

**COMMONWEALTH OF KENTUCKY PIKE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-00233**

ELECTRONICALLY FILED

Nicky Gauze, Individually;
Nicky Gauze, as Administrator of
the Estate of Mary Gauze, deceased;
Nicky Gauze, as Guardian of Joey Gauze, a Minor;
and Cody Gauze, Individually.

PLAINTIFFS

vs.

Pikeville Medical Center, Inc. d/b/a Pikeville Medical Center;
John Does 1 through 3, Unknown Defendants

DEFENDANTS

**PLAINTIFFS' COMBINED MOTION TO VACATE ORAL ORDER OF MISTRIAL
AND TO ENTER JUDGMENT**

COMES NOW Plaintiffs, by and through counsel, and pursuant to Common Law, as well as CR 59.05 and/or CR 60.02, hereby move this Court to vacate its oral order of February 10, 2023 striking juror Angela Kendrick, and declaring a mistrial. Further, Plaintiffs move this Court to enter the judgment in this matter consistent with the jury's verdict. In support of these motions, Plaintiffs state as follows.

INTRODUCTION

During jury deliberations in the instant case, a biased juror, *infra*, made misleading and untrue representations to the Court concerning a statement made by another juror. In turn, counsel for Plaintiffs were consequently misled as to the nature and circumstances of the purported statement. Defendant moved to strike the juror and for mistrial, and based on the erroneous information communicated to Plaintiffs' counsel, no objection was made. Palpable and reversible error was committed when the Court did not investigate or *voir dire* any of the jury, and sustained

Defendant's motion to strike the juror and for mistrial. *Deemer v. Finger*, 817 S.W.2d 435 (Ky. 1991)

STATEMENT OF THE FACTS

On February 9, 2023, upon the conclusion of proof in the present case and after dismissing the two alternative jurors, this Court instructed and charged the jury, which thereafter began its deliberations. The first instruction given the jury, and the first task to complete in deliberations, pertained to choosing a foreperson. At the outset of deliberations, *no juror volunteered* to act as foreperson. See Juror Affidavits attached as Exhibits 1, 2, 4, 5.¹ *After several moments*, Ms. Angela Kendrick volunteered to act as foreperson, although she had *previously expressed a disinclination* to participate in this role. *Id.* Following selection of Ms. Kendrick as Foreperson, the jury began deliberations. *At the beginning of deliberations*, Ms. Kendrick made an off-hand comment to the effect that she had “told her husband not to take her to Pikeville Medical Center” in case of emergency. This comment created a concern, temporarily, amongst some jurors as to whether she could render an unbiased verdict in this case. However, subsequent discussion among the jurors, including Ms. Kendrick, dispelled any doubt of Ms. Kendrick's fitness, as she clarified that any understanding she had concerning Defendants' competences or negligence arose solely from *the facts presented at trial*. Furthermore, she had not communicated with her husband regarding any details of the case, and she simply held no biases vis-à-vis Defendants. See Exhibit 1. While most jurors accepted Ms. Kendrick's exposition and explanation, and did not impute bias or misconduct to Ms. Kendrick; one juror, a Mr. Chris Little (as well as one other older juror), appeared angry during the episode. Thereafter, during deliberations, the other older juror went so

¹ Plaintiffs have attached the affidavits of five (5) members of the jury. Exhibit 1 is the affidavit of Angela Kendrick. Exhibit 2 is the affidavit of Ethan Rife. Exhibit 3 is the affidavit of Nancy Hall. Exhibit 4 is the affidavit of Randal Damron. Exhibit 5 is the Affidavit of Roger Williamson.

far as to demand other jurors “shut up.” Exhibit 1 at ¶¶ 21, 23, 28–29; Exhibit 2 at ¶¶ 9, 12, 16; Exhibit 3 ¶¶ 16–18; Exhibit 4 at ¶¶ 19–20; Exhibit 5 at ¶¶ 8–10.

This episode notwithstanding, jury deliberations ensued, and at some point, the jurors asked to see the testimony of Mr. Nicky Gauze once more. The Court and the parties agreed to allow the video testimony to be replayed. After the conclusion of the replaying of Mr. Gauze’s testimony, the jury went back to deliberations. Jury deliberations concluded without result on February 9, 2023, and the jury returned for duty the following day. No juror, including Mr. Little, asked to approach the Court during, or after, the first day of deliberations concerning Ms. Kendrick’s comment.

Upon the jury’s return on February 10, 2023, this Court reminded the jury of several instructions, including those regarding cell phone usage, and otherwise communicated a sense of trust in the integrity of the jury. *See* Trial Transcript 1 attached as Plaintiffs’ Exhibit 6 at 1–7. Juror 1 proceeded to ask a question, to which the Court responded.

Juror 1: I have a question about –
 Judge Hall: Do you want to come around?
 Juror 1: -- deliberation.
 Judge Hall: Come on around. We better take that in private. There’s not much we can tell you, but –
 Juror 1: Well –
 Judge Hall: -- the question might – the question might be something we can tell you. Let’s scramble if we could.
 (BENCH CONFERENCE)
 Judge Hall: We’re just going to scramble. Okay.
 Juror 1: We’ve – well, I’m going to tell you what we’ve done. We get through number 1, and then to number 2, and we can’t get any further. We can’t skip 2 and go onto 3. We have to get 2 done before we can –
 Judge Hall: The only thing I can tell you is continue to talk to each other, continue to deliberate. That’s all I can really tell you. Is there anything else I can tell him that you-all know of?
 Male Attorney: I don’t think there’s anything else, Your Honor.
 Judge Hall: The only thing I can tell you is –

Juror 1: I just wanted to make sure –
 Judge Hall: I can just tell you keep trying to –
 Juror 1: Yeah.
 Judge Hall: -- to arrive at a verdict. If you eventually can't, we'll bring you back in and see where you're at. We can't push you one way or the other.

Juror 1: Oh, no. I was just wondering.
 Judge Hall: I mean, I don't mean push you one way or the other, but I mean, we can't push you – obviously, we can't push you right or left, but we can't push you toward a verdict or away from a verdict.

Juror 1: Right.
 Judge Hall: You know, we can't direct you any direction at all.
 Juror 1: Okay. That's –
 Judge Hall: Obviously, we couldn't go right, left.
 Juror 1: That's what we kind of understood, but I wanted to make sure.
 Judge Hall: Yeah. I can't push you toward a verdict or away from a verdict.

Juror 1: Yeah.
 Judge Hall: But – and I can't – obviously can't go right or left or back or forward. You-all are in complete control.

Juror 1: That's scary.
 Judge Hall: I know There you go. Okay.
 (END OF BENCH CONFERENCE)

After admonitions and answering juror 1, and just prior to this Court's directive to resume deliberations, a juror identified on the Transcript as Juror 2 (now known to have been Mr. Little), indicated that he had a question. Exhibit 6 at 10. At the bench and in the presence of parties' counsel, Mr. Little inquired,

If there was a statement made at the *beginning of deliberations* by one of the jurors that would have made them not eligible to be on this jury, is that – that's – I mean [. . .] is that just the way [. . .] it is, right?

Exhibit 6 at 10–11. This Court obviously and immediately sought to determine whether there had been jury misconduct, and Mr. Little went on to editorialize to the effect that he had “lost sleep . . . [but] not because of the facts.” Exhibit 6 at 11. He implied thereby that there had been juror misconduct. *Id.* Affiant jurors state that they were unaware during this bench colloquy, of just

what Mr. Little was discussing with the Court, or why he had approached the bench in the first place. *See* Attached Exhibits 1–5.

At some point Mr. Little returned to his seat, but, after consulting the parties’ attorneys, this Court invited Mr. Little back to the bench to continue probing matters—*outside of parties’ counsel’s hearing*. Exhibit 6 at 18. Mr. Little then further stated he held concerns regarding the person who “volunteered to be the foreperson, *about a few minutes into deliberations.*”

“She volunteered to be the foreperson, which was -- I thought was strange somebody volunteered right off the bat to be that, you know. I'm, like, dang, I figured nobody –[.]”

Mr. Little apparently then claimed Ms. Kendrick had told her “family” not to take her to Pikeville Medical Center. Exhibit 6 at 19. According to Mr. Little, he confronted Ms. Kendrick thereafter, asking “so you’re basing your decision *on the first day of trial,*”² and further claimed Ms. Kendrick “backtracked,” her story. *Id.* at 20. Following some colloquy at the bench, the following exchange occurred:

Judge Hall: Now, did she make that statement based on what she heard in the trial, or did she bring that preconceived feeling into the courtroom?

Juror 2: Yeah, that’s what – that’s *what I took it as.*

Judge Hall: It was so early in the trial, that she brought that feeling in with her.

Juror 2: Yeah, *she said that.* That’s what I’m saying. *We hadn’t started deliberating.* [. . .]

Judge Hall: [. . .] Was it based upon what she’d heard during this trial, or was it what she brought in as a preconceived feeling?

Juror 2: And then we *continued to deliberate* a few minutes –

[. . .]

² Given her actual comment, per her recount thereof and the bench colloquy, it is reasonable to infer that Mr. Little actually meant, ‘the first day of deliberations,’ not ‘first day of trial.’

Judge Hall: That – oh, that was – did she say she felt – she mentioned something about the first – at the very beginning.

Juror 2: That was *before we started deliberating*.

Judge Hall: She said that after the first (Inaudible)?

Juror 2: *She volunteered to be the foreperson*, which was – I thought was strange somebody *volunteered right off the bat* to be that that, you know. I’m like, dang, I figured nobody --

Exhibit 6 at 19–23. The Court then relayed his understanding of the conversation to parties’ counsel including “[a]pparently, *the lady insisted on becoming foreperson*,” and “[h]e said she said – that was at the *first day of the trial*.” *Id.* at 24. The Court then proceeded to communicate its discomfiture at procuring more information on any potential effects Ms. Kendrick’s alleged comments had on the jury to that point. *Id.*

A mistrial was declared outside the presence of the jury at motion of Defendant.

Judge Hall: Court is going to reluctantly and painstakingly go ahead and sustain the motion and strike that particular juror and in turn declare a mistrial with apologies to everyone that happened. Secondly, the court wants us to get some benefit out of a ten day trial and by that we’re going to go ahead and let the jury deliberate and return a verdict that it may assist the parties in future negotiations because what better way, the court is not involved in, I’ve always made it policy to not, to be one of the least intrusive judges in the state as far as trying to make people settle, but if you can be of assistance and this would be assistance towards that, assist the parties in valuing a case what better way to do it than let a jury go ahead and return a verdict. What more realistic circumstances can you get than a full two week trial. So with that in mind we’re going to go ahead let the jury return a verdict with the record being made that the motion has been sustained on both removing a juror, and I just thought about what if that juror just comes in and says they never said that. We’re not going to have a trial, we can’t have a trial amongst the jurors can we?

Male Attorney: (Inaudible).

Male Attorney: Well you know what? We contemplated that.

