THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2019-000637
Civil Action No. 2016-CP-24-00157

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SC Court of Appeals

Tony Young

v.

Greenwood County Detention Center and
Greenwood County Sheriff's Office, Respondents.

FINAL BRIEF OF RESPONDENTS

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COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the appellant receive a fair trial consistent with his constitutional rights?

2. Did the Circuit Court Judge err in denying Appellant's Motion for a New Trial?

3. Did the Circuit Court Judge err in denying Appellant's Motion for a New Trial based on the Thirteenth Juror Doctrine?

4. Did the Circuit Court Judge err in allowing the jury to hear deposition testimony of Deborah Knowles?

5. Did the Circuit Court Judge err in instructing the jury on comparative negligence?

COUNTER-STATEMENT OF THE CASE

This appeal arises out of an action filed by Tony Young on July 10, 2013, in the Court of Common Pleas for Greenwood County designated as Case Number 2013-CP-24-00655 alleging state and federal claims. On August 12, 2013, the defendants filed a Notice of Removal pursuant to 28 U.S.C. §1441 and §1446 in the United States District Court, District of South Carolina, designated as civil action number 8:13-cv-02185-MGL-KFM. The defendants filed an Answer denying the merits of any federal or state claim and setting up various defenses.

The plaintiff alleged that the defendants violated his federal and state constitutional rights and were grossly negligent while Young was in their custody. The United States District Court granted defendants' motion for summary judgment as to the claims brought pursuant to 42 U.S.C. §1983 and declined to exercise supplemental jurisdiction over the state law claims and remanded the case to the Greenwood County Court of Common Pleas. [R. p. 1045.] The case was then designated as Civil Action Number 2016-CP-24-00157. The remaining state law claim was tried before a jury September 24, 2018 through September 27, 2018 before The Honorable Frank Addy, Jr.

At the end of the three-day trial the jury deliberated and returned a verdict in favor of the defense, finding that the defendants were not grossly negligent in regards to their duty to provide access to reasonable and necessary medical care and

treatment to the plaintiff while he was incarcerated at the Greenwood County Detention Center. The plaintiff filed post-trial motions on October 5, 2018. Plaintiff's motions were vague, unsupported by any specific evidence or objections, and failed to cite any law. Plaintiff's motions were denied by Order dated March 27, 2019. The trial judge found that the "Plaintiff and Defendants presented conflicting evidence on the issue of gross negligence, and the jury simply found that the Plaintiff had not met his burden of proving the Defendant acted negligently in providing medical care to the plaintiff. In light of the contested nature of the testimony and out of due respect and deference to the findings of the trier of fact, the court declines to grant the Plaintiff's motion for a new trial." [R. p. 2.]

On April 15, 2019, the South Carolina Court of Appeals received plaintiff's Notice of Appeal.

ARGUMENT

The allegations set forth in Plaintiff's Complaint arise out of his lawful arrest on August 16, 2011 for Felony Driving Under the Influence after he was involved in an automobile accident on August 10, 2011. Following the automobile accident, appellant was taken to Greenville Memorial Hospital where he was treated and subsequently discharged on August 16, 2011. Appellant was picked up from the hospital by a South Carolina Highway Patrolman who then transported him to the Greenwood County Detention Center.

Appellant was booked at the Greenwood County Detention Center on August 16, 2011. Appellant's allegations center around the first six (6) days of his detention at the Greenwood County Detention Center. Appellant alleges that his neck brace was taken from him for the first six (6) days and that he was denied medical treatment and medication for the first six (6) days of his detention. The appellant further alleges that he was denied physical therapy which he claims was deemed necessary by his physician; however, no such order was ever been provided.

After the first six (6) days however, appellant says the neck brace was returned to him and he wore it until it was no longer necessary. In addition, appellant testified that after the first six (6) days he was given pain medication and that he continuously received medication almost daily throughout the duration of his time at GCDC; however, it was inadequate. Furthermore, appellant received materials in order to

change his wound dressings.

Young arrived at the GCDC at approximately 5:00 pm on August 16, 2011. Upon his arrival to the GCDC, Young went through the intake/ booking process. Appellant's neck brace was removed momentarily so that he could be photographed and so the collar could be checked for contraband, however, it was returned to him shortly thereafter. In addition, appellant's collar was removed for the booking photo because it would cover identifying marks such as tattoos, scars, birthmarks, etc, and so the officers could check the collar for contraband, weapons, etc. for the safety and security of the facility and everyone in it.

