IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-1971
Appellate Case No. 2013-002367

Barbara Gaines, ...Respondent,

v.

Joyce Ann Campbell, ...Appellant.

APPELLANT'S INITIAL REPLY BRIEF

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FACTS

On January 8, 2010, Ms. Gaines and Ms. Campbell were involved in the automobile accident which gives rise to this lawsuit. That accident resulted in very little damage to either parties' vehicle. (Exhibits are missing) In fact, Ms. Gaines testified that she told the investigating police officer that she did not know if she were injured at the time of the accident. (T1 p. 58; T1 p. 47; and, T1 p. 135) Thereafter, Ms. Gaines drove her vehicle from the scene of the accident. (T1 pp. 89-90; and, T1 p. 135) At the time of the accident, Ms. Gaines was seventy years of age.

At some point shortly thereafter, Ms. Gaines went to the emergency room, wherein one of

her complaints was with regard to neck pain. Furthermore, upon examination, her neck was found to be supple, without muscular spasms, and, absent any stiffness. Indeed, her complaint of neck pain was characterized as mild. Of more importance, Ms. Gaines failed to complain of right arm pain. Just as important, x-rays were obtained of Ms. Gaines's neck, wherein the radiologist determined that severe degenerative changes were present. However, the radiologist also noted that there were no acute injuries or abnormalities in Ms. Gaines's neck. (Harding Depo. pp. 40-49)

Prior to the automobile accident, Ms. Gaines began experiencing problems with her with her neck as early as July 23, 1987. Please recognize that this problem would have occurred approximately twenty-two years prior to the automobile accident in question. (T1 pp. 96-98) Ms. Gaines then proceeded to complain of problems with her neck through September 1, 2009. In other words, she was having continued trouble with her neck roughly four months prior to the subject accident. (T1 pp. 109-111) Indeed, Ms. Gaines was taking pain medications, the dosages of which were actually being increased, as late as November 30, 2009. To clarify, this medication adjustment would have occurred approximately one month prior to her accident with Ms. Campbell. (Harding Depo. p. 29; 33-37)

Regardless, one month after the accident in question, Ms. Gaines went to her doctor, wherein she promulgated a list of complaints, with the fourth item on that list being right arm pain. (Harding Depo. pp. 50-53) As a result of that complaint, her doctor ordered an MRI. Thereafter, the radiologist who interpreted that MRI noted that Ms. Gaines suffered from severe bone spurring, a congenitally small spinal canal, and severe spinal canal stenosis. (Harding Depo. pp. 55-57, and missing exhibit)

Thereafter, that MRI was also reviewed by Dr. Mina, after which she opined, "she (meaning Ms. Gaines) had what is called an osteophyte, otherwise known as a bone spur, on the

right side of her cervical 5-6 level, which was compressing the right C-6 nerve root." (Mina Depo. pp. 9-10, and missing exhibit) Dr. Mina further stated, "my impression was that this bone spur that was pinching the nerve was the source of the symptoms." Furthermore, Dr. Mina stated that, "the bone spur could not have been caused by the automobile accident." (Mina Depo. pp.21-22) Indeed, Dr. Mina stated that she essentially removed the bone spur, which alleviated the pressure on the disc. This, in turn, relieved Ms. Gaines's symptoms. (Mina Depo. pp. 27-28; Mina Depo. p. 34; Harding Depo. pp. 61-62; T1 p. 71; and, missing exhibit) Furthermore, Dr. Mina ultimately conceded that the mere existence of a bone spur created potential for Ms. Gaines to have had problems, regardless of an accident. (Mina Depo. p. 40) Nevertheless, upon excision of the bone spur, Ms. Gaines experienced nearly complete resolution of her pre-operative symptoms, as the same ceased to exist. (Mina Depo. p. 40)

ARGUMENTS

A. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT GRANTED A NEW TRIAL, BASED UPON THE THIRTEENTH JUROR DOCTRINE, AS A RESULT OF THE FOLLOWING MISAPPREHENSIONS OF LAW.

