

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank Addy, Circuit Court Judge

Appellate Case No. 2019-000637

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SC Court of Appeals

Tony Young,.....Appellant,

v.

Greenwood County Detention Center and the Greenwood County Sheriff's Office, Defendants,

Of Which The Greenwood County Sheriff's Office is.....Respondent.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities..... ii

Statement of Issues on Appeal..... 1

Statement of the Case..... 2

Facts..... 3

Arguments

1. THE APPELLANT WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT
TO A FAIR TRIAL 5

2. THE TRIAL COURT SHOULD HAVE GRANTED A NEW TRIAL 11

3. THE TRIAL COURT ERRED IN DENYING THE APPELLANT’S MOTION
FOR A NEW TRIAL UNDER THE THIRTEENTH JUROR DOCTRINE 17

4. THE TRIAL COURT ERRED IN ALLOWING THE JURY TO HEAR
DEBORAH KNOWLES TESTIMONY..... 18

5. THE COURT’S COMPARATIVE NEGLIGENCE INSTRUCTION
AMOUNTS TO REVERSIBLE ERROR 19

Conclusion 20

TABLE OF AUTHORITIES

CASES

Caldwell v. K-mart Corp., 306 S.C. 27 (1991).....9

Cole v. S.C.E.&G., 355 S.C. 183, 195 (S.C. App. 2003).....19

Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491
S.E.2d 571 (1997).....12

Fairchild v. SCDOT, 398 S.C. 90 (2012).....9

Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990).....17

Gantt v. Columbia Coca-Cola Bottling Co., 193 SC 51, 7 SE (2d) 641 (1940).....6

Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998).....12

Hollins v. Richland County School Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654,
656
(1993).....9

Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (S.C. 2003).....9

Madison v. Babcock Ctr., Inc., 638 S.E.2d 650 (S.C. 2006)9

Norton v. Norfolk Southern Ry. Co., 567 SE 2d 851 (2002) 17

Ross v. Paddy, 340 S.C. 428, 436 (S.C. App. 2000)19

Sentry Select Insurance Co. v. Maybank Law Firm LLC et al., No. 27806
(S.C. May 30, 2018)11

Snakenburg v. Hartford Casualty Ins. Co., Inc., 2992 S.C. 164, 383 S.E.2d 2 (1989).....11

Sorin Equipment Co., Inc. v. The Firm, Inc., 323 S.C. 359, 474 S.E.2d 819 (Ct.App.1996).....17

South Carolina State Highway Dep't v. Townsend, 265 S.C. 253, 217 S.E.2d 778 (1975).....17

Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373,
520 S.E.2d 142 (1999).....9, 12

Turner v. Wilson, 86 S.E.2d 876 (1955).....6

<i>Vinson v. Hartley</i> , 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996)	11
<i>Welch v. Epstein</i> , 536 S.E. 2d 408 (2000)	12
<i>Youmans v. Dept. of Transp.</i> , 670 S.E.2d 1, 380 S.C. 263 (S.C. App., 2008).....	19

OTHER AUTHORITIES

Rule 403, <i>SCRE</i>	6
Rule 609, <i>SCRE</i>	6
U.S. Const. Amd VII.....	5, 11

STATEMENT OF ISSUES ON APPEAL

1. WAS THE APPELLANT DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL?
2. DID THE TRIAL COURT ERR IN DENIAL OF THE APPELLANT'S MOTION FOR A NEW TRIAL?
3. DID THE TRIAL COURT ERR IN DENIAL OF THE APPELLANT'S MOTION FOR A NEW TRIAL UNDER THE THIRTEENTH JUROR DOCTRINE?
4. DID THE TRIAL COURT ERR IN ALLOWING THE JURY TO HEAR DEBORAH KNOWLES' DEPOSITION TESTIMONY?
5. DID THE TRIAL COURT ERR IN INSTRUCTING THE JURY ON COMPARATIVE NEGLIGENCE WHERE THE RESPONDENT PUT UP NO EVIDENCE OF COMPARATIVE NEGLIGENCE?

STATEMENT OF THE CASE

This is an appeal of a verdict returned by a jury in the Greenwood County Court of Common Pleas in a Tort Claims Act case. The case was tried for four days. After four hours of deliberation, the jury returned a defense verdict. The appellant timely filed post-trial motions, which were denied by the trial court. The appellant then timely appealed the trial court's order.

