harass the judge by parading the issue before him again, by asking for a mistrial." 311 S.C. 43, 46 (1993). The Court further explained that "[a] motion for new trial is not necessary to preserve for review on appeal a question which has been fairly and properly raised in the trial court and passed upon there." *Id.* (citing *Hubbard v. Rowe*, 192 S.C. 12 (1939)).

That is precisely what happened here. The parties argued the issue, and the court decided it at the outset of Respondent's examination. The court then repeatedly enforced its ruling. After argument outside the jury's presence, the court stated, "We're not going to lead him." When Appellant attempted to ask whether Respondent had enough time to stop safely, the court again

ruled, “No leading.” The court understood the issue and ruled on it. Under *Dunn*, nothing more was required to preserve it.

Second, no proffer was required. Respondent’s proffer authorities concern excluded testimony, where an appellate court cannot evaluate the ruling without knowing what the witness would have said. That is not the error presented here. The court did not exclude a discrete answer or subject of testimony; it prohibited a method of examining an adverse party that Rule 611(c) expressly permits. The ruling and its consequences are apparent from the transcript. In particular, the record shows that the restriction prevented Appellant from confronting Respondent effectively with his own recorded statement concerning whether he could have stopped had his truck been empty. A proffer was unnecessary to establish the nature of the ruling or to permit review of its effect.

Third, Appellant was not required to separately establish prejudice as a ground for objection. Appellant identified Rule 611(c) as the basis for his objection, and the court ruled on that basis. Whether the error was harmless is a separate appellate inquiry determined from the record as a whole. As the Court of Appeals explained, “[n]o definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” *Judy v. Judy*, 384 S.C. 634, 646 (Ct. App. 2009). “Error is harmless where it could not reasonably have affected the result of the trial.” *Id.* The issue was preserved; the transcript supplies the basis for determining whether the error was prejudicial.

2. The error was prejudicial because it prevented Appellant from effectively confronting Respondent with a material prior statement.

The clearest example arose when Respondent was asked whether he could have stopped if his truck had been empty. (Trial Tr. 80:23-25). He answered, “I can’t answer that.” *Id.* 81:1. Counsel then attempted to confront him with his recorded statement: “If I would have been empty,

I would have stopped. I wouldn't hit him." *Id.* 81:2-6. The court intervened: "Please, you can't tell him what's in the statement. Just ask him questions about the statement, please." *Id.* 81:7-9. Respondent's counsel then acknowledged the problem, stating that he was "not sure how she intends to impeach without leading." The court confirmed its restriction: "We're not going to lead him." *Id.* 89:1-3.

Respondent's counsel was right. Impeachment with a prior inconsistent statement requires a leading question. Asking, "You said that if your truck had been empty, you would have stopped, didn't you?" directly identifies the inconsistent statement and asks Respondent to acknowledge or deny it. An open-ended question cannot accomplish the same thing because it does not confront the witness with the statement's actual words. Once the court prohibited leading questions, Appellant could not effectively confront Respondent with his prior statement. The court nevertheless maintained that restriction.

The jury then heard what an unimpeached adverse party says. Respondent answered "I can't answer that" when asked whether his load prevented him from stopping, gave the same answer when asked whether he could have stopped unloaded, and when asked whether he had ever said he could have stopped, answered: "I might have been able to, but I can't answer that, you know, truly." (Trial Tr. 99:7-12). That is the situation the Supreme Court warned against in *Reid v. Kelly*. Without impeachment from a prior inconsistent statement, an adverse party "could tell his version as he pleased." 274 S.C. 171, 175 (1980).

Respondent now tells this Court the ruling was a "mere limitation on the form of the questions." Resp. Br. at 15 n.1. His counsel described it more accurately at trial: without leading, there could be no impeachment. Further, counsel's conduct at trial says otherwise. Counsel objected to Appellant's leading questions from the first minutes of the examination.

Counsel then led his client through the contested facts:

- "Mr. Edelmayer's vehicle was still rolling forward when you made contact with the back of the vehicle, correct?"
- "And in fact, you saw some scratches on the back bumper and tailgate that were already rusting."
- "Do you think you were put in a sudden emergency situation on the highway, based on this white jeep stopping ahead of Mr. Edelmayer?"
- "Did you do everything you could to respond to that emergency?" "Did you hit the brakes as hard as you could?" "Did you leave skid marks on the highway?" "Did you slow down almost to a stop before the tap occurred?"
- And he closed with: "And just so we're clear for the jury, you did everything in your power to stop, correct?" and "you believe you were placed in a sudden emergency on the highway?"

(Trial Tr. 109:17-113:18). These are all leading questions. Rule 611(c) gives the advantage of leading questions to the party examining an adversary, not to the party questioning his own client. The trial court's ruling reversed that. Appellant, examining the opposing party, was held to open-ended questions. Respondent's counsel, examining his own client, led him through every element of the sudden emergency defense. A party does not fight that hard to stop leading questions, then use them at his first opportunity, if they do not matter.