Judge Hall: The rulings been made.
 Male Attorney: We contemplated that possibility.
 Judge Hall: The rulings been made.
 Male Attorney: It seems pretty clear there has been an impact on other jurors (inaudible).
 Judge Hall: So we'll go ahead and let the jury return and 1230 proceed as though there's not a de facto trial but then go out and deliberate, hopefully they won't be upset, I think they'll appreciate it, they do find out (inaudible) they'll appreciate it as well.

See Trial Transcript 2 Attached as Plaintiffs' Exhibit 7. Plaintiffs did not object to Defendant's motion for mistrial upon the belief that the statements made by Mr. Little and then relayed by the Court to counsel were accurate.

The full jury was allowed to deliberate without knowing of the ordered mistrial, ostensibly to render an untainted verdict to assist the parties in future potential negotiations. At no point was Ms. Kendrick or any other juror besides Mr. Little interrogated, or voir dired, as to the content or circumstances surrounding Ms. Kendrick's purported comments, or when they were purportedly made. Exhibits 1–5. Later that afternoon the jury returned a ten-million-dollar verdict in favor of the Plaintiffs. *See* Jury Verdict Attached as Plaintiffs' Exhibit 8.

The following Monday, after the verdict had been rendered, Ms. Kendrick saw the verdict's report on the KY Trial Court Review's Facebook page. Ms. Kendrick then posted the following comments on said report:

Angie Kendrick: whoah! seriously?! I had never spoken to that man until deliberations. Was he just trying to sabotage the jury process? I know the juror you're talking about. He was very odd during deliberations, and didn't seem to understand most of the trial.

Angie Kendrick: [. . .] I made that statement DURING deliberations, and AFTER the trial. I made it very clear that I came to that opinion after hearing the evidence.

See Facebook Comments Attached as Plaintiffs' Exhibit 9 hereto (*sic*) (emphasis in the original). In addition to her statements on Facebook, Ms. Kendrick contacted Plaintiff's counsel because she was deeply concerned that the Court had been misled about what had transpired. It was not until this point that Plaintiffs became aware of the discrepancies between Mr. Little's representations to the Court, and the truth about what occurred according to other jurors.

In the days following this revelation, five jurors provided affidavits refuting the key points of Mr. Little's recitation of events: Angela Kendrick, Ethan Rife, Nancy Hall, Randal Damron, and Roger Williamson. Exhibits 1–5 respectively. In addition to the newly discovered information regarding the apparent inaccuracies in Mr. Little's representations to the Court, affiants also state that Mr. Little, along with the other “angry” juror, made comments describing Plaintiffs' counsel as “ambulance chaser[s].” Exhibit 1 at ¶ 29; Exhibit 2 at ¶ 11; Exhibit 3 at ¶ 19. It is baffling why Mr. Little waited through several hours of deliberations the first day to wait and say something the morning of the second day if he was genuinely concerned.

Based upon the affidavits, and the inconsistent information provided to the Court and counsel, there exists the potential—demonstrable via the substantial evidence herewith attached—that Mr. Little may have even perpetrated a fraud on this Court, in the apparent hope that the case would be thrown out. At the beginning of the second day of deliberations, according to juror affidavit, see Aff. of Roger Williamson attached as Exhibit 5, the jury was stuck on the question of “causation” with eight (8) votes in Plaintiffs' favor, three (3) in Defendant's favor, and one (1) undecided. This corresponds with Juror #1's original question, *supra*, asking the Court if the jury could skip the question on “causation” and go to question number 3.

Because the Court allowed the jury to deliberate and reach an untainted verdict, Plaintiffs now move for the oral order of mistrial be vacated and the rightful verdict be entered as final.

LAW AND ARGUMENT

The Court should vacate its order declaring a mistrial, based on the new information detailed, *supra*. Importantly, the Court has not yet considered the affidavits of jurors as provided herewith, *i.e.*, they controvert the representations of the juror who approached the Court. Those affidavits are properly submitted to the Court for consideration. “[T]he affidavit of a juror cannot be used to impeach the verdict of a jury; [however] ***it can be used to support a verdict.***” *Gregorich v. Jones*, 386 S.W.2d 955, 956 (Ky. 1965) (emphasis added) (citing *Turner v. Hall's Adm'x*, 252 S.W.2d 30 (Ky. 1952)).

“A court's authority for reconsidering an interlocutory order is actually found under common law and in CR 54.02 which make such orders 'subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.’” *Tax Ease Lien Invs. 1, LLC v. Brown*, 340 S.W.3d 99, 103 (Ky. App. 2011) (quoting *Bank of Danville v. Farmers Nat. Bank of Danville, Ky.*, 602 S.W.2d 160, 164 (Ky. 1980) (“Order was interlocutory and subject to change by the trial court at any time prior to the final adjudication.”)). An order to declare a mistrial and order a new trial is an interlocutory order. *Hardin v. Waddell*, 316 S.W.2d 367, 368 (Ky. 1958) (“The rule is that an order either sustaining or denying a motion for a new trial authorized by CR 59.01 is not a final order and is not appealable as such, though it may be reviewed on appeal from the final judgment”). The Kentucky Supreme Court has held that a motion to reconsider is “properly invoked only when there is a bona fide reason for it, *i.e.*, a reason the court has not already considered.” *Moore v. Commonwealth*, 357 S.W.3d 470, 496 (Ky. 2011). The bona fide reason existent here is the new information found in Ms. Kendrick’s public statements and the affidavits which are attached hereto.

1. **Ms. Angela Kendrick, foreperson, did not engage in any misconduct during the trial or jury deliberations.**

It is clear that, based upon new information in the form of the subsequent online posts of Ms. Kendrick, and especially the supplied affidavits, there was no juror misconduct upon which to justify the grant of the motions to strike a juror, and for mistrial. As an aside, Ms. Kendrick's subsequent actions and statements, *e.g.*, statements on Facebook, have been entirely proper, as jurors are allowed to make statements during jury's deliberations and after trial. As to the purported comment to her husband, such a comment at most merely represents her perception of Pikeville Medical Center's quality of care and/or customer service. Whether Ms. Kendrick would care to be treated by Pikeville Medical Center is simply no indication as to whether she had concluded that the Center had acted negligently in this case. I may think that Ford trucks are ugly, and may say so, but such a comment would indicate nothing about my opinion of Ford truck brake pads, or their liability to fail. Moreover and crucially, any such comment arose *after* Ms. Kendrick heard the evidence presented, which was not Mr. Little's representation to the Court, or what counsel for Plaintiffs were informed of. While jurors are not to "make up their minds" prior to deliberations, it would be a patent departure from reality to expect jurors not to form impressions during the presentation of evidence. Indeed, how could the jurors have anything about which to deliberate, if they did not come away from the presentation of evidence with impressions?

"[A] mistrial is an extreme remedy and should be resorted to only when there appears in the record a manifest necessity for such an action or an urgent or real necessity." *Dunlap v. Commonwealth*, 435 S.W.3d 537, 604 (Ky.2013) (as modified (Feb. 20, 2014)). Although *Dunlap* is obviously a criminal matter, and issues of Double Jeopardy are not in play in a civil action, this principle holds nonetheless, universally. Trial courts in the Commonwealth are routinely instructed that their discretion to order a mistrial "is to be used sparingly and only with the utmost

caution, under urgent circumstances, and for very plain and obvious causes.” *Commonwealth v. Scott*, 12 S.W.3d 682, 685 (Ky.2000). A trial court should declare a mistrial “only when there is a **fundamental defect** in the proceedings.” *Parker v. Commonwealth*, 291 S.W.3d 647, 658 (Ky.2009) (emphasis added).

What is the defect here? Did Ms. Kendrick have an unfavorable impression of Pikeville Medical Center from the outset of trial, such that she should have been struck from the jury for cause? We have absolutely no evidence of this. Did she have an unfavorable impression of Pikeville Medical Center, at least as to some aspects of the Center, at the end of the presentation of evidence? It is Plaintiffs’ position that Ms. Kendrick was permitted to have, even necessarily so, some kind of impression of the Center at that point.

Was it the fact that she made any comment to her husband? Yet, once again and crucially, such a comment would have constituted an informational impression ***out of*** the mind of a juror, and not information ***going into*** the ears of the juror. Such a misstep is at most formal and technical. “[J]uror misconduct ***only*** results in a new trial when the misconduct so prejudices a party that a fair trial was not obtained,” according to the Kentucky Supreme Court in *Gould v. Charlton Co., Inc.*, 929 S.W.2d 734, 738 (Ky. 1996) (emphasis added). Defendants, the trial proceedings, and indeed this Court, suffered absolutely no prejudice if such comment was made.

In sum, a trial court only orders a mistrial, under the following standard in the Commonwealth of Kentucky:

A trial court ***only declares a mistrial if a harmful event is of such magnitude that a litigant would be denied a fair and impartial trial and the prejudicial effect could be removed in no other way.*** Stated differently, the court must find a manifest, urgent, or real necessity for a mistrial.

Matthews v. Commonwealth, 163 S.W.3d 11, 17 (Ky. 2005) (emphasis added). Acknowledging the burden on the parties and on the system, the Kentucky Supreme Court has stated “[g]ranted a mistrial delays justice and **dramatically** increases the costs of the proceedings **to both the public and parties.**” *Gould*, 929 S.W.2d at 738 (emphasis added). Moreover, “[a] mistrial is an extraordinary remedy that 'should only be granted where there is a **manifest necessity** for such an action or an **urgent or real necessity.**’” *Kingrey v. Com.*, 396 S.W.3d 824, 829 (Ky. 2013) (quoting *Gosser v. Commonwealth*, 31 S.W.3d 897, 906 (Ky.2000) (emphasis added)). “Mistrial should only be 'used in those situations where an error of such import has been committed that a litigant's right to a fair and impartial jury would be violated if a new trial were not held.” *Id.* (quoting *Welch v. Commonwealth*, 235 S.W.3d 555, 559 (Ky.2007)).

Not to beat a dead horse, but the circumstances warranting the declaration of a mistrial must be so egregious as to rise to a level which **directly impacts the jury's ability to render a fair verdict**. Mr. Little's representation of Ms. Kendrick's statement, and its impact, have been refuted by juror affidavits. *See* Exhibits 1–5. Ms. Kendrick's off-hand comment can hardly be compared to the acquisition of extra-judicial information at issue in *Gould*. *Id.* Indeed, the *Gould* Court stated that trial courts do not abuse their discretion in deciding **not to declare a mistrial** when the juror had **obtained external information** from her husband. *Id.*³ In contrast, Ms. Kendrick relayed a statement to the jury that **she had made** to her husband. *See* Exhibit 1. There is absolutely no evidence that she received information or opinion **from her husband**. Furthermore, there is absolutely no indication that Ms. Kendrick came to make her comment in a premature manner, without first hearing the evidence of both parties. *Id.* The evidence had simply made an impression.

³ Again, the alleged offending comment of Ms. Kendrick pertained to a statement made **by** Ms. Kendrick, **not to her**.

