THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2015-CP-46-00882
Appellate Case No. 2016-002008

Lorrie Dibernardo, individually and as the Personal Representative of the Estate of Anthony Dibernardo, deceased,.....Appellant,

V.

Carolina Cardiology Associates, PA and Naresh Mori, MD,..... Respondents.

Initial Reply Brief

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ARGUMENT

This appeal concerns the simple application of tort law. The inquiry is whether the trial court erred in failing to include Appellant's requested charge on the control of an instrumentality.[1] The answer rests in the fact that South Carolina law allows an inference of negligence in medical malpractice cases. More specifically, South Carolina law allows an inference of negligence when the factors for control of the instrumentality are satisfied. Appellant was entitled to the requested charge based on Respondent Mori's admission, along with other circumstantial evidence presented at trial. This error prejudiced Appellant because it denied the jury crucial information on inferring negligence—an inference well supported in this case by physical evidence, expert testimony, and Respondent Mori's admissions on the witness stand.

There are three legal principles that cannot be disputed. One, a plaintiff has two distinct burdens of proof in tort law: the burden of going forward with evidence and the burden of persuading the jury on an issue. *See, e.g.*, Rule 301, SCRE ("a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast."); *Pike v. S.C. Dep't of Transp.*, 343 S.C. 224, 230-231, 540 S.E.2d 87, 90-91 (2000); *King v. J.C. Penny Co.*, 238 S.C. 336, 340, 120 S.E.2d 229, 230 (1961). Two, a plaintiff can meet the

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[1] The requested charge stated:

> When a thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have management use proper care, it affords a reasonable evidence, in the absence of explanation by the defendant, that the accident arose from a want of care.

(Jury Charge-Court Exhibit 3).

burdens of proof through direct evidence as well as circumstantial evidence, which allows a reasonable inference of negligence. *See e.g., Snow v. City of Columbia,* 305 S.C. 544, 553–55, 409 S.E.2d 797, 803–04 (Ct. App. 1991). Three, an inference of negligence or reference to the lack of a defendant's explanation of events does not mean that the burden of proof has shifted to a defendant; rather it indicates the plaintiff has satisfied the burden of going forward with the evidence, and a jury with proper instruction on the law will determine if the plaintiff has satisfied the second burden of persuading the jury. *See, e.g.* Rule 301, SCRE; *Tucker v. Reynolds*, 268 S.C. 330, 336, 233 S.E.2d 402, 406 (1977); *Brock v. Carolina Scenic Stages*, 219 S.C. 360, 366, 65 S.E.2d 468, 470 (1951).

Respondents attempt to refute these basic tenants and argue the trial court properly disallowed the charge because the charge describes res ipsa loquitur and changes the standard for medical malpractice by shifting the burden of proof to Respondents. This contention confuses the distinction between res ipsa loquitur and our jurisprudence's acknowledgment that an inference is often appropriate based on control of an instrumentality. This inference does not shift the burden of proof. Further, Respondents incorrectly contend the circumstantial evidence charge was sufficient to address the concerns underlying Appellant's request for the charge.

At the outset, Appellant agrees with Respondents that the doctrine of res ipsa loquitur has been rejected in South Carolina. *Eickhoff v. Beard-Laney, Inc.*, 199 S.C. 500,__, 20 S.E.2d 153, 155 (1942) (noting South Carolina courts have declined to adopt the doctrine of res ipsa loquitur). As this Court is aware, "res ipsa loquitur means the thing speaks for itself." *O'Leary-Payne v. R.R. Hilton Head, II*, 371 S.C. 340, 348, 638 S.E.2d 96, 100 (Ct. App. 2006) (internal citation omitted). Res ipsa loquitur arises in a context in which "there is *no evidence, circumstantial or otherwise*, at least none of sufficient probative value, to show negligence, apart from the postulate,

which rests on common experience and not on specific circumstances of the instant case . . . ." *Id.* (emphasis added).

