THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000534
Civil Action No. 2017-CP-10-5824

John Mayers .....Appellant,

v.

Konan Henthorn.....Respondent.

FINAL INITIAL BRIEF OF APPELLANT

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III. Did the Trial Court err in denying Appellant's Motion for New Trial where the verdict returned by the jury was inconsistent with the evidence presented at trial and reflects the jury's confusion?

STATEMENT OF THE CASE

This case arises out of a collision where a 1996 Ford Mustang driven by Respondent rear-ended a bicycle driven by Appellant on a wet and rainy day in Charleston, South Carolina. Appellant, John "Chad" Mayers was riding his bicycle northbound on Ashley River Road, heading home. Respondent Konan Henthorn was also operating his vehicle northbound on Ashley River Road, behind Appellant in the same lane of travel. After the Parties passed the Rite Aide at the fork of Ashley River Road and Old Town Road,the front of Respondent's Ford Mustang collided with Appellant's rear tire. Appellant sustained serious and permanent injuries as a result of this collision. The lawsuit was filed November 9, 2017. (R. pp. 13-19).

This matter came to a jury trial before the Honorable Bentley Price of the Charleston County Circuit Court on February 19, 2020. By Order dated February 21, 2020, the jury found for the Respondent. (R. pp. 10-12). The Order was received by Appellant's counsel the same day.

On February 28, 2020, Appellant's counsel filed and served his Motion for JNOV And New Trial Absolute upon opposing counsel and the Circuit Court. (R. pp. 3-7). On March 4, 2020, the Circuit Court denied Appellant's Motion. (R. pp. 8-9)

The March 4, 2020 Order was electronically mailed to all counsel of record on the same date. On March 20, 2020 Appellant served the Notice of Appeal on Respondent. Therefore, this Appeal is timely.

STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, the appellate court's standard of review extends to the correction of errors of law. *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 221 S.E.2d 773 (1976); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth*., 343 S.C. 424, 540 S.E.2d 113 (Ct.App.2000). The Appellate Court will not disturb the jury's factual findings unless a review of the record discloses there is no evidence which reasonably supports the jury's findings. *Townes*, 266 S.C. at 85, 221 S.E.2d at 775; *Brown v. Smalls*, 325 S.C. 547, 481 S.E.2d 444 (Ct.App.1997); see also *York v. Conway Ford, Inc*., 325 S.C. 170, 480 S.E.2d 726 (1997) (Court has no power to review matters of fact in action at law except to determine if verdict is wholly unsupported by evidence); *Cohens v. Atkins*, 333 S.C. 345, 509 S.E.2d 286 (Ct.App.1998) (in action at law on appeal of case tried by jury, jurisdiction of Court of Appeals extends merely to correction of errors of law, and factual finding of jury will not be disturbed unless review of record discloses there is no evidence which reasonably supports jury's findings).

Generally, the admission of evidence is a matter left to the discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009); *Hanahan v. Simpson*, 326 S.C. 140, 155, 485 S.E.2d 903, 911 (1997). However, when the ruling is based on an error of law or a factual conclusion without evidentiary support, an abuse of discretion occurs and appellate correction is required. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. at 434, 673 S.E.2d at 457 (2009); *Patel v. Patel*, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004).

ARGUMENT

I. The Trial Court erred in denying Appellant's Pre-Trial Motion for Summary Judgment and as such, the Entire Trial was Tainted.

It is axiomatic in South Carolina jurisprudence that failure to respond to Requests for Admissions within the time frames proscribed in South Carolina Rule of Civil Procedure, Rule 36(a), renders any matter listed in the request conclusively admitted for trial. Rule 36, S.C.R.C.P.; *See Hatchell v. Jackson*, 290 S.C. 256, 258, 349 S.E.2d 407, 407 (Ct.App. 1986); *Hinson-Barr Inc., v. Pinckard*, 292 S.C. 267, 269, 356 S.E.2d 115, 116 (1987); *Matter of Solomon*, 307 S.C. 1,3, 413, S.E.2d 808, 809 (1992); *Scott v. Greenville Housing Authority*, 353 S.C. 639, 579 S.E.2d 151, (Ct.App. 2003); *Bakala v. Bakala*, 352 S.C. 612, 630, 576 S.E.2d 156, 165 (2003); *Brown v. Odom*, 425 S.C. 420, 434-35, 349 S.E.2d 183, 190 (Ct.App. 2019).