On the other hand, the suspiciousness of Mr. Little's apparent concern, paired with his own concurrent and questionable behavior during deliberations, indicate that, if anything, Plaintiffs were the parties handicapped in deliberations. It would appear from the affidavit of Mr. Rife that Mr. Little himself was biased, and he himself was not a fair and impartial juror. *See* Rife Affidavit at ¶¶ 11–13. Mr. Little's generalized statement regarding Plaintiffs' lawyers would have been a disqualifying statement, evidencing his determination to enter a verdict against Plaintiffs, *due to his distaste for the nature of their representation alone*. In any event, *no infringement on Defendants' right to a fair trial occurred*. At bottom, **abiding by Mr. Little's representations would be palpable and reversible error**. *See Deemer v. Finger*, 817 S.W.2d 435 (Ky. 1991), *Infra*.

Plaintiffs, without the benefit of an investigation at the time of the claim, have only learnt of what actually transpired, after the fact, via the other jurors. Had the Court properly investigated the claim by Mr. Little, it would have found the claim to be dubious at least, and of no consequence in sum.

2. The Jury's deliberations were not tainted by consideration of a declaration of mistrial, and the verdict rendered should be entered.

The jury was encouraged to deliberate without knowledge of the proposed mistrial at the suggestion of the Court. It was because of this proper use of the Court's discretion that the jurors carried out their constitutional duties and reached a correct and fair verdict. Thus, the resulting verdict is untainted and should be entered by the Court on a motion to vacate pursuant to Common Law, CR 54.02 and/or CR 60.02. Importantly, the Pike Circuit Court has the unlimited power to alter, amend, or vacate its own orders to correct problems. This authority extends to oral orders such as the motion to strike the juror and the oral mistrial order here. Specifically, the Kentucky Supreme Court has stated the following:

A trial court is authorized to alter, amend, or vacate a judgment or order under CR 59.05 upon a properly filed motion by any party within ten days of the final judgment. Recognizing the scope of this power, our Supreme Court has noted that "a trial court has 'unlimited power to amend and alter its own judgments.'"

Bowling v. Kentucky Dept. of Corrections, 301 S.W.3d 478, 483 (Ky. 2010) (quoting *Gullion v. Gullion*, 163 S.W.3d 888, 891-92 (Ky. 2005)). The *Bowling* Court stated there was "no abuse of discretion by the trial court" when it *vacated its own* "*prior order* granting Appellants' summary judgment." *Bowling*, 301 S.W.3d at 484 (emphasis added). Logically, it follows that, if a trial court has unlimited power to alter its own judgements, it also has unlimited power to change its own orders any time before entry of a final judgment. Indeed, *Tax Ease Lien Invs. 1, LLC v. Brown*, *see supra*, states that this power is not only enshrined in the Kentucky civil rules, but in Common Law as well.

The present case is analogous to that presented in *Gould*, *see supra*, in that "[a]ll aspects of the jury verdict were fully supported by the evidence." *Gould*, 929 S.W.2d at 741; *see also* Exhibits 1–5. *Furnish v. Commonwealth*, 2019 WL 5617687, (Ky. 2019), demonstrates the level of influence required for a jury to be considered tainted by a jury member's statements. There, the Kentucky Supreme Court upheld the post-conviction court's finding that a juror's revelations about her consultation with a priest were "general statements" and did not violate the defendant's rights by tainting the jury. *Id.* Surely, if the jury in a death penalty proceeding is not tainted by a juror's statements regarding a priest's beliefs on the moral implications of the verdict, the present jury was not unduly influenced when they had no knowledge of the ongoing discussions of mistrial. *Id.*

Not only would the mistrial order be a clear error of law based on the circumstances and facts which have subsequently come to light, but it would be a work of manifest injustice to allow

the mistrial order to stand. Plaintiffs would have to try their case again—due at bottom, to the presence of an anti-Plaintiffs-biased juror(s) on the first jury, *i.e.*, Mr. Little, and the other juror described as an elderly gentleman. The Court in its wisdom allowed the jury to deliberate unhindered by the knowledge of a mistrial. Mr. Little did not assert at any point that he was unable to voice his opinion regarding the negligence of Defendants. In fact, multiple juror affidavits attest to the fact that deliberations were carried on in a fair manner, with open discussion, and any discussion from which Mr. Little abstained was by his own volition. Additionally, there is no evidence that any of the jurors were aware of a potential for mistrial. That same untainted jury, with no knowledge of the potential mistrial, made a factual determination that Defendants' negligence did cause the alleged injury to Mrs. Gauze.

The simple solution is for the Court to reconsider and vacate its order for mistrial, which is clearly within the trial court's power, especially in light of those cases establishing this power, even where prior orders may contain "manifest errors of law." *See Bowling*, 301 S.W.3d at 484. Defendants have every right to appeal a final decision once entered. RAP 2. However, a premature grant of mistrial based on unsubstantiated juror claims would result in the very burdens on the parties and the judicial system about which the Kentucky Supreme Court in *Gould* warned. *Gould*, 929 S.W.2d at 738. Moreover, given the publicity of the proceedings following the verdict, it would be all the more difficult to obtain an untainted pool of jurors in a new trial, as opposed to bringing a final verdict to appeal by the Defendants at the Court of Appeals.

Because the jury's verdict was deliberated and rendered with no knowledge of the proposed mistrial, Defense retains access to the appeals process. A new trial would be burdensome on the parties and the judicial system. Plaintiffs respectfully request the Court reconsider and vacate its mistrial order and instead enter a judgement consistent with the verdict.

3. **Mr. Little usurped the authority of the Court to ensure the expediency and accuracy of its rulings.**

This Court has inherent power and a duty to investigate the statements of a juror who makes inaccurate representations, and alleges misconduct on the part of another juror.

We are persuaded that there are certain implied powers which are inherent in any Court of Justice in this State which arise from the very nature of their institution. Such authority is required because they are necessary to proper exercise of all other judicial authority. As such, these powers are governed not by statute or rule, but by the control vested in the court to manage its own affairs so as to achieve the orderly and expeditious, accurate and truthful disposition of causes and cases.

Potter v. Eli Lilly & Co., 926 S.W.2d 449, 453 (Ky. 1996). This “implied” and “inherent power” includes the power “to conduct an independent investigation when there is a reasonable basis to believe that there is a possible lack of accuracy or truth” *Potter v. Eli Lilly & Co.*, 926 S.W.2d 449, 454 (Ky. 1996) (emphasis added). “The inherent authority of the court . . . encompasses bad faith conduct, abuse of judicial process, and *any deception of the court* **and lack of candor** to the court.” *Id.* at 453-454 (emphasis added).

Through demonstrable bad faith conduct Mr. Little has usurped this Court’s inherent authority to determine the accuracy of its own rulings and processes. His statement to the Court to the effect that Ms. Kendrick should have been disqualified from serving on the jury is one that, if based in fact, would provide a reasonable basis to believe that the judicial processes had been tainted in some way. It was not.

Indeed, it was incumbent upon the Court at the time to immediately investigate and question the other jurors to determine the following: Were Mr. Little’s allegations and implications of juror misconduct true? Just what was/were the offending statement[s]? Were any such statement[s] grounds for a mistrial? None of this was done in this case. As such, Mr. Little has

effectively disrupted this Court's rightful processes for determination of the truth in this matter. Mr. Little, inadvertently or no, has led this Court to an "accommodation of deceit or lack of candor" in this judicial process. *Id.* at 455.

Should the Court be inclined to deny the motion to vacate and decline to instate the verdict delivered by the jury, Plaintiffs would ask for an evidentiary hearing with all of the jurors who sat for deliberations in this matter, to assist the Court in its investigations. At base, "the trial court has sufficient authority to conduct an investigation *and* [hold] a hearing to determine whether its judgments accurately reflect the truth." In sum, this Court has the implied and necessary authority to instate the jury's verdict or to conduct an investigative hearing. *Id.*

4. Plaintiffs not objecting to Defendants' motion for mistrial was predicated on testimony by Mr. Little, who is now known as a biased juror.

At the time of Defendants' motion for a mistrial based upon Mr. Little's statements, all involved parties (both sets of counsel, as well as the Court) were under the impression that Mr. Little's statements were candid. Upon this belief, Plaintiffs did not (at the time) object to the motion. As the affidavits confirm, Mr. Little's statements turned out to be false, or at least wildly inaccurate. Ms. Kendrick should never have been disqualified to serve on the jury. Additionally, Plaintiffs have discovered, via affidavits, that in fact it was Mr. Little who possessed preconceived biases against Plaintiffs' attorneys prior to deliberations.

The Kentucky Supreme Court has held that a trial court that fails to remedy juror misconduct such as this—misconduct that could not have been known to the parties at the pertinent time—rises to the level of palpable error. *Deemer v. Finger*, 817 S.W.2d 435 (Ky. 1991) (issue of juror misconduct, raised for the first time on discretionary review in the Supreme Court, considered "palpable error," where juror made comments captured on video at trial, but unknown to counsel for the parties at the time). No party objected to the jury returning a verdict in this case, and the

jury did so; this verdict was otherwise complete and proper in all respects. Given the affidavits, the jury rendered a proper verdict in all respects and a judgment consistent with the jury verdict should be entered.

Had an investigation been conducted by the Court to determine the veracity of Mr. Little's claims and the extent of their effect, Plaintiffs would have objected to a motion for mistrial at that time. As the case stands, Plaintiffs were not given the benefit of an investigation into the truth of the matter. *Importantly, although Plaintiffs and the Court were not aware of the facts underlying Mr. Little's accusations, the jury determined the truth of the facts underlying the ultimate case before it. Any investigation into Mr. Little's claim can only confirm the fairness of the jury's deliberations and enhance the credibility of the jury's verdict.*

5. Failing to vacate mistrial in this case would constitute palpable error, resulting in a determination in the Court of Appeals, under an abuse of discretion standard, that manifest injustice occurred in this case.

Under CR 61.02, a “palpable error which affects the substantial rights of a party may be considered by the court on motion . . . even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.” Affidavits demonstrate the jury's ultimate decision was not affected by any statement made by Ms. Kendrick. *See* attached Exhibits 1–5. A declaration of mistrial based on the word of one juror without proper *voir dire* of the remaining jurors would result in a manifest injustice. The jury's finding in favor of Plaintiffs after considering the evidence of both parties—basing its decision on that evidence alone—was proper. *Id.*

Palpable error is determined when “there is a substantial possibility that the result would have been different without the error.” *Shy v. Walker*, 2013 WL 3808005, (Ky. Ct. App. 2013) (citing *Hibdon v. Hibdon*, 247 S.W.3d 915, 918 (Ky. App. 2007)). In the *Shy* case, the Kentucky

Court of Appeals denied a motion for mistrial because, although statements made by the plaintiff's attorney may have been improper, they did not warrant a mistrial. *Id.* In other words, especially in the greater context of the evidence presented, there was no indication of a *substantial possibility* that the plaintiff's counsel's remarks caused the jury to reach a different verdict than it otherwise would have. In contrast, in the present case the jury reached a verdict in favor of Plaintiffs, which is *prima facie* evidence the "result [in a final verdict and order] would [have been] different without" an erroneous declaration of mistrial. *Higdon*, 247 S.W.3d 915 at 918.