Appellant's Brief cited four separate and distinct legal principals that were misconstrued by the Trial Court when it made the determination to grant a new trial based upon the Thirteenth Juror Doctrine. Respondent's Brief failed to address any of those legal standards. Indeed, the thirteen page brief submitted by Respondent's Counsel never once indicated that Appellant's statement of the law was wrong or misleading.

The Appellant's Brief also stated that the Trial Court's misapprehension of four separate and distinct legal principals led to the Court completely misapprehending the evidence set forth during the trial. Again, Respondent's Brief failed to even once negotiate those issues.

Please recognize that there is no question being posed with regard to the Trial Court's ability to invoke the Thirteenth Juror Doctrine. However, a court may only employ that doctrine when its conclusions are not controlled by an error of law. Again, Respondent's Brief failed to even once engage this statement, or mention that the same was, in any way, misleading.

In essence, the Respondent has conceded that the Appellant's Brief, with regard to its application of the law, is completely accurate. Unfortunately, that concession affirms the Appellant's position. The Trial Court simply misapprehended four separate and distinct principles of law in arriving to the incorrect conclusion that a new trial should be granted. Those repeated misapprehensions of the law culminated in a misapprehension of the facts, with the ultimate result being that the Trial Court incorrectly granted a new trial based upon the Thirteenth Juror Doctrine. There misapprehensions, unfortunately, are legally referred to as abuses of discretion. As such, and pursuant to that legal definition, the Trial Court abused its discretion.

I. THE TRIAL COURT MISAPPREHENDED THE LAW IN ITS BELIEF THAT DEFENDANT MUST PRESENT AN EXPERT SO AS TO CONTRADICT AN OPPOSING EXPERT'S TESTIMONY.

To reiterate, the Court's Order granting a new trial stated, in pertinent part, "The only **competent evidence** admitted at trial requires a verdict that compensates the Plaintiff, at a minimum, for the medical bills and expenses incurred as a result of the spinal surgery. This Court finds an award of damages for only the emergency bills in the value of $3,901.00 is grossly inadequate and unsupported by the evidence in the case. Therefore, this Court grants Plaintiff's Motion for a New Trial Absolute." (Emphasis added) (Order)

Unfortunately, the Court misapprehended the law with regard to "competent evidence." The Court engaged its first misapprehension by specifically stating, "The Defendant did not present

any evidence to refute (the Plaintiff's) experts, and relied solely on McGarr's cross-examination of the witnesses to contest the proximate cause issue." (Order) The Court granted a new trial based upon its misapprehension that a given expert's opinion can only be countered by that of an opposing expert. As set forth in the Appellant's Initial Brief, the Court's application of this principle is in direct contradiction of the law itself. Indeed, this misapprehension was the first of a series of the same which led to the improper granting of a new trial.

II. THE TRIAL COURT MISAPPREHENDED THE LAW IN ITS BELIEF THAT CROSS EXAMINING AN EXPERT AMOUNTS TO PITTING WITNESSES.

The Court then cited a second cause for granting a new trial in its finding that an attorney may not cross-examine an expert by doing the following: 1) inquiring as to the veracity of other witnesses; 2) utilizing collateral sources; and, 3) in bringing to the jurors' attention that a physician was essentially calling emergency room physicians quacks. In essence, the Court felt that the above consisted of "pitting" witnesses against one another. (Order) Again, as stated in Appellant's Initial Brief, the Court's application of the law, with regard to the cross-examination of experts, was, unfortunately, another misapprehension of the law. Therefore, its rationale for granting a new trial was additionally flawed.

III. THE TRIAL COURT MISAPPREHENDED THE LAW IN ITS BELIEF THAT AN EXPERT CANNOT BE CROSS EXAMINED BY ASKING IF OTHER THINGS COULD HAVE POSSIBLY CREATED THE PROBLEM IN QUESTION.

The Court's third misapprehension of the law was with regard to its understanding that an expert may not be cross-examined based upon a hypothetical line of questioning. In other words, the Court found it inappropriate to cross-examine an expert based upon asking if alternate scenarios were "possible." Indeed, the Court stated, "The law in South Carolina requires that

opinion testimony by medical experts must to a reasonable degree of medical certainty, and more probably than not. There is no distinction made as to who the questioning party is." (Order) Again, as stated in Appellant's Initial Brief, the Court simply misapprehended the law with regard to this issue, as it failed to take into consideration Rules 702, 703, 704, and 705 of the South Carolina Rules of Evidence, in addition to South Carolina's longstanding rule with regard to utilizing hypotheticals whilst cross-examining experts. Unfortunately, through its misapprehension of this law, the Court improperly granted a new trial.

