

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Appellate Case No.: 2019-001478

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Opinion No. 5666 (S.C. Ct. App. filed July 17, 2019)

Ex parte: The Travelers Home and Marine Insurance Company Petitioner,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, Respondent,

v.

Cameron Thomas Stringfellow, Defendant.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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Petitioner The Travelers Home and Marine Insurance Company (“Petitioner”) respectfully submits this reply to Respondent’s Return to Petition for Writ of Certiorari for the Court’s consideration.

STATEMENT OF THE CASE

Petitioner relies on the Statement of the Case as described in the Petition for a Writ of Certiorari.

ARGUMENT

I. RESPONDENT’S ARGUMENT THAT THE TRIAL COURT’S ORDER WAS BASED ONLY UPON THE FACTS AND NOT UPON AN ERRONEOUS LEGAL PRINCIPLE IS REFUTED BY THE EVIDENCE IN THE RECORD.

Respondent asserts Petitioner has misconstrued the trial court’s ruling and argues that the ruling “was based solely upon the evidence . . . and is not the result of the application of a legal principle that a passenger could never be more at fault than a driver.” (Ret. To Pet. 10). However, the reasoning the trial court provided in its order shows that its ruling was inextricably linked to its belief that because Petitioner admitted recklessness, Decedent could not have been more culpable than the Defendant. The order states, “In this case, the jury’s finding that the Decedent was fifty-one percent (51%) at fault and the Defendant was forty-nine percent (49%) at fault is not supported by the evidence.” (Appx. 10). The very next sentence reads, “The Defendant admitted that he was reckless and that his recklessness caused the accident.” *Id.* The order then details the definition of recklessness and discusses how a jury is permitted to compare fault in situations involving reckless conduct. *Id.* This constitutes the entirety of the court’s analysis on the subject. The court fails to explain how the jury’s verdict was unsupported by the evidence outside the context of the recklessness finding.

Accordingly, it is clear that the trial court's analysis and its decision to invoke the thirteenth juror doctrine was hinged on its ultimate determination that the admission of recklessness foreclosed the jury from apportioning greater fault to Decedent than to the Defendant. As discussed in the Petition for Certiorari, such a conclusion was a reversible error of law. See Berberich v. Jack, 392 S.C. 278, 294, 709 S.E.2d 607, 616 (2011) (stating a jury may compare all forms of negligence as part of its assessment of fault and explaining the "relative significance of each party's conduct and its overall contribution to the [alleged] injury are accounted for in the offsets inherent in our comparative negligence system").

Respondent also argues that the Supreme Court should not consider on-the-record comments made by the trial court when the Supreme Court investigates the trial court's reasoning for invoking the thirteenth juror doctrine. However, the law cited by Respondent deals with situations where a trial court's oral rulings and final written directives conflict. In those cases, Respondent is correct that the final order controls. Here, the Court is not faced with the typical scenario where a conflict exists because the trial court made oral rulings that were later changed or contradicted in the final order. There is no inconsistency between the trial court's statements and the order in this case. The trial court's statements on the record provide context and expound upon the reasoning that eventually appeared in the written order. Thus, the trial court's oral rulings should be examined in accordance with this Court's precedent, rather than rejected. See Lane v. Gilbert Constr. Co., 383 S.C. 590, 681 S.E.2d 879 (2009) (reviewing trial judge's statements for legal error before affirming trial court's grant of a new trial under the thirteenth juror doctrine); Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008) (reviewing hearing transcript in detail when reviewing circuit judge's grant of new trial under thirteenth juror doctrine); Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 593 S.E.2d 504 (Ct.

App. 2004) (reviewing statements made by court at motions hearing in addition to order granting new trial under thirteenth juror doctrine).

An examination of the trial court's oral statements reveals that its decision was controlled by an error of law. For example, after the jury's verdict the following exchange occurred:

Counsel for Respondent: At this time, we would move for judgment as notwithstanding the verdict on the grounds that no reasonable jury could find that John Corey Stringfellow was reckless as a result of his conduct as the passenger in the car. The Court directed a verdict on recklessness on behalf of the Plaintiff as to the Defendant, Cameron Stringfellow. There's no higher level of fault under the negligence standard than recklessness. And so the jury would have to either find 50/50 based upon the Court's ruling of directed verdict or something less. But under the ruling of the Court, you can't get to 51 percent for John Corey Stringfellow and 49 percent for Cameron Stringfellow.

The Court: Mere negligence cannot exceed recklessness.

Counsel for Respondent: Correct.

(Appx. 500-501). This exchange makes plain the Court's agreement with Respondent's assertion that it was the legal finding of recklessness—rather than any underlying facts—that should invalidate the jury's verdict.¹ It also establishes that Respondent's own argument for a new trial was—from its inception—a legal argument. As detailed earlier, this legal conclusion lies at the heart of the trial court's order, and errors of law are undeniably reviewable on appeal. See Folkens v. Hunt, 300 S.C. 251; 254-55, 387 S.E.2d 265, 267 (1990) (“A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported

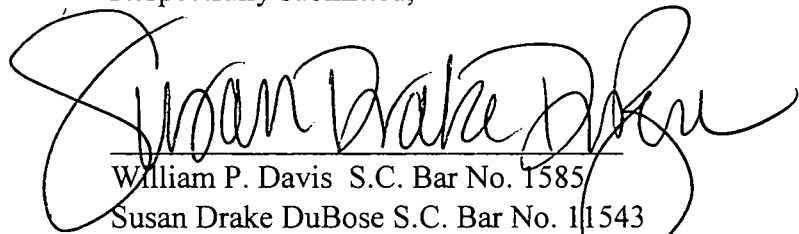
¹ Notably, the jury verdict form *allowed* for a finding of more than 50% negligence on the part of Respondent. That form provided, “If the Decedent John Corey Stringfellow's percentage of the combined negligence is greater than 50%, STOP AND DELIBERATE NO FURTHER.” (Appx. 13). Although Respondent engaged in a colloquy on the record about some of the language contained on the verdict form, he also stated, “Your honor, I have no objection to the layout with how they allocate fault.” (Appx. 360).

by the evidence, or the conclusion reached was controlled by an error of law.”). Because the Court of Appeals failed to identify and correct this critical error of law, its opinion should be reversed.

CONCLUSION

For these reasons, as well as those discussed in the Petitioner’s Petition for a Writ of Certiorari, Petitioner respectfully requests that this Court grant its Petition for Certiorari, reverse the Court of Appeals’ Opinion, and reinstate the jury’s verdict.

Respectfully submitted,



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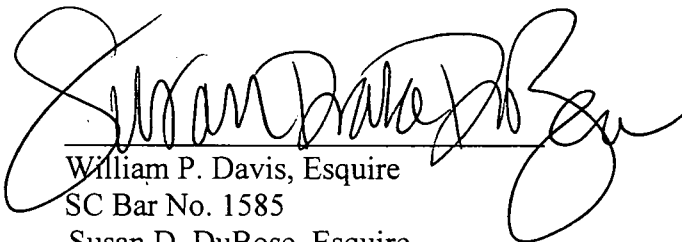
Cameron Thomas Stringfellow, Defendant.

PROOF OF SERVICE

I, Susan Drake DuBose, hereby certify that I have served Petitioner's Reply to Return to
Petition for Writ of Certiorari upon Respondent by depositing a copy in the U.S. Mail on
November 6, 2019 addressed to his attorneys of record at the address shown below:

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