Rule 36(a) provides that matters for which admissions are requested will be deemed admitted "unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow [,] ... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter...." *Scott v. Greenville Housing Authority*, 353 S.C. at 645, 579 S.E.2d at 154 (Ct.App. 2003). In reviewing the tenets of Rule 36(a), our courts have repeatedly found that failure to respond to requests for admissions deems matters contained therein admitted for trial, irrespective of whether the admission concerns a matter responded to in a party's pleadings. *Id*. at 646, 154–55.

Rule 36 SCRCP allows a party to personally serve Requests for Admission on another party with the Summons and Complaint. "The request may, without leave of court, be served upon . . . any other party with . . . the summons and complaint upon that party." Rule 36 SCRCP.

Here, Respondent (a) failed to respond to Appellant's RFAs in a timely fashion and (b) never moved for leave of court to respond to RFAs. The procedural history of this case is as follows:

11/9/2017	Complaint Filed
12/7/2017	Defense Counsel Answers Raising Service & Requiring Personal Service or Dismissal
3/13/2018	Defendant Personally Served (in Idaho) with Summons, Complaint, Interrogatories, Requests to Produce and Requests for Admission
4/2/2018	Charleston County Clerk of Court Files Affidavit of Service notating what was served "Summons, Complaint, Civil Action Coversheet, Plaintiff's First Set of Requests for Admission to Defendant Konan Henthorn…"
4/29/2018	Defendant Misses Request for Admission Response Deadline (45 days because served with Summons & Complaint)
11/30/2018	Plaintiff Limits Discovery to Damages Based on RFA Admissions
12/19/2018	Plaintiff Limits Depositions to Damages Based on RFA Admissions
1/15/2019	Defendant testifies at deposition he received suit papers as served, called his counsel and was instructed that he did not need to send to them
1/16/2019	Mediation – Plaintiff reiterates liability position regarding RFA admissions
2/1/2019	Defendant, through counsel, sends responses to RFAs without leave of Court extending time as required
4/17/2019	Trial #1 – Continued

2/19/2020	Trial #2 – Still no motion to Extend Time to Respond to RFAs has been filed

The Summons and Complaint [Civil Action No.: 2017-CP-10-05824] was filed on November 9, 2017. (R. pp. 13-19). Respondent's counsel, hired by Progressive, answered on December 11, 2017. (R. pp. 20-26). This Answer was filed prior to Counsel for Appellant being able to effect service on the Respondent. Respondent's counsel raised the following defense:

> *The defendant has not been properly served under South Carolina law and therefore, the Respondent asserts all rights pursuant to Rule 12(b)(2), (4), and (5) of the South Carolina Rules of Civil Procedure, and requests that the Appellant's Complaint be dismissed.*
>
> R. pp. 24.

After receiving the Answer demanding personal service on the Respondent, Appellant served Respondent with the following documents on March 13, 2018, in Moscow, Idaho. (R. p. 27):

- Summons
- Complaint
- Civil Action Coversheet
- Appellant's First Set of Requests for Admission
- Appellant's Standard and First Supplemental Interrogatories

The process server's Affidavit of Service, filed with the Court on April 2, 2018, confirms that ALL of these documents were served on Respondent – most notably, the Requests for Admission ("RFAs") were served with the Summons and Complaint. (R. pp. 28-29). Given the date of service – March 13, 2018 – Respondent's Request for

Admission response date was no later than April 27, 2018 operating under the 45-day rule. Rule 36 SCRCP.

Appellant's RFAs included admissions of proximate cause and liability. After receiving the documents outlined in the Affidavit of Service, Respondent tried to send the paperwork to his defense team, who declined them. (R. p. 368, lines 17-24).

Q: So you called him that day?
A: Uh-huh.
Q: All right. And what did you say?
A: That I was given or that somebody handed by wife a bunch of the legal paperwork and what do I do with them, what's going on.
Q: What did you end up doing with them?
A: I filed them away in our important papers binder, and they're sitting underneath my bed currently.
Q: Okay. So you never provided them to your attorney?
A: He believed he had the same ones. I think that is what I was told.