IV. THE TRIAL COURT MISAPPREHENDED THE LAW IN ITS BELIEF THAT A CLOSING ARGUMENT WITH NO DIRECT APPEAL TO ANY SPECIFIC JUROR ACTUALLY VIOLATES THE RULE AGAINST APPEALING TO A JUROR.

The issues at hand were then compounded by the Court's fourth rationale for granting a new trial. That rationale was based upon the fact that, "McGarr personally addressed and personally appealed to the jury in his closing remarks." (Order) Unfortunately, the Court misapprehended Rule 43(i) of the South Carolina Rules of Evidence. This fourth misapprehension of the law caused the Court to, on yet another ground, improperly grant a new trial.

V. THE TRIAL COURT'S MISAPPREHENSION OF THE LAW RESULTED IN A MISAPPREHENSION OF THE FACTS.

It is of vital importance to recognize that while the Trial Court felt the methods of cross-examination were improper, it noted that no objections were ever raised with regard to said cross-examination. (Order) The Trial Court also readily admitted that "indiscretions" of McGarr's closing argument drew no objections from Peace. (Order) This, coupled with Respondent's failure to contend with the legal principles set forth in Appellant's Initial Brief, make it apparent that

Counsel for Respondent understood the law, and the Trial Court, unfortunately, misapprehended the same.

Despite the above, Respondent's Brief cites, by page and line, selective portions of Appellant Counsel's cross-examination of Dr. Mina. However, please find below the complete dialogue associated with Appellant Counsel's discussion with Dr. Mina, regarding the aforementioned emergency room records. However, please recognize that the objections raised by Mr. Peace were either edited or ignored before the deposition video was shown the jurors. The entire discussion, with the objections removed, occurred as follows:

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Q. Does it appear that when she was being deposed, - - and we were asking about her history while under oath, that she was telling us that she had been knocked out as a result of this accident?
A. Yes, sir, I believe that's referred to in my office notes as well.
Q. So she was telling you the accident was severe enough to have knocked her out; is that correct?
A. Right.
Q. Which would give you some indication of one heck of a mechanism of injury, a good flexion extension type injury - -
A. Yes.
Q. - - if she got hit enough to - -
A. In an - - in an impact to the head, yes.
Q. Yeah, a pretty good impact of the head.
A. Yes.
Q. If we could, going to the emergency room records on the date of this accident, does it appear - - and I've highlighted it. Does it appear that she never told

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them that she was knocked out? In fact, she said she had no altered level of consciousness, denied dizziness, and denied being knocked out? And I know I'm using the lay people terms.
A. Yes, although when they say no altered level of

consciousness, I'm not sure if that's something that the patient is saying that she is not altered now or wasn't altered at the time of the accident. That it doesn't specify.
Q. Wouldn't you think that if a patient had been knocked out as a result of an automobile accident, that she would report an injury to the police officer and report to the emergency room that, I have been knocked out?
A. It's possible - -
(INTERRUPTION)
WITNESS:
I'm sorry. Off the - -
VIDEOGRAPHER:
Going off the records at 17:59.
(OFF TH E RECORD)
VIDEOGRAPHER:
Going back on the record at camera time 17:59.
EXAMINATION RESUMED BY MR. McGARR:
Q. Doctor, the question again would be, does it not

strike you as extremely surprising that someone who had been hit so hard that they were knocked out failed to tell the police officer they were injured and fails to tell the hospital that they were knocked out?
WITNESS CONTINUES:
A. If there was a significant head injury, then it might not be unusual. Because the patient right after the accident, right after a blow to the head, might be confused.
Q. I understand. But by the time she has gotten to the emergency room, she's specifically denying being knocked out.
A. But again she could be confused at this point in time. This is immediately after the accident.
Q. Don't' you think if she's able to tell you that she presents following a motor vehicle collision, the onset was just prior to arrival, the collision was a rear impact, the patient was the driver, there were safety mechanisms including seat belt - - that if she's able to give that much detail, that she probably

should be able to remember, if she knows what's

hurting her, that she had been knocked out? I mean, it would be very unusual to have that much detail and not remember being knocked out.

