THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2019-002082

JOHN BYERLY, individually, and as Personal representative of the ESTATE OF SUSAN B. BYLERLY,

Appellant,

v.

THOMAS WESLEY,

Respondent.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in allowing John Byerly to be cross-examined about his deceased wife's medical records which were not admitted into evidence?

II. Did the trial court err in refusing to charge the jury the law relating to a landlord's nondelegable liability?

STATEMENT OF THE CASE

Susan B. Byerly filed this premises liability action on May 8, 2017 asserting negligence against Thomas Wesley (hereinafter "Wesley"), Brown Rooftops, LLC and Bay Service Contracting, LLC. (*See* Compl.). Thereafter, the complaint was amended to assert a claim for loss of consortium on behalf of John Byerly. (Am. Compl.). On May 26, 2018, while the case was pending, Susan B. Byerly passed away. John Byerly was appointed as the Personal Representative of the Estate of Susan B. Byerly and proceeded with claims for himself, individually, and on behalf of the Estate.

John Byerly reached a settlement with Brown Rooftops, LLC before trial and dismissed it from the case. At the call of the case for trial, John Byerly voluntarily dismissed all claims against Bay Service Contracting, LLC, which was in default. The case proceeded to trial only against the landlord and property owner Wesley.

This action was tried November 20-21, 2019, before the Honorable R. Markley Dennis, Jr. in the Horry County Court of Common Pleas. The jury returned a verdict in favor of Wesley. (Tr. 237).

Appellant timely served his Notice of Appeal on December 30, 2019.

FACTS

John and Susan Byerly, their daughter Amber, and Amber's three (3) boys rented one half of a duplex home from Wesley in Myrtle Beach. (Tr. 112). Mr. and Mrs. Byerly

both worked at Coastal Carolina University and rode to work together each day. (Tr. 110, 111). In October of 2016, Hurricane Matthew struck the area and the Governor issued a mandatory evacuation. (Id.). The Byerlys complied with the evacuation order and went to Rock Hill to stay with friends for several days. (Tr. 113). The hurricane caused a large tree to fall on the roof of the house, although most of the damage was on the other side of the duplex. (Tr. 177, 185).

After buying the property, Wesley placed railroad ties in the front yard of the property, near the street, to prevent people from driving onto the property or parking in the yard. (Tr. 174, 178). After the hurricane, Wesley contracted with Richie Brown, owner of Brown Rooftops, LLC, to perform all repairs to the property. (Tr. 186, 187). At some unknown point during the repairs, Brown moved the railroad ties from their location in the front yard at the street to directly beside the driveway where the Byerly vehicle was parked each day (Tr. 174). Brown also sub-contracted with Bay Service Contracting, LLC to bring in a crane to remove the tree from the roof. (Tr. 187).

Wesley was present during most of the repairs. (Tr. 178). Wesley admitted at trial he knew the railroad ties were placed in the approximate area of where the Byerly vehicle would be, by the driveway, and further admitted he knew the railroad ties were "pretty close in the driveway and she [Susan Byerly] would have had to dodge them to get in on that side of the car, . . .". (Tr. 179, 181, 182).

The Byerlys returned to the property on October 11, 2016. (Tr. 115). There was still no electricity or power at the home when the Byerlys returned. (Tr. 117, 180). Wesley was at the property at that time. (*Id.*). The Byerlys did not see or notice any railroad ties near the driveway when they returned to the property that day. (Tr. 116). On October 12,

2016, John went to work at 6:00 a.m. but Susan stayed home. (Tr. 117). Although it was dark when he left for work in the morning, John testified he did not see or notice any railroad ties near the driveway when he returned home from work on the October 12. (*Id.*). It is undisputed there was no power that day or the next day, October 13, 2016. (*Id.*).

