IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the York County Court of Common Pleas
for the Sixteenth Judicial Circuit

Honorable William A. McKinnon, Presiding Judge

Appellate Case No. 2021-000907
C.A. Case No. 2019-CP-46-01736

Thomas Lovelace and Carol Lovelace, Respondents,

v.

The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD, Appellants.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Did Dr. Billman[1] prepare an adequate record on appeal?
2. Did Dr. Billman otherwise preserve the appealed issues for appellate review?
3. Did the trial court commit reversible error when it refused to substitute an exhibit that highlighted the fact that inadmissible information had been redacted from Dr. Billman's May 13, 2015 office note?
4. Did the trial court commit reversible error when it charged the jury that the negligence of a subsequent treating doctor is foreseeable?

STATEMENT OF THE CASE

Mr. Lovelace commenced this action on May 16, 2019, asserting a claim for medical malpractice against Dr. Billman.[2] (R. p. 11). Specifically, Mr. Lovelace alleged Dr. Billman deviated from the standard of care in failing to diagnosis properly a lesion on Mr. Lovelace's tongue that was later diagnosed as cancerous. (R. pp. 12-13). Dr. Billman answered, asserting a general denial and affirmative defenses that included comparative negligence and intervening proximate causes for Mr. Lovelace's injuries. (R. p. 15).

Prior to trial, Mr. Lovelace filed a Motion *in Limine* through which he sought to exclude from evidence at trial his history of smoking and alcohol consumption. (R. p. 218). On November 4, 2020, the trial court held a hearing on pretrial motions, including Mr. Lovelace's Motion *in*

[1] In this brief, Respondent Thomas Lovelace refers to himself as "Mr. Lovelace" and collectively refers to Appellant Mark Billman, DMD, MD, and his practice, Respondent The Center for Oral and Maxillofacial Surgery, PA, as "Dr. Billman."

[2] Mr. Lovelace's wife also asserted a claim for loss of consortium. The jury returned a verdict of no damages as to that claim. (R. p. 171). Mrs. Lovelace did not appeal. Therefore, her claim has ended and she is not a party to the present appeal.

Limine. (R. pp. 224-225). On November 11, 2020, it granted the motion in a written Order. (R. p. 1).

The circuit court held a jury trial from June 14-18, 2021.

Following jury selection, the trial court took up several pretrial matters outside the presence of the jury. One such item was the parties' exhibits. Specifically, Mr. Lovelace's counsel offered Plaintiff's Exhibits 1-19, which the trial court admitted into evidence without objection from Dr. Billman. (R. pp. 24-25). Similarly, Dr. Billman's counsel offered Defendant's Exhibits 1 and 2, which the trial court admitted into evidence without objection from Mr. Lovelace. (R. p. 25). Dr. Billman did not raise an objection to the redaction of any exhibits.

Among the exhibits admitted by consent was Plaintiff's Exhibit 3, a May 13, 2015 office note created by Dr. Billman, from which smoking and alcohol history was redacted in "white out" fashion per the trial court's ruling on the Motion *in Limine*. (R. pp. 25, 215). Plaintiff's Exhibit 3, a one-page exhibit, is the same as page 7 of Defendant's Exhibit 2 (R. p. 178), which was also redacted in white.[3] Specifically, the following are the portions of the exhibits relevant to this appeal:

Pertinent PMH: √ none __DM __HTN __Asthma __OSAS

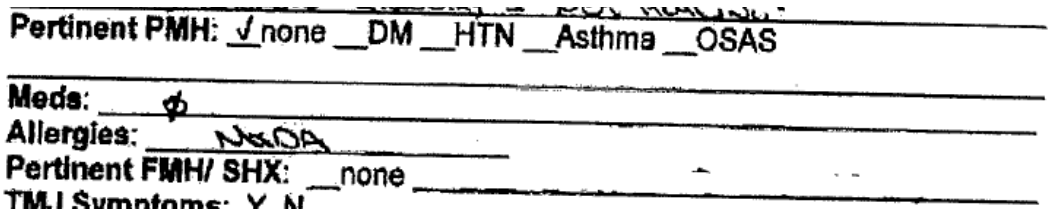
Meds: ϕ

Allergies: NKDA

Pertinent FMH/ SHX: __none

(R. p. 215).

[3] At trial, the court and the parties referred to the office note by both exhibit numbers (and sometimes without reference to an exhibit number). In discussing the redaction issue on appeal, Dr. Billman refers to Defendant's Trial Exhibit 2, page 7 (marked as 0009 BILLMAN). (Appellant's Br., p. 9). For brevity and to avoid confusion, Mr. Lovelace simply refers to the document as "Plaintiff's Exhibit 3." However, his arguments apply equally to Defendant's Trial Exhibit 2, page 7 (marked as 0009 BILLMAN) (R. p. 178).



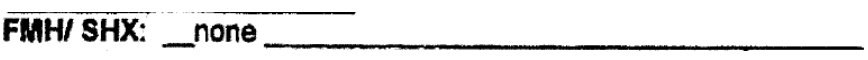
(R. p. 178).

The parties and witnesses referred to the redacted exhibit without objection throughout the plaintiff's case. (*See, e.g.*, R. pp. 29, 58–59, 63, 66–67, 86).

At the conclusion of Mr. Lovelace's case, Dr. Billman's attorney moved for a directed verdict as to negligence, which the trial court denied. (R. pp. 87-88). After that, Dr. Billman's counsel raised, for the first time, an issue with the manner in which Plaintiff's Exhibit 3 had been redacted. Specifically, the following colloquy took place among Dr. Billman's attorneys (Mr. Tierney and Mr. Coles), the trial court, and Mr. Lovelace's attorneys (Ms. McVey and Mr. Kassel):

> MR. TIERNEY: Yes, one interesting item *we noticed this morning* and I think it's something we can fix. This is on – and this would be just for the Court's reference, in evidence this would be part of Doctor Billman's record which I believe is defendant's two. ... On his examination form we were required by the Court to redact any information relative to alcohol or smoking. ... Well, on the record the way it's redacted and I believe this is a blowup of that particular record where it says pertinent family medical history slash smoking history,[4] with the redaction it looks like Doctor Billman never asked that information and it leaves this void to the jury where they go back there and they look at the evidence and they think, well he just testified that he says he does this in his initial work up of a patient and we're looking at the record and it's not on there. So I have a solution.
>
> THE COURT: Okay. I'm [sic] don't know if I was a juror if I would know what these terms mean.
>
> . . .
>
> MR. TIERNEY: [T]he point is that, as part of the past medical history it's right here on his form. He asks about that information. [The jury is] going to go back there and they're

[4] Plaintiff's Exhibit 3 actually says "FMH/ SHX," as shown by the following excerpt:



(R. p. 215).

going to see a blank space and it's going to look like he didn't ask that question when clearly asked that question.