FACTS

On August 10, 2011, the appellant was involved in an automobile collision. The appellant sustained serious injuries in the collision, including several broken bones. The appellant was transported to Greenville Memorial Hospital, where medical providers prescribed him pain medication and a C-spine collar to wear, and he was discharged to “home.” On August 16, 2011, the appellant was charged with Felony Driving Under the Influence in connection with the collision. The appellant was then taken from the hospital to the Greenwood County Detention Center. Upon his arrival at the Detention Center, the appellant was stripped of his medication and C-spine collar.

The appellant filed suit in the Greenwood County Court of Common Pleas on July 10, 2013. The case was tried from September 24, 2018 to September 27, 2018. The appellant presented uncontroverted evidence that the Sheriff’s Office¹ violated its own policies and procedures with regard to its medical screening of the appellant at booking. The appellant moved for a directed at the close of his case and again at the close of trial. Following the trial, the appellant timely filed post-trial motions, including a motion for a new trial.

At trial, the jury heard uncontested evidence that the Sheriff’s Office failed to comply with the Minimum Standards for detention facilities in South Carolina and violated its own internal policies and procedures, which required the Sheriff’s Office to have a physician clear Tony Young for detention. The jury also heard uncontested evidence that the Sheriff’s Office failed to document Tony’s injuries upon booking and refused to give him medication prescribed to him by a physician. However, Tony was prevented from fully developing these issues due to various evidentiary rulings, and the jury’s deliberations were compromised due to instructions communicated to the

¹ The respondent is referred to at various points in the brief as “the Sheriff’s Office.” The Sheriff’s Office operates the detention center where the events related to the action occurred.

jury which, among other things, essentially instructed the jury to disregard relevant and material evidence. The jury's ability to consider relevant and material evidence was compromised in a way that deprived the appellant of a fair trial. Without improper limitations on the presentation of evidence, a reasonable jury, hearing so much uncontested evidence of gross negligence, could have only returned a verdict for the appellant.

ARGUMENTS

1. The appellant was deprived of his constitutional right to a fair trial.

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...” U.S. Const. Amd VII. The United States Constitution entitled Tony to a fair trial by a jury of his peers. He was deprived of that right in the following ways.

First, the Court informed the jury of the reason for the appellant’s arrest, even though that charged offense was not relevant to the issue of whether the Sheriff’s Office was grossly negligent in its treatment of Tony. During *voir dire*, the Court disclosed to the potential jurors the reason for Tony’s detention. The Court first told potential jurors that the appellant was involved in a collision and taken into custody as a result (R. p. 65). The Court then questioned whether any member of the jury panel or a close family member had ever been arrested for or convicted of felony driving under the influence and whether any member of the jury panel or a close family member has “been a victim of a drunk driver” (R. pp. 71-72). Because the Court made these statements during *voir dire*, the appellant had no opportunity to raise objections.

The prejudice that these comments caused to Tony and his case was underscored by the Court’s interaction with one potential juror. The Court told the potential juror, “[t]he appellant basically was ultimately convicted of felony DUI” (R. p. 73). When the Court asked the potential juror if she could be impartial, she responded truthfully that she was not certain she could be (*Ibid.* 73).²

The appellant submitted a motion *in limine* to bar discussion of all prior arrests, including the reason for Tony’s arrest at the time of the events giving rise to this cause of action (R. p. 88).

² The juror was excused.

Since the statements to the jury about the arrest were made before motions *in limine* were heard, the jury was poisoned before the Court ruled on the matter. The appellant made several arguments that under Rules 609 and 403 of Evidence, the Felony DUI conviction should not come into evidence (R. p. 91). The appellant later stipulated that the appellant pled guilty to Felony DUI. The appellant had little choice in the matter, however, because the Court had already informed all potential jurors during *voir dire*. The court acknowledged that, in hindsight, it may have been better to “sh[y] away” from discussing the DUI and another party’s injuries during *voir dire* (R. p. 92). Additionally, the Sheriff’s Office informed the jury that another party was injured during the collision (R. p. 653), even though the appellant had argued to the Court that such information served “no other purpose but to inflame the jury” (R. p. 91)