Were the Court to continue with the order of mistrial, a second trial could easily have a truly tainted jury pool and return a verdict in favor of Defendants. Yet, there would then be more than adequate evidence to demonstrate error on appeal. Thus, the Court should enter the verdict determined by the jury, rather than allowing manifest injustice to occur in the form of an unwarranted mistrial.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the Court reconsider and vacate its order declaring a mistrial, and instead enter a Judgement consistent with the verdict of the jury. In the alternative, should the Court be inclined to deny the motion to vacate, Plaintiffs ask for an evidentiary hearing, with all jurors who deliberated to be present, thereat to submit for questioning by the Court and the parties.

By: /s/ Ross F. Mann
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document was filed with the Pike County Circuit Court Clerk using the ECF system, which will send notification of same to the following counsel of record this 20th day of February, 2023:

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dbrown@gazakbrown.com
Jim Smith, Esq.
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Gazak Brown, P.S.C.
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Counsel for Defendants

/s/ Ross F. Mann
ROSS MANN LAW PLLC

**COMMONWEALTH OF KENTUCKY
PIKE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-00233**

ELECTRONICALLY FILED

Nicky Gauze, Individually;
Nicky Gauze, as Administrator of
the Estate of Mary Gauze, deceased;
Nicky Gauze, as Guardian of Joey Gauze, a Minor;
and Cody Gauze, Individually.

PLAINTIFFS

vs.

Pikeville Medical Center, Inc. d/b/a Pikeville Medical Center;
John Does 1 through 3, Unknown Defendants

DEFENDANTS

AFFIDAVIT OF ANGELA KENDRICK

Comes now the Affiant, Angela Kendrick, being first duly sworn, hereby deposes and states:

1. My name is Angela Kendrick. I am over the age of 18 years, and I have personal knowledge of the information set forth herein.
2. I am a resident of Pike County, Kentucky.
3. I was summoned for jury duty for the Pike County Circuit Court in January, 2023.
4. I have treated in the past and continue to treat with physicians and agents of Pikeville Medical Center.
5. On or around January 31, 2023, I was selected to sit on the jury in the matter of *Nicky Gauze, et al v. Pikeville Medical Center, Inc., et al.*, Pike Circuit Court, Division No. II, Civil Action No. 19-CI-00233.
6. I attended each day of the trial in the above matter and attentively listened to the attorneys, witnesses, and evidence presented.
7. I did not formulate any final opinions on this matter until I had heard all of the

evidence presented by both sides.

8. I did not speak to any jurors about the case until deliberations began on the afternoon of Thursday, February 9, 2023.
9. I did not discuss the facts of the case or evidence presented at trial with anyone at all prior to the conclusion of the case.
10. On Thursday, February 9, 2023, following the closing arguments by Plaintiffs and Defendants, the jury began deliberations.
11. It was not my intent or desire to be the foreperson of the jury entering the deliberation room.
12. In fact, I expressly stated I did not want to be the foreperson at the beginning of deliberations.
13. No one initially volunteered to be the foreperson of the jury.
14. After several minutes, I volunteered to serve as foreperson because no other jurors indicated a willingness to do so.
15. I was the foreperson for the jury deliberations on the case *Nicky Gauze, et al v. Pikeville Medical Center, Inc. et al.*
16. At or near the beginning of the deliberation process on Thursday, February 9, 2023, I made a statement to the rest of the jurors that angered a male juror.
17. The male juror referred to in paragraph 16 was the same individual that sat beside me during the trial.
18. To the best of my recollection and belief, the statement I made during deliberations was as follows: "I told my husband never take me to Pikeville Medical Center in an emergency."

19. The statement referenced above was one I made to my husband on the night of Wednesday, February 8, 2023 after all parties had finished presenting evidence.
20. I did not discuss the specific facts of the case, any evidence presented, or any thoughts I had concerning the case with my husband or anyone else.
21. Following my statement during deliberations, the male juror referred to in paragraph 16 accused me of being biased and stated that I should not be there.
22. In response, I informed the male juror referred to in paragraph 16 that I did not enter the case with any opinions on Pikeville Medical Center and, further, any opinions I had formed were based exclusively on the evidence presented during the trial.
23. The male juror referred to in paragraph 16 who scolded me did not make any further statements to me during the remainder of the first day of deliberations.
24. On the second day of deliberations, I saw the male juror referred to in paragraph 16 approach the Judge.
25. I did not know the substance of what he stated to the Judge at that time.
26. Sometime after the male juror referred to in paragraph 16 approached the Judge, the jury resumed its deliberations.
27. To the best of my knowledge and belief, the entire jury panel was unaware that a mistrial had been declared and continued deliberations.
28. During the deliberations on Friday, February 10, 2023, the male juror referred to in paragraph 16 and another older, male juror refused to participate in the deliberations after nine (9) jurors found that Pikeville Medical Center's negligence caused the injuries to Mary Gauze and her family.

- 29. The male juror referred to in paragraph 16 was extremely upset after the jury supported causation and stated that, "Plaintiffs are nothing but a bunch of ambulance chasers."
- 30. When the jury returned its final verdict for Plaintiffs, I was totally unaware that a mistrial had been declared.
- 31. I first learned of the mistrial when I saw it posted on Facebook.
- 32. Upon learning of the mistrial, I contacted counsel for Plaintiffs of my own volition to discuss the events that took place in the jury room.
- 33. I was never interviewed during jury deliberations by any party, attorney, or judicial employee concerning the allegations made against me by the male juror referred to in paragraph 16.
- 34. In sum, each and every opinion I developed concerning this case or Pikeville Medical Center was based exclusively on the evidence produced by the parties at the trial.

Further, this Affiant sayeth naught.

VERIFICATION

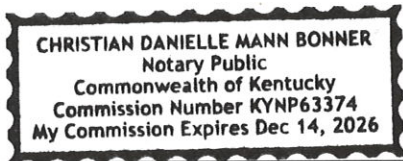
I, Angela Kendrick, having been duly sworn, hereby affirm, subject to the penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.



 ANGELA KENDRICK, Affiant

COMMONWEALTH OF KENTUCKY)
) SS:
 COUNTY OF PIKE)

Subscribed and sworn to before me by Angela Kendrick on this the 16 day of February, 2023.



D Bonner

NOTARY PUBLIC, STATE-AT-LARGE

My Commission Expires: 12-14-26

EXH : 000005 of 000005

**COMMONWEALTH OF KENTUCKY PIKE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-00233**

ELECTRONICALLY FILED

Nicky Gauze, Individually;
Nicky Gauze, as Administrator of
the Estate of Mary Gauze, deceased;
Nicky Gauze, as Guardian of Joey Gauze, a Minor;
and Cody Gauze, Individually.

PLAINTIFFS

vs.

Pikeville Medical Center, Inc. d/b/a Pikeville Medical Center;
John Does 1 through 3, Unknown Defendants

DEFENDANTS

AFFIDAVIT OF ETHAN RIFE

1. My name is Ethan Rife. I am over the age of 18 years, and I have personal knowledge of the information set forth herein.
2. I am a resident of Pike County, Kentucky.
3. I was a juror who sat for the jury deliberations on the case *Nicky Gauze, et al v. Pikeville Medical Center, Inc. et al.*
4. I did not speak with any jurors about the case prior to the close of evidence on February 8, 2023.
5. To the best of my knowledge and belief, we began deliberations on this case on February 9, 2023.
6. During the first day of deliberations, no juror initially volunteered to be the foreperson.
7. After several minutes passed, a female juror volunteered to serve as the foreperson because no one else had volunteered to do so.
8. On February 9, 2023, the first day of deliberations, I heard the foreperson make the

following statement: "I told my husband to never take me to Pikeville Medical Center".

9. Two (2) male jurors became upset at the foreperson's statement.
10. In response, the foreperson stated the following: "I am not biased, and I haven't told my husband anything about this case. I just told him to never take me to Pikeville Medical Center."
11. After nine (9) jurors decided for the Plaintiff on the issue of causation, a male juror stated, "Those Plaintiffs' attorneys are nothing but a bunch of ambulance chasers".
12. That male juror and another older male juror were angry with the remainder of the jury once nine (9) supported causation.
13. The juror who stated that Plaintiffs' attorneys are ambulance chasers is the same juror who went up to the Judge's bench on the second day of deliberations.
14. I did not hear what the juror said to the Judge and was not interviewed by anyone concerning deliberations prior to the rendering of the final verdict on February 10, 2023.
15. I made my decisions as a juror based on the evidence I heard in the court room during the trial;
16. During the deliberations the juror who made the statement in line 4 and an older gentleman were angry with the rest of the jurors for finding for the Plaintiff.
17. My votes and decisions in this matter were based exclusively on the evidence I heard at trial.

Further, this Affiant sayeth naught.

VERIFICATION

**COMMONWEALTH OF KENTUCKY PIKE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-00233**

ELECTRONICALLY FILED

Nicky Gauze, Individually;
Nicky Gauze, as Administrator of
the Estate of Mary Gauze, deceased;
Nicky Gauze, as Guardian of Joey Gauze, a Minor;
and Cody Gauze, Individually.

PLAINTIFFS

vs.

Pikeville Medical Center, Inc. d/b/a Pikeville Medical Center;
John Does 1 through 3, Unknown Defendants

DEFENDANTS

AFFIDAVIT OF NANCY HALL

1. My name is Nancy Hall. I am over the age of 18 years, and I have personal knowledge of the information set forth herein.
2. I am a resident of Pike County, Kentucky.
3. I was summoned for jury duty in January, 2023.
4. On or around January 31, 2023, I was selected to sit on the jury in the matter of *Nicky Gauze, et al v. Pikeville Medical Center, Inc.*
5. I attended each day of the trial in the above matter and listened to the attorneys, witnesses, and evidence presented attentively.
6. I did not formulate any final opinions on this matter until I had heard all of the evidence presented by both sides.
7. I did not speak to any jurors about the case until deliberations began on the afternoon of Thursday, February 9, 2023.
8. I did not discuss the facts of the case or evidence presented at trial with anyone at all prior to the conclusion of the case.