THE COURT: What are you proposing, Mr. Tierney?

MR. TIERNEY: I propose that the record that we had originally where it's just redacted in black goes back there so they know that question was asked and discussed. They don't get to see what the answer was whether or not he smoked 12 years ago or whatever it might be they see that in black there was something written there so obviously he asked the patient about that. I don't think if you don't get that then it implies to the jury that he didn't ask that and that's not a small insignificant point…. That would infer to this jury that he's careless in his questioning of the patient.

. . .

MR. TIERNEY: It's that we're asking him whether or not he takes a past medical history and we're going to ask him what he asks as far as past medical history…. And they're going to get this record back here and they're going to say, oh, you know what, he said he said it but it's not on there.

THE COURT: How would they know what FMHSHX means.

MR. TIERNEY: Family medical history.

THE COURT: I would not have known that. I definitely would not have known what SHX means.

MR. TIERNEY: Smoking history.

. . .

MS. MCVEY: What's the problem?

MR. TIERNEY: It's whited out.

. . .

THE COURT: Mr. Tierney, I understand what you're saying is you want it clear to the jury that something was redacted so it is not attributed as an oversight by Doctor Billman.

MS. MCVEY: One problem is that we used this entire exhibits [sic] the entire trial and they've have been up on this board and up there for the entire trial. So now they're going to see this big black thing which makes no sense when we've been showing this exact thing. They can ask them what he went through and all that kind of stuff.

. . .

MR. COLES: [B]y removing this data from that line as effectively as it has been removed, 20 percent of what Doctor Billman wrote is being eliminated from this record. Twenty percent, if you look at the lines that he wrote. So, it is putting Doctor Billman's defense at a market disadvantage when a huge part of this case is, did Doctor Billman do a diligent job when he spoke with and met with this client, this patient, on May 13th. And the Court's order is requiring us to present to the jury a form that is inaccurate and is to a careful juror – and the law assumes these jurors are going to be careful, they're going to look at this

> document that's in evidence that is very well redacted and a juror is going to say, all right. This line right here that's been redacted that we're discussing has none, and then it has a line. Well, Doctor Billman neither circled none nor wrote anything.
>
> THE COURT: Would you be satisfied if we just took that entire section out. There was just a blank. So it doesn't say family medical history. It doesn't say smoking history. Just the whole thing is blank.
>
> MR. TIERNEY: No, respectfully, and I understand that, but we think it's important that portion is there based on what I've already argued. … My suggest would be that this is their exhibit. We have got a separate exhibit, Defendant's two I believe is this record. So they've published theirs to the jury. We haven't published ours yet. We would like to publish ours with the black redaction.
>
> THE COURT: Slow down. Defendant's two is in evidence and you would like to publish that?
>
> MS. MCVEY: It's in evidence just like ours is in evidence.
>
> MR. COLES: It is. *We whited it out by agreement until we caught this issue* and we would like to substitute that with a copy that's got black redactions.
> . . .
>
> THE COURT: I am going to deny your request. I think given we're using the white out redaction having one thing that is blacked out makes it look different. It draws attention to it and it's my discretion. I will deny the request.

(R. pp. 88-96) (emphasis added).

During the same stage of trial, the trial court initially discussed with counsel proposed jury instructions. (R. p. 97). In that discussion, Mr. Lovelace's counsel requested a charge as to the foreseeability of a treating physician's negligence. (R. pp. 103-104). Dr. Billman initially objected to the charge on the basis it could confuse the jury unless the court made clear that it was referring to a subsequent treating physician. (R. pp. 104-105). The trial court agreed to make that clarification. (R. pp. 105-106, 108-109). Dr. Billman's counsel did not object to the court's clarification but instead stated: "Okay. That will satisfy us" and "I agree. And I respect your prior ruling." (R. pp. 106, 109).

At a subsequent charge conference after the close of all evidence, Dr. Billman's attorney referred to the court's proposed jury instructions and told the judge, without further elaboration:

> The negligence of a later treating doctor is foreseeable. We take exception to that charge. That portion of the charge, the negligence of the later treating doctors is foreseeable.

(R. pp. 127-128).

In his charge to the jury, the trial judge included the following specific instructions:

> Ladies and gentlemen, redactions. During the presentation of the case you may have noticed that occasionally parts of the audio or video or documents that were presented have been redacted or edited out. This is due to the rules of court and was a decision made by me. Please do not speculate as to what may or may not have been contained in these portions of documents or videos and you are not to hold those portions against either party.

(R. p. 135).

> An intervening force may be a superseding cause that relieves an actor from liability. However, to get relief from liability, the intervening cause must be one that could not have been reasonably foreseen or anticipated. In other words, the intervening negligence of a third party person will not excuse the first wrongdoer if such intervention ought to have been foreseen in the exercise of due care. The negligence of a later treating doctor is foreseeable. Further, even if an intervening act is not foreseeable, the first wrongdoer is nevertheless still liable if the intervening act is a natural and probable consequence of the original actor's conduct.

(R. pp. 141-142).

After instructing the jury on the law, the trial court inquired whether the parties had any objections to his charge. (R. p. 154). Dr. Billman's attorney only stated, without further explanation: "Just renewing that one prior objection, Your Honor." (R. p. 154).[5] Because Dr. Billman had earlier made multiple objections to the charge (R. pp. 97-103, 110-117), it is not clear from the record to which objection he was referring.