As part of the booking process, appellant went through a medical screening. Nurse Sherry Bouknight evaluated plaintiff when he arrived at the detention center. Nurse Bouknight started Young on ibuprofen instead of the narcotic pain medicine he was prescribed, Loratab, and also ordered him naproxen which was scheduled to be delivered on August 18, 2011. Pursuant to detention center policy, narcotic medication is prohibited. In addition, due to his medical issues, plaintiff was classified as a Special Needs Inmate and was placed in a single cell. The Special Needs Inmate Report dated August 16, 2011, the day appellant arrived, provides as follows: check wounds daily, check C Spine Collar daily, extra mattress if needed, if meds for pain needed other than am/pm med pass complete sick call, 15 minute medical watch, and no stairs.

Contrary to appellant's allegations, the Medication Administration Records, provide that he received medication on the same day he arrived, August 16, 2011, and the following five days. For the reasons set forth below, Judge Addy properly denied appellant's post-trial motions and this Court should affirm his decision and dismiss the appellant's appeal.

I. The appellant received a fair trial consistent with his constitutional rights.

Argument 1 of appellant's brief sets forth various allegations about the trial proceedings; however, the appellant has failed to set forth any law, statutory or case law, supporting his position that the jury verdict should be overturned. The appellant received a fair trial before a jury of his peers consistent with his constitutional rights. Specifically, the appellant takes issue with information revealed during voir dire, evidence rulings, and statements the Court made in the presence of the jury. For the reasons set forth below, the respondent respectfully submits that the appellant received a fair trial and the trial judge acted reasonably and within the bounds of his discretion at all times; therefore, the Order denying appellant's post-trial motions should be affirmed and the jury verdict should be upheld.

A. VOIR DIRE

The appellant contends that he did not receive a fair trial because jurors were told during voir dire that the appellant was involved in a collision and taken into

custody as a result and they were asked 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 had been a victim of a drunk driver. (Appellant's Initial Brief, p.5.)

The trial judge did not abuse his discretion during voir dire. During voir dire the judge asked:

> Is there any member of the jury panel or any close family member who, to your knowledge, has ever been either arrested for felony driving under the influence or been a victim of a drunk driver, or someone who is convicted of felony DUI? Any member of the jury panel who's either been arrested themselves, had a family member arrested or been a victim or had a close family member who was a victim of a felony DUI? If so, please stand.

(R. pp. 71-72).

This case is a suit against the Greenwood County Detention Center concerning the care the appellant received while detained there, and the trial judge noted, "it's natural for any juror when Mr. Young testifies, if he's not asked why he's in jail, they're going to wonder why he's in jail." (R. p. 92).

The trial judge had the jurors who answered yes to the above question approach to discuss. He did inform a couple jurors who approached the bench that the appellant was convicted of Felony DUI; however, upon information and belief, none of those jurors were seated on the jury panel and the appellant was free to use his strikes to prevent them from being seated on the jury. (R. p. 72, R. pp. 74-75.)

It is obvious that the appellant had pending charges of some sort and it would be in fact be prejudicial to the defendant if the jury were not informed that the plaintiff had injuries upon his arrival to the detention center that had nothing to do with the care he received at the detention center and were in no way the result of any acts and/or omissions on part of the defendant. In addition, it was clear that the appellant was a detainee at the Greenwood County Detention Center based on some criminal charge, and informing the jury as to the nature of his charge did not cause any prejudice. In fact, failing to identify the charge could leave the jury to speculate his involvement in a more heinous or violent crime such as criminal sexual conduct with a minor, armed robbery, murder, criminal domestic violence, etc.

Furthermore, the appellant's conviction of Felony DUI is admissible under Rule 609 of the South Carolina Rules of Evidence which provides in pertinent part: "evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." *See*, Rule 403, 609 SCRE.

The appellant was sentenced to two years in prison for his conviction of Felony DUI, and his conviction is admissible for impeachment purposes under Rule

609 and the trial judge did not abuse his discretion by admitting the conviction into evidence. The appellant did not ask the trial judge for a limiting instruction in that regard.

In addition, the appellant agreed to stipulate that he pled guilty to Felony DUI; thereby waiving any objection to its admissibility. (R. pp. 91-96). The appellant testified that he was convicted of Felony DUI and sentenced to SCDC as a result of this accident. (R. pp. 560-561.) The appellant stipulated to the matter; therefore, the trial judge's Order denying appellant's post-trial motions should be affirmed.