(R. p. 368, lines 17-24).

Importantly, during Appellant's pre-trial motion for summary judgment based on Respondent's failure to answer the RFAs, the following exchange took place:

The Court: Let's do this. And, you know I was a trial lawyer, and this is what I did. I want you to answer this question very honestly, Mr. Coulter, when was the last time you looked at an affidavit of service that was filed?

Mr. Coulter: I don't think I ever have.

(R. p. 82, lines 20-24).

As Appellant did not receive any discovery responses from Respondent, specifically, to Appellants RFAs, the case sat dormant for some time as damages were the only remaining issue. Appellant requested medical bills and records and prepared to try his case on damages only due to Respondent's failure to answer the RFAs.

In November 2018, in preparation for Appellant's deposition, Appellant informed Respondent's Counsel that discovery, and Appellant's deposition, should be tailored to case-specific damages due to the unanswered RFAs. (R. pp. 419-420).

Discovery remained completely unanswered until December 5, 2018 when Respondent finally responded – but only to Appellant's Interrogatories and Requests for Production – not to Appellant's RFAs.

Nearly a month later, in preparation for depositions, Appellant reminded Respondent's Counsel that the scope of discovery was limited to damages. (R. p. 421).

Rather than filing a motion to amend his responses or enlarge time to respond, Respondent issued his own RFA to Appellant:

> *Admit that the Appellant did not directly serve Clarkson, Walsh & Coulter, P.A. or any member of the firm with Appellant's Request to Admit*.
>
> (R. p. 31).

As of Respondent's January 15, 2019 deposition, Respondent's Counsel had yet to respond to Appellant's RFAs or even ask Respondent for the RFAs they knew were served upon him. (R. p. 368, lines 17-24).

Appellant reiterated his liability position both before and during his same-day deposition.

The Parties mediated the very next day – on January 16, 2019 and Appellant continued to state his liability position – liability has been deemed admitted by Respondent. The parties arrived at an impasse.

The case was called for trial on April 17, 2019. The Honorable Judge Roger Young heard pre-trial arguments from counsel. Again, Appellant's counsel raised the issue of the unanswered RFAs and the Respondent's failure to make any motion to extend the time to answer the same. (R.

pp. 37-70). The case was continued.

The case was called for trial again on February 19, 2020. Respondent still never filed (and to date, has yet to file) the ***requisite*** motion to extend the time to respond to Requests for Admission as required by Rule 36. However, the trial court denied Appellant's pretrial Motion for Summary Judgment based on Respondent's failure to answer the Requests for Admission that had been served on Respondent some 700+ days prior. Accordingly, it was wholly improper to allow Respondent to deny liability when, under our Rules of Civil Procedure, it was clearly admitted. There is no provision in the Rules or our case law to permit the Court to act as it did here. This was a clear abuse of the Court's discretion and this Court should correct it.

II. The Trial Court Abused its Discretion in Allowing in Evidence and Testimony Regarding Unopen Beer Cans at the Scene of the Collision and Information About Beer in Medical Records (a) when there was no Duty for Appellant not to Drink Before Riding a Bicycle; (b) with no Evidence of Impaired Judgment; and (c) when Appellant Denied the Contents of the Medical Records.

No Statutory Duty

Evidence and testimony regarding beer and/or it's consumption should not have come in in this case – as there is no statutory duty requiring Appellant to not drink before operating a bicycle.

The seminal case on whether or not a duty can arise where the legislature has specifically chosen not to create one is *Mayes v. Paxton*, 313 S.C. 109, 116, 437 S.E.2d 66, 70 (1993):

> We also find that Mayes' failure to wear a helmet does not constitute contributory negligence. It is undisputed that Mayes had no statutory duty to wear a helmet at the time of the accident. Although S.C. Code Ann. § 56–5–3660 (1991) requires the use of a helmet by motorcycle operators and passengers under the age of twenty-one, Mayes was excluded from that duty because he was more than twenty-one years old when the accident occurred. In light of the fact that the Legislature has enacted a statute requiring the use of helmets and has specifically elected not to extend that requirement to motorcyclists twenty-one or older, we decline to create

> a judicial penalty for those exempted from the statutory duty. *See Keaton v. Pearson*, 292 S.C. 579, 358 S.E.2d 141 (1987) (declining to impose a duty to wear seatbelts when not statutorily required); *Kealoha v. County of Hawaii*, 74 Haw. 308, 844 P.2d 670 (1993) (the majority of jurisdictions have ruled against instituting a common law duty requiring motorcyclists to wear protective headgear).

