

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Ernest L. Cobb and Nancy Cobb, Respondents,

v.

Dan M. Lafoy, Appellant.

Appellate Case No. 2012-212693

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

Memorandum Opinion No. 2014-MO-014
Heard March 6, 2014 – Filed May 28, 2014

AFFIRMED

Robert Daniel Moseley, Jr., and Joseph William Rohe,
both of Smith Moore Leatherwood, LLP of Greenville,
for Appellant.

Larry C. Brandt, of Larry C. Brandt, PA, of Walhalla,
for Respondents.

PER CURIAM: We affirm the order granting a new trial under the Thirteenth Juror Doctrine since there is conflicting evidence in the record whether appellant was negligent. *See e.g. Rivera v. Newton*, 401 S.C. 402, 413, 737 S.E.2d 193, 198 (Ct. App. 2012)("As long as there is conflicting evidence, the trial court's grant of a

new trial will not be disturbed."). We remind the parties that the evidentiary rulings made in the first trial, including whether there was evidence warranting a jury charge, do not "carryover" to the next proceeding. *See e.g. Branham v. Ford Motor Co.*, 390 S.C. 203, 232, 701 S.E.2d 5, 20 (2010); *Odom v. Steigerwald*, 260 S.C. 422, 428, 196 S.E.2d 635, 638 (1973). Nothing in our decision today should be construed as reaching the issue whether the trial judge was correct in declining to charge the defense of sudden emergency.

AFFIRMED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**