On October 13th, John and Susan Byerly left for work around 6:30 a.m., prior to sunrise, traveling the same route from the house to the car they used every day. (Tr. 118). John was walking to the driver's side of the car and Susan was walking to the passenger side. (Tr. 126, Pl's. Ex. 1E). As they approached their car, Susan fell and screamed, and John found her lying on the ground between railroad ties. (Tr. 119). Susan suffered a fractured ankle and a torn labrum in her hip, although the torn labrum wasn't discovered until nearly two (2) months later after Susan continued complaining of pain and an MRI was performed. (Tr. 132-137). Because of her injuries, Susan was physically unable to perform her job duties as a custodian and was forced to resign her employment with CCU on April 17, 2017. (Tr. 141). Although she attempted to return to work for a short period, Susan was unable to perform the physical demands of the job and had to resign. Susan Byerly died of unrelated, natural causes on May 26, 2018.

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the ruling of the trial court either lacks evidentiary support or is controlled by an error of law." *Id.; see also Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

"An appellate court will not reverse the trial court's decision regarding jury

instructions unless the trial court committed an abuse of discretion." *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." *Id.* "A trial court must charge the current and correct law." *Wells v. Halyard*, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000). In reviewing a jury charge for alleged error, an appellate court must consider the charge as a whole in light of the evidence and issues presented at trial. *Id.*

ARGUMENT

I. THE TRIAL COURT ERRED IN ALLOWING JOHN BYERLY TO BE CROSS-EXAMINED ABOUT HIS DECEASED WIFE'S MEDICAL RECORDS WHICH HE DID NOT AUTHOR AND WERE NOT ADMITTED INTO EVIDENCE.

In his case in chief, John Byerly testified about the medical bills incurred because of Susan's injuries sustained in her fall over the crossties. (Tr. 132-137). In particular, John testified about the Grand Strand Regional Medical Center emergency room bill. (Tr. 132). The ER medical bill was introduced into evidence as Plaintiff's Exhibit 2 without objection. (Pl's. Ex. 2). Byerly did not introduce any medical records from Grand Strand. Wesley did not introduce any medical records from Grand Strand.

During cross-examination of Byerly by Wesley's counsel, the following colloquy occurred:

> Q. Isn't it true that the medical bill that your attorney moved in and is asking the jury to have Tom pay reflects treatment which took place on October 13 between the hours of a 12:50 check-in time, and a 2:30 p.m. discharge time?
>
> A. I can't explain the time. All I can tell you is I took her directly out there. I don't know if the time didn't start until after she was in the back room or whatever, but I took her out there directly after the accident.

Q. Right, but what I'm representing to you is that the medical records that you are asking for that treatment to be paid for by Tom –

Appellant's Counsel: Your Honor, I need to object. I don't believe she can impeach him on a document he didn't author.

The Court: You put it into evidence, it's subject to cross-examination. I overrule your objection.

(Tr. 144-45).

In fact, the medical records, which purportedly contained times, had NOT been put into evidence – by anyone. The medical bill makes **no** reference to any specific times whatsoever. No document was introduced, or shown to the jury, with any times of treatment, check-in, or discharge. The Court was simply wrong that Byerly had put such information into evidence and the ruling therefore lacked evidentiary support.

After the Court's incorrect statement and ruling, Wesley's counsel continued:

Q. And you took Ms. Byerly directly, you say, at 6"00, 6:30 to 809 82nd Parkway, which is the emergency room, right?

A. Right.

Q. And it is my understanding that is about 1.8 miles away from your house?

A. About that.

Q. And with traffic, maybe four or five minutes at the most?

A. Maybe, yes.

Q. And those medical records that you would like Tom to pay, that reflects treatment at a different time when you say you were there, do you dispute anything else in those medical records or in the bill you are submitting to the jury?

A. Please repeat that.

Q. Sure. The medical bill that you have submitted to the jury, and that you are here on behalf of your wife and asking Tom to pay, it reflects treatment during a different time than when you say you were there; are you disputing anything else in that medical record or that medical bill?

A. No, ma'am. But I can't explain why they had the 12:00 to 2:00, but I know when I took her out there. That is all I can say.

Q. All right. And when Ms. Byerly fell and tripped over the railroad tie, if you took her directly to the emergency room and checked in at 12:50, it would have been light outside at the time of her trip and fall, correct?

A. No, ma'am, it wouldn't be. The sun rose at 7:15, 7:20, and I was already on my way to the hospital by then. It was dark when she tripped.

(Tr. 145-56).