A. Well, but is this the patient herself giving the information? Because according to this, History Source says "patient and family." So a lot of this may be obtained from family members

Q. But the bottom line is, wouldn't you think that if the family members were there and she had been knocked out, that someone would have told the hospital?

A. Again, there might have been confusion right after the accident.

Q. But nonetheless, this hospital note makes no mention of her being knocked out. In fact, it specifically denies hat she was knocked out.

A. That's - -

A. That's what the note says. Where the source of that information comes from, I don't know.

Q. Okay, so at least with regard to what was stated on the day of this accident when she goes to the emergency room, the opposite of what she told us in

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the deposition is placed in these notes?

A. That's true. Again, I question the reliability of this, this history, though.

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Q. So she was doing better until she started putting out the mulch the weekend before, and now she's got a flare-up; is that correct?

A. I'm sorry. I must be misunderstanding the timing of something, because this implies to me that she has some soreness in the shoulder and neck but that her right arm at this point is feeling better.

Q. Does it say, "Right arm has been doing better, though sore in shoulder and neck since putting out mulch over the weekend?"

A. It is.

Q. Okay. So does it appear that she started having soreness in her shoulder and her neck after putting mulch out over the weekend?

A. It - - it does say that.

Q. And by the very act of putting out mulch, when you have a spur to the extent that you have at C5-6, you

could inflame a nerve enough where you ultimately end up doing surgery to fix it?
A. Well, you could. But if that were the case, then why wouldn't the right arm be doing worse?
Q. Because - -
A. Because that would be where the symptoms would come from, from an inflamed nerve.

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Q. Except if we go and we look back under those - - under that theory, then why didn't she have radiating pain at the hospital the day of the accident?
A. I can't - - I wasn't there the day of - -
Q. But they don't describe - -
A. At the hospital, - -
Q. - - radiating pain.
A. - - so I can't speak to that.
Q. But, the records that we saw, she doesn't refer to radiating pain going into her right arm at the hospital; did she?
A. Well, I'd have to look back at them to see.
Q. Can we do that?
A. There's no specific mention made of arm pain here.
Q. In fact, if we actually go through the ER records, she's not complaining of arm pain. She's not complaining of radiating pain. She's not complaining of chest pain. She's not complaining of low back pain. She's essentially complaining of head and neck pain; is that correct?
A. Correct.
Q. So if there was a C - - a C5-6 issues, it wasn't presenting itself at the emergency room; was it?
A. Well, it's not mentioned in these notes. But again,

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here I'm questioning the reliability of this, this history, because here it doesn't even talk about the loss of consciousness that she had.
Q. It actually says the exact opposite, she denied having a loss of consciousness; does it not?
A. Well, other records state - -
Q. It's not silent. It says it.
A. Other records state that she did, and that she clearly had a head injury, and, therefore, she was likely to

have some confusion at the time.
Q. Is it your testimony, Doctor, that you think that an emergency room doctor would hear that someone's been involved in an automobile accident, claiming headache, and then not check to see if they had a loss of consciousness? Is that your - -
A. No, that's - -
Q. Is that your testimony?
A. That's not my testimony.
Q. Okay, so if they come in and they're presenting or they're saying, I've got a headaches and I've been involved in an automobile accident, one of the first things they're going to check, and they obviously did, because they went through a litany of question, are you feeling different, are you having nausea, are you - - were you knocked out? And all of these occasions,

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she said no; is that correct?
Then let's read them together.
Q. Does it state, Doctor, that her chief complaint was that she was rear ended this p.m.? Patient complains of low back pain and headache. Patient complains of nausea also.
A. I'm sorry. I'm on a different page, evidently.
Q. Are you not on the ER visit?
A. This says ED visit. Where on the page, are we?
Q. Are you not at the History of Present Illness?
A. Okay, can you read what you were reading again?
Q. Okay, just above that, Chief Complaint. "Rear ended

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this p.m., complains - - patient complains of low back pain and headache, complains of nausea also." Is that what it says at the top?
A. Yes.
Q. And does it go on to say, "The patient presents following motor vehicle collision. The onset was just prior to arrival. The collision was rear impact. The patient was the driver. There was a safety mechanism, including seat belt. Location, head and neck. The degree of pain severe. The degree of bleeding is none. Risk factors consist of age. Therapy today, none. Associated symptoms - - nausea, headache. Denies shortness of breath. Denied chest pain.