Second, the Court prevented the appellant from introducing evidence in support of his claims for gross negligence. The appellant proffered evidence from Lonnie Smith about other similar occurrences in which the detention center failed to provide inmates with appropriate medical care (R. pp. 399-401). Counsel for the appellant submitted case law to the Court in support of the relevance of the testimony (R. p. 405). See *Turner v. Wilson*, 86 S.E.2d 876 and *Gantt v. Columbia Coca-Cola Bottling Co.*, 193 SC 51, 7 SE (2d) 641 (1940). Despite this supporting case law, the Court ruled that the testimony was irrelevant (R. p. 353). The jury should have been able to hear and weigh the evidence because Tony was required to show gross negligence, and prior similar occurrences show a likelihood of deprivations to occur in the future.

The Court also prevented the appellant from introducing evidence that the Sheriff’s Office’s failure to give Tony medication prescribed by a physician was grossly negligent. During a hearing on Knowles’ deposition testimony, the Court stated, “[t]hey weren’t depriving him of medication that he needed, period. End of story. They were depriving him of narcotics, which he

can't have in the jail" (R. p. 616). In making this ruling, the Court essentially weighed the evidence for the jury and usurped the jury's power to determine whether it was grossly negligent for the respondent to deny the appellant prescribed medication. Since the policy requiring physician clearance was violated, a jury should have also been able to decide whether refusal to provide prescribed medication to a person with a broken neck, broken back, and shattered teeth constituted gross negligence.

Third, the Court made statements in the presence of the jury that skewed the jury and deprived Tony of his right to a fair trial. Multiple witnesses confirmed that the Sheriff's Office violated the Minimum Standards because those witnesses confirmed that the Sheriff's Office failed to obtain the required physician clearance for Tony's detention upon his arrival at the detention center. Counsel sought to draw attention to this testimony, which is uncontested evidence of gross negligence. As part of the effort to do so, Tony's counsel suggested to Lonnie Smith that Tony should not have been admitted to the detention center without being cleared by a physician, as the Minimum Standards and the Sheriff's Office's own internal policies and procedures require. The Court intervened and made the following statement in the presence of the jury:

We've been down this road before, okay? We've been down the road before. I think you're pumping a dry well here. He was released from the hospital in Greenville. It's what I said [in a side bar away from the jury] earlier this morning. He cannot be boomeranged back between doctors. We need to move on from this of questioning and focus on what your complaint is, and that is the six days without the neck brace, okay? So go . . . (R p. 376).

By commenting about important evidence in the presence of the jury, the Court again weighed the evidence for the jury and made it impossible for the finders of fact to objectively analyze the evidence. Additionally, the conclusion the Court drew for the jury was directly in conflict with the plain wording of the policies and procedures, as well as testimony from numerous witnesses confirming the policy and the requirement to comply with it. The jury should have been

allowed to hear and consider this evidence, and the fact that the Sheriff's Office failed to do the minimum required of it in screening a seriously injured person leaves only one reasonable conclusion: that the Sheriff's Office acted in a grossly negligent manner. The Court's comment endorsed the Sheriff's Office's admitted violation of the Minimum Standards and deprived jurors of the ability to come to the only conclusion that unbiased and fair-minded jurors could: that the refusal to do the *minimum* required by this State and the Sheriff's Office's own policies and procedures constitutes gross negligence.

This was not the only instance in which the Court intervened. When Tony's counsel asked Lonnie Smith whether he had made any effort to gather footage of Tony in the booking area pursuant to a subpoena that Tony's counsel had sent, the Court interrupted the examination of the witness. Without defense counsel making an objection, the Court stated, "All right. Sustained." After defense counsel thanked the Court, the Court continued, "[t]his suit was filed years later, okay? The tapes get written over. Let's focus on what is truly an issue here and stop chasing rabbits, please, okay?" (R. p. 384). The Court also commented on the Sheriff's Office's failure to provide subpoenaed footage during Sharon Middleton's testimony. The Court essentially stated, in the presence of the jury, that Tony's delay in filing excused the Sheriff's Office's failure to produce the footage (R. pp. 437-440). The Court's statements in the presence of the jury deprived the jury of the ability to weigh the importance of the Sheriff's Office's spoliation of subpoenaed evidence that would show Tony at the time of booking and directly address one of the primary issues in the case. By commenting on the evidence and strongly implying that the Sheriff's Office's failure to bring important and subpoenaed evidence to trial was meaningless, the Court deprived Tony of his right to a fair trial.