B. INTRODUCTION OF EVIDENCE

The appellant alleges that the trial judge erred when he allegedly prevented the appellant from introducing evidence of other occurrences and evidence to support his argument that the failure to give prescribed medication was grossly negligent.

The appellant states that he:

> proffered evidence from Lonnie Smith about other similar occurrences in which the detention center failed to provide inmates with appropriate medical care (TT 344-346). Counsel for the appellant submitted case law to the Court in support of the relevance of the testimony. (TT 350) … Despite this supporting case law, the Court ruled that the testimony was irrelevant (TT 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.

(Appellant Initial Brief, p. 6.) [R. pp. 399-401, 405, 408].

First, the case law that appellant's argument relies upon is easily distinguishable from the present facts. The appellant cited two cases one from 1940 and the other from 1955. The first, *Turner v. Wilson,* 86 S.E.2d 867, is an action brought against a sandwich manufacturer by a customer who purchased a deviled egg sandwich through a retailer and allegedly became sick after eating it. The facts are completely different. In that case the Court held that when, under the same conditions, several people who have eaten the same food and become similarly ill, the inference may be warranted that the food was unwholesome and was the cause of the illness. *Id.* However, even in the context of *Turner*, the appellant here set forth no evidence of any other detainees whose neck brace or similar medical equipment was kept from them.

The second case the appellant relies on is *Gantt v. Columbia Coca-Cola Bottling Co.,* 193 S.C. 51, 7 S.E.2d 641 (1940), which involves a minor suing the manufacturer for allegedly putting the harmful ingredient "bluestone" in a bottle of Coca-Cola. The Court in *Gantt* held that other instances should have been admissible; however, the facts are totally unrelated to those involved here. *Id.* The two cases the appellant relies on involve the Pure Food Act and neither of which involve gross negligence. The appellant here made an effort to suggest that inmate "complaints" about any and all types of medical care had some probative and relevant value to this case.

The evidence proffered by the appellant was testimony by Lonnie Smith concerning complaints filed by other inmates and as the Court noted, there was no evidence "that this has been a recurring problem, only that there have been recurring complaints. And that's not to be – that's not unexpected in a detention center setting that there would be complaints." (R. p. 408). The trial judge did not abuse his discretion by ruling that the complaints of other inmates were irrelevant because they were just allegations that had not been substantiated. (R. pp. 408-409). The judge gave proper consideration to the evidence proffered and the appellant's argument in the evidentiary hearing and excluded what they wanted to proffer, and it clearly does not amount to an abuse of discretion.

In addition, the appellant alleges that the Court prevented him from entering evidence that the "failure to give Tony medication prescribed by a physician was grossly negligent." (Appellant's Initial Brief, p. 6.) The appellant alleges that "[s]ince 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." (Appellant's Initial Brief, p. 7.)

The appellant erroneously argues that the physician clearance policy was violated. There was absolutely no finding on that matter. The only finding is that the defendants were not grossly negligent. The appellant repeatedly questioned

witnesses concerning alleged policies and procedures trying to imply violations of internal policies and procedures; however, as Gene Powell, Katie Gilmore, and Lonnie Smith testified, the policies referenced were admittedly not followed anymore because they were old policies prior to Southern Health Partners taking over the medical care at the detention center. (R. p. 198-199, 238-239, 243, 376-382). The appellant was not able to receive the narcotic pain medication he was prescribed while he was detained in the detention center due to a policy of Southern Health Partners which prohibited narcotics. (R. pp. 231-232, 293-298, 386-387, 441-442).

There is no evidence, testimony, or law that imputes a duty on behalf of the detention center to dispense narcotic medication in violation of that policy. Therefore, any argument the appellant alleges that there is such a duty and the failure to dispense narcotics to him while a prisoner in the county detention center was gross negligence is flawed.

Furthermore, the Court did not abuse it's discretion when clarifying for the jury that "the narcotic that the defendant was prescribed in Greenville as medication. That's not medication. Medication is penicillin if you have pneumonia, it is insulin if you have diabetes, it is a chemical that treats and cures a disease. The narcotic medicine that was prescribed to the defendant, no jail in South Carolina, no prison in South Carolina would permit that medication through the door for a very, very,

very good reason." (R. p. 398). The appellant was not prevented from receiving life-saving medication such as insulin or blood thinners, he was prohibited from receiving narcotic pain medication, and was given a non-narcotic alternative in its place. (R. pp. 231-232, 293-298, 386-387, 441-442.)

The appellant attempted to confuse the jury on the matter and upon information and belief, the Court did not abuse its discretion by clarifying it.