In contrast to res ipsa loquitur, our courts allow circumstantial evidence to support an inference as a means of satisfying the burden of proof requirements. *See e.g., Snow,* 305 S.C. at 553-55, 409 S.E.2d at 803-04. The distinction between res ipsa loquitur and circumstantial evidence that allows an inference of negligence is significant. The two theories are distinguished by whether the factual circumstances point merely to an occurrence "without any tendency to indicate the responsible human agency" or if there is some indication of "fault of omission or commission upon the part of the defendant." *Eickhoff,* 199 S.C. ____, 20 S.E.2d at 155. The first scenario cannot prove negligence without invoking res ipsa loquitur while, in the second circumstance, "a fact may be established prima facie by circumstantial evidence . . . without invoking the distinctive doctrine of res ipsa loquitur." *Id.* Since *Eickhoff,* South Carolina courts have continually invoked a flexible case-by-case approach in the use of circumstantial evidence to warrant the inference of negligence. *Chaney v. Burgess,* 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965) (explaining when circumstantial evidence is relied upon to meet the burden of proof, "the plaintiff must show such circumstances as would justify the inference that his injuries were due to the negligent act of the defendant, and not leave the question to mere conjecture or speculation").

Consistent with this approach, our courts have acknowledged an inference of negligence, as set forth in Appellant's requested charge, is appropriate for control of an instrumentality. In *Childers v. Gas Lines, Inc.*, the Court explained a reasonable inference can be drawn when an injury occurs from an instrumentality under the known management of the defendant, and an accident of such nature does not occur if the instrument had been managed with proper care, in the absence of explanation. 248 S.C. 316, 323–24, 149 S.E.2d 761, 764 (1966) ("negligence may be

inferred from all of the facts and attendant circumstances in the case, and where the circumstances are such as to take the case out of the realm of conjecture and into the realm of legitimate inferences from established facts, a prima facie case is made"). Unlike a circumstance invoking res ipsa loquitur, in *Childers*, as in the present case, there was a known "responsible human agency" to indicate fault and coupled with specific factual circumstances—established by testimony—warranted an inference of negligence.[2] *Eickhoff*, 199 S.C. ____, 20 S.E.2d at 155; *See e.g., Childers*, *Sheperd v. United States Fidelity & Guaranty Company*, 233 S.C. 536, 106 S.E.2d 381 (1958) (explaining a prima facie inference of negligence is sufficient to satisfy the burden of proof for proximate cause); *see also Bramlette v. Charter-Med.-Columbia,* 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990) (citing *Childers*) (relying on facts of instrumentality of control, the Court found in a medical malpractice action that a defendant "may be held liable for anything which appears to have been a natural and probable consequence of his negligence"). Additionally, South Carolina appellate courts have held an admission by the defendant doctor along with circumstantial evidence is sufficient to infer proximate cause in medical malpractices cases. *Green v. Lilliewood,* 272 S.C. 186, 191, 249 S.E.2d 910, 912 (1978). Thereby, demonstrating that an inference based on evidence, as well as an admission at times, is distinguishable from res ipsa loquitur because the evidence face exceeds res ipsa loquitur no evidence standard .[3]

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[2] Appellant relies on her Brief for a full discussion of this case and factual application. *See* Appellant's Brief at 13-4.

[3] Respondents take issue with the requested charge in a medical malpractice setting, however they point to no authority that suggests the basic tenants of negligence do not apply to medical negligence. The reason being that medical malpractice is a category of negligence and the requested inference is allowed in all negligence cases if the elements are satisfied. *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 176, 758 S.E.2d 501, 503–04 (2014) (explaining "medical malpractice is a category of negligence, the distinction between medical malpractice and negligence claims is subtle, there is no rigid analytical line separating the two causes of action").

Respondents argue *Fletcher v. Medical University of South Carolina*, and its progeny prove the requested charge invokes the doctrine of res ipsa loquitur, and therefore would be improper. 390 S.C. 458, 463–65, 702 S.E.2d 372, 374–75 (Ct. App. 2010). A review of these cases demonstrates the exact opposite. In *Fletcher*, the plaintiff underwent a bypass surgery and following discharge experienced bloating and shortening of breath. Plaintiff argued defendant doctors failed to inform her of such potential risks. 390 S.C. at 461–62, 702 S.E.2d at 373–74.