Similarly, the Court intervened during appellant counsel's examination of Sharon Middleton. Counsel asked Middleton whether anyone from the Sheriff's Office contacted the on-call physician when Tony arrived at the detention center, in light of the clear and undisputed requirement that a doctor clear Tony prior to his admission into the jail (R. pp. 447-450). Middleton began to answer the question, stating, "I don't have any evidence that a doctor---," before counsel for the Sheriff's Office objected. The Court then stated, in the presence of the jury, "[l]et's move along, please. I think we've covered this ground several, several times. So ask her a different question involving a different issue, please" (R. p. 450). The central issue in this case was whether the Sheriff's Office was grossly negligent by, among other things, failing to comply with the Minimum Standards and the internal policies and procedures of the jail.

It is hard to argue that failure to do the *minimum* amount required is not the same as failure to exercise slight care, and gross negligence is defined as the failure to exercise slight care. *Steinke v. SC Dept. of Labor, Licensing*, 520 S.E.2d 142 (1999). It "is a relative term, and means the absence of care that is necessary under the circumstances." *Hollins v. Richland County School Dist. One*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993). Further, it is well-established in South Carolina that causative violations of the law and internal policies and procedures are relevant evidence of negligence and gross negligence. *See Fairchild v. SCDOT*, 398 S.C. 90 (2012) (violations of laws negligence per se); *Caldwell v. K-mart Corp.*, 306 S.C. 27 (1991) (evidence of violations of internal policies admissible as to whether standard of care breached); *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (S.C. 2003) (gross negligence verdict for the Plaintiff supported by, among other evidence, that the conduct "was contrary to County's established detention center policies."); *Madison v. Babcock Ctr., Inc.*, 638 S.E.2d 650 (S.C. 2006).

The Sheriff's Office's violations of the Minimum Standards are directly relevant to the central issues in the case and critical to an analysis of whether the Sheriff's Office was grossly negligent. The Sheriff's Office's failure to call a physician, even when one was on-call, clearly and undisputedly violated the Minimum Standards and internal policies and procedures. This is the very definition of failure to exercise "slight care." The Court not only stopped the witness from fully answering the question on this matter, but also contemporaneously told the jury that the information was unimportant. However, even though the Court intervened on this issue, Middleton did testify that she was not aware of any evidence that staff contacted a physician before removing Tony's neck brace (R. p. 450).

The Court also made comments in the jury's presence about how the appellant arrived at the detention center. The Court informed the jury, "[w]e know that somebody called the Highway Patrol to come and bring him from the hospital" (R. p. 556). Not only was this fact never established through testimony or other evidence, but Tony's discharge papers clearly state that he was "discharged to home." If Tony's treating physicians believed that the appellant was going home, then they would have given him prescriptions and instructions accordingly. By representing that the hospital called for Tony to be picked up by law enforcement or that law enforcement called the hospital, the Court injected information into the record that was not in evidence and prevented the jury from considering whether this additional failure to comply with the Minimum Standards caused the appellant unnecessary pain and suffering.

Fourth, the Court erred in charging the jury on comparative negligence (R. p. 622). In the context of this case, and with the evidence presented at trial, this instruction was confusing, as it was impossible for the appellant to be comparatively negligent. Uncontested testimony was given that the Sheriff's Office deprived the appellant of his neck brace, that this deprivation caused the

appellant pain, and that the Sheriff's Office refused to comply with the policy that required a physician's clearance. Even if the evidence had been contested, it would have been impossible for Tony to influence whether the Sheriff's Office complied with the Minimum Standards and its policies and procedures.