The jury returned a verdict in favor of Mr. Lovelace against Dr. Billman. Dr. Billman made a Motion for Judgment Notwithstanding Verdict/Motion for a New Trial, which the trial

[5] The trial transcript indicates this statement was made by Mr. Kassel, one of Mr. Lovelace's attorneys; however, it is clear from the context that this is a reporter's error and one of Dr. Billman's attorneys actually made the statement.

court denied in an Order dated July 21, 2021. (R. p. 4[6]). As germane to this appeal, the trial court ruled:

> Defendants also object to the method of redaction, which "whited out" the answers to "Pertinent FMH/SHX." This objection is meritless for several reasons. First, there is no evidence these cryptic abbreviations were even understandable to the jury. Second, Plaintiffs never argued that Defendant failed to consider Plaintiff's past medical history so the related portion is irrelevant. Finally, Defendants agreed to the redaction method.
> . . .
> Finally, the charge that, "[t]he negligence of a later treating doctor is foreseeable," is a correct statement of law and did not prevent the jury from considering intervening or superseding causes. *See Payton v. Kearse*, 319 S.C. 188, 460 S.E.2d 220 (Ct. App. 1995) rev'd on other grounds, 329 S.C.511, 495 S.E.2d 205 (1998); *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984); *Fairchild v. SC DOT and William Palmer*, 398 S.C 90, 727 S.E.2d 407 (2012).

(R. pp. 4-5).

This appeal followed.

STANDARD OF REVIEW

1. Issue preservation.

Before reviewing an appealed issue, the Court must satisfy itself that the appellant has properly preserved that issue for appellate review. If not, the Court should not consider the issue. *Ulmer v. Ulmer,* 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006). "Issue preservation requires a party to preserve an issue both at trial and in presentation of the issue on appeal." *Beverly S. v. Kayla R.*, 395 S.C. 399, 401, 718 S.E.2d 224, 225 (Ct. App. 2011), *citing S.C. Dept. of Transp. v. M & T Enters. of Mt. Pleasant,* 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008).

At trial, to preserve an issue for appellate review, a party must raise the issue to the trial court – both with specificity and in a timely manner – and obtain a ruling from the trial court. *S.C.*

[6] Dr. Billman did not include a copy of his Motion for Judgment Notwithstanding the Verdict or for New Trial in the Record on Appeal, only the Order denying the motion.

Dept. of Transp. v. First Carolina Corp., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007), *citing* J.H. TOAL, ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2d ed. 2002).

With respect to evidence, this timeliness requirement requires the appellant to object contemporaneously with the introduction of the objectionable evidence. *State v. Byers*, 392 S.C. 438, 710 S.E.2d 55 (2011); *see also* Rule 103(a)(1), SCRE. If he fails to do so, he waives his right to appellate review. *McKissick v. J.F. Cleckley Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996). An appellant must also proffer any excluded evidence to the trial court, *see, e.g., In re Estate of Fabian*, 326 S.C. 349, 352, 483 S.E.2d 474, 475 (Ct. App. 1997). Thus, if the issue on appeal is whether the trial court erred in refusing to admit a redacted medical record instead of another version of the document, the appellant must proffer the redacted exhibit and include it in the appellate record to satisfy these obligations. *Turner v. Med. Univ. of S.C.*, 430 S.C. 569, 589 n.9, 846 S.E.2d 1, 12 n.9 (Ct. App. 2020).

As regards an objection to a specific jury instruction, the specificity requirement of issue preservation rules requires the appellant to state specific grounds for the objection – and any appeal is limited to the grounds argued to the trial court. *Wright v. Hiester Const. Co.*, 389 S.C. 504, 525, 698 S.E.2d 822, 833 (Ct. App. 2010); *see also* Rule 51, SCRCP ("No party may assign as error the giving … an instruction unless he objects…, stating distinctly the matter to which he objects and the grounds for his objection."); J.H. TOAL, A.W. WALKER & M.E. BAKER, APPELLATE PRACTICE IN SOUTH CAROLINA 202 (3d ed. 2016).

At the appellate level, issue preservation imposes additional requirements.

An appellant "is responsible for compiling an adequate record from which [the appellate] court can make an intelligent review." *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 404, 368 S.E.2d 687, 690 (Ct. App. 1988). As such, he must include any excluded evidence in the

record on appeal so the appellate court can determine whether its exclusion was erroneous and created prejudice. *Ellis v. Oliver*, 323 S.C. 121, 132, 473 S.E.2d 793, 799 (1996); *State v. Anderson*, 304 S.C. 551, 555-56, 406 S.E.2d 152, 154 (1991). However, a party shall not include in the appellate record any matter that was not presented to the trial court. Rule 210(c), SCACR. The appellate court cannot consider a fact that does not appear in the record on appeal. Rule 210(h), SCACR.

In addition, a party appealing a specific jury instruction must include the entire jury charge in the record on appeal to permit the appellate court to review the charge as a whole. *Beverly S.*, 395 S.C. at 402, 718 S.E.2d at 226; *see Bragg v. Hi-Ranger, Inc.*, 319 S.C. 531, 547, 462 S.E.2d 321, 330 (Ct. App. 1995) ("In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.").

2. Rulings on admission of evidence.

The Court should apply an abuse of discretion standard when reviewing a trial court's rulings on the admission of evidence.

> The admission of evidence is within the discretion of the [circuit] court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the [circuit] court either lack evidentiary support or are controlled by an error of law.

Berry v. Spang, 433 S.C. 1, 9, 855 S.E.2d 309, 314 (Ct. App. 2021), *quoting State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (citation omitted). This abuse of discretion standard applies to rulings on motions to strike testimony or evidence. *See, e.g., State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57-58 (2011).

Similarly, a trial judge's ruling on redactions to exhibits already admitted into evidence and published to the jury are subject to an abuse of discretion standard of review. *State v.*

Matthews, 296 S.C. 379, 390-91, 373 S.E.2d 587, 594 (1988); *see also Turner*, 430 S.C. at 589 n.9, 846 S.E.2d at 12 n.9.

"To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." *Vaught v. A.O. Hardee Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

3. Rulings on jury instructions.

Whether a trial court erred in providing a specific instruction to a jury is also governed by an abuse of discretion standard.