Denied abdominal pain. Denies vomiting. Denies back pain. No altered level of consciousness. Denies dizziness. And denies syncope." Which means, in lay people's terms, denied being knocked out. Is that what the document says?

A. That's what this says, but again we don't know if this is coming directly from the patient or from a family member who may not have had all the information, because up here the history of source says patient and family.

Q. Which would mean you would get more accurate information, not less?

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A. I'm sorry?

Q. You would get more accurate information, not less. Would that be correct?

A. No, not necessarily.

Q. So two head are not better than one?

A. Not necessarily.

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Q. And even though she was doing better and she had these post-existing events, they couldn't have had anything to do with that surgery?

A. I'm sorry. Could you restate?

Q. Even though she's had these post-existing events, those could have nothing to do with this surgery?

A. I'm sorry. What's a post-existing event?

Q. Mulching.

A. A pre-existing event?

Q. Post-existing, something that took place after the accident. She was mulching and started having trouble again.

A. Well, the trouble that she's describing with the mulching does not fit with a C-6 radiculopathy in the upper right extremity.

Q. If that's the case, the it doesn't fit with a C-6 radiculopathy when she went to the hospital either; does it?

A. Well, that's - - again, that's documentation form the emergency room visit, the reliability of which is unclear. And I wasn't there at that time to question

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or examine the patient.

Q. So as far as you're concerned, the ER doctors are quacks?
A. I beg your pardon?
Q. You said more - -
Q. You said, more than once, that you don't think the emergency room records are reliable.
A. Correct. That does not mean that the emergency room doctor is a quack. That mean that the records here, the history that's obtained from the patient and family, is not necessarily exactly what happened or what the patient was feeling at the time.
Q. Okay, and that's because two heads are never better than one?
A. That has nothing to do with it. (Mina Depo. pp. 45-49; 75-80; and, 87-88)

Again, please recognize the amount of time spent on this cross-examination. Furthermore, please recognize that no objections were made, presented, and/or brought forth during the trial, with regard to that cross-examination.

Frankly, our form of jurisprudence is adversarial by nature. This adversarial system has proven to be extremely effective with regard to unearthing the truth. Indeed, an effective cross-examination is an integral part of that adversarial process. A cross-examination that illustrates the nonexistence of a fact; the bias of a witness; the improper assumption of a witness; and/or, the unfairness of a witness, is not improper. *State v. Sclocomb*, 266 S.C. 619, 521, S.E.2d 507 (S.C. App. 1999) The manner of cross examination illustrated above is the very "sword" facilitated by Rule 705. That "sword" must be sharp, or the system fails.

Respondent's Brief also spent a great deal of time highlighting selective portions of Appellant Counsel's closing argument. Again, our system is adversarial by design. However, please review several highlighted portions of Respondent's closing argument:

1) "Good afternoon ladies and gentlemen. My name is John Peace. **I was introduced to you earlier today during jury selection during jury selection. Like the judge said, we**