Finally, the appellant's closing argument was hampered by the objections that the Court improperly sustained. During his closing argument, Tony's counsel stated, "[w]hat you do is directly going to impact what the sheriff's office is allowed to do in the future in all those different areas" (R. p. 637). The Court sustained the objection, but the argument is entirely proper and tracks well-established South Carolina law. *See Snakenburg v. Hartford Casualty Ins. Co., Inc.*, 2992 S.C. 164, 383 S.E.2d 2 (1989) ("A basic purpose of the common law is to preserve the community's security and liberty by enforcing a reciprocal system of rights and duties among its members."); *Sentry Select Insurance Co. v. Maybank Law Firm LLC et al.*, No. 27806 (S.C. May 30, 2018) ("The deterrent purpose of tort law is also served by our decision. One reason for making a defendant liable in tort for injuries resulting from a breach of his duty is to prevent such injuries from occurring. Underlying this justification is the assumption that potential wrongdoers will avoid wrongful behavior if the benefits of that behavior are outweighed by the costs imposed by the payment of damages..."). Tony's counsel should have been able to make the arguments at issue to the jury.³ This, too, worked to deprive the appellant of his right to a jury trial guaranteed by the South Carolina Constitution and is reversible error.

2. The Trial Court should have granted a new trial.

"The trial judge must grant a new trial absolute if the amount of the verdict is grossly

³ Counsel for the Sheriff's Office objected six times during Tony's closing argument. Four times, the Court limited counsel's ability to argue the deterrent effect of a verdict by either sustaining objections or commenting on the closing.

inadequate...” *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996). In this case, the verdict is not supported by the evidence presented at trial, so the appellant is entitled to a new trial. Defense witnesses admitted throughout trial that the Sheriff’s Office violated the Minimum Standards and its policies related to injured persons, and the defense presented no evidence to rebut this fact. As a result, there was no genuine issue of material fact. Because no reasonable juror could have returned a defense verdict had Tony gotten a fair trial⁴, the Court should have granted a directed verdict in the appellant’s favor.

If there is no evidence to support the trial court’s ruling, then the Court of Appeals may reverse the trial court. *Creech v. South Carolina Wildlife and Marine Resources Dep’t*, 328 S.C. 24, 491 S.E.2d 571 (1997). See also *Welch v. Epstein*, 536 S.E. 2d 408 (2000). See also *Steinke v. South Carolina Dep’t of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999); *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998). At trial, the appellant offered uncontroverted evidence of the Sheriff’s Office’s violations of the Minimum Standards and, as a result, gross negligence. Since a reasonable jury could have only returned a verdict for Tony if he had been given a fair trial, the Court should have awarded JNOV. The result reached by the jury could only be the result of the Court’s influence on the jury through improper comment and improperly sustained objections, as set out above.

The jury heard ample and uncontested evidence that the respondent violated its own policies and procedures. Tony testified extensively about his injuries, his physical state at the time of booking, and the booking process. At the time that he arrived at the detention center, Tony had sustained serious injuries, including broken teeth and multiple fractures in each of the following: pelvis, neck, and back (R. p. 526). Tony testified that the Sheriff’s Office took his prescribed neck

⁴ The appellant believes the verdict was a result of the Court’s comments, and that if the jury had not been tainted by the Court’s comments, the evidence could only lead the jury to a verdict for the plaintiff.

collar, and that the pain in his neck increased as a result (R. p. 529). After taking Tony's neck brace, the Sheriff's Office forced Tony to stand in a shower with a walker and a casted arm (R. pp. 528-529). Tony's daughter, Samantha Porter, verified that he did not have his neck brace when she visited him at the detention center (R. p. 486). This testimony was not rebutted by any credible evidence (R. pp. 506-507).⁵ Porter also testified about Tony's physical condition when he arrived at the detention center, stating that he had a cast on his arm, required the assistance of a walker, and was covered in road rash (R. p. 487).

Tony testified that the Sheriff's Office failed to call a doctor to examine him before booking, that the Sheriff's Office took his neck brace, and that the Sheriff's Office kept his neck brace from him for six days, until he first saw a doctor at the detention center (R. pp. 537-538, 531). Tony testified that the Sheriff's Office was in custody and control of his prescribed medication, which the Sheriff's Office did not return to him upon his release from the detention center (R. p. 539). The defense offered no evidence to rebut this fact and, indeed, could not, as the medication was listed as part of Tony's belongings at the time of booking and was not included in the belongings returned to him at his release. Presumably, this means that the Sheriff's Office lost, destroyed, or kept the medication that a doctor deemed necessary for Tony's condition. Tony testified that he was in pain throughout his detention and attempted to get medical treatment, as reflected in Sick Call forms he submitted, which contained the phrase, "I hate to keep bugging yall" (R. p. 548).