> This court will not reverse the decision of the trial court as to particular jury instructions absent an abuse of discretion. *Cole v. Raut*, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008); *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). A trial court abuses its discretion when the ruling is not supported by the evidence or is based on an error of law. *Clark*, 339 S.C. at 389, 529 S.E.2d at 539. However, an erroneous jury instruction is not reversible error unless it causes prejudice to the appealing party. *Raut*, 378 S.C. at 405, 663 S.E.2d at 33; *Ellison v. Simmons*, 238 S.C. 364, 372, 120 S.E.2d 209, 213 (1961).

Hughes v. Western Carolina Sewer Auth., 386 S.C. 641, 646, 689 S.E.2d 638, 641 (Ct. App. 2009).

ARGUMENT

1. Redaction of Plaintiff's Exhibit 3.

   a. The trial court's decision to redact versus the method of redaction.

As a threshold matter, it is important for the Court to understand that Dr. Billman has not appealed the trial court's ruling on Mr. Lovelace's smoking and alcohol consumption history and resulting decision to redact Plaintiff's Exhibit 3 – that is, *the fact of redaction* itself. Rather, his appeal is limited to challenging the manner in which the admitted exhibit was redacted – that is, *the method of redaction*.

Because Dr. Billman has not appealed the fact of redaction, the propriety of the trial court's ruling to exclude the redacted material in Plaintiff's Exhibit 3 is the law of the case. In other words, the redacted information was inadmissible. This Court's inquiry, therefore, is limited to whether the trial court abused its discretion and committed reversible error by submitting to the jury Plaintiff's Exhibit 3 as redacted rather than striking that exhibit and substituting a version redacted via another method.

b. Dr. Billman did not preserve for appellate review his argument on the method of redaction.

At trial, Dr. Billman did not raise a timely objection to Plaintiff's Exhibit 3. (R. pp. 24-25). In fact, Dr. Billman introduced his own version of that exhibit with identical redactions. (R. pp. 25, 178). Dr. Billman did not take issue with the redaction until after Mr. Lovelace had rested the Plaintiff's case and the Court had denied Dr. Billman's motion for directed verdict. (R. pp. 88-95). By failing to object earlier, Dr. Billman waived his right to appeal this issue.

In *McKissick v. J.F. Cleckley Co.*, 325 S.C. 327, 479 S.E.2d 67 (Ct. App. 1996), the defendant at trial (Cleckley) appealed a verdict in favor of the plaintiff arguing, among other things, that the trial court had erred in admitting into evidence a contract that included a set of construction specifications known as the "Red Book." This Court rejected Cleckley's argument, concluding it had failed to preserve the issue for appellate review, reasoning:

> To preserve an issue regarding the admissibility of evidence, a contemporaneous objection must be made. Failure to object when the evidence is offered constitutes a waiver of the right to have the issue considered on appeal.
>
> Moreover, a specific objection to the admission of evidence must be made to preserve the issue for appeal. The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge. The same ground argued on appeal must have been argued to the trial judge.
> . . .
>
> Nor did Cleckley object to the admission of the Red Book at the time it was offered. As a matter of fact, when McKissick's attorney asked his expert to read part of the contract between Cleckley and the Department into the record, Cleckley's attorney replied, "No

> objection at this time. We agree that part and parcels of the Red Book is [sic] part of the contract."
>
> Additionally, when McKissick actually moved to introduce the Red Book into evidence, the court inquired whether Cleckley's attorney had any objection. He responded, "Not at this time." Therefore, Cleckley cannot now complain about the admission of the Red Book into evidence.

McKissick, 325 S.C. at 343-44, 479 S.E.2d at 75-76 (citations omitted).

Similarly, Dr. Billman's failure to make a contemporaneous objection to the admission of Plaintiff's Exhibit 3 is fatal to his present appeal from the trial court's ruling submitting that exhibit to the jury. As is clear from the colloquy between Dr. Billman's attorneys and the trial court, Dr. Billman's untimely objection to the method of redacting the exhibit was the product of a mid-trial change in strategy or case of "buyer's remorse" resulting from concerns Dr. Billman's attorneys developed only after Mr. Lovelace had presented his case to the jury.

Moreover, because Dr. Billman failed to include his Motion for Judgment Notwithstanding Verdict/Motion for a New Trial in the appellate record, this Court cannot review the arguments Dr. Billman made regarding the redaction issue at that stage of the case except as noted in the Order denying that motion. That Order only states that Dr. Billman objected "to the method of redaction, which 'whited out' the answers to 'Pertinent FMH/SHX.'" (R. p. 4). This is inadequate to demonstrate that Dr. Billman provided sufficiently specific grounds to the trial court in support of his argument regarding the method of redaction and fails to show that he made to the trial court the same arguments he is now making in the present appeal.

Finally, Dr. Billman failed to proffer his version of the redacted exhibit into the trial record. (*See* R. pp. 88-96). It was not marked as a Court's Exhibit. (R. p. 23).[7] Therefore, even if he had

[7] Dr. Billman seeks to include in the Record on Appeal a document marked as "Exhibit 2, p. 0009 Billman," to his discovery deposition. (R. p. 226). Neither Dr. Billman's deposition nor any exhibit to that deposition was offered at trial and, therefore, cannot be included in this appellate record or considered by this Court. Rule 210(c), SCACR. Dr. Billman cannot now seek to include

preserved the issue for review in the trial court, Dr. Billman failed to preserve it for review by this Court.

c. The trial court did not abuse its discretion in refusing to substitute a version of Plaintiff's Exhibit 3 that was redacted in black.

As noted above, whether the redaction issue is considered one related to the admission of evidence or the denial of a motion to strike evidence,[8] the governing standard of review is abuse of discretion.

> An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.

State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). Stated differently, a reversal based on an abuse of discretion is only warranted "when the appellate court is in substantial or violent disagreement" with the trial court's discretionary ruling. *Rish v. Rish*, 296 S.C. 14, 15-16, 370 S.E.2d 102, 103 (Ct. App. 1988).