really couldn't hold jury trials without you, obviously. You are the main event. You are the ultimate deciders of all issues of fact." 2) "**So when you are in the jury room thinking, 'well, what is pain and suffering worth?' I can already tell you.** I mean. Judge Miller's instructions is going to be, there is no market price for pain and suffering, it's not bought and sold. And there is no fixed amount that should be charged for it. **You, in the exercise of your common sense, need to decide what its worth in this case, for this lady, under these circumstances. This is the individualized justice because this is the case that has been presented to you as the jury.**" 3) "**Ladies and gentlemen, this is my closing argument. We are going to have these figures in the jury room with you.** Which are the medical fees. It's also Dr. Mina's reśumé. **We are going to have this medical log so that you can look more closely at it.** You are going to see the hardware as it is today, you can see the course of treatment starting with MRI's right after the wreck. And you can see up close what Dr. Mina showed you in her testimony yesterday. **Ultimately, I want you to go back to the jury room, after you have been instructed on the law and deliberate carefully. Discuss it amongst yourselves, use your common sense. But based, on the evidence that has been put before you in this trial, I would suggest that the only logical result would be a verdict for Barbara Gaines in the amount well in excess of the medical bills in this case. I thank you in advance for your hard work.** Depending on what Mr. McGarr may say to you, I also have the right to respond to that. So I may be back here in just a moment and have a brief overview before you deliberate."; 4) "Ladies and gentlemen, **I know you have been living with this case for a few days and you are ready to get on with your job. It won't take a lot of time, but I've got to tell you, its hard to sit here and listen to somebody accuse me of being disingenuous when he is calling**

Barbara Gaines a liar. You listened to her, you listened to her daughter, and you listened to her doctors. And I leave it to you to decide who is telling the truth as far as her injuries."; and, 5) **"So ladies and gentlemen, I am going to sit down and let the Judge instruct you all on the law. Please use your common sense**. And weigh this for what it is and bring back a verdict that speaks the truth for both of these parties. I appreciate it." (T1 pp. 56-79 and 98-102).

In essence, a closing statement cannot be accomplished during a jury trial, if one cannot speak to the jurors collectively. Ms. Gaines's attorney properly addressed the jurors in exactly that fashion. Mr. Campbell's attorney did the same.

Please compare both closing arguments, and, meanwhile, please note that neither party offered an objection during the other's closing statement. This is because neither closing argument, in any way, violated Rule 43(i) of the South Carolina Rules of Civil Procedure. Indeed, this issue was set forth in Appellant's Initial Brief, and, as such, this brief will refrain from boring the court by re-stating the same.

All of the above is brought to the Court's attention in order to contextualize the "offensive" comments, which are so heavily relied upon in Respondent's Brief. It also highlights the deficiency of Respondent's Brief, in addition to the Trial Court's numerous misapprehensions. Indeed, for Appellant's Counsel, the matter at hand calls forth the following adage: "If the law and the facts are with you, pound on both. If the law is against you, pound on the facts. If the law and the facts are against you, pound on the table."

It is quite possible that "pounding" resulted in the Court's final misapprehension of the facts, wherein the Court stated "The only **competent evidence** admitted in trial, requires a verdict that compensates the plaintiff, at a minimum, for the medical bills and expenses incurred as a result

of the spinal surgery. This Court finds an award of damages for only the emergency room bills, in their value of $3,941.00 is grossly inadequate and unsupported by the evidence in this case." (Emphasis added) (Order).

This conclusion fails to consider Ms. Gaines's longstanding preexisting issues with regard to her neck. Furthermore, the conclusion fails to consider that the pain medications Ms. Gaines had been utilizing were actually being increased just prior to the occurrence of the automobile accident in question. Additionally, this conclusion fails to appreciate the minor nature of the automobile accident itself. Moreover, no consideration is given to the credibility issues associated with a number of the plaintiff's witnesses. Indeed, the conclusion does not consider the fact that Ms. Gaines's neck was actually doing better, until the point wherein she exacerbated her neck problems while mulching her yard. Furthermore, it fails to consider that surgery was not performed until some point after the aforementioned mulching incident. Alas, the Court's decision failed to consider the fact that Ms. Gaines simply grew older and, unfortunately, a defendant cannot be held responsible for the natural progression of the aging process, and the worsening conditions associated therewith.

As stated above, almost identical versions of this case have previously been tried and discussed on appeal, *Black v. Hodge*, and *Vinson v. Hartley*. In fact, *Vinson* was appealed because the Trial Court refused to invoke the Thirteenth Juror Doctrine, in spite of the plaintiff's attorney's request that the same be done. Furthermore, the Court of Appeals upheld the Trial Court's refusal of that request.