C. STATEMENTS BY THE COURT

The appellant alleges that "the Court made statements in the presence of the jury that skewed the jury and deprived Tony of his right to a fair trial." (Appellant's Initial Brief, p. 7.) Specifically, appellant alleges that the Court made statements regarding the repeated questioning about Young being admitted to the detention center without being sent back to an outside physician, the alleged spoliation of video footage, and that the Court sustained an objection when appellant's counsel was questioning Cpt. Middleton on the issue of physician clearance.

The appellant was able to fully develop their theory of the case and did so with repeated questions on every alleged issue. The Court did not prevent the appellant from exploring any angle of his case. In response, the defense presented evidence to contradict the plaintiff's position and the jury found that the appellant simply did not meet his burden of proof.

Furthermore, the appellant alleges that the Court made comments that informed the jury that someone called the Highway Patrol to get the appellant from the hospital and transport him to the detention center. The appellant now appears to dispute this and attempts to renew his allegations that he was discharged prematurely from the hospital and that the respondents in someway had something to do with his transport from the hospital. However, the appellant stated during the Motions in Limine hearing that "Judge, Mr. Young initially had the belief there was some back and forth between an officer and the medical providers that resulted in him being discharged early, but we were unable to really shore that up in discovery. And so we have no intention of arguing that --- the Greenwood County Sheriff's Office or any other officer, you know, persuaded the medical staff to release him earlier than they should have. So I don't think we're going to go there." (R. pp. 106-107). In addition, the appellant himself stated in his opening argument that "An officer, I believe, with the Highway Patrol takes him to the detention center…" (R. p. 133). Therefore, the Court's comments regarding the highway patrol were not new information to the jury. The first mention of any involvement by the highway patrol was from the appellant himself during his opening argument.

The only evidence provided establishes that the Highway Patrol initiated the charges against the appellant and transported him to the Greenwood County Detention Center. (R. pp. 452-465, 555-556, 564-565). In fact, the appellant himself

testified that he knew he was charged by the highway patrolman and he does not dispute that a highway patrolman picked him up from the hospital and took him to the detention center. (R. pp. 452-465, 555-556, 564-565). Therefore, there is absolutely no basis or grounds for the appellant to now renew his allegations concerning the timing of his discharge and his transportation to the hospital. This was not an issue in the trial and it is not an issue to be decided on appeal.

The trial judge acted properly and well within the bounds of his discretion at all times during the trial proceedings. The trial judge specifically instructed the jury at the beginning of the trial to "Please understand that you're the sole judges of the facts, so if at any time I make any comments concerning the facts, you have to disregard any comment that I make. You'll determine the facts from the testimony and the other evidence that's introduced." (R. pp. 119-120). In addition, the trial judge again instructed the jury during the Charge on the Law at the end of the trial:

> Now, as has been said several times, ladies and gentlemen, you are the sole and exclusive judges of the facts in this case. Understand that a trial judge is not permitted to comment on or make any statement about the facts in any case tried by a jury. Since you're the sole judges of the facts, please don't think by anything that I've said during the progress of this trial in ruling upon the admissibility of evidence or otherwise that I have any opinion about the facts in this case. Ladies and gentlemen, the law does not permit me to have any opinion about the facts. This is solely for you to determine.

(R. pp. 688-689).

The trial judge ruled on objections and evidence issues and the jury was specifically instructed twice that any alleged comments on the facts should be disregarded. The appellant seems to be grasping at straws to reconcile the fact that the jury found against him. An appeal is not a venue to re-try his case.

II. The Circuit Judge did not abuse his discretion in denying the Appellant's Motion for a New Trial Absolute.

The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989); *see also Boozer v. Boozer*, 300 S.C. 282, 283, 387 S.E.2d 674, 675 (Ct. App. 1988) (stating the court of appeals has no power to review circuit court's ruling unless it rests on basis of fact wholly unsupported by evidence or is controlled by error of law). "In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Umhoefer*, 298 S.C. at 224, 379 S.E.2d at 297.

The findings of the jury and the trial judge are completely supported by the evidence presented in trial, and the appellant has failed to identify any error of law, much less one sufficient to overturn the jury verdict and the trial judge's order denying the appellant's post-trial motions.