9. On Thursday, February 9, 2023, following the closing arguments by Plaintiffs and Defendants, the jury began deliberations;
10. At the beginning of deliberations, we were all asked if we wanted to be the foreperson.
11. A female juror raised her hand and volunteered to do so.
12. At or near the beginning of the deliberation process on Thursday, February 9, 2023, the foreperson made a statement about telling her husband not to take her to Pikeville Medical Center if she had an emergency.
13. This statement led to a discussion amongst jurors.
14. The foreperson explained she was not biased and based her decision on the evidence.
15. There were two (2) male jurors that supported Pikeville Medical Center in the deliberations from the beginning of deliberations.
16. On at least one (1) occasion, one of the two (2) male jurors mentioned in the above paragraph instructed other members of the panel to “shut up” during deliberations.
17. This juror seemed frustrated other jurors didn’t agree with him.
18. The two (2) male jurors referenced in paragraph fifteen (15) refused to participate in deliberations after nine (9) jurors found that Pikeville Medical Center’s negligence caused the injuries to Mary Gauze and her family.
19. During deliberations, one (1) of the male jurors referenced in Paragraph fifteen (15) stated that Ross Mann, one of Plaintiff’s counsel, was an “ambulance chaser.”
20. On the second day of deliberations, one (1) of the male jurors mentioned in paragraph fifteen (15) approached the Judge.

21. I did not know the substance of what the juror stated to the Judge at that time.
22. Later that day, the jury resumed deliberations.
23. To the best of my knowledge and belief, the entire jury panel was unaware that a mistrial had been declared and continued deliberations in good faith.
24. When the jury returned its final verdict for Plaintiffs, I was totally unaware that a mistrial had been declared.
25. I first learned of the mistrial after the conclusion of the trial.
26. I was never interviewed by any party, attorney, or judicial employee concerning any statements made in the jury room prior to the rendering of the verdict.
27. My votes, and each and every opinion I developed concerning this case or Pikeville Medical Center was based exclusively on the evidence produced by the parties at the trial.

Further, this Affiant sayeth naught.

VERIFICATION

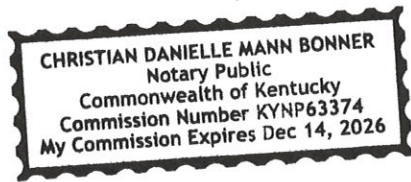
I, Nancy Hall, hereby affirm, subject to the penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.


Nancy Hall

COMMONWEALTH OF KENTUCKY)
)SS:
 COUNTY OF PIKE)

Subscribed and sworn to before me by Nancy Hall on this the 16 day of February, 2023.

My Commission Expires: 12-14-26



D Bonner
 NOTARY PUBLIC, STATE-AT-LARGE

**COMMONWEALTH OF KENTUCKY PIKE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-00233**

ELECTRONICALLY FILED

Nicky Gauze, Individually;
Nicky Gauze, as Administrator of
the Estate of Mary Gauze, deceased;
Nicky Gauze, as Guardian of Joey Gauze, a Minor;
and Cody Gauze, Individually.

PLAINTIFFS

vs.

Pikeville Medical Center, Inc. d/b/a Pikeville Medical Center;
John Does 1 through 3, Unknown Defendants

DEFENDANTS

AFFIDAVIT OF RANDAL DAMRON

1. My name is Randal Damron. I am over the age of 18 years, and I have personal knowledge of the information set forth herein.
2. I am a resident of Pike County, Kentucky.
3. I was summoned for jury duty in January, 2023.
4. On or around January 31, 2023, I was selected to sit on the jury in the matter of *Nicky Gauze, et al v. Pikeville Medical Center, Inc.*
5. I attended each day of the trial in the above matter and listened to the attorneys, witnesses, and evidence presented attentively.
6. I did not formulate any final opinions on this matter until I had heard all of the evidence presented by both sides.
7. I did not speak to any jurors about the case until deliberations began on the afternoon of Thursday, February 9, 2023.
8. I did not discuss the facts of the case or evidence presented at trial with anyone at all prior to the conclusion of the case.

9. On Thursday, February 9, 2023, following the closing arguments by Plaintiffs and Defendants, the jury began deliberations.
10. At the beginning of deliberations, all jurors were given an opportunity to volunteer to serve as foreperson.
11. No one initially raised their hand to volunteer for the position.
12. Eventually, a female juror volunteered to serve as the foreperson.
13. Shortly after deliberations began, the foreperson commented that she told her husband not to take her to Pikeville Medical Center if she had an emergency.
14. Several jurors, including myself, were initially concerned about this statement and a discussion ensued.
15. During the discussion, the foreperson explained that she did not discuss the facts of the case with anyone prior to her deliberation.
16. Further, she stated that all of her opinions were based only on the evidence.
17. I also remember the foreperson explaining that she treated with Pikeville Medical Center doctors all the time.
18. There were two (2) male jurors that supported Pikeville Medical Center from the beginning of deliberations.
19. One of those two (2) male jurors, an older male, was rude to some of the other jurors. Specifically, that juror told other jurors to “shut up.”
20. I recall on at least one (1) occasion asking the older gentleman referenced in paragraphs 18 and 19 to be friendlier.
21. On the second day of deliberations, one (1) of the male jurors mentioned in paragraph eighteen (18) approached the Judge.

- 22. I am unaware of what exactly that juror discussed with the Judge at that time.
- 23. The jury resumed deliberations sometime after the other juror approached the Judge.
- 24. I was completely unaware of the mistrial throughout the remainder of deliberations through the rendering of the verdict.
- 25. I was never interviewed by any party, attorney, or judicial employee concerning any statements made in the jury room prior to the rendering of the verdict.
- 26. I first learned of the mistrial on February 15, 2023.
- 27. My votes, and each and every opinion I developed concerning this case or Pikeville Medical Center was based exclusively on the evidence produced by the parties at the trial.

Further, this Affiant sayeth naught.

VERIFICATION

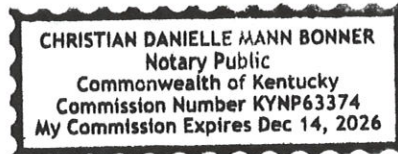
I, Randal Damron, hereby affirm, subject to the penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.


 Randal Damron

COMMONWEALTH OF KENTUCKY)
)SS:
 COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Randal Damron on this the 16 day of February, 2023.

My Commission Expires: 12-14-26



DBonner

NOTARY PUBLIC, STATE-AT-LARGE

COMMONWEALTH OF KENTUCKY PIKE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-00233

ELECTRONICALLY FILED

Nicky Gauze, Individually;
Nicky Gauze, as Administrator of
the Estate of Mary Gauze, deceased;
Nicky Gauze, as Guardian of Joey Gauze, a Minor;
and Cody Gauze, Individually.

PLAINTIFFS

vs.

Pikeville Medical Center, Inc. d/b/a Pikeville Medical Center;
John Does 1 through 3, Unknown Defendants

DEFENDANTS

AFFIDAVIT OF ROGER WILLIAMSON

1. My name is Roger Williamson. I am over the age of 18 years, and I have personal knowledge of the information set forth herein.
2. I am a resident of Pike County, Kentucky.
3. I was a juror who sat for the jury deliberations on the case *Nicky Gauze, et al v. Pikeville Medical Center, Inc. et al.*
4. I did not speak with any jurors about the case before the close of evidence on February 9, 2023.
5. To the best of my knowledge and belief, we began deliberations on this case on February 9 after closing arguments by the Plaintiffs and Defendants.
6. During the first day of deliberations, no juror initially volunteered to be the foreperson.
7. After several minutes passed, a female juror volunteered to serve as the foreperson because no one else had volunteered to do so.
8. One juror, an elderly gentleman, was rude and obnoxious as soon as deliberations

began said he would not be voting anything but “no” and to not talk to him about the case.

9. This elderly juror said that these folks are nothing but ambulance chasers.
10. The same juror told other jurors while deliberating to “shut up” and that the family was only out for money.
11. The first day of deliberations, I heard the foreperson make a statement to the effect of : “I would never take a dog to PMC.”
12. Initially, I was concerned about the statement and asked the group if we felt like we should take this to the judge.
13. We, as a jury, discussed the statement, and the foreperson clarified that she came to her opinions after hearing the evidence.
14. After a discussion amongst the entire jury, we were satisfied there was no preconceived bias with the foreperson and there was nothing improper stated nor anything that needed to be reported to the judge.
15. We retired Thursday evening around 6:30 p.m. At that time, we had decided the question of “negligence” 10-2 and there were 8 “yes” votes for whether the negligence caused the injuries.
16. To my knowledge when we retired Thursday evening nobody thought there was anything improper to report to the judge.
17. The following morning before the second day of deliberations, I observed one gentleman approach the judge.
18. I did not know what was said to the Judge and was not interviewed by anyone concerning deliberations prior to the rendering of the final verdict on February

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1 COMMONWEALTH OF KENTUCKY

2 PIKE CIRCUIT COURT

3 DIVISION I

4 CIVIL ACTION NO. 19-CI-00233

5
6
7 NICKY GAUZE, INDIVIDUALLY, AND
8 NICKY GAUZE, AS ADMINISTRATOR OF THE
9 ESTATE OF MARY E. GAUZE, DECEASED;
10 NICKY GAUZE, AS GUARDIAN OF JOEY GAUZE, A MINOR;
11 AND CODY GAUZE, INDIVIDUALLY,
12 Plaintiffs

13
14 V.

15
16 PIKEVILLE MEDICAL CENTER, INC.
17 D/B/A PIKEVILLE MEDICAL CENTER, ET AL.,
18 Defendants

19
20
21 TRIAL EXCERPT

22
23
24
25 DATE: FEBRUARY 10, 2023

Page 2

APPEARANCES

1
2
3 ON BEHALF OF THE PLAINTIFFS, NICKY GAUZE, INDIVIDUALLY,
4 AND NICKY GAUZE, AS ADMINISTRATOR OF THE ESTATE OF
5 MARY E. GAUZE, DECEASED; NICKY GAUZE, AS GUARDIAN OF
6 JOEY GAUZE, A MINOR; AND CODY GAUZE, INDIVIDUALLY:
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13
14 ON BEHALF OF THE DEFENDANTS, PIKEVILLE MEDICAL CENTER,
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17 James E. Smith, Esquire
18 Gazak Brown, PSC
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20 Suite 200
21 Louisville, Kentucky 40220
22 Telephone No.: (502) 412-5020
23
24
25

PROCEEDINGS

1
2
3 JUDGE HALL: Back on record. Case number
4 19-CI-233. Let the record reflect that the jury is
5 returning to the courtroom.
6 (JURY ENTERS THE COURTROOM)
7 JUDGE HALL: Good morning, everyone.
8 JURY PANEL: Good morning.
9 JUDGE HALL: Welcome back. 12 of you,
10 12 -- everybody --
11 BAILIFF: You-all may be seated.
12 JUDGE HALL: Got the same 12?
13 BAILIFF: Thank you-all.
14 JUDGE HALL: Yeah. Oh, that's right. Sorry.
15 Thank you, Jimmy. As you-all noticed, we run
16 different. We -- we're like some basketball teams
17 that play all the players. We run people -- clerks
18 run in and out and cover, and the sheriff's
19 department tags in and out on us as well. We
20 appreciate them, and sometimes the -- if we look a
21 little awkward, it's because we're using a different
22 starting lineup every day, sometimes with the
23 procedures and who says what where, but we
24 get -- that -- that's not the important -- the
25 important part is that you-all -- oh, housekeeping