Likewise, just as there is no statute requiring a motorcyclist to wear a helmet while operating a motorcycle, there is no statute requiring a bicyclist to not drink before operating a bicycle. However, there is a statute prohibiting operating a motor vehicle while intoxicated that is part of Title 56[1], the same Title that regulates operation of bicyclists on the roadway, so it is clear that while the Legislature has enacted a statute requiring motorists to not drink before operating a motor vehicle on the highway, it has specifically elected not to extend the requirement to bicyclists.

Unopen Beer Cans at the Scene

The Court allowed respondent's counsel, over Appellant's objections, to continually elicit testimony and present pictures about 2 unopened beer cans that were allegedly found at the scene of the collision. (R. pp. 416-417). The Court found that the pictures were "more probative than prejudicial" and allowed them in as evidence. (R. p. 182, line 9).

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[1] SECTION 56-5-2930. Operating motor vehicle while under influence of alcohol or drugs; penalties; enrollment in Alcohol and Drug Safety Action Program; prosecution.

(A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.

Our courts have found that evidence of the mere presence of drugs or alcohol, without further indication of impairment, could mislead the jury. *Kennedy v. Griffin*, 358 S.C. 122, 128, 595 S.E.2d 248, 251 (Ct. App. 2004). Furthermore, the balancing test carved out by Rule 403 is not whether the evidence is "more probative than prejudicial" it is whether the probative value is ***substantially outweighed*** by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. SCRE 403.

Here, the probative value, if any, was ***substantially outweighed*** by the danger of unfair prejudice, confusion of the issues, misleading the jury and needless presentation of cumulative evidence. *Id*. There was simply no correlation between the beer cans and the collision. First, every single witness to the collision testified that the beer cans were not empty. In fact, they were fizzing and spewing around the scene – as one would expect when a bicyclist is hit by a motorist and thrown onto the windshield/roof.

The pictures and testimony about the unopened beer cans at the scene are in no way determinative of liability and the Court, as the gatekeeper, committed reversible error by admitting the same.

Medical Records

The Court also allowed Respondent to cross examine Appellant on the contents of his medical records. Specifically, Respondent focused on the following from Appellant's medical records: "Patient drank approximately 2 24-ounce beers." (R. pp. 373-374).

Appellant argued that these records were inadmissible for numerous reasons including authenticity, relevance and hearsay. Respondent was allowed to cross examine and impeach Appellant with these medical records over Appellant's numerous objections. The court made

the following findings regarding the admissibility of Plaintiff's Medical Records:

> *THE COURT: As to the motion in limine excluding medical records I find that the information contained in the MUSC report on the second page, that the patient drank approximately two 24-ounce beers would be a hearsay exception based on the fact that it's for diagnostic purposes because of course if you've been drinking alcohol you cannot go under anesthesia and that's probably why, I know that's exactly why they noted that for the medial records. Also, the fact that the on-scene nurse, from my understanding, is going to indicate that he smelled of alcohol. It's contained in the medical records. There is two beer cans at the scene and there's now been testimony in the record that he was wobbly. I think that for contributory negligence purposes, I find that it's more probative than prejudicial and I'm going to allow it so you can start your case from there. Alright.*
>
> *MR. WILLEY: Your Honor, I need you to rule on a few more pieces of that specifically.*
>
> *THE COURT: Alright.*
>
> *MR. WILLEY: So, there's nothing in the record to indicate that he was undergoing anesthesia that I'm aware of.*
>
> *THE COURT: I just said it was for diagnostic purposes. I didn't say he was going to. They note those in the records to determine whether in fact if somebody walks in and says oh goodness something has happened, this guy has internal bleeding, oh wait he's had two 24-ounce beers. They need to take that into consideration.*
>
> *MR. WILLEY: Well, and the issue with that is that 16 there's also no evidence in the record of a blood screen which would have occurred if it was necessary for treatment.*
>
> *THE COURT: If it had been necessary for treatment, thank goodness the defendant was okay, and it wasn't necessary. I mean the plaintiff was okay and it wasn't necessary.*
>
> *MR. WILLEY: So, we're not -- so there's nothing in the record that you found that's indicated that it was necessary for medical treatment?*
>
> *THE COURT: I just said it was for diagnostic purposes, therefore it's an exception to the hearsay rule.*
>
> *MR. WILLEY: Alright. With respect to the statutory duty argument, what is your ruling on their being no statutory duty to not drink beer before riding a bike therefore no judicial duty for comparative or contributory negligence purposes being able to be leveled against the plaintiff in this Court based on the Mayes v Paxton case.*
>
> *THE COURT: I don't find that it's relevant in this case. I think for contributory negligence purposes and if the fact that he drank alcohol and rode a bike in the median I*

think is more probative than prejudicial so I'm letting in it.

MR. WILLEY: Okay. With respect -- I'm sorry, I've just got to get all, you know, all of these on the record. With respect to the errors that are replete in the medical records, what is the Court's finding that this particular statement is reliable when on the same page it calls him a female and on the next page it says he's 105 years old and is at a pool party. What is the finding with respect to this statement being an accurate reflection of anything?

THE COURT: I find it to be a scrivener's error and it doesn't really, for purposes of the trial, have any bearing on it whatsoever. And I find that the plaintiff could have taken the deposition of the doctor, the nurse, or anybody that wrote 23 this and ask them those questions and they chose not to do it.

MR. WILLEY: Alright. And specifically and finally, on the pitting of witnesses?

THE COURT: I don't ever agree with that pitting of witnesses standard, so I'm just going to deny that for that purpose.

MR. WILLEY: Okay. And so you are not requiring them to call the doctor to get in anything that he might have put in the records or anyone else ---

THE COURT: I'm going to stick the records -- solely to come in through the defendant, if he can recognize that those are his medical records only to those two relevant pages. We're not going to go into anything else. I mean the plaintiff; I keep saying the defendant. I've said it twice. For the record I meant plaintiff. Alright.

(R. p. 156, line 14-p. 159, line 13).

Medical records contain multiple levels of hearsay. A party cannot relate as true case specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception. It follows that documents consisting of multiple layers of hearsay, such as medical records, are inadmissible to prove its truth unless each layer, analyzed independently, falls within an established hearsay exception.

First, "Patient drank approximately two 24-ounce beers" is not a statement made for a medical diagnosis. A physician's testimony as to a patient's statement of his present condition, past symptoms or medical history is admissible as evidence upon which the doctor relied in

reaching his opinion, **but not admissible as substantive proof of the facts so stated**. *Gentry v. Watkins-Carolina Trucking Co*. 249 S.C. 316 (1967) (emphasis added).

Second, there is no indication Appellant ever made this statement. Appellant continually denied drinking beers or ever making this statement to hospital personnel. (R. p. 254, lines 7-21). (R. p. 256, lines 14-21). (R. p. 263, lines 1-12). This statement could have come from emergency personnel since there were two 24-ounce beer cans, albeit full, unopened and fizzing on the scene – but it is unknown. South Carolina Rules of Evidence 613 provides that a witness may only be impeached by his or her own prior inconsistent statement. SCRE 613. Thus, unless the witness on the stand is the author of the document or medical record, hearsay statements and content within the document are not prior inconsistent statements of the witness and are therefore not valid impeachment. SCRE 613.

Third, subjective opinions and judgments found in business records are not admissible. SCRE 803(6).