Respondent's reliance on *Sumner v. Pruitt* is misplaced. There, the Court of Appeals found no prejudice because "throughout direct examination Dr. Pruitt answered questions willingly and thoroughly." 281 S.C. 63, 67 (1984). Unlike the witness in *Sumner*, Respondent did not answer those questions willingly and thoroughly; his answers left Appellant unable to test his account

effectively. *Yoho v. Thompson*, another case where the plaintiff was allowed to explore a subject in general terms, provides a more useful comparison. 345 S.C. 361. There, the Supreme Court still found prejudice because the examination denied was "qualitatively different" than the examination permitted. *Id.* at 366.

Open-ended questions about a prior statement were no substitute for confronting Respondent with the statement's actual words. It was qualitatively different. Appellant should have been able to ask directly whether Respondent told the adjuster that he would have stopped had his truck been empty. That question would have required Respondent to address the statement itself, rather than evade its substance. The court's restriction impaired Appellant's ability to pursue that examination.

Respondent also points out that Appellant's counsel managed to ask some leading questions. The issue is whether the court restricted Appellant's examination on a consequential issue, not whether counsel managed to ask a leading question elsewhere. The exchange concerning Respondent's recorded statement demonstrates the restriction's practical effect.

Finally, Respondent argues that whether the circumstances created a sudden emergency was a jury question in any event. That argument does not establish harmlessness. The question was not simply whether the Jeep's maneuver was unexpected; it was whether Respondent's own conduct contributed to the collision and whether the sudden-emergency doctrine excused that conduct. Respondent's prior statement that he would have stopped had his truck been empty was relevant to that inquiry. Confronting him with that statement would have allowed Appellant to test his trial testimony and challenge the premise that the collision was unavoidable despite his efforts to stop.

The error concerned a central issue in a case that was resolved by the jury's verdict. The court's restriction prevented Appellant from confronting Respondent with a recorded statement directly bearing on his ability to stop, while Respondent's counsel was permitted to lead him through the facts supporting the sudden-emergency defense. Given the importance of that issue and the limited answers Respondent provided when questioned about his prior statement, the restriction materially impaired Appellant's examination and affected the verdict. A new trial is warranted.

C. . The jury's question about the legal standard for negligence requires a new trial.

At the start of trial, the Court told the jury not to "consult a blog or dictionary or reference materials," and told them that the judge, not the jury, decides the law. (Trial Tr. 52:16-20). Yet when the jury asked a question of law, the Court answered with a dictionary. "Bad judgment" does not appear anywhere in the charge. The charge told the jury that a driver must "use the same care that would be used by a person of ordinary reason and prudence if that person were driving the same vehicle at the same time and place and under the same circumstances." *Id.* 449:21-25. The relevant question, therefore, was whether Respondent acted as a reasonably prudent driver under the circumstances, not how a dictionary defines "bad judgment." The jury's question suggested that it was struggling to apply that standard to the distinction it perceived between "bad judgment" and "negligence." The Court could have directed the jury back to the charge it had already given.

A dictionary could not tell the jury that, and a jury that had accepted the sudden emergency defense in full would have had no reason to ask. The jury never received the answer it needed, and a new trial is required.

Respondent argues the note reflects "careful deliberations," not confusion. Resp. Br. at 18. But the jury was not asking about the facts. It was asking where the line falls between conduct that is negligent and conduct that is merely poor judgment. That is a legal question, and the charge already answered it. This question matters because "bad judgment" was not part of the Court's instructions, and the jury nevertheless sought to distinguish it from negligence. Under the charge, the issue was whether Respondent exercised the care a reasonably prudent driver would have exercised under the same circumstances. The Court should have directed the jury to that standard rather than allowing an ordinary dictionary definition to frame its deliberations.

The appropriate response was straightforward: the Court could have reread its definition of negligence and instructed the jury to apply the reasonable-person standard to the evidence. Instead, the response directed the jury toward a dictionary definition of "bad judgment," even though the Court had instructed jurors not to consult dictionaries or other outside reference materials. That response led to the jury substituting an ordinary-language distinction for the legal standard the jury was required to apply.

III. CONCLUSION

Respondent testified that he was already braking for visible traffic before the Jeep moved, and Appellant stopped for the same hazard; Respondent alone could not. The sudden emergency doctrine does not protect a driver whose own lookout, speed and following distance helped create the emergency. Appellant respectfully requests that this Court reverse and remand for entry of judgment on negligence and a trial on the remaining issues. Alternatively, Appellant requests a new trial because he was barred from examining Respondent as an adverse party, and because the jury's confusion about the negligence standard was never resolved.

Dated: October 30, 2026

Respectfully Submitted,

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