The Court allowed Wesley's counsel to place John Byerly with the impossible task of trying to refute a medical record which was not shown to him, was not in evidence, and which he did not author. Wesley's counsel was allowed to argue to the jury, in effect, the accident occurred in daylight hours with absolutely no evidence in the record to support such a claim.

The South Carolina Rules of Evidence generally maintain that the contents of a document can only be published to the jury after the document has been admitted into evidence. S.C.R.E. 802, 901. The rules governing authenticity, relevancy, and hearsay prevent the publication of documents without satisfying each evidentiary requirement. Reading or relaying the content of a document not in evidence to a witness while the jury is present is essentially "publishing" it to the jury in violation of evidentiary rules.

Medical records not in evidence typically contain multiple levels of hearsay. The content or admission of a document consisting of multiple layers of hearsay, such as a

medical record, is inadmissible to prove its truth unless each layer, analyzed independently, falls within a hearsay exception. Wesley did not call any witness(es) necessary to lay the proper foundation for the admissibility of any medical record, so he should not have been allowed to use it to cross-examine John Byerly. Wesley's counsel does not, and should not, get a foundational "free pass" to regurgitate the purported contents of medical records to the jury on cross-examination.

Moreover, Wesley's counsel improperly pitted John Byerly against the author of the purported medical record. In effect, Wesley was allowed to pit John Byerly against his wife's medical professionals. South Carolina courts have long held that pitting witnesses against one another is improper cross-examination. "It is improper to cross-examine in a way that requires a witness to attack another witness's credibility." *State v. Benning*, 338 S.C. 59, 63, 524 S.E.2d 852, 855 (Ct. App. 1999); see also *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998).

The line of questioning allowed by the trial court was not proper impeachment either. South Carolina Rule of Evidence 613 provides that a witness may only be impeached by his or her own prior inconsistent statement. Thus, unless John Byerly was the author of the purported medical record, which was never actually seen or admitted, hearsay statements and content within the medical records could not have been a prior inconsistent statement made by him and the medical record should not have been used for impeachment. Such practice essentially requires one witness to be pitted against another to comment on the veracity of another witness's statement. *S.C. Dep't of Soc. Servs. v. Lisa C.*, 380 S.C. 406, 418, 669 S.E.2d 647, 653 (Ct. App. 2008).

Neither Rule of Evidence 803(3) nor 803(4) is applicable to the time of medical treatment and neither rule, even if applicable, would permit counsel to publish a medical record without laying a proper foundation and then pitting the author of the record against a non-author witness, especially with no opportunity to cross-examine the author.

The trial court erred in allowing Wesley's counsel to cross-examine John Byerly about his wife's medical record, and essentially publish the record to the jury, without admitting the record into evidence, laying a proper foundation, determining if the hearsay contained it the record was subject to any exception, and pitting John Byerly against the unknown author of the record.

Not only did the trial court's improper ruling lack evidentiary support, it was also controlled by an error of law. John Byerly submits the case should be remanded for a new trial based upon the trial court's erroneous ruling on the cross-examination of Byerly with Susan's medical record which was not in evidence and which he did not author.

II. THE TRIAL COURT ERRED IN DENYING APPELLANTS' REQUEST TO CHARGE.

Prior to jury selection, counsel for the parties and the trial court engaged in discussion regarding the allocation of fault, should the jury find in favor of Byerly. (Tr. 4-12). In fact, Wesley's counsel stated she "object[ed] to anything going to the jury as to an instruction on vicarious liability for anything that the contractors did being imputed on [Wesley]." (Tr. 12). At that time, undersigned counsel for Byerly notified the Court of a proposed jury charge concerning that very issue. (*Id.*).

Prior to charging the jury, John Byerly submitted his proposed jury charge concerning a landlord's nondelegable liability, which charge specifically addresses duty and liability to tenants when repairs are being made to property. (Tr. 200). The trial court

refused to charge the jury as requested over Byerly's objections. (Tr. 202-08, 233).

The trial court erred in refusing to instruct the jury on Byerly's requested charge concerning a landlord's nondelegable liability for the dangerous condition of property when repairs are being made. The charge was timely submitted to the trial court, and the charge would have assisted the jury in making an informed decision based on South Carolina law; thus, the charges rendered were inadequate and this Court should reverse the trial court's ruling and remand this matter for a new trial.