Certainly, the trial court did not abuse its discretion in allowing the jury to consider Plaintiff's Exhibit 3 – admitted without objection and which the jury had viewed and witnesses had discussed during the presentation of the plaintiff's case.

Dr. Billman's request to substitute a differently redacted version of Plaintiff's Exhibit 3 came after Mr. Lovelace had completed the presentation of his case and had rested. (R. pp. 88-

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an exhibit from his discovery deposition to overcome his failure to proffer a proposed exhibit at trial. The Court should strike that proposed document from the Record on Appeal or otherwise disregard it.

[8] While counsel for Dr. Billman did not characterize his mid-trial request as such, it was arguably a motion to strike Plaintiff's Exhibit 3 and replace it with a version that was redacted in black instead of white. (*See* R. pp. 90, 94-95).

91). Until that time, the parties had throughout the trial discussed with the jury Plaintiff's Exhibit 3, that used a "white out" method of redaction to which no party had objected. At that point, the trial court had three choices: (1) maintain the status quo, as to which Dr. Billman had previously consented; (2) strike that exhibit, replace it with one that emphasized the redaction (by highlighting it in black), and explain the substitution to the jury; or (3) leave Plaintiff's Exhibit 3 in evidence and add a differently redacted version which not only emphasized the redaction but invited the jury to compare the two and speculate about what Mr. Lovelace had whited out. The trial court did not abuse its discretion in choosing the first option.

This Court has not addressed the proper manner of redactions in a setting similar to the present case but has done so in another context. In *State v. Jackson*, 410 S.C. 584, 765 S.E.2d 841 (Ct. App. 2014), the Court reviewed whether a criminal defendant's rights were violated by introduction of a statement from his non-testifying co-defendant in which the appellant's name had been redacted and replaced with the generic term "another person." Under the governing standard set forth in *Bruton v. United States,* 391 U.S. 123, 126, 88 S.Ct. 1620, 1622, 20 L.Ed.2d 476, 479 (1968), this Court was required to analyze whether the redaction "adequately obscured" the appellant's identity. *State v. Jackson*, 410 S.C. at 592, 765 S.E.2d at 846.

In concluding that the redaction failed to meet the *Bruton* standard, the Court focused, in part, on the manner of redaction and criticized "clumsy substitutions [that] invite[d] the jury to speculate" about the omitted information. *Id*. at 599, 765 S.E.2d at 849. In so holding, the Court relied upon *Gray v. Maryland,* 523 U.S. 185, 193, 118 S.Ct. 1155-56, 1155, 140 L.Ed.2d 294, 301 (1998) for the proposition that an "obvious deletion may well call the jurors' attention specially to the removed name. By encouraging the jury to speculate about the reference, the redaction may

overemphasize the importance of the confession's accusation – once the jurors work out the reference."

It is therefore clear from *State v. Jackson* that, in redacting exhibits, a trial court should be careful not to employ a method of redaction that emphasizes the fact of redaction or encourages the jury to speculate about the material which was redacted. *Accord Reynolds v. State*, 2017 Tex. App. LEXIS 11064, *19 (Tex. App. 2017) (recognizing that visible redaction of exhibits could lead a jury to speculate that the party was attempting to conceal evidence).

Here, the trial court was apparently motivated by these proper considerations when it denied Dr. Billman's motion to substitute his "blacked out" redacted version of the exhibit:

> I think given we're using the white out redaction[,] having one thing that is blacked out makes it look different. It draws attention to it and it's my discretion. I will deny the request.

(R. p. 96). These would be legitimate concerns regardless of whether the trial court had substituted Dr. Billman's redacted version or submitted both redacted versions to the jury; either way, the jury would be tempted to speculate what had been removed from the exhibit.

The Tennessee Court of Criminal Appeals addressed the converse question regarding a "white out" redaction in *State v. Adkisson*, 2000 Tenn. Crim. App. LEXIS 540 (Tenn. Crim. App. 2000). There, the trial court admitted into evidence a police report from which it redacted the defendant's blood-alcohol level. As in the present case, the defendant did not object to the admission of the report or the fact of redaction; but, on appeal, he argued that the trial court's manner of redaction was erroneous. Specifically, he claimed that, by redacting the document using liquid paper the trial court drew "attention and suspicion." *Id*. at *10. The appellate court rejected his argument noting:

> [T]he redacted portion is not suspicious or even overly conspicuous. Rather than being in a line entitled "blood-alcohol level," the redacted portion appears just above the defendant's name. There is nothing to suggest that the redacted portion contains any

information relevant to the defendant's blood-alcohol level.

Id.[9] In other words, the court in *Adkisson* held that an inconspicuous redaction method which is unlikely to prompt speculation by the jury is preferable and within a trial court's discretion.

The redacted portion of Plaintiff's Exhibit 3 is similarly inconspicuous and unlikely to lead to jury speculation or "suspicion." The "whited out" portion is next to the abbreviation "FMH/ SHX." No witness defined these medical terms for the jury – in fact, even the trial judge did not know what the abbreviations represented. (R. pp. 91-92).[10] Thus, as the trial court correctly concluded (R. p. 4), there was no evidence to suggest the apparently blank portion was in any way relevant to Dr. Billman's review of Mr. Lovelace's past medical history (also see the discussion under heading d. below).

Here, the trial court did not abuse its discretion in refusing Dr. Billman's motion because the blank area created by the redaction did not suggest anything relevant to the matters at issue; moreover, it was preferable to highlighting the fact of redaction and inviting the jury to speculate improperly about what had been redacted.

d. Dr. Billman was not prejudiced by the trial court's refusal to highlight for the jury the redaction to Plaintiff's Exhibit 3.

Contrary to Dr. Billman's argument, the method of redaction for Plaintiff's Exhibit 3 does not suggest he failed to obtain a medical history of Mr. Lovelace or to complete "a full examination of the lesion on Mr. Lovelace's tongue." (Appellant's Br., p. 9).

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[9] The *Adkisson* court also noted as further support for its holding: "[W]hile the defendant objects to the manner of redaction at one point in the trial, it appears from the record that he later acquiesces and approves of the manner of redaction." *Id*. at *10. Similarly, Dr. Billman's acquiescence to the introduction of Plaintiff's Exhibit 3 as redacted in "white out" fashion should preclude his appeal regarding the manner of redaction. *See* Argument 2.c., *infra*.