Tony also testified about false documents generated by the Sheriff's Office. Tony arrived

⁵ Deborah Knowles testified in her deposition that Young had his collar on at the bond hearing, but her testimony should have been excluded (R. p. 520). Knowles was taking medication for seizures and fluid on her brain at the time of her deposition. Her testimony was flawed in many demonstrable ways, including testimony that Young was wearing the brace in his mugshot, which the mugshot itself proves wrong, and testimony that Young's cast was on his right hand, when it was actually on his left hand.

at booking with extensive injuries, missing teeth from the wreck, a cast, and a walker. Nevertheless, the Sheriff's Office noted that Tony had no observable medical issues, that his mobility was not restricted in any way, and that he did not have any painful dental conditions. The Sheriff's Office ignored Tony's injuries, despite the fact that he arrived with multiple broken bones, wore a cast and neck brace, required the use of a walker, and had his front teeth freshly knocked out (R. pp. 535-536). This error was proven by the Sheriff's Office's own documents and is consistent with the documents related to Tony's booking being a complete mess, riddled with errors and falsehoods. The records even described Tony, who is clearly Caucasian, as a black male (R. p. 604).

Gene Powell verified that Tony's injuries were incorrectly documented on a detention form document (R. p. 209). When an inmate arrives at the detention center, employees are required to mark whether an inmate has any injuries, casts, or deformities. On Tony's form, the Sheriff's Office noted *no* injuries, casts, or deformities, despite the fact that the appellant had multiple broken bones, his arm was in a cast, and his neck was in a brace. It is little wonder why Tony did not receive appropriate treatment, seeing as the Sheriff's Office refused to acknowledge or record his serious injuries.

The jury heard testimony from Katie Gilmore, an employee of the Sheriff's Office, that the Minimum Standards in South Carolina require detention centers to have a physician examine an inmate who arrives at the detention center "severely injured" (R. p. 220). The witness went on to differentiate between a nurse and a "doctor" or "an MD" (R. p. 220). Gilmore further testified that an inmate must "be in good physical health" in order to be admitted to a detention center (R. p. 229). According to Gilmore, if an inmate is visibly injured upon arrival, then the "officer present will refuse the subject until the committing officer takes the subject to the hospital" (R. p. 230).

When asked if there were any exceptions to these Minimum Standards, the witness could not offer any (R. p. 248).

The jury heard testimony from Sherry Bouknight, a detention center nurse, that Tony's hospital records indicated that he was "discharged to home" (R. p. 261). Bouknight further testified that the Sheriff's Office did not allow him to have medication prescribed to him by his treating physician, even though the Sheriff's Office ignored its duty to have Tony examined by a physician (R. p. 262). Bouknight confirmed that Tony had multiple bone fractures at the time that the Sheriff's Office denied him prescribed medication and forced him to remain at the detention center without physician's clearance (R. p. 263). Bouknight testified that Tony's injuries would have caused him to be in pain at the time that the Sheriff's Office deprived him of his prescribed pain medication (R. p. 263). Bouknight also verified that Tony's family expressed concern because the Sheriff's Office refused to give Tony his medication (R. p. 271).

The jury heard testimony from Beverly Weaver, a detention center employee, who was present when Tony arrived. Weaver testified that she was trained on the Minimum Standards and that she was aware of the requirement that injured inmates be cleared by a physician before they be housed (R. p. 343). Weaver further testified that she saw Tony's injuries and recorded his mobility as unrestricted, even though he had a broken neck, several other broken bones, a neck brace, and an arm cast (R. pp. 351-352).

The jury also heard from Lonnie Smith, who was on duty at the detention center when Tony arrived. Smith admitted that Tony was "pretty beat up" and visibly injured upon his arrival (R. p. 367). He also admitted that he could not explain why Tony's hospital records showed that he was released to "home." (R. p. 370). Smith acknowledged that doctors prescribed the appellant Lortab, which the detention center did not allow him to take, and that hospital staff recorded that

he was going to leave the hospital with a “friend,” even though he was collected and transported by a state trooper. (R. pp. 370-371). This evidence establishes that doctors at the hospital did not clear Tony for transport to the detention center before the Sheriff’s Office refused to have a physician evaluate him.