Under South Carolina law, a property owner "owes no duty to use reasonable care to take precautions against or to warn guests of open and obvious dangers. In such situations, the guests themselves have a duty to discover and avoid the danger." *Hackworth v. United States*, 366 F. Supp. 2d 326, 330 (D.S.C. 2005) (citing *Neil v. Byrum*, 288 S.C. 472, 343 S.E.2d 615, 616 (1986)). However, in *Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991), the South Carolina Supreme Court first recognized an exception to the open and obvious danger rule and adopted Section 343(A) of the Restatement (Second) of Torts.

In *Callander*, an invitee brought a negligence action against a Krispy Kreme Doughnut Shop after he slipped and fell when he backed up to sit on a stool, from which the round top was missing. *Id.* at 362. The owner–manager of the Krispy Kreme admitted that the stool top had been missing for over two months and conceded that "many of his regular customers were senior citizens who customarily backed up to the stools in order to sit down." *Id.* at 363. The court noted that: "The traditional 'no duty to warn of the obvious' rule has been modified in many jurisdictions to hold that an owner is liable for injuries to an invitee, despite an open and obvious defect, if the owner should anticipate

that the invitee will nevertheless encounter the condition, or that the invitee is likely to be distracted." *Id.* at 362. Following this trend, the court expressly adopted the Restatement (Second) of Torts section 343(A) (1965), which provides that "[a] possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." *Id.* at 362 (emphasis added). Quoting comment (f) of Section 343(A), the court further explained that "an owner may be required to warn the invitee, or take other reasonable steps to protect him, if the 'possessor has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, . . . or fail to protect himself against it.'" *Id.* at 362–63 (quoting Restatement (Second) of Torts § 343(A) cmt. (f)). The court subsequently remanded the case for further proceedings in accordance with its adoption of section 343(A) and comment (f). *Id.*[1]

Byerly submitted and requested the following charge on a landlord's nondelegable liability:

> South Carolina Courts have found that a landlord who undertakes repair of his property by use of a contractor has a non-delegable duty to see that the

[1] The exception recognized in *Callander* has since been applied by South Carolina courts and this court. *See, e.g., Hackworth v. United States*, 366 F. Supp. 2d 326, 330 (D.S.C. 2005) ("The degree of care owed with regard to an open and obvious danger is commensurate with the circumstances involved, including the possessor's prior knowledge of the defect's existence and the age and capacity of the invitee.") (emphasis added); *Hancock v. Mid–South Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801, 803 (2009) ("While a parking lot's state of disrepair may be considered open and obvious, a jury could determine that Respondent should have anticipated that such a condition may cause an invitee to fall and injure themselves."); *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 491 S.E.2d 571, 575 (1997) ("[T]here was ample evidence that County had been warned the lack of safety rails could present a danger to people fishing from the dock and could expose County to potential liability. Accordingly, County was not entitled to a directed verdict based on the open and obvious nature of the dangerous condition.").

> repair is done properly and remains vicariously liable for injuries caused by improper repairs. *Gary v. Askew*, 417 S.C. 232, 789 S.E.2d 94 (Ct. App. 2016); *Simmons v. Tuomey Reg'l Med. Ctr. (Simmons 2)*, 341 S.C. 32, 42, 533 S.E.2d 312, 317 (2000).
>
> A person may delegate a *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains *liable* for that breach. It actually is the liability, not the duty, that is not delegable. The party which owes the non-delegable duty is vicariously liable for the negligent acts of the independent contractor. *Id.* (Emphasis in original).

The trial court denied Byerly's request to charge and gave as its reason for denying the request the fact that "there [was] no evidence of that." (Tr. 203). But, when undersigned counsel requested that Wesley's counsel be prevented from attempting to point the finger at a third-party during closing argument, the trial court stated, "He's (Wesley) not responsible for the work because it is an obvious condition. It has nothing to do with the work. It has to do with what the premises looked like." (Tr. 206-07). The trial court's decision – to refuse to charge the jury on nondelegable liability for landlords while allowing Wesley's attorney to point the fingers at a third-party for liability – was prejudicial and amounts to reversible error. The trial court essentially ruled as a matter of law the condition was open and obvious when that issue was clearly a question of fact for jury determination. Even Wesley admitted it would have been "pitch black" when Susan was walking to her car at 6:30 a.m., with no electricity or power to provide even background lighting, and encountered the railroad ties placed beside the vehicle and completely unaware of their presence. (Tr. 181).