[10] Even Dr. Billman's attorney seems to have been unsure at trial what the abbreviation meant, stating "SHX" represented "smoking history" rather than "social history." (R. p. 92). *See* n.11, *infra*.

Rather, Dr. Billman testified on multiple occasions that he reviews all patients' (including Mr. Lovelace's) past medical history. (R. pp. 120-121). Dr. Billman's expert witness, Dr. Lecholop, also testified Dr. Billman's "workup" on Mr. Lovelace included going "through his past medical history." (R. p. 119). Significantly, despite redactions, Plaintiff's Exhibit 3 contained a preprinted section that addressed Mr. Lovelace's pertinent "PMH" (past medical history)[11] that Dr. Billman completed as "none." (R. p. 215). In other words, Plaintiff's Exhibit 3 confirms Dr. Billman reviewed Mr. Lovelace's medical history, so the redacted portion could not have led the jury to speculate otherwise; the trial court's ruling did not "create the risk of misinterpretation of the remaining text of the document." (Appellant's Br., p. 10). Even if the jury somehow determined Plaintiff's Exhibit 3 had been redacted and then speculated about the redaction despite the trial court's instructions (see below), it could not have reached a factual conclusion unfavorable to Dr. Billman given that he clearly documented there was no pertinent past medical history.[12]

Furthermore, Dr. Billman and his expert were not prevented from discussing the "PMH" portion of the exhibit at trial. Although they discussed the fact Dr. Billman reviewed Mr. Lovelace's medical history, for some reason they chose not to address the "PMH" entry on Plaintiff's Exhibit 3. Dr. Billman's attorneys could have done so by asking, "Did Dr. Billman inquire about Mr. Lovelace's pertinent past medical history?" In response, Dr. Billman and/or his expert could have confirmed that he did and pointed to the undisputed "PMH" entry on the exhibit

[11] "PMH" is the generally accepted medical abbreviation for past (or prior) medical history. *See, e.g., Bright-Jacobs v. Barnhart,* 386 F. Supp. 2d 1295, 1303 (N.D. Ga. 2004); *Commonwealth v. Jerome,* 56 Mass. App. Ct. 726, 733, 780 N.E.2d 108, 115 (Mass. App. Ct. 2002). As Dr. Billman acknowledges, the abbreviation "FMH/SHX" (which precedes the redacted portion of Plaintiff's Exhibit 3) represents family history and social history. (Appellant's Br., p. 9).

[12] In addition, Dr. Billman's chart contains a "Health History" form on which Mr. Lovelace provided information as to numerous questions regarding his past medical history. (R. p. 175). This further shows the redaction in question could not lead a jury to believe Dr. Billman failed to obtain a past medical history from Mr. Lovelace.

that was admitted into evidence without objection. Indeed, if Dr. Billman were truly concerned that the jury may conclude he failed to address Mr. Lovelace's past medical history, he could have easily addressed that concern in this fashion.

On the other hand, as the trial court correctly noted (R. p. 4), Mr. Lovelace did not claim Dr. Billman failed to take or to document an adequate history. The only discussions in Mr. Lovelace's case on the topic of taking a medical history were in the testimony of his experts, Dr. Spalla and Dr. Fonseca. Dr. Spalla testified generally that the standard of care requires taking a history that includes "pertinent information about [the patient's] medical history" (R. p. 51) but he did not opine that Dr. Billman took an inadequate history of Mr. Lovelace. Similarly, Dr. Fonseca testified about the history Dr. Billman should have taken and documented to satisfy the standard of care, as well as his criticism of Dr. Billman's failure to document the size and appearance of Mr. Lovelace's lesion. (R. p. 64). However, neither related to smoking or drinking, nor would they have been documented next to "FMH/SHX" on Plaintiff's Exhibit 3. Additionally, contrary to Dr. Billman's current argument (Appellant's Br., pp. 9-10), Mr. Lovelace's attorney's argument to the jury was not that Dr. Billman was rushed and his examination was "incomplete and hurried." Rather, he argued Dr. Billman's office note was missing information about cancer as a possible diagnosis and about Mr. Lovelace's follow-up care. (R. pp. 157-158, 160-162, 163).

In short, Dr. Billman's claim of how the redaction of Plaintiff's Exhibit 3 allegedly prejudiced him at trial is nothing more than a "strawman" argument whereby he mischaracterizes Mr. Lovelace's evidence and arguments before attempting to knock them down.

Importantly, Dr. Billman also cannot show prejudice from the trial court's refusal to emphasize the fact of Plaintiff's Exhibit 3's redaction because, as he acknowledges (Appellant's Br., p. 11), the trial judge charged the jury that it should disregard the fact that any document may

have been redacted and should not speculate on what had been redacted. (R. p. 135). Dr. Billman did not object to this charge. One must assume the jury followed this instruction given the Court's inability to intrude into the privacy of the jury's deliberations in the absence of proof of juror misconduct, which is not alleged here. *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). In short, assuming (as one must) that the jury followed the trial court's charge on this issue, the fact of redaction would have made no difference; therefore, the Court cannot find prejudice from the trial court's refusal to highlight for the jury the fact Plaintiff's Exhibit 3 had been redacted.

2. Jury charge.

a. Dr. Billman did not preserve for appellate review his argument regarding the subject jury charge.

At trial, Dr. Billman did not express specific objections to the jury charge at issue. His original objection appeared to be that the proposed charge by Mr. Lovelace was "confusing"[13] and failed to distinguish between all attending physicians and just subsequent treating physicians. (R. pp. 104-105). However, once the trial court agreed to limit the charge to later treating doctors, Dr. Billman's attorneys noted their agreement and satisfaction with the modified charge. (R. pp. 106, 109). Dr. Billman's subsequent objection to the subject charge was only general in nature ("We take exception to that charge.") and failed to explain why he was then dissatisfied with the modified charge. (R. pp. 127-128). At the conclusion of the jury instructions, his only objection was by vague reference to a "prior objection," which is not specific enough to relate it to the charge at issue here. (R. p. 154).