Fourth, Appellant cannot be impeached with his own medical records. The Appellant does not author his own records. If the Respondent wanted to prove the content of the medical records, impeachment of the Appellant with those records was not a proper way to achieve that goal. Cross-examining the Appellant with his own records necessarily requires the pitting of the Appellant against the author(s) of his medical records, i.e, his doctors. Whether previously admitted into evidence or not, a medical record authored by someone other than the Appellant is not a statement made by the Appellant. Even if direct statements in the medical records are attributed to the Appellant, the Appellant cannot be forced to comment on the written hearsay transcribed by the doctor or to comment on the doctor's ability to accurately obtain information and input that information into a medical record. The exception to this rule relates to documents filled out by

the Appellant, such as intake forms, pain diagrams, and medical history questionnaires, which are not hearsay because the doctor did not author those records.

Fifth, unless the medical record has been admitted into evidence, it is impermissible to ask the non-author to read something from the medical record to the jury. [SCRE 803]. Even if the record has been admitted, the defense attorney cannot ask the witness to comment on the credibility of the content or its author. *State v. Benning*, 338 S.C. 59, 63, 524 S.E.2d 852, 855 (Ct.App.1999). However, Respondent did just that:

> *Q: Okay. Alright. And you did go to the hospital, of course after this accident? A: Yes.*
> *Q: Right. And you remember telling the people at the ER that you had drank two 24-ounce beers. Do you remember that?*
> *A: I don't remember any of that.*
> *Q: Okay. Do you deny saying that? A: I'm going to deny that. Yeah.*
> *Q: Well, let me show you. Let me see if this refreshes your recollection. Okay. I'll hand you this medical record. Just to be sure that we're on the same page here.*
> *A: Okay.*
> *Q: You should be on page 2. Are you on that page?*
> *A: Alright. I don't recall saying anything about beers or anything like that.*
>
> (R. p. 254, lines 7-21).

Sixth, the medical records were replete with errors and therefore not reliable. Appellant's medical records contained other statements such as: "Patient is a 105-year-old male". (R. pp. 373-374).

With the admission of these hearsay statements and pictures of unopened beer cans – this became a case about an alleged boozy bicyclist rather than what it was – a straightforward rear-end collision case. The Court should have prohibited Respondent from publishing the pictures of beer cans to the jury and from using Appellant's unreliable medical records, laden with hearsay statements, to cross examine Appellant. Admission of this evidence was a clear violation

of the evidentiary rules mentioned herein. The trial court was well aware that such evidence had no place before this jury yet allowed it in anyway without sufficient justification and without due regard to the balancing test implicated by Rule 403, SCRE.

III. The Trial Court Erred in Denying Appellant's Motion for JNOV and New Trial Where the Verdict Returned by the Jury was Inconsistent with the Evidence Presented at Trial and Reflected the Jury's Confusion.

The "thirteenth juror doctrine" allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict. *Trivelas v. South Carolina Dept. of Transp.* 357 S.C. 545, 593 S.E.2d 504 (Ct.App. 2004). The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when the court finds that the evidence does not justify the verdict. The effect is the same as if the jury failed to reach a verdict. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990).

This case was an admitted rear-end collision. There was evidence that Respondent's car, a 1996 Ford Mustang, was not in working order when he was involved in the collision with Appellant.

This collision occurred on May 17, 2016. Earlier that year, Respondent had taken his car into PepBoys several times. PepBoys indicated that he needed work done on his brakes, but he failed to do so. (R. p. 162, lines 8-13). Instead, he continued to drive his vehicle. [Id.]. In late February 2016, he reported to PepBoys that the brakes were squealing. (R. p. 163, lines 3-10). The rear brakes were "fixed", according to Respondent, but nothing else was touched – despite PepBoys notating other parts of his vehicle were in need of repair – specifically his: front brakes, rotors, ball joints, tie rods, rack and pinion, bushings, engine mounts, control arms, shocks, struts, springs, axel, CV axel, boots and joints to the axles. (R. pp. 164-166).

Pictures of the collision scene also show that windshield wipers are missing from

Respondent's vehicle just after the collision. (R. p. 413).

Here, the evidence did not justify the verdict and as such, a new trial should have been granted.

CONCLUSION

Based on the foregoing legal arguments, the Appellant respectfully prays that this Honorable Court **REVERSE** the trial court's February 21, 2020 Order/Verdict Form and the Court's March 4, 2020 Order and **REMAND** this matter back to the trial court for further proceedings.

Respectfully submitted,

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