To grant a new trial in the case before you, after citing *Vinson*, is clear evidence that the Trial Court simply misapprehended the Rules of Evidence and Rules of Civil Procedure, and, as a logical result, the facts of the matter. For that reason, the Trial Court abused its discretion, and its Order granting a new trial should be reversed.

CONCLUSION

To summarize, the jury was presented with a plaintiff who had a longstanding history of neck problems. Indeed, those neck issues were of a progressive nature, and were naturally worsening in proportion to the Plaintiff's aging process. In the meantime, the Plaintiff was involved in a low impact automobile accident. Indeed, the Plaintiff confirmed that, while at the scene of this low impact accident, she advised the investigating officer who inquired as to her health that she did not know if the accident had caused her any injury. Moreover, she subsequently drove herself away from the scene of that accident. Thereafter, she ultimately went to the hospital, wherein she was examined and noted to be without complaint of pain radiating into her arm. One month later, she went to her family physician's office, wherein she reported arm pain. However, that arm pain, by all accounts, was associated with and caused by a bone spur located in the Plaintiff's neck. That very bone spur had been in existence well before the automobile accident in question occurred. Regardless, the Plaintiff was then treated to improvement, until a point some time later, wherein she mulched her yard, and, during that process, re-injured her neck. Thereafter, the bone spur was surgically removed, and the Plaintiff's neck and arm symptoms were resolved.

The jury then heard testimony from Ms. Gaines and a number of Ms. Gaines's witnesses. The credibility of all those witnesses was ultimately subjected to grave suspicion during the course of cross-examination.

In consideration of all the above, it was suggested to the jury that it award the Plaintiff an amount commensurate with the emergency room bill that she incurred on the date of the accident. After deliberating, the jury logically and fairly returned a verdict in the amount of the emergency room bill. There is no competent evidence to suggest that this verdict was shockingly disproportionate to the injuries suffered, or affected by passion, caprice, or prejudice.

In conclusion, the Trial Court misapprehended multiple laws. Those misapprehensions of law engendered misapprehensions of fact. In the commission of these errors, the Trial Court improperly granted a new trial secondary to numerous errors of law. These errors represent a clear abuse of the Trial Court's discretion, and, as such, Counsel for Appellant respectfully requests a reversal of the Trial Court's Order, and a reinstatement of the jury's fair and reasonable verdict.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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Joyce Ann Campbell — Appellant,

PROOF OF SERVICE

I certify that I served the Appellant's Reply Brief; Appellant's Provisional Designation of Matter to be Included in the Record on Appeal; and, a corresponding Proof of Service on Barbara Gaines by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to her attorney of record, John Robert Peace, Esq. at his Post Office Box at P.O. Box 8087 Greenville, SC 29604 on July 31, 2014

July 31, 2014

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July 31, 2014

The Honorable Jenny Abbott Kitchings
Clerk for the South Carolina Court of Appeals
Po Box 11629
Columbia, SC 29211

RE: Case Name: Barbara Gaines v. Joyce Ann Campbell
Appellate Case No.: 2013-002367

Dear Ms. Kitchings:

Please find enclosed an original and one copy of the following documents regarding the above referenced action:

1. The Appellant's Reply Brief;
2. The Appellant's Provisional Final Designation of Matter to be Included in the Record on Appeal;
3. The Appellant's Proof of Service; and,
4. A stamped, self-addressed envelope provided for your convenience.

I would appreciate you filing the originals of these documents, clocking the additional copy, and returning the same to me in the enclosed, self-addressed, stamped envelope provided for your convenience.

Furthermore, please note, by copy of this letter, that I am placing Counsel for Plaintiff/ Respondent on notice that the originals of these documents have been filed with the Court.

On the other hand, please recognize that I have filed a motion to remand this matter to the Trial Court as a number of the exhibits needed to create the Record on Appeal are now missing. As such, my Designation of Matter to be Included in the Record on Appeal is simply provisional. As such, I would ask that the Court hold in abeyance, the time to file the formal Record on Appeal and final briefs.

As always, I thank you and your staff for all the help and assistance you repeatedly provide with regard to these matters.

Sincerely,

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Enclosures
cc: John Robert Peace, Esq.
Joyce Ann Campbell
Tashona Miles