"Ordinarily, a trial [court] has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Fernanders*, 499 S.E.2d at 510. However, jury instructions should be confined to the issues made by the pleadings and

supported by the evidence. *Baker*, 309 S.E.2d at 771. In *Burns v. S.C. Comm'n for Blind*, 323 S.C. 77, 80, 448 S.E.2d 589, 591 (Ct. App. 1994) (internal citations omitted) this Court held:

> If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error.

South Carolina appellate courts have specifically held that jury charges that result in the possibility of the jury regarding a party's liability resting in someone else – absent statutory or precedential limitations – are improper. In *Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 781 S.E.2d 534 (2015), the South Carolina Supreme Court held that a trial court's refusal to charge which could lead to a jury's inference that a tortfeasor could not be liable for its omissions because of a third party's actions was reversible error because it was prejudicial. In *Stephens* the plaintiffs brought a suit against the defendants claiming their injuries from a train collision were caused by defendant's negligence. *Id.* at 537. An emergency responder testified she smelled alcohol at the accident scene. *Id.* at 538. While the plaintiff was being treated for her injuries at the emergency room, doctors ordered a test of her blood and urine to determine whether she had alcohol and/or drugs in her system. *Id.* Medical records revealed that the plaintiff had opiates in her system and had a blood alcohol content of .018%. *Id.*

The plaintiff objected to the trial court's decision to charge the jury S.C. Code Ann. § 56–5–2930 (2006), the criminal statute involving the charge of driving under the influence ("DUI"), while refusing to charge § 56–5–2950(B)(1) to show that the plaintiff was presumptively not impaired by alcohol as her blood alcohol content was .018%. *Id.*

at 547. Additionally, plaintiffs claimed they were prejudiced from the trial court's refusal to charge § 56–5–2950(B)(1) was exacerbated by the trial court's decision to charge section S.C. Code Ann. § 15–78–60(20)[2], which led the jury to infer that the governmental defendant could not be liable for its omissions because of criminal activities committed by the plaintiff. *Id.*

The Supreme Court determined it was necessary to provide the jury with some type of instruction regarding impaired driving as the emergency responder testified the accident scene smelled of alcohol, the plaintiff admitted that she consumed alcohol and took prescription medication the morning of the accident, and the plaintiff's blood test after the accident revealed the presence of opiates. *Id.* However, because the plaintiff presented evidence that her blood alcohol content was .018%, the Supreme Court found she was entitled to have the jury instructed on the statutory presumption provided in § 56–5–2950(B)(1). *Id.* In the absence of this instruction, the Court reasoned, it was arguable the jury found the plaintiff was impaired while driving and that this criminal act negated any negligence on the part of either defendant, including the governmental entity. *Id.* Accordingly, the Court determined that the plaintiff was prejudiced by the judge's refusal to charge his proposed instruction. *Id.*

Furthermore, because the duty owed by Wesley to the Byerlys in this case evolved from the special relationship that arose from the landlord-tenant relationship, it was necessary to charge the jury on the nondelegable liability because the refusal to charge allowed Wesley – the landlord – to argue liability rested with some other party. *Burns*, 448

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[2] "The governmental entity is not liable for a loss resulting from an act or omission of a person other than an employee including but not limited to the criminal actions of third persons."

S.E.2d 589.

In *Burns*, a resident at a rehabilitation center, who was the victim of an attempted sexual assault by another resident, brought a negligence action against the governmental entity operating the center. *Id.* at 590. The governmental defendant argued the trial court erred in refusing to charge that it owed its residents the duty to exercise reasonable care in maintaining its premises in a safe condition under the law of premises liability. *Id.* This Court reversed and remanded the case, holding "this is a premises liability case and, therefore, the trial [court] should have charged the jury on premises liability, as limited by the South Carolina Torts Claims Act." *Id.* at 591. This language from *Burns* indicated that although the resident brought a claim for premises liability, it remained subject to any applicable limitations of liability provided by the South Carolina Tort Claims Act.