Smith could not explain why the appellant’s neck brace was documented on one date and not documented again for seven days (R. pp. 390-391). Smith testified, “I have no evidence when [Tony’s neck brace] was returned,” and admitted that it would constitute a violation of the policy to keep the appellant’s neck brace from him for six days (R. p. 383). Smith’s testimony supported Tony’s assertions that his injuries were incorrectly documented upon his arrival (R. p. 393). Michael Holtzclaw, the deputy who fingerprinted Tony, similarly admitted that Tony’s neck brace should not have been kept from him because such a deprivation was not safe (R. pp. 596-597).

Sharon Middleton, the assistant jail administrator at the time, admitted that Tony had significant injuries when he arrived at the detention center, was covered in road rash, moved slower than normal, and was wearing a neck brace (R. pp. 420-421). She noted the importance of giving inmates with spinal injuries special attention, especially because detention center employees are not always aware of the extent of an inmate’s injuries when he arrives (R. pp. 421-422). Middleton also verified that it would be a violation of policy to deprive an inmate of a neck brace for six days (R. p. 425). However, she confirmed that the Sheriff’s Office could *not* verify how long it deprived Tony of his neck brace. When asked directly, “[do] you know of anybody that can say how long that neck brace was gone for?” Middleton responded “[n]ot at this time” (R. p. 427). When asked whether she knew of anyone with knowledge of how long the deprivation lasted, Middleton responded “I do not” (R. p. 427). Middleton could not point to a document showing Tony’s neck brace was ever given back to him and acknowledged that progress notes showed the brace missing

for six days (R. pp. 427, 432).

Finally, Middleton was questioned about General Order 2.5, which requires the detention center to provide paperwork to the respondent showing he is fit to be incarcerated (R. pp. 443-445). When asked whether the Sheriff's Office complied with General Order 2.5, Middleton responded by saying "...it would not have been necessary to send him out to be re-evaluated..." (R. p. 445). In addition to being unresponsive, this answer conclusively establishes the Sheriff's Office's willful violation of yet another rule. Middleton then, after Court intervention, admitted that the Sheriff's Office failed to have a physician examine Tony upon arrival at the detention center (as required by the Minimum Standards) (R. p. 448).

The jury heard substantial uncontested evidence that the Sheriff's Office: 1) failed to get physician's clearance as required by the Minimum Standards, 2) refused to even contact the physician on call at the time, 3) filled out documents incorrectly, 4) withheld prescribed medication, and 5) failed to provide documentation of physician clearance as required by General Order 2.5. This uncontested evidence conclusively establishes that the Sheriff's Office failed to exercise "even slight care" in its treatment of Tony Young. No reasonable juror could have ignored this evidence and found for the Sheriff's Office without improper Court intervention. As a result, the appellant requests that this Court enter judgment in his favor notwithstanding the verdict.

3. The Trial Court erred in denying the appellant's motion for a new trial under the Thirteenth Juror Doctrine.

"South Carolina's thirteenth juror doctrine is well established as the standard for granting a new trial in state law actions." *Norton v. Norfolk Southern Ry. Co.*, 567 SE 2d 851 (S.C. 2002). See also *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990); *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct.App.1996). The thirteenth juror doctrine allows the

trial judge to sit as the thirteenth juror when he finds “the evidence does not justify the verdict,” and then to grant a new trial based solely “upon the facts.” *Id.* at 254, 387 S.E.2d at 267 (citing *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)).

For the reasons articulated in the appellant’s argument for judgment notwithstanding the verdict, the appellant respectfully asserts that the Trial Court erred in denying his motion for a new trial under the thirteenth juror doctrine. Because no reasonable juror could have found for the respondent if the evidence had been presented without improper comment, the trial judge, sitting as the thirteenth juror, could not have found for the Sheriff’s Office. The evidence in this case does not justify the verdict, so the appellant is entitled to a new trial based solely upon the facts.