[13] This alone is an inadequate objection. *See State v. Kerr*, 330 S.C. 132, 144, 498 S.E.2d 212, 218 (Ct. App. 1998) ("[A] confusing charge alone is insufficient to warrant reversal.").

Even considering all of Dr. Billman's attorneys' comments together, they fail to create a sufficient record of an objection in the trial court to permit appellate review. *See Bellamy v. Payne*, 304 S.C. 179, 182-83, 403 S.E.2d 326, 328 (Ct. App. 1991) (Rule 51, SCRCP, requires a party to object timely and to "support[] those objections with distinctly-stated grounds of objections"; without same, the objection is not preserved for appellate review). The cases cited with approval in *Bellamy* illustrate that merely asking a trial court for a different charge without explaining the reasons for the request sufficient to "bring into focus" the reason for the request/objection is not adequate to preserve the issue for appeal. *Id*. at 183-84, 403 S.E.2d at 328.

On appeal, Dr. Billman also failed to preserve this issue for appellate review. Simply put, he did not include the entire jury charge in the Record on Appeal and, as a result, this Court cannot entertain his appeal regarding the specific charge. See *Beverly S. v. Kayla R.*, 395 S.C. 399, 402, 718 S.E.2d 224, 226 (Ct. App. 2011) ("Beverly failed to present the issue on appeal by not including the entire jury charge in the Record on Appeal. An appellate court reviewing a jury charge for error must review the charge as a whole."); *see also State v. Vanderhorst*, 257 S.C. 114, 120, 184 S.E.2d 540, 542 (1971) (where the trial court's instructions are not in the record, the appellate court must presume the judge correctly charged the jury).[14]

b. <u>The jury charge was applicable to the issues and evidence and correctly stated the law.</u>

A trial judge must charge the current and correct law. *Welch v. Epstein,* 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000). A trial judge has the duty to give requested instructions if they correctly state the law and are applicable to the issues and the evidence in the case. *Fernanders v. Marks Constr. of S.C.*, 330 S.C. 470, 499 S.E.2d 509 (Ct. App. 1998).

[14] After Mr. Lovelace raised this issue in his Initial Brief, Dr. Billman filed a "Reply Designation of Matter" to include the remaining portions of the jury charge in an apparent effort to avoid this result. Mr. Lovelace defers to the Court on whether to consider this later-added material.

As the trial court found (R. pp. 4-5), the disputed jury charge is a correct statement of South Carolina law and has been for over fifty years.

In *Bessinger v. DeLoach*, 230 S.C. 1, 94 S.E.2d 3 (1956), the plaintiff brought a malpractice action against her dentist for allegedly burning her mouth while fitting her for dentures. The dentist asserted a defense based upon his claim that a physician who treated the plaintiff for the burns was negligent in his care and thereby aggravated the plaintiff's injuries. The Supreme Court reversed a directed verdict for the defendant and remanded for a new trial. Regarding the defense of the subsequent treating physician's alleged negligence, the court noted, "the following principle may come into play upon re-trial: 'The general rule is that if an injured person uses ordinary care in selecting a physician for treatment of his injury, the law regards the aggravation of the injury resulting from the negligent act of the physician as a part of the immediate and direct damages which naturally flow from the original injury.'" *Id.* at 4, 94 S.E.2d at 5 (citations omitted).

The appellate courts have since consistently applied this rule. For example, this Court applied it in *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (Ct. App. 1984), where the plaintiff sued her ophthalmologist who administered eyedrops that made her vision blurry and caused her to fall, breaking her hip. The doctor appealed a verdict in favor of the plaintiff arguing the trial court should have granted his post-trial motions regarding proximate cause of the plaintiff's injuries based upon the fact the plaintiff developed an infection as a result of her subsequent hip surgery, which the doctor claimed broke the chain of causation. The Court rejected the argument, citing *Bessinger* and noting: "It has been held in South Carolina that the negligence of an attending physician is reasonably foreseeable." *Graham*, 282 S.C. at 399, 321 S.E.2d at 44.

In *Payton v. Kearse,* 319 S.C. 188, 460 S.E.2d 220 (Ct. App. 1995), *rev'd on other grounds*, 329 S.C. 51, 495 S.E.2d 205 (1998), this Court approved a jury charge regarding the plaintiff's complications from a procedure she received as a result of injuries caused by defendant, reiterating:

> [E]ven if the injury were the result of negligence [by a subsequent treating physician], the intervening negligence of a third person will not excuse the original wrongdoer if such intervention ought to have been foreseen in the exercise of due care. *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). *The negligence of an attending physician is reasonably foreseeable*; thus, if an injured person uses ordinary care in selecting a physician for treatment of his injury, the law regards the aggravation of the injury resulting from the negligent act of the physician as part of the immediate and direct damages which naturally flow from the original injury. *Id.* Here, the treatment of Payton's original injury caused additional injuries. The trial court's instructions to the jury therefore were proper.

Payton v. Kearse, 319 S.C. at 211, 460 S.E.2d at 233-34 (emphasis added).

More recently, in *Fairchild v. S.C. Dept. of Transp.*, 398 S.C 90, 727 S.E.2d 407 (2012), the South Carolina Supreme Court affirmed this Court's holding that the trial court erred in refusing to charge the following:

> The intervening negligence of a third party will not excuse the original wrongdoer if such intervention ought to have been foreseen in the exercise of due care.
>
> *It is the law in South Carolina that the negligence of a treating doctor is reasonably foreseeable*. It is the general rule that if an injured person uses ordinary care in selecting a physician for treatment of his injury, the law regards the aggravation of the injury resulting from the negligent act of the doctor as part of the immediate and direct damages which naturally flow from the original injury.

Id. at 103, 727 S.E.2d at 413-14 (emphasis added). In reaching its holding, the Supreme Court noted that this was a correct statement of South Carolina law. *Id*. at 103, 727 S.E.2d at 414.

Indeed, it does not appear Dr. Billman disputes the validity of this legal principle. (*See* Appellant's Br., pp. 12-13). In addition, he does not argue Mr. Lovelace deviated from ordinary care in selecting his subsequent treating doctors – nor could he, inasmuch as Mr. Lovelace followed up with Dr. Renner's practice, where Dr. Billman advised him to return.