During trial, plaintiff's expert testified the defendant doctors breached the standard of care, and on cross-examination, the expert testified that the identified problem "could have occurred during this procedure even in the absence of any surgical negligence." *Id.* at 463, 702 S.E.2d at 374. The Court of Appeals found no evidence established how defendant doctors deviated from the standard of care, and therefore plaintiff was improperly seeking recovery on a theory of res ipsa loquitur when the only basis was the expert saying a breach occurred. *Id.*

In reaching this decision, the Court of Appeals relied on *Cox v. Lund*, 286 S.C. 410, 334 S.E.2d 116 (1985) and *Bowie by Bowie v. Hearn*, 292 S.C. 223, 355 S.E.2d 550 (Ct. App. 1987) (*Bowie I*). 390 S.C. at 464, 702 S.E.2d at 374–75. In *Cox*, decedent died because his colon was perforated during a colonoscopy. 286 S.C. at 413, 334 S.E.2d at 118. At trial, decedent's expert testified defendant doctor breached the standard of care when decedent's colon was unprepared for the procedure and opined that no colonoscopy should have been performed. *Id.* The expert's opinion was based on a review of relevant medical charts and x-rays. 286 S.C. at 414–15, 334 S.E.2d at 119. The Supreme Court found the testimony and documentary evidence satisfied the statutory requirements of proof for medical malpractice. 286 S.C. at 415, 334 S.E.2d at 119.

In *Bowie I*, plaintiff "sued the physician who delivered him via caesarean section because he was cut on the cheek during the procedure, resulting in a scar." *Fletcher,* 390 S.C. at 464, 702

S.E.2d at 374–75. Plaintiff's expert testified the proper standard of care would have been for defendant doctor not to cut the baby. *Bowie I*, 292 S.C. at 226, 355 S.E.2d at 552. The *Bowie I* Court found the expert's opinion to be "conclusory" and insufficient to satisfy the statutory requirements previously enunciated by the Supreme Court in *Cox*. 292 S.C. at 227, 355 S.E.2d at 552. The Court explained under plaintiff's theory of recovery "the doctors in *Cox* could simply have testified that normally colons are not perforated during colonoscopies, the standard of care, therefore, is a doctor should not perforate the colon, and to do so violates the standard of care." 292 S.C. at 227, 355 S.E.2d at 552. Finding this reasoning legally unsound, the *Bowie I* Court found plaintiff failed to meet the burden of proof. *Id.*

Significantly, the Supreme Court reversed *Bowie I* in a per curium opinion. 294 S.C. 344, 364 S.E.2d 469 (1988) (*Bowie II*). The Supreme Court found the expert's testimony that "the use of [the] standard technique will not result in injury to the baby" was sufficient. 294 S.C. at 345, 364 S.E.2d at 469. The Court noted that defendant doctor testified that he made "swipes" with a scalpel, instead of the standard tiny incision, and this admission coupled with expert testimony was evidence that defendant doctor deviated from the standard of care. *Id.* at 346, 364 S.E.2d at 469. In sum, the Supreme Court found an expert stating the standard technique does not cause an injury, coupled with evidence or admission by defendant doctor, is sufficient to meet the burden of proof, i.e. is not res ipsa loquitur.

Despite the reversal, the *Fletcher* Court relied on *Bowie I*'s misperception of *Cox* to find res ipsa loquitur and for the proposition that "negligence cannot be inferred." 390 S.C. at 464–65, 702 S.E.2d at 375("[t]he analysis in *Bowie I* is precisely on point with this case, and we discern no factual basis that would cause the reasoning in that case to be inapplicable to the facts presented here.") Appellant respectfully submits the reasoning of *Bowie I*, as interpreted by the *Fletcher*

Court as res ipsa loquitur, was rejected by the Supreme Court in *Bowie II*—relying on the expert's testimony to the effect that if the procedure had been done properly, the injury would not have occurred when coupled with other evidence. This is seemingly acknowledged by the *Fletcher* Court in footnote 3 in which it states, "No self-incriminating testimony from [the defendant doctors] in this case suggests a deviation in the standard of care," however this is merely dicta and fails to set forth, and arguably ignores, the standard as outlined by *Cox* and *Bowie II.* 390 S.C. at 464 n. 3, 702 S.E.2d at 375 n. 3. Further, the suggestion that there is a requirement of self-incriminating to overcome an implication of res ipsa loquitur has never been the standard. Instead, South Carolina courts have readily relied on medical records and x-rays as the basis of circumstantial evidence in medical malpractice, as discussed *supra.* As it stands, *Fletcher* characterizes res ipsa loquitur too broadly and suggests an impractical standard to warrant an inference in medical negligence cases.