Page 3

INDEX

1
2
3 PROCEEDINGS
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page
4

Page 5

1 measure here. I need to tell the people on Zoom
2 that I'm holding them up. Let me tell the -- you'll
3 see a bunch of people on here. Are we on the Zoom?
4 If you could go off --
5 CLERK: Sure.
6 JUDGE HALL: -- away from the trial for a
7 second. There we go. There's my name. I knew I'd
8 get there someday. Name up in writing. Come on.
9 Come on. Hey, Tawana, can you hear me? There we go.
10 Hello, those of you -- those of you that are
11 appearing in court for the Zoom docket or for the
12 motion docket, we're going to have about a ten-
13 minute delay. I'm going to call the motion docket
14 at 9:10, at ten minutes after 9:00. But I'm going
15 to leave you on just in case -- or let's see.
16 There's no need for that to be on, is there?
17 That's nothing but a -- there's no reason
18 for -- we'll -- we'll turn you back on here in just
19 a couple minutes. We're going to call the motion
20 docket at nine minute -- or ten minutes after 9:00,
21 a little bit of a delay. Back to the trial, Case
22 number 19-CI-233. When we adjourned yesterday
23 evening, the jury was in the process of
24 deliberation. I don't think there's any other
25 business other than just let them return back to the

Page 6

1 jury room to continue their deliberations. Ladies
 2 and gentlemen, we'll going to be in recess.
 3 The Court -- this trial will be in recess until
 4 return -- until you notify the bailiff that you have
 5 reached -- arrived at a verdict. I forgot to
 6 mention yesterday, did you-all go ahead and take
 7 cell phones in the room with you as -- deliberations
 8 yesterday? I was going to say -- I think that's my
 9 discretion. I like letting you keep them. I don't
 10 think anybody's going to go in there and go off and
 11 be talking to somebody while the other 11 are
 12 deliberating. I think you-all wouldn't do that
 13 anyway. And I don't -- I can't -- I can't think of
 14 any other misuse other than somebody trying to
 15 research information, and I don't think any of you
 16 would do that. If you've done that, you already
 17 missed that opportunities [sic] for two weeks.
 18 The other reason somebody might use a cell phone is
 19 to call to say, hey, we're at such-and-such number.
 20 What should I -- I don't think anybody's going to
 21 call out for an audible, for anybody to help them.
 22 There -- nobody out there you could call that knows
 23 as much about this case as you do. Who would
 24 you -- I mean, you know what I'm saying? Who would
 25 you call? They're not going to know what two weeks

Page 7

1 of testimony is all about. They're not going to
 2 know anything about this case more than you-all do.
 3 So with that in mind, I'd rather you just keep them
 4 with you. If you-all want to, when you get in
 5 there, if you want to just avoid the disruption, you
 6 may want to set them on a separate table yourselves
 7 and then check them every hour, however you-all want
 8 to do it. I'm going to let you police yourselves on
 9 jury -- I mean on the cell phones; is that okay?
 10 Because some of you might have -- if you're like me,
 11 I mean, you might get an emergency text or
 12 something. And most people text these days. They
 13 don't call. Calls disrupt you. Most people now
 14 know how to text you. So usually all you have to do
 15 is go in and take a quick look. And what I did when
 16 I was on jury, I just texted back, I'm in a jury
 17 trial. Call you later. Click. Done. I think
 18 that's what most people do nowadays. Most people
 19 know how to do that. If I know how to do it, you
 20 know how to do it, okay? We'll put it like that.
 21 Oh, you-all see me when there -- when there's a
 22 technology -- yes, sir?
 23 JUROR 1: I have a question about --
 24 JUDGE HALL: Do you want to come around?
 25 JUROR 1: -- deliberation.

Page 8

1 JUDGE HALL: Come on around. We better take
 2 that in private. There's not much we can tell you,
 3 but --
 4 JUROR 1: Well --
 5 JUDGE HALL: -- the question might -- the
 6 question might be something we can tell you.
 7 Let's scramble if we could.
 8 (BENCH CONFERENCE)
 9 JUDGE HALL: We're just going to scramble.
 10 Okay.
 11 JUROR 1: We've -- well, I'm going to tell you
 12 what we've done. We get through number 1, and then
 13 to number 2, and we can't get any further. We can't
 14 skip 2 and go onto 3. We have to get 2 done before
 15 we can --
 16 JUDGE HALL: The only thing I can tell you is
 17 continue to talk to each other, continue to
 18 deliberate. That's all I can really tell you. Is
 19 there anything else I can tell him that you-all know
 20 of?
 21 MALE ATTORNEY: I don't think there's anything
 22 else, Your Honor.
 23 JUDGE HALL: The only thing I can tell you
 24 is --
 25 JUROR 1: I just wanted to make sure --

Page 9

1 JUDGE HALL: I can just tell you keep trying
 2 to --
 3 JUROR 1: Yeah.
 4 JUDGE HALL: -- to arrive at a verdict. If you
 5 eventually can't, we'll bring you back in and see
 6 where you're at. We can't push you one way or the
 7 other.
 8 JUROR 1: Oh, no. I was just wondering --
 9 JUDGE HALL: I mean, I don't mean push you one
 10 way or the other, but I mean, we can't push
 11 you -- obviously, we can't push you right or left,
 12 but we can't push you toward a verdict or away from
 13 a verdict.
 14 JUROR 1: Right.
 15 JUDGE HALL: You know, we can't direct you any
 16 direction at all.
 17 JUROR 1: Okay. That's --
 18 JUDGE HALL: Obviously, we couldn't go right,
 19 left.
 20 JUROR 1: That's what we kind of understood,
 21 but I wanted to make sure.
 22 JUDGE HALL: Yeah. I can't push you toward a
 23 verdict or away from a verdict.
 24 JUROR 1: Yeah.
 25 JUDGE HALL: But -- and I can't -- obviously,

Page 10

1 can't go right or left or back or forward.
 2 You-all are in complete control.
 3 JUROR 1: That's scary.
 4 JUDGE HALL: I know. There you go. Okay.
 5 (END OF BENCH CONFERENCE)
 6 JUDGE HALL: Let's go back on record. Ladies
 7 and gentlemen, we're going to let you-all go ahead
 8 and retire to the jury room. Now, we -- is
 9 everybody fine as far as food right now?
 10 Everybody's -- nobody's -- I don't want anybody's
 11 stomach growling, okay? So you know where I'm
 12 coming from. As the day progresses, if stomachs
 13 start growling, we'll address that, without going
 14 into detail. That in mind, I'll go ahead and let
 15 the jury be excused to the -- oh, do you want to
 16 come around?
 17 JUROR 2: Yeah. I have a question.
 18 JUDGE HALL: All righty. Back on the scrambler
 19 if you don't care.
 20 (BENCH CONFERENCE)
 21 JUROR 2: If there was a statement made at the
 22 beginning of deliberations by one of the jurors that
 23 would have made them not eligible to be on this
 24 jury, is that -- that's -- I mean, this is
 25 already -- the case is done now. But is that just

Page 11

1 the way -- that's just the way it is, right?
 2 I mean --
 3 JUDGE HALL: Unless it's a violation of one of
 4 the rules we've laid out -- if it's a violation of
 5 one of the rules we've laid out --
 6 JUROR 2: Well, they answered -- they -- I
 7 mean, that's --
 8 JUDGE HALL: Huh?
 9 JUROR 2: That's another --
 10 JUDGE HALL: If you think it makes this trial
 11 illegal, we need to know about it.
 12 JUROR 2: Well, that's -- I mean, you what I'm
 13 saying? I lost sleep last night because of that,
 14 not because of the facts -- this facts or that.
 15 JUDGE HALL: (Inaudible.)
 16 JUROR 2: There was three people other than me
 17 that were -- jaws dropped.
 18 JUDGE HALL: Here's the deal. Here's the deal.
 19 JUROR 2: And we asked should that be brought
 20 to the judge and --
 21 JUDGE HALL: Would have rather it been when we
 22 had 14 jurors with us, but we're scared now that
 23 we're down to 12. You-all work as a unit, and we
 24 don't like to disturb. We don't want to disturb
 25 you-all as a unit.

Page 12

1 JUROR 2: It was just a -- I mean, you know
 2 what I'm saying? That's -- it was something that
 3 was made during the deliberations, and three
 4 people's jaws hit the floor. And we discussed, you
 5 know, should this be brought to the judge? I mean,
 6 it's --
 7 JUDGE HALL: That's your-all's decision --
 8 JUROR 2: So I --
 9 JUDGE HALL: -- whether or not you bring it to
 10 me. Would you want me to bring -- would you-all
 11 like them to bring it to me without you-all to
 12 make a determination or decide whether it's
 13 something --
 14 MALE ATTORNEY: Could -- could -- could
 15 we -- could we talk? Could we talk for a minute?
 16 MALE ATTORNEY: Yeah.
 17 MALE ATTORNEY: Thank you.
 18 JUDGE HALL: Yeah, let's talk about it real
 19 quick. Okay. Good deal.
 20 MALE ATTORNEY: So -- Brian (Inaudible) hear
 21 what he said.
 22 MALE ATTORNEY: Basically, he said a comment
 23 was made at the very beginning of deliberations.
 24 Several people, three people plus him, were very
 25 upset about it. And he said that it was something,

Page 13

1 correct me if I'm wrong, that would've disqualified
 2 that juror from the case.
 3 JUDGE HALL: Well, it being a civil case, we
 4 have nine out of 12. If it was a criminal case,
 5 I'd really be more upset. Can they --
 6 MALE ATTORNEY: I -- I mean --
 7 JUDGE HALL: Can they work amongst themselves,
 8 or did he say something to taint the jury?
 9 MALE ATTORNEY: Can I --
 10 JUDGE HALL: What's Jimmy doing?
 11 MALE ATTORNEY: Could I -- Your Honor, could I
 12 talk to these gentlemen for a second?
 13 JUDGE HALL: Jimmy probably wants to
 14 (Inaudible) away from the juror. Like I said,
 15 I'm more uncomfortable with what's going on there.
 16 (INAUDIBLE BACKGROUND CONVERSATION)
 17 JUDGE HALL: I'm more uncomfortable with the
 18 bailiff back there talking with the jurors.
 19 I don't...
 20 MALE ATTORNEY: I'm with you. I'm --
 21 JUDGE HALL: Jimmy, what you got? Jimmy, you
 22 got something? Have you got something with the jury
 23 that needs -- is there some discussions with the
 24 jury? Okay.
 25 BAILLIFF: Uh-uh.

Page 14

1 JUDGE HALL: Okay.

2 BAILIFF: Not when -- not when (Inaudible).

3 JUDGE HALL: Yeah. Well, I -- be careful

4 talking to anybody, I mean even the weather.

5 BAILIFF: No problem.

6 JUDGE HALL: Good deal.

7 MALE ATTORNEY: Hey, Judge. I -- I just think

8 in abundance of caution -- we don't know which way

9 this cuts, right?