Instead, Dr. Billman argues the foreseeability principle "applies only when the defendant was the cause of the plaintiff's injuries and the defendant is arguing that a ***later*** treating physician aggravated the injury." (Appellant's Br., p. 13 (emphasis in original)).[15]

Here, however, Dr. Billman has not appealed the jury's finding that he was negligent and proximately caused Mr. Lovelace's injuries. That finding is now the law of the case. So, even if it were legally valid, the first premise of Dr. Billman's argument fails.

The second part of Dr. Billman's argument also fails. The charge by its terms referred to "[t]he negligence of a later treating doctor." (R. p. 142). The term "later" was added at the request of Dr. Billman's counsel. (R. p. 105). Most importantly, contrary to its argument in this appeal, Dr. Billman did argue at trial that Dr. Greiner, a doctor who treated Mr. Lovelace after Dr. Billman's treatment on May 13, 2015, had been negligent. (R. pp. 164-167). Among other things, in his closing argument, Dr. Billman's attorney stated:

- "I ask you to consider Doctor Greiner in November of 2015. This is huge. On November 11th Doctor Greiner sees Mr. Lovelace. … On November 18th, Doctor Greiner smooths the tooth. Doctor Greiner tells his partner, Doctor Renner, it looked ugly. It looked angry. You heard Doctor Renner say that. … [H]e answered the question truthfully, I think, when he was asked, did your partner Doctor Greiner do the right thing if he did not tell Mr. Lovelace to return and Doctor Renner said no. No." (R. p. 166).

- "Either Doctor Greiner told the patient to come back in after the tooth was smoothed, or Doctor Greiner did not tell the patient to come back in. If Doctor Greiner told the patient to come back in he didn't. If Doctor Greiner did not tell the patient to come back in after the tooth was smoothed you will remember every Doctor who testified said that would be negligent." (R. pp. 166-167).

- "Doctor Spalla referred to Doctor Greiner and Doctor Renner as being a very disappointing breach of the standard of care, lazy in their practice and they didn't take care of the patient." (R. pp. 166-167).

[15] Notably, Dr. Billman did not make this argument at trial, with the exception of asking the trial court to add the term "later" to the charge, a request which the court granted. Therefore, this argument is not preserved for appellate review. *See, e.g., Wright v. Hiester Const. Co.*, 389 S.C. 504, 525, 698 S.E.2d 822, 833 (Ct. App. 2010).

Lastly, Dr. Billman asserts the jury charge is contrary to the South Carolina Contribution Among Tortfeasors Act, S.C. CODE ANN. § 15-38-15(D) (1976, as amended), because it "effectively stripped Dr. Billman of his statutory right to assert that a nonparty tortfeasor contributed to or caused Plaintiff's injury." (Appellant's Br., p. 13). This argument fails for two reasons.

First, the charge does not prevent a defendant such as Dr. Billman from making an "empty chair defense" whereby he asserts the Plaintiff's damages were solely caused by a non-party. *See Smith v. Tiffany*, 419 S.C. 548, 557, 799 S.E.2d 479, 484 (2017). In any event, a defense based on the sole negligence of another only applies where the defendant is free from negligence and cannot apply where, as here, the defendant is found to be negligent. *See O'Neal v. Carolina Farm Supply of Johnston*, 279 S.C. 490, 494, 309 S.E.2d 776, 779 (Ct. App. 1983).

Second, a negligent defendant is not entitled to reduce his liability to the plaintiff based on the fact that a non-party may have also negligently contributed to the plaintiff's injury. In *Smith v. Tiffany*, the Supreme Court rejected the argument that the amendments to the Contribution Among Tortfeasors Act changed this longstanding rule. *Smith*, 419 S.C. at 557-59, 799 S.E.2d at 484-85.

c. Even if the charge was erroneous, it did not prejudice Dr. Billman.

When reviewing a specific jury charge for alleged error, the appellate court must consider the trial court's instructions as a whole in light of the evidence and issues presented at trial. *Daves v. Cleary*, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003). "This holistic approach to jury instructions is linked to the principle of appellate procedure that '[a]n error not shown to be prejudicial does not constitute grounds for reversal.'" *Ardis v. Sessions*, 383 S.C. 528, 532, 682

S.E.2d 249, 250 (2009), *quoting Brown v. Pearson*, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997).

For example, in *Thornton v. Spartan Mills,* 98 S.C. 262, 82 S.E. 414, 415 (1914), the Court found no prejudice where the trial judge charged an erroneous statement of the law but there was "no reasonable ground for supposing that the result would have been different." Instead, an appellant must specifically show how he was prejudiced by an erroneous jury charge because the appellate court cannot rely upon speculation or find prejudice "because of the potential to confuse the jury." *Cole v. Raut*, 378 S.C. 398, 405-06, 663 S.E.2d 30, 33-34 (2008).

Here, Dr. Billman does not specifically address any claimed prejudice as a result of the allegedly erroneous charge. It would be improper for this Court to speculate that, following a trial that took place over five days with eight witnesses and 27 exhibits, one sentence from a lengthy jury charge (much of which is omitted from the record) was the reason the jury found Dr. Billman liable.

In fact, Dr. Billman could not be prejudiced by the charge, even if it were erroneous. As noted above, the law of this case is that he negligently caused Mr. Lovelace's damages. As such, the fact that a non-party may have also been negligent could not relieve Dr. Billman from liability.

CONCLUSION

For the reasons set forth above, this Court should affirm the judgment of the Circuit Court.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the York County Court of Common Pleas
for the Sixteenth Judicial Circuit

Honorable William A. McKinnon, Presiding Judge

Appellate Case No. 2021-000907
C.A. Case No. 2019-CP-46-01736

Thomas Lovelace and Carol Lovelace, Respondents,

v.

The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD, Appellants.

CERTIFICATE

The undersigned certified that this Brief complies with Rule 211(b), SCACR.

/s/ Bert G. Utsey, III
Bert G. Utsey, III
Attorney for the Respondents

March 21, 2022