Here, the trial court's determination that Wesley could point the finger at nonparties was error because his liability was nondelegable, and therefore not subject to any applicable limitations of liability – through statute or otherwise. Thus, the trial court's instructions were insufficient to enable to the jury to understand fully the law of the case and issues involved. *Id.* "If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial." *Sanders v. Western Auto Supply Co.*, 256 S.C. 490, 183 S.E.2d 321 (1971). Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error. *Jones v. Ridgely Communications, Inc.*, 304 S.C. 452, 405 S.E.2d 402 (1991).

The trial court's insistence that Wesley's counsel could "say [Respondent] didn't

do anything, the contractor caused it[]" allowed Wesley and his counsel to imply there was another source responsible for any liability or damages to the Byerlys. In fact, Wesley's counsel made it clear she intended to blame third parties for Wesley's non-delegable liability. (Tr. 4) ("I just want to be clear that I'm asking for their actions to be considered and intend to bring that up in front of the jury. And, further, I would ask that there be a percentage of negligence that the jury would be awarding or allocating to that."). During her opening statement[3], Wesley's counsel argued just that:

> You also hear, as was indicated, that Mr. Wesley did not move the railroad ties. He was not there when they were moved, but you'll hear testimony about the reason and necessity for them to be moved.
> (Tr. 51, ¶¶12-15).
>
> At the end of the day, you will be asked to apportion percentages to the various parties[.]

(Tr. 53, ¶25 – 54, ¶1).

However, the requested charge explicitly stated the law concerning Wesley's ability to blame others for his liability, despite his trial testimony admitting it was his sole responsibility to make sure the premises were safe (which also contradicted his attorney's arguments). (Tr. 180). The trial court's refusal to charge a landlord's nondelegable liability invited the jury to not only consider evidence outside of the record, but also led the jury to infer that Wesley could not be liable for his omissions because of the negligence of a third party. Therefore, the Byerlys have demonstrated the trial court's ruling was controlled by an error of law and was not supported by the evidence. For those reasons, the trial court's ruling should be reversed, and this matter should be remanded for a new trial. *Fairchild v. Dep't of Transp.*, 385 S.C. 344, 683 S.E.2d 818 (Ct. App. 2009).

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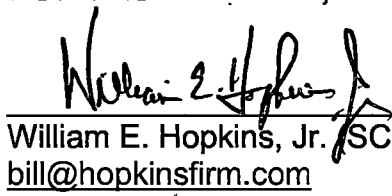
[3] The parties' closing arguments are not included in the trial court's transcript.

CONCLUSION

Based upon the foregoing, Appellant John Byerly respectfully requests the trial court's rulings overruling counsel's objection to Wesley's cross-examination regarding medical records and denying his request to charge be reversed, and the case remanded for a new trial. Additionally, Appellant would ask that the judgment be reversed for any other reason appearing in the record of the case.

HOPKINS LAW FIRM, L.L.C.



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THE STATE OF SOUTH CAROLINA
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JOHN BYERLY, individually, and as Personal representative of the ESTATE OF SUSAN B. BYLERLY,

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vs.

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CERTIFICATE OF SERVICE

I, Kathy Roberts, an employee of Hopkins Law Firm, LLC, do hereby certify that on February 19, 2020, I served a copy of **Appellant's Initial Brief** and **Appellant's Designation of Matter to be Included in the Record on Appeal** upon counsel for Respondent via Federal Express, postage prepaid, to the following address:

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February 19, 2020

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Susan B. Byerly and John Byerly v. Thomas Wesley, Brown Rooftops, LLC and Bay Service and Contracting, LLC
Civil Action No.: 2017-CP-26-02880

Dear Ms. Kitchings:

Please find enclosed the original Appellant's Initial Brief, Designation of Matter to be Included in Record on Appeal, Certification of Counsel Regarding Designation of Matter and Certificate of Service in the above referenced matter.

Sincerely,

HOPKINS LAW FIRM, LLC

William E. Hopkins, Jr.

WEHjr/kyr
Enclosures

cc: Stephanie P. Anthony, Esquire (via Federal Express)
John Byerly

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2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.
Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery,misdelivery,or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental,consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss.Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.