10 MALE ATTORNEY: Yeah. I think we --

11 MALE ATTORNEY: No clue. I think we -- the

12 Court needs to know what was said, and we need to

13 figure out what we're going to do about this.

14 MALE ATTORNEY: If you believe it's

15 disqualifying, then we can go from there. I mean,

16 I don't want the -- none of us want the two weeks to

17 be for nothing.

18 MALE ATTORNEY: I think we should probably -- I

19 think -- I think what we should probably do right

20 now is have the jury not deliberate for a few

21 minutes and let's figure this out.

22 JUDGE HALL: Okay.

23 MALE ATTORNEY: I would suggest -- I would

24 suggest this to the group, that -- that the juror

25 talk to the judge. He can find out what it's about.

Page 15

1 MALE ATTORNEY: Yeah, I agree.

2 MALE ATTORNEY: And then you can make a

3 determination as to whether or not it's something

4 that should be -- if it --

5 JUDGE HALL: Should he do it right here at the

6 bench on the record?

7 MALE ATTORNEY: Well, let me -- do you -- do

8 you not think --

9 JUDGE HALL: I think he ought to come here

10 and --

11 MALE ATTORNEY: Do you not think -- do you not

12 think not -- we should know, too? I mean --

13 MALE ATTORNEY: I think --

14 MALE ATTORNEY: I think he makes the decision.

15 If it's just -- if he believes it's disqualifying,

16 then yes. If he believes it's not --

17 MALE ATTORNEY: If it's something that's going

18 to bias somebody like --

19 MALE ATTORNEY: It sounds like that's the only

20 thing it could have been. I'm just...

21 MALE ATTORNEY: -- just someone has -- knows

22 them or knows us or -- or has sued somebody. You

23 know what I mean? Like, if it's a --

24 MALE ATTORNEY: Sure.

25 MALE ATTORNEY: -- disqualifying, then the

Page 16

1 judge can submit it to our attention. If some -- if

2 somebody (Inaudible) last night, then they're --

3 then that's a problem --

4 MALE ATTORNEY: If it's something that we can

5 admonish on, simplify, then we don't need to hear

6 it.

7 MALE ATTORNEY: Yeah. If it's not a

8 disqualifying, bias --

9 MALE ATTORNEY: I mean, it doesn't sound --

10 it -- okay. That's fine. But it doesn't sound like

11 something minor. If -- if -- if three --

12 MALE ATTORNEY: I agree.

13 MALE ATTORNEY: -- if three jurors --

14 MALE ATTORNEY: I -- I agree.

15 JUDGE HALL: Who said it? Yeah. When he said

16 that -- that --

17 MALE ATTORNEY: If three guys (Inaudible).

18 MALE ATTORNEY: Yeah. If three jurors didn't

19 sleep last night --

20 MALE ATTORNEY: Yeah.

21 MALE ATTORNEY: -- it ain't small.

22 MALE ATTORNEY: There's clear frustration and

23 anger last night with some of the jurors. I think

24 we all -- can talk about it all night long. Some of

25 them -- some of them are angry about something.

Page 17

1 I'm not sure, but this might be what it is.

2 MALE ATTORNEY: Yeah.

3 MALE ATTORNEY: So I think you probably need to

4 find out.

5 JUDGE HALL: Well, I don't live in a vacuum.

6 Someone told me last night that one of the jurors

7 was walking up and down Main Street after it was

8 over kind of huffing and puffing.

9 MALE ATTORNEY: Okay.

10 MALE SPEAKER: We have (Inaudible).

11 MALE ATTORNEY: Okay.

12 JUDGE HALL: Okay. So what do you-all think

13 right now -- we're going to -- I'm going to talk to

14 him in private back in my office.

15 MALE ATTORNEY: Yeah --

16 BAILIFF: The juror who just came up here,

17 yes, sir.

18 JUDGE HALL: Just bring him here to me first.

19 BAILIFF: Or which -- wherever you want to do

20 it.

21 JUDGE HALL: I'm going to bring him here so I

22 can make a record, but I don't hear -- I mean,

23 I don't want them to hear --

24 MALE ATTORNEY: Let me -- let me say this.

25 I think we -- I think he -- you need to ask him if

Page 18

1 he's comfortable to say it right here, or would he
 2 rather --
 3 MALE ATTORNEY: Yeah.
 4 JUDGE HALL: Right.
 5 MALE ATTORNEY: -- or -- or -- or would he
 6 rather be on the record?
 7 MALE ATTORNEY: What's his name?
 8 MALE ATTORNEY: I think Christian Little.
 9 I think he was --
 10 MALE SPEAKER: Mr. Little.
 11 MALE ATTORNEY: I think he needs to --
 12 MALE ATTORNEY: Christian Little, L-I-T-T-L-E.
 13 MALE ATTORNEY: I think he -- I think you need
 14 to ask him --
 15 JUDGE HALL: Mr. Little, would you come right
 16 up?
 17 MALE ATTORNEY: Your Honor, I would ask him if
 18 he would rather make it to you on record or
 19 chambers.
 20 JUDGE HALL: Okay. I'm going to let you tell
 21 me a little bit about it --
 22 JUROR 2: Okay.
 23 JUDGE HALL: -- a little bit about it, outside
 24 of the attorneys.
 25 JUROR 2: Okay.

Page 19

1 JUDGE HALL: We can do it one of three ways.
 2 We're on the record right now.
 3 JUROR 2: Okay.
 4 JUDGE HALL: There's a record being made.
 5 I can either talk to you about it back in my office
 6 with the other jurors or just you individually, you
 7 as the person carrying the message. We can do it
 8 back in my office. We can leave it out here with
 9 the tape running where it's all aired out. It'll be
 10 this recording, but that's the scrambler.
 11 JUROR 2: Yeah.
 12 JUDGE HALL: Want to go back in my office --
 13 wherever you feel more -- where do you think would
 14 be the most comfortable way to address it?
 15 JUROR 2: I mean, I can tell you right here.
 16 JUDGE HALL: Okay. Go ahead.
 17 JUROR 2: It's not -- the -- the -- I'll tell
 18 you exactly what happened. The person that
 19 volunteered to be the foreperson --
 20 JUDGE HALL: Uh-huh.
 21 JUROR 2: -- okay, volunteered to be the
 22 foreperson, about a few minutes into the
 23 deliberations, she stated, "I've told my family that
 24 if anything ever happens to me, never take me to
 25 PMC." And three people -- like I said, three --

Page 20

1 they were -- they were -- I saw three peoples' eyes
 2 get -- immediately.
 3 JUDGE HALL: Uh-huh.
 4 JUROR 2: And I immediately raised my hand and
 5 I said, "Why -- can I ask why you let yourself be on
 6 this jury?" And two other people questioned, and
 7 then --
 8 JUDGE HALL: Uh-huh.
 9 JUROR 2: -- she changed her story and said,
 10 "Well, I -- I know -- I didn't tell my family.
 11 I told my husband that after the trial started."
 12 And I said, "Me and -- so you're basing your
 13 decision on the first day of trial, you know,
 14 because you -- you" -- so she backtracked then.
 15 And then another person, not me, another person,
 16 a juror said, "Do you -- you know, do you think that
 17 we should take this to the judge?"
 18 JUDGE HALL: Right. There is no such thing as
 19 a perfect juror. There's no -- none of us are
 20 perfect. I have to look at myself mirror when I come
 21 in here. If I've got to hear a case that I feel a
 22 little uncomfortable, I wouldn't hear the case.
 23 JUROR 2: Right. Exactly. I just --
 24 JUDGE HALL: Everybody's allowed to bring their
 25 biases into the room.

Page 21

1 JUROR 2: Yeah, I agree.
 2 JUDGE HALL: And she probably should have
 3 answered that during the voir dire if that question
 4 was directly asked. I don't remember.
 5 JUROR 2: That's what that was, the question we
 6 asked her was --
 7 JUDGE HALL: Uh-huh. Keep in mind --
 8 JUROR 2: We asked if anybody --
 9 JUDGE HALL: -- that this isn't a criminal case
 10 that requires all 12 of you.
 11 JUROR 2: Right.
 12 JUDGE HALL: One person can roadblock it.
 13 JUROR 2: And that -- this is my problem.
 14 This is -- my next problem is that -- and I can tell
 15 you because -- I can tell you --
 16 JUDGE HALL: Do you feel comfortable -- do you
 17 feel comfortable -- and I don't shouldn't even be
 18 making any comments back to you. Do you feel
 19 comfortable right now going forward with the case
 20 with that person in there once you disclosed it to
 21 me?
 22 JUROR 2: Well, I mean, it's -- I mean, I just
 23 wanted to say that's how --
 24 JUDGE HALL: Uh-huh.
 25 JUROR 2: I mean, I just want -- I'm not

Page 22

1 going -- I don't want go --
 2 JUDGE HALL: Sure.
 3 JUROR 2: -- leave here --
 4 JUDGE HALL: You want me -- now, I can take
 5 what you said to the attorneys.
 6 JUROR 2: I'm not leaving it on my conscience.
 7 JUDGE HALL: I can take what you said to the
 8 attorneys and let them see how they want to handle
 9 it.
 10 JUROR 2: Okay.
 11 JUDGE HALL: If they say go forward, we're
 12 going to go forward.
 13 JUROR 2: Yeah.
 14 JUDGE HALL: I think we can go forward.
 15 JUROR 2: Okay. And that's just my -- my
 16 concern, was that --
 17 JUDGE HALL: Right.
 18 JUROR 2: -- the first question -- this is
 19 between me and you.
 20 JUDGE HALL: Now, did she make that statement
 21 based on what she heard in the trial, or did she
 22 bring that preconceived feeling into the courtroom?
 23 JUROR 2: Yeah, that's what -- that's what I
 24 took it as.
 25 JUDGE HALL: It was so early in the trial,

Page 23

1 that she brought that feeling in with her.
 2 JUROR 2: Yeah, she said that. That's what I'm
 3 saying. We hadn't started deliberating. This is
 4 after we --
 5 JUDGE HALL: I feel -- well, I won't tell you
 6 how I feel. I've only got one question. Was it
 7 based upon what she'd heard during this trial, or
 8 was it what she brought in as a preconceived
 9 feeling?
 10 JUROR 2: And then we continued to deliberate a
 11 few minutes --
 12 JUDGE HALL: That was on --
 13 JUROR 2: -- and I --
 14 JUDGE HALL: That -- oh, that was -- did she
 15 say she felt -- she mentioned something about the
 16 first -- at the very beginning.
 17 JUROR 2: That was before we started
 18 deliberating.
 19 JUDGE HALL: She said that after the first
 20 (Inaudible)?
 21 JUROR 2: She volunteered to be the foreperson,
 22 which was -- I thought was strange somebody
 23 volunteered right off the bat to be that, you know.
 24 I'm, like, dang, I figured nobody --
 25 JUDGE HALL: You-all are a sacred body.