Moreover, reliance on the proposition that "negligence may not be inferred" is an incorrect statement of law. 292 S.C. at 227, 355 S.E.2d at 552. It is well settled in South Carolina that negligence can be inferred. *The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc.*, 418 S.C. 142, 162, 791 S.E.2d 152, 163 (Ct. App. 2016) ("where circumstantial evidence is relied upon to establish liability, plaintiff must show such circumstances as would justify the inference that his injuries were due to the negligent act of the defendant, and not leave the question to mere conjecture or speculation") (internal citation omitted).[4] Both of these

[4] *See e.g., McQuillen v. Dobbs,* 262 S.C. 386, 392, 204 S.E.2d 732, 735 (1974) (affirming the denial of a directed verdict when plaintiff established a reasonable inference that defendant's negligent inspection of furnace led to fire; based partially on testimony regarding recommended procedures for the proper inspection and maintenance of furnace that defendant's failed to follow); *McCready v. Atl. Coast Line R. Co.*, 212 S.C. 449, 455, 48 S.E.2d 193, 196 (1948); *Graham v. Town of Latta, S.C.*, 417 S.C. 164, 187, 789 S.E.2d 71, 83 (Ct. App. 2016); *Tucker v. Doe*, 413 S.C. 389, 401, 776 S.E.2d 121, 128 (Ct. App. 2015); *Gastineau v. Murphy,* 323

inconsistencies should be clarified by this Court. In sum, the doctrine of res ipsa loquitur is inapplicable when expert testimony and other evidence, which can include admissions, demonstrate that if the procedure was done correctly the injury would not have occurred.

Notably, pursuant to *Cox* and *Bowie II*, the present case is distinguishable from *Fletcher* and proves the requested charge is not res ipsa loquitur based on the medical records and testimony presented at trial. *Cox*, 286 S.C. at 415, 334 S.E.2d at 119; *Bowie II*, 294 S.C. at 345, 364 S.E.2d at 469.[5] Trial testimony established that if the procedure had been done properly, Mr. Dibernardo's injury would not have occurred. Respondent Mori repeatedly agreed that if he had performed the pericardiocentesis properly, by either correctly inserting the sheath or needle, the injury would not have resulted. (Tr. 261, 290). He agreed, "If you do all of those things properly, you should not cause an injury to the heart" and "you should not tear up the heart tissue" if you are performing the procedure correctly. (Tr. 262). Additionally, he testified Mr. Dibernardo's injury is the exact injury "doing the procedure properly is meant to avoid." (Tr.262). Respondent Mori also agreed that improperly inserting the sheath is the only way a sheath can cause Mr. Dibernardo's injury, and if he had put the sheath in properly, then it would not injure the patient. (Tr. 288-89). This is further supported by the testimony of both parties' experts. Dr. Schob testified if the sheath and dilator/introducer is inserted properly, pursuant to the normal standard, then this type of injury does not occur. (Tr. 138, 144). Similarly, Dr. Story testified that if the widely accepted standards

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S.C. 168, 178–79, 473 S.E.2d 819, 826 (Ct.App.1996) (quoting 29 Am.Jur.2d *Evidence* § 313 (1994)), *rev'd on other grounds,* 331 S.C. 565, 503 S.E.2d 712 (1998).

[5] While Appellant believes the testimony and evidence satisfies the standard set forth in *Bowie II* and *Cox*, and is distinguishable from the absence of evidence in *Fletcher*, out of an abundance of caution to preserve her argument, she will be arguing against precedent. A motion to argue against precedent is forthcoming.

are followed in the insertion of either a sheath or needle, then there is no injury to the heart. (Tr.359-60).

For these reasons, Respondents mischaracterize the requested charge as res ipsa loquitur. Accordingly, Appellant's requested charge reflects a correct and current statement of the law that is applicable to this case.