4. The Trial Court erred in allowing the jury to hear Deborah Knowles’ deposition testimony.

Debra Knowles, Tony’s former spouse, was deposed prior to trial. Knowles, who was in poor health in the last years of her life, died before trial. Tony’s counsel moved *in limine* to exclude Knowles’ deposition testimony from being introduced at trial. Tony’s counsel argued that the deposition testimony would be confusing to the jury, as Knowles was taking medication for several health ailments – including seizures and fluid on her brain – at the time that she was deposed (R. pp. 97-98). The transcript of Knowles’ deposition contained information about Knowles’ health problems and medications (R. pp. 513-514).

During her deposition, Knowles’ testimony indicated that her memory was unreliable. She testified that Tony had several broken bones at the time that he arrived at the detention center and was supposed to wear his neck brace (R. p. 520). However, she also testified that Tony had the collar on in his mug shot, even though it is clear from the photograph introduced at trial that Tony was not wearing the collar (R. p. 520). Additionally, Knowles was unable to accurately recall which of Tony’s arms was casted when he arrived at the detention center (R. p. 519).

During trial, Knowles' daughter, Samantha Porter, testified that Knowles suffered from seizures, took medication for seizures and fluid on her brain, and struggled with cognitive issues during the last few years of her life, including when her deposition was taken (R. pp. 488-498). However, even with Porter's testimony, Knowles' deposition testimony was still confusing to the jury. Because Knowles was deceased, she was not available for the jury's observation. As a result, the jury was unable to evaluate Knowles' cognitive functioning and reliability. The Court should have excluded Knowles' deposition testimony from trial.

5. The Court's Comparative Negligence Instruction Amounts to Reversible Error.

The Sheriff's Office had the burden of proving the affirmative defense of comparative negligence but failed to present any evidence that Tony was comparatively negligent or that comparative negligence proximately caused any of the harm. *Youmans v. Dept. of Transp.*, 670 S.E.2d 1, 380 S.C. 263 (S.C. App., 2008) ("Comparative negligence is an affirmative defense."); *Cole v. S.C.E.&G.*, 355 S.C. 183, 195 (S.C. App. 2003) ("The trial court committed reversible error by not placing the burden of proving the affirmative defense of assumption of risk with SCE & G in its jury charge."). Further, it is reversible error to charge the jury on comparative negligence without also charging the jury that the defendant bears the burden of proof on the affirmative defense. *Ross v. Paddy*, 340 S.C. 428, 436 (S.C. App. 2000). ("Because we conclude comparative negligence is an affirmative defense, the trial court erred in not charging the jury that Paddy had the burden of proving Ross' negligence."). Accordingly, the charge should not have been given at all, and even if the evidence justified giving the charge, the charge's omission of the burden of proof was reversible error.

Tony's counsel addressed the problem with the Court, and stated "Judge, the way we see it, the proof has come out at trial, doesn't really constitute any evidence of comparative negligence

because...it could be misleading to the jury...” (R. p. 617). Counsel went on to state “...if we charge the jury on comparative negligence, we’d be charging on something that there weren’t facts in the record to support it and it may be misleading to the jury.” (R. p. 617).

The Court never specifically instructed the jury that comparative negligence is an affirmative defense and that the defendant had the burden of proof. The Court instead charged the jury “Defendant must prove by a preponderance...of evidence that the plaintiff breached a duty of care which proximately caused the plaintiff’s injuries...” (R. p. 694). The Court then instructed the jury that “The same law that I’ve instructed you on that you will use in deciding whether the defendant was grossly negligent should be used in deciding whether the plaintiff was negligent” (R. p. 694). This was confusing because the instructions referred to by the Court stated that the plaintiff had the burden of proof (R. pp. 691-692). The instruction should not have been given since there was no evidence of comparative negligence presented at trial, and the instruction that was given was confusing because it referred the jury back to an instruction where the plaintiff had the burden of proof. The case should be remanded for a new trial.

CONCLUSION

The appellant respectfully requests that the Court grant a new trial. In the alternative, the appellant requests that the Court remand this action with instructions for the trial court to award the appellant judgment as a matter of law and schedule a damages hearing.

Respectfully submitted,

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August 14, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank Addy, Circuit Court Judge

Appellate Case No. 2019-000637

Tony Young,.....Appellant,

v.

Greenwood County Detention Center and the Greenwood County Sheriff's Office, Defendants,

Of Which The Greenwood County Sheriff's Office is.....Respondent

CERTIFICATE OF COUNSEL

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

Respectfully submitted,

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