III. The Circuit Judge did not abuse his discretion in denying Appellant's Motion for a New Trial.

The standard of review when adjudicating the denial of a motion for JNOV is constrained by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Welch v. Epstein*, 342 S.C. 279, 299–300, 536 S.E.2d 408, 418–19 (Ct. App. 2000). Additionally, the trial court must deny a JNOV motion when the evidence yields more than one inference or its inference is in doubt. *Id*. An appellate court will reverse the trial court only when no evidence supports the ruling below. *Id*. When considering a JNOV motion, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Id*. A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Id*. The jury's verdict should be affirmed if any evidence exists that sustains the factual findings implicit in its decision. *Id*.

During the three day trial both parties presented extensive conflicting evidence to the jury in the form of witness testimony and documentation thereby giving the jury more than sufficient grounds to find for the defendant. The appellant's assertion that he "presented uncontroverted evidence" is simply without merit. (Appellant's Initial Brief, p. 3.)

The appellant's argument that the jury "heard ample and uncontested evidence that the respondent violated its own policies and procedures," is simply not true.

(Appellant's Initial Brief, p. 12.) In addition, even if it were true, which it is not, as the judge instructed, a violation of internal policies or procedures "***MAY*** be considered by you as evidence of gross negligence and ***MAY*** be considered in connection with all other facts and circumstances surrounding the case in determining whether the defendant was grossly negligent." (R. p. 692, emphasis added; *See also*, *Caldwell v. K-Mart Corp.,* 306 S.C. 27, 31-32, 410 S.E.2d 21, 24 (Ct. App. 1991).) Although any alleged policy or procedure violations may have been considered by the jury, the jury had the duty to weigh the evidence and they found that the appellant did not meet his burden of proof. Furthermore, as discussed previously, the policies and procedures appellant tried to imply the defendant violated were no longer applicable and were old policies that were replaced when Southern Health Partners was contracted to provide medical care to the prisoners. (R. pp. 198-199, 238-239, 243, 376-382).

In addition, appellant's allegations that "[t]he 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," are not true.

1. Physician Clearance.

Again, this is not the proper venue to re-try the case, but by way of example, Sharon Middleton explicitly stated "He had been cleared to come to jail," … and "[t]here was no reason to think he had not been cleared." (R. pp. 454-456; *See also*, R. pp. 452-465). In addition, Katie Gilmore, Beverly Weaver, and Lonnie Smith also testified that the appellant had been cleared by a physician. (R. pp. 250, 358, 369.) Thus, appellant's allegations were clearly contested.

2. Refused to contact an on-call physician as required by Minimum Standards.

Sharon Middleton, Katie Gilmore, Beverly Weaver, and Lonnie Smith spoke to this issue and explained that Mr. Young had just been released from the hospital and cleared. Sherry Bouknight evaluated Mr. Young while he was in booking (R. pp. 292, 337, 448, 452-465). Appellant has failed to prove that it was necessary or required to call an on-call physician, and respondents set forth evidence demonstrating that it was not necessary nor required to call a physician.

3. Filled out documents incorrectly.

Lonnie Smith testified that a document filled out by the Highway Patrol concerning whether a person appeared injured or had any observable medical problems that was answered "No" was inaccurate. (R. pp. 393-394). Lonnie Smith further testified that the respondents had no part in filling out this form. (R. pp. 393-394). In addition, the Highway Patrol is not a named defendant in this case. Again, disputing appellant's allegations.

4. Withheld prescribed medication.

Numerous witnesses including Rodney Gresham, Katie Gilmore, Nurse Bouknight, Lonnie Smith, and even Tony Young testified that narcotic medication is prohibited in the detention center; therefore, the appellant was not allowed to receive the Lortab the doctor prescribed him at the hospital, so he was provided an over the counter alternative. (R. pp. 162, 231-232, 271, 293-298, 370, 379-380, 386-387, 562.) Thereby disputing appellant's claims that the respondents unlawfully withheld appellant's prescribed medication.

5. Failed to provide documentation of physician clearance as required by General Order 2.5.

In addition to other witnesses, Katie Gilmore testified in reference to General Order 2.5, and explained that after a doctor discharged an inmate from the hospital he was cleared by a physician. (R. pp. 232-236, *See also*, R. pp. 250, 358, 369). There is absolutely no credible evidence to suggest that appellant's discharge papers were not sufficient clearance by a physician.

In light of the above, it is evident that the appellant's statement that the "jury heard substantial uncontested evidence" on the above issues is simply just not true. (Appellant's Initial Brief, p. 17.)

IV. The Circuit Judge did not abuse his discretion in denying Appellant's Motion for New Trial based on 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. *See 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). South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, 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)). As the "thirteenth juror," the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *Id.* As this Court explained in *Folkens,*

> The effect is the same as if the jury failed to reach a verdict . . . . When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id.

Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Folkens*, 300 S.C. at 254-55, 387 S.E.2d at 267 (citing *South Carolina State Highway Dep't v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (1976)). Upon information and belief, this Court's "review is limited to

consideration of whether evidence exists to support the trial court's order." *Id.* at 255, 387 S.E.2d at 267. As long as there is conflicting evidence, the South Carolina Supreme Court has held that the trial judge's grant of a new trial will not be disturbed. *Id.*

In the present case, a lot of evidence was submitted to establish that the detention center and its staff did not breach their duty to provide the appellant with reasonable access to medical care. Beverly Weaver, Jail Administrator Lonnie Smith, Captain Sharon Middleton, and Sergeant Michael Holtzclaw testified that the appellant's neck brace was taken off during booking so that he could be photographed and so it could be searched for contraband. (R. pp. 355-356, 368-369, 382, 425-426, 429, 457-462, 597-599). In addition, Rodney Gresham, Katie Gilmore, Nurse Bouknight, Lonnie Smith, and even Tony Young testified that narcotic medication is prohibited in the detention center; therefore, the appellant was not allowed to receive the Lortab the doctor prescribed him at the hospital, but he was given access to an over the counter alternative. (R. pp. 162, 231-232, 271, 293-298, 370, 379-380, 386-387, 562).

Upon information and belief, the appellant changed his theory and then alleged issues concerning the frequency he was given over the counter pain medication, but Nurse Bouknight testified that the medication administration records clearly show that Young was started on ibuprofen or advil instead of Lortab for the

six days in issue. (Transcript, p. 210-211, 293-302). In addition, Nurse Bouknight testified about the numerous medical encounters the appellant had while detained at the Greenwood County Detention Center including those during the first six days.

Given the testimony summarized above, the jury clearly had sufficient evidence on which to support a finding for the defendants; therefore, the trial judge's order denying the appellant's post-trial motions should be upheld and affirmed and the appellant's appeal should be dismissed.

V. The Circuit Judge did not abuse his discretion in allowing the jury to hear deposition testimony of Deborah Knowles.

The appellant alleges that the trial judge erred in allowing the jury to hear deposition testimony of Deborah Knowles because she was on medication at the time of the deposition. (Appellant's Initial Brief, p. 18-19.) Deborah Knowles testified that the appellant had his neck brace on at the bond hearing, which contradicts the appellant's allegations. (R. pp. 520-521). Appellant's counsel was provided the opportunity to cross examine Knowles in the deposition and dispute anything she testified to. The appellant however is not allowed to determine issues of credibility. The jury is instructed to weigh the credibility of the witnesses and that is their duty, not that of the appellant. Just because she said something to contradict the appellant's story does not make her testimony or the presentation of it to the jury improper. Upon information and belief, there are no allegations concerning the legality of the jury deliberations; therefore, appellant's allegations are without merit

and should be dismissed.

VI. The Circuit Judge correctly instructed the jury on comparative negligence.

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion." *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." *Id*.

An erroneous jury instruction will not result in reversal unless it causes prejudice to the appealing party. *Id*. at 405, 663 S.E.2d at 33; *see also Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) ("When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues."). "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion affects the outcome of the trial." *Cole*, 378 S.C. at 404, 663 S.E.2d at 33.

The trial judge did not abuse his discretion by instructing the jury on comparative negligence. Furthermore, even if there was an error, it in no way prejudiced the plaintiff or had any impact on the verdict. The verdict form was in a flowchart format where if the jury voted Yes on the first question they would then move to the second question, but if they voted No on the first question all

deliberations would stop at that point and that was the verdict. (R. pp. 695-697, 702) The first question on the verdict form read as follows: "Was the defendant grossly negligent?" and the jury answered "No" therefore all deliberations stopped. (R. pp. 695-697, 702). Deliberations ended at that point and the jury did not even go on to consider proximate cause or comparative fault, therefore, any alleged error in the comparative fault instruction clearly did not cause any prejudice and was harmless. *Id.* Therefore, the jury's verdict should be upheld and the Appellant's appeal should be dismissed as a matter of law.

CONCLUSION

In view of the arguments and authorities set forth above and in The Honorable Judge Addy's Order dated March 27, 2019, the respondents respectfully submit that Young's appeal is without merit and should be denied and the trial court's Order should be affirmed and the jury verdict upheld.

Respectfully submitted,

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