Contrary to the trial court's ruling and Respondents' argument, the burden of proof remained with the Appellant. South Carolina courts have recognized that when an inference or presumption is made, the burden remains with plaintiff to prove the case to the jury. *Tucker*, 268 S.C. at 336, 233 at 405. ("The burden to prove his case is always on the plaintiff, whether the defendant introduces evidence or not."); *Grier v. Cornelius*, 247 S.C. 521, 148 S.E.2d 338 (1966). Courts have explained any suggestion that "it is the duty of the defendant to go forward with his proof" is stated for the sole purpose that "if he expects to win, it is his duty to do so, or take the risk of an adverse verdict, and not that any burden of proof rested on him." *Id.* Moreover, showing a lack of explanation by the defendant does not shift the burden of proof from the plaintiff. *Brock*, 219 S.C. at 366, 65 S.E.2d at 470.[6] Thus, the requested charge does not shift burdens; rather it clarifies that the jury may draw an inference of negligence under circumstances like those

[6] In *Brock*, the minor plaintiff died from injuries in a collision with a bus and the truck, in which the plaintiff was traveling in as a passenger, on a rainy foggy day. 219 S.C. at 361–63, 65 S.E.2d at 468–69. The issue before the court was whether there was testimony or evidence that warranted an inference of negligence of the bus. *Id.* The plaintiff and her father, the driver, died instantly and there were no other eye witnesses. *Id.* There was no direct evidence of speed or placement on the highway, and pictures taken after indicated. *Id.* All debris from the accident was on the side of the highway, and examination of the bus after the accident showed the tires were worn. *Id.* The Court found that given the circumstances coupled with the "absence of any explanation of the defendants warranted an inference" that the bus was not being driven within its lane. *Id.* at 366, 65 S.E.2d at 470. Despite the inference, the Court explained despite the difficulty of proof the plaintiff was not relieved of the burden of proof. *Id.*

Appellant presented here—i.e. where evidence has been adduced that had the instrument that caused the injury been managed with proper care, no injury would have occurred.

To be entitled to this inference, Appellant had to put forth sufficient evidence and testimony to show that (1) the pericardiocentesis, specifically the needle and sheath, was under the management of Respondent Mori at the time of the injury, (2) if the procedure was performed with the requisite care the injury sustained by Mr. Dibernardo would not have occurred, and (3) no other explanation could justify the injury.[7] Therefore, Appellant had to satisfy the above elements in order to receive the charge and had to satisfy those elements to the jury's satisfaction for the inference to be made.

While the parties disagree about the interpretation of the facts, it does not negate that Appellant put forth sufficient evidence to satisfy the charge's elements. Respondent Mori, and both experts testified that when the procedure is done properly no injury occurs. (Tr. 50, 61, 138, 140-41, 144149-50,261-62, 268,289, 290, 347; PMC 034; PMC 0043; Cardiac Cath Report 11). Appellant readily agrees with Respondents that they discussed other possible complications to the procedure during trial. (Tr. 138, 140-41, 144, 261-62, 268, 289, 290, 347). However, evidence was put forth by Appellant during trial that there is no explanation or stated reason in the medical records to change the instruments in Mr. Dibernardo's heart, which was properly functioning at the time of the switch from the catheter to a sheath. (Tr. 42-43, 282, 284; Cardiac Cath Lab Report 10). Under Appellant's theory, as supported by evidence and testimony at trial, the J-wire was not inserted far enough into the pericardium, leaving it unable to perform its function of protecting the heart. (Tr. 141). Following this switch, it became apparent there was an injury/abrasion to the

[7] As discussed in Appellant's Brief, a review of the testimony and evidence presented at trial shows the charge's factors were satisfied. *See* Appellant's Brief at 15–17.

heart. (Tr. 142). The second fluoroscopy (Fluro #2) showed the catheter had become "tethered" to the heart. (Tr. 45, 141, 143-44; Fluro #2 video). The parties perceived differences in the testimony merely reflects why the decision is properly left to the jury, and does not negate that Appellant satisfied the elements to receive the requested charge.

