THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-000163

Henry Pressley,.....Respondent,

v.

Eric Sanders,.....Appellant.

FINAL REPLY BRIEF

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TABLE OF CONTENTS

Table of Cases.....i

Argument.....1

Conclusion.....4

Rule 211(b) Certification.....6

TABLE OF CASES

Green v. Fritz,
356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003).....1-4

Luchok v. Vena,
391 S.C. 262, 705 S.E.2d 71 (Ct. App. 2015).....1-4

Waring v. Johnson,
341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000).....1

ARGUMENT

Appellant Eric Sanders ("Sanders") respectfully asserts that he has previously addressed all of the issues raised in Respondent Henry Pressley's arguments in his primary Appellant's Brief. For brevity's sake, Sanders will not repeat his arguments here. However, Sanders submits this Reply Brief to clarify and respond to a few points raised in the Respondent's Brief.

First, Pressley erroneously charges Sanders with attempting to create a new standard of review for cases involving a decision to grant a new trial *nisi additur*. Contrary to Pressley's implication, Sanders did not manufacture or concoct the "compelling reasons" standard. This Court has repeatedly used that very phrase in the context of additur decisions. *See, e.g., Waring v. Johnson*, 341 S.C. 248, 256, 257, 533 S.E.2d 906, 910-11 (Ct. App. 2000) ("Compelling reasons, however, must be given to justify invading the province in this manner."). The cases cited in the Appellant's Brief, which Pressley attempts to distinguish, all cite and apply this same standard. Thus, Pressley's contention that Sanders relies on an inapplicable standard is patently incorrect.

Second, Pressley's attempts to distinguish the cases cited in the Appellant's Brief do not succeed. As previously argued, both *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003), and *Luchok v. Vena*, 391 S.C. 262, 705 S.E.2d 71 (Ct. App. 2015), are directly on point both factually and legally. Those decisions arose from wreck cases in which the defendants admitted fault for the vehicular accidents, but disputed some of the damages claimed by the plaintiffs. The exact same situation exists in the present case. In both *Green* and *Luchok*, the defendants challenged portions of the medical providers' testimony, but did not present any medical testimony from a defense expert. Sanders also

used that approach at trial. Despite the absence of medical testimony to contradict the medical providers in *Green* and *Luchok*, this Court concluded the juries were entitled to reject some or all of the plaintiffs' claimed damages based on other evidence and the defendants' arguments. For that reason, the trial judges in those cases erred in disturbing the verdicts, and this Court reversed the decisions to grant additur. Pressley has failed to demonstrate any legitimate basis for a different outcome in the present case, which falls squarely within the fact patterns of *Green* and *Luchok*. If any factual differences exist, they are minor, and the similarities vastly outnumber and outweigh them.

Third, it is significant that Pressley only attempts (unsuccessfully) to distinguish the cases cited in the Appellant's Brief. Pressley does not cite any cases with similar fact patterns that he claims support his position. This is a tacit admission that no such cases are available to Pressley, or at least it appears to be. Presumably Pressley would have cited cases like that had he been able to find them. Thus, Pressley has no option but to argue the cases cited in the Appellant's Brief are not controlling. As explained above, however, his arguments in that regard are unconvincing. This leaves *Green*, *Luchok* and the other cases cited by Sanders as the only applicable authorities, and they support reversal of the trial judge's order.

Fourth, Pressley incorrectly suggests that Sanders did not rely on any evidence when challenging the reasonableness and necessity of Dr. Zgleszweski's treatments. Although Sanders did not present any witnesses to challenge Dr. Zgleszweski's testimony, he was not required to do that. Sanders was entitled to rely on other parts of the record to support his arguments, and that is what he did. Specifically, Sanders cited the following evidence in support of his position: (1) the long gap between the end of

Pressley's chiropractic treatments and his first visit to Dr. Zgleszweski, (2) the fact that Pressley's attorney referred him to Dr. Zgleszweski, whom Pressley had not seen before, (3) Dr. Zgleszweski's admission that Pressley's long years of work as a brick mason could account for some of his back pain, and (4) the "zero" impairment rating Dr. Zgleszweski assigned to Pressley when releasing him. Sanders did not need to offer a witness to testify to any of those facts because all of them came into evidence during Pressley's case-in-chief.

Those facts were more than sufficient to support the jury's conclusions that Dr. Zgleszweski's treatments were not reasonable and necessary, or that the accident was not the proximate cause of those treatments. Pressley believes the jury should have focused on other evidence and reached a different conclusion. Yet, the risk of a jury disagreeing with his position was an inherent part of his decision to take his case to trial. A factual dispute existed, and it was the jury's job to decide it. The jury's ultimate conclusion finds ample support in the record, and the trial judge erred by substituting his own view of the evidence for that of the jury.

Fifth, Pressley's argument that the trial judge's order provided Sanders an adequate remedy is without merit. It is certainly true that the trial judge's order provided Sanders the option of selecting a new trial if he declined to pay the additur amount. But that is not the relief Sanders seeks in this appeal. Sanders wants, and is entitled to, the reinstatement of the jury's verdict. The fact that Sanders already has the option of a new trial is of no legal consequence. Were that not the case, this Court could not have reached the results it did in *Green* and *Luchok*. Those cases demonstrate that a defendant facing an award of additur is not bound by the options offered by the trial judge (*i.e.* pay

the additur amount or try the case a second time). The defendant can choose one of those options, but is not required to do that because a third option exists. The defendant can pursue an appeal in an effort to have the additur order reversed, which has the effect of restoring the original verdict. Again, *Green* and *Luchok* plainly demonstrate this point, and Pressley's position on this issue must fail.

CONCLUSION

Another jury might have viewed the evidence differently and awarded a larger verdict to Pressley. The record arguably could have supported that result. This appears to be the gist of Pressley's arguments in this appeal, along with a suggestion that the actual verdict was somehow not "fair" or "just."

Yet, what a different jury might have done has no relevance here. Rather, the sole focus is on what this jury did and whether the evidence supports that result. As long as there is a basis in the record for the jury's verdict, it is reasonable, and there is no "compelling reason" to disturb it. The proper inquiry is not whether someone else believes the verdict was "fair" or agrees with it, but whether the record supports it. This is the point the trial judge and Pressley have both missed.

If this were not true, trial judges would have an unlimited ability to change verdicts they did not like or with which they did not agree. As a result, the balancing of the respective roles and discretions of the judge and jury would be lost. *Green* and *Luchok* recognize the need for that balance, and the results in those cases place appropriate limitations on a trial judge's authority to disturb a jury's verdict. Because the present case is factually similar, if not identical, to those precedents, the same result is

warranted here. Therefore, the Court should reverse the trial court's order and reinstate the jury's verdict.

Respectfully submitted,

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RULE 211(b) CERTIFICATION

The undersigned, an attorney in this matter for the Appellant, certifies that this Final Reply Brief complies with the provisions of Rule 211(b), SCACR.

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