In addressing Appellant's prejudice argument, Respondents incorrectly suggest the circumstantial evidence charge encompassed the principles from Appellant's requested language.[8] Reviewing the charge as a whole, the trial court failed to adequately advise the jury that evidence adduced could allow it to infer negligence based specifically on the control of the instrumentality. *Hennes v. Shaw*, 397 S.C. 391, 402, 725 S.E.2d 501, 507 (Ct. App. 2012). The purpose of giving a jury charge is to assist the jury in its role as a fact-finder and provide context for the evidence that was presented during trial. *Trial Handbook for South Carolina Lawyers* § 34:1 ("The purpose of jury instructions is to enlighten the jury and aid it in arriving at a correct verdict.") (citing *State v. Leonard*, 292 S.C. 133, 355 S.E.2d 270 (1987)). While the circumstantial evidence charge refers to an inference, generally, as well as the proximate cause charge, neither sufficiently connects the legal propositions. At best the circumstantial evidence charge informs the jury that evidence allows an "inference" from proof that is not actually established but is based on something that can be inferred "in light of ordinary experience and common sense." (Tr. 468). In comparison, the requested charge allows the jury to make an inference if Appellant proved an instrument caused an injury that was under control of the defendant, and that injury does not occur when the instrument is managed properly. (Tr. 488, Court Exhibit 3-Jury Charge).

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[8] In similar fashion, Respondents direct the Court's attention to the fact that Appellant did not object to the jury charge that explains a physician cannot insure a positive result. (Resp. Brf. 25-26). As discussed in relation to res ipsa loquitur, Appellant contends this is not a circumstance in which the mere occurrence warrants negligence nor does Appellant suggest that the evidence merely suggests an adverse result.

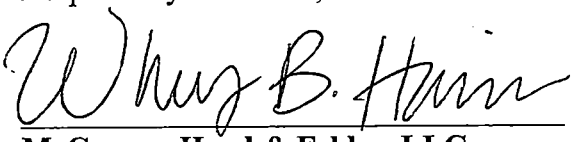
Solely relying on the circumstantial evidence charge is misplaced and prejudices Appellant. The charge makes no suggestion that Appellant can be afforded an inference of negligence based on the evidence presented at trial. Instead, it generally suggests the jury can make an inference—absent any direction on the type of inference or the that this specific inference is allowed under South Carolina law. Further, the charge fails to provide the necessary context for the jury to appreciate the evidence given the complexity of the procedure and the fact that both experts and Respondent Mori agreed that proper care of the instrument would have avoided the injury. A comparison between the circumstantial evidence charge and the requested charge highlight that the circumstantial evidence charge is a more general charge, while the requested charge is tailored to the facts presented at trial. *See e.g.*, *State v. Day,* 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (finding a trial judge's refusal to specifically tailor the self-defense charge to adequately reflect the facts and theories presented by the defendant is reversible error); *State v. Fuller,* 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989) (holding a trial judge's refusal to include an additional requested jury charge is reversible error where the facts and circumstances presented at trial warrant such a charge).

This inference was vital to Appellant's case. A charge clarifying that this injury could have been avoided simply by using proper care was essential to the jury's consideration of the evidence. As such, the jury was never told that under South Carolina law evidence and testimony presented by Appellant allows them to infer Respondent Mori was negligent based on circumstantial evidence. This prejudicial error requires and warrants a new trial.

CONCLUSION

Based on the foregoing, Appellant is entitled to a new trial based on the trial court's failure to charge the jury with the control of instrumentality charge. This error prejudiced Appellant because it prohibited the jury from contextualizing the evidence, testimony, and admission by Respondent Mori as it relates to the inference of negligence that can be made. For the reasons stated herein, reversal and a new trial are warranted.

Respectfully submitted,



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In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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Lorrie Dibernardo, individually and as the Personal Representative of the Estate of Anthony Dibernardo, deceased..... Appellant,

V.

Carolina Cardiology Associates, PA and Naresh Mori, MD..... Respondents,

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PROOF OF SERVICE

The undersigned hereby certifies that on July 31, 2017 she served counsel for Respondents with the *Initial Reply Brief* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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July 31, 2017

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RE: *Lorrie Dibernardo v. Carolina Cardiology*
Appellate Case No. 2016-002008

Dear Ms. Kitchings,

Please find enclosed for filing the original and one (1) copy of the *Initial Reply Brief* in regards to this case. I have also enclosed a proof of service. Please return the additional copy in the enclosed stamped envelope.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

With kind regards, I am

Whitney B. Harrison

Enclosures

cc: George Cox Beighley, Esquire
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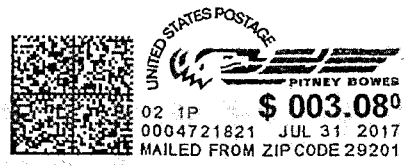

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