Page 24

1 You-all were on your own. But that -- that -- that
 2 probably needed to be brought to -- out of the jury
 3 room to us. I'll let the attorneys see how they want
 4 to handle that, okay? Appreciate it.
 5 JUROR 2: Okay.
 6 (END OF BENCH CONFERENCE)
 7 JUDGE HALL: Okay. Let's go back.
 8 Oh, scram -- oh, if the attorneys could come up.
 9 I think we're okay.
 10 (BENCH CONFERENCE)
 11 JUDGE HALL: Apparently, the lady insisted on
 12 becoming foreperson --
 13 MALE ATTORNEY: Do what now?
 14 JUDGE HALL: He said the one lady -- this is
 15 when they deliberating -- who wanted to be
 16 foreperson and after she got to be foreperson she
 17 said, "I've told my family don't ever take me to
 18 Pikeville Medical Center." I'm paraphrasing.
 19 There's a record made of it. She said, "I -- never
 20 take me to Pikeville Medical Center." And I quizzed
 21 him a little bit about was that a preconceived
 22 feeling she brought in, or did she did learn that
 23 here. He said she said -- that was at the first day
 24 of the trial. She told her -- she said, "Well, I
 25 didn't tell all my family, just my husband."

Page 25

1 MALE ATTORNEY: So she --
 2 JUDGE HALL: Came in with a preconceived --
 3 MALE ATTORNEY: And she's the foreperson?
 4 MALE ATTORNEY: She's the foreperson.
 5 JUDGE HALL: And -- but now, you've got three
 6 saying, you know, I -- it doesn't sound like -- I
 7 mean, I don't know, and I'm not going to make
 8 opinions. That was what's said to me. I didn't go
 9 any further. I think it would have been
 10 inappropriate for me to ask what impact did that
 11 have. There's so many things I would like to ask,
 12 but I can't.
 13 MALE ATTORNEY: Yeah, I know.
 14 JUDGE HALL: I hope I didn't ask anything
 15 further. I just kind of asked him a little bit
 16 about it.
 17 MALE ATTORNEY: Your Honor, I don't think we
 18 can make a decision --
 19 MALE ATTORNEY: Yeah. We've got to talk --
 20 MALE ATTORNEY: -- without talking to our
 21 clients. We're going to have to be recessed for a
 22 little while?
 23 JUDGE HALL: Sure. Okay.
 24 (INAUDIBLE BACKGROUND CONVERSATION)
 25 JUDGE HALL: Oh --

Page 26

1 MALE ATTORNEY: Can we dismiss the jury
 2 for --
 3 JUDGE HALL: Now, I need to tell Mister -- hold
 4 just a second. Do I need to tell him not to discuss
 5 with them what he told me?
 6 MALE ATTORNEY: Yes.
 7 JUDGE HALL: Do I need to let him know that
 8 he --
 9 MALE ATTORNEY: Yes.
 10 MALE ATTORNEY: Yeah.
 11 JUDGE HALL: -- doesn't need to tell them,
 12 that it was private?
 13 MALE ATTORNEY: Yeah.
 14 JUDGE HALL: Okay. Mister -- could I have you
 15 come back up real quick? To protect the integrity
 16 of the entire -- make sure -- to protect the
 17 entire -- integrity of the whole process, because I
 18 want you-all to work as a body, not -- to protect
 19 the integrity of the process, anything you said up
 20 here, I think we all agree, should not be discussed
 21 with the jury in general. What did you tell the
 22 judge? What did they say? What - - what's the
 23 hold-up?
 24 JUROR 2: Okay.
 25 JUDGE HALL: I think you need to tell them

Page 27

1 to -- you know, that -- that -- that under direct
 2 orders of the judge, direct orders, it not be
 3 discussed what -- anything said up here. That's
 4 why the scrambler is on.
 5 JUROR 2: Okay.
 6 JUDGE HALL: So that's why the scrambler was
 7 put off so that they -- it was -- if I wanted them
 8 to hear it, we would've turned that off.
 9 JUROR 2: Right.
 10 JUDGE HALL: We're going to keep that body
 11 sacred.
 12 JUROR 2: Okay.
 13 JUDGE HALL: Appreciate it. Thank you.
 14 (END OF BENCH CONFERENCE)
 15 JUDGE HALL: All right. Back on record. Ladies
 16 and gentlemen of the jury, we're -- we've got a full
 17 day ahead of us, so nobody get too excited. We've
 18 got a couple of administrative matters we have to
 19 take care of. We're going to go ahead and let the
 20 jury be returned to the -- what's the best way?
 21 You-all want to return -- should we have them return
 22 back to the gallery -- back to the jury room? What
 23 would be the most appropriate way?
 24 MALE ATTORNEY: Oh, when they come back?
 25 JUDGE HALL: No. Or should they be -- should

Page 28

1 they be free to go about?
 2 MALE ATTORNEY: Probably free to go about --
 3 MALE ATTORNEY: Yeah. I think that -- yeah --
 4 JUDGE HALL: Okay. Ladies --
 5 MALE ATTORNEY: I think -- I think not the
 6 deliberating room.
 7 MALE ATTORNEY: Definitely -- yeah.
 8 I think --
 9 JUDGE HALL: Okay. Ladies and gentlemen of the
 10 jury, we're not going to let you start your
 11 deliberations on this day yet. You've been
 12 informally in there a while ago, and that was
 13 you-all -- obviously, the only -- the only reason we
 14 didn't want you to start deliberation then is
 15 because they've not had all 12 together. I know
 16 that from watching the school board battles. They
 17 say you can't meet until everybody's here. If only
 18 11 of you met in there, it would be improper. So
 19 you know where I'm coming from. You have to have
 20 the 12 of you as a group before you begin -- do any
 21 deliberating. So this break is not going to be a
 22 deliberate -- for you to go back and deliberate.
 23 This break is going to be like we just generally
 24 had. The only problem is you've already started
 25 deliberation. That makes it even more important than

Page 29

1 ever that you not discuss anything amongst
 2 yourselves or others. Anything that was brought
 3 before the bench with a scrambling with one juror
 4 present, that is not evidence or anything that needs
 5 to be discussed, okay? Those are things that
 6 were -- the three of us -- both sides and me agree
 7 aren't things that need to be carried back into the
 8 jury room. Those are not evidence or anything that
 9 would relate to the arriving at a decision about the
 10 case. That's not evidence, okay? With that in
 11 mind, let's go ahead and take a -- 15 minutes.
 12 Let's go take a 15 minutes. Let's take -- let's let
 13 the jury come back at 9:40 to begin deliberation.
 14 Now -- well, on the return, should we have everybody
 15 brought from the hallway in at once? The reason I
 16 brought them in here earlier was -- is because I
 17 knew the attorneys and everybody would be going
 18 right by you out the hallway. So on this break,
 19 they're all going to be in here. So if you-all want
 20 to go that way -- if you have to have a cup of
 21 coffee, though, you go -- it'd be best if you went
 22 into the hallway. If you need a cup of coffee,
 23 grab it, and take it on out with you and -- because
 24 we've got a couple things we need to bring up in
 25 here. It would be best if you weren't going from

1 that door to that door. It'd be best if you were
 2 out of the room completely. And I know it's hard to
 3 go to the coffee room and back out there without
 4 coming back through here. I figured that out,
 5 but anyway... So with that in mind, let's go ahead.
 6 If you need to grab a cup of coffee, go ahead and
 7 grab it now in there and take it on out. If you
 8 need a cigarette, take it outside. Then we're going
 9 to come back here at 9:40 and let you-all begin your
 10 deliberation. This Court will be in recess until
 11 9:40.

12 (END OF RECORDING)

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1 CERTIFICATE OF REPORTER
 2 COMMONWEALTH OF KENTUCKY AT LARGE

3
 4 I do hereby certify that the the said matter was reduced
 5 to type written form under my direction, and constitutes
 6 a true record of the recording as taken, all to the best
 7 of my skill and ability. I certify that I am not a
 8 relative or employee of either counsel, and that I am in
 9 no way interested financially, directly or indirectly,
 10 in this action.

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Sameen Shabbir

22 SHAFaq SAMEEN SHABBIR,
 23 COURT REPORTER/NOTARY
 24 COMMISSION EXPIRES ON: 01/07/2027
 25 SUBMITTED ON: 02/16/2023

EXH : 000010 of 000014

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1 COMMONWEALTH OF KENTUCKY

2 PIKE CIRCUIT COURT

3 DIVISION I

4 CIVIL ACTION NO. 19-CI-00233

5

6 NICKY GAUZE, INDIVIDUALLY, AND

7 NICKY GAUZE, AS ADMINISTRATOR OF THE

8 ESTATE OF MARY E. GAUZE, DECEASED;

9 NICKY GAUZE, AS GUARDIAN OF

10 JOEY GAUZE, A MINOR; AND

11 CODY GAUZE, INDIVIDUALLY

12 Plaintiffs

14 v.

15

16 PIKEVILLE MEDICAL CENTER, INC.

17 D/B/A PIKEVILLE MEDICAL CENTER, ET AL.

18 Defendants

20 TRIAL EXCERPT

25 DATE: FEBRUARY 10, 2023

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>1 ON BEHALF OF THE PLAINTIFFS, NICKY GAUZE, INDIVIDUALLY, 2 AND NICKY GAUZE, AS ADMINISTRATOR OF THE ESTATE OF 3 MARY E. GAUZE, DECEASED; NICKY GAUZE, AS GUARDIAN OF 4 JOEY GAUZE, A MINOR; AND CODY GAUZE, INDIVIDUALLY: 5 Ross F. Mann, Esquire 6 Brian Jasper, Esquire 7 Ross Mann Law PLLC 8 2257 Executive Drive 9 Lexington, Kentucky 40505 10 Telephone No.: (606) 367-7116 11 12 ON BEHALF OF THE DEFENDANTS, PIKEVILLE MEDICAL CENTER, 13 INC. D/B/A PIKEVILLE MEDICAL CENTER: 14 Daniel G. Brown, Esquire 15 James E. Smith, Esquire 16 Gazak Brown, PSC 17 3220 Office Pointe Place 18 Suite 200 19 Louisville, Kentucky 40220 20 Telephone No.: (502) 412-5020 21 22 23 24 25</p>	<p style="text-align: center;">PROCEEDINGS</p> <p>1 2 3 JUDGE HALL: Let's see here. Back on the 4 record in Case number 19-CI-233 for reference. 5 We've got some matters we need to take up outside of 6 your presence. We're not loafing today, I promise 7 you. Sometimes we're just loafing when we call you - 8 - don't call you back, but today we're -- today 9 we're really trying to get you-all back into 10 deliberation mode. And it's almost like watching 11 the space shuttle launch. You know, you get all 12 anxiety and watch that number, you're, like, hey, 13 let's not -- let's not take too much risk. So this 14 is sort of like one of those 28-degree mornings with 15 the ice on the -- ice stuck on the thing right now. 16 So we're going to be a few minutes ironing out some 17 niceties that we have to do -- deal with. May take 18 us a few minutes. It's 9:42. Do the attorneys 19 think we can addre -- let me see. That's not fair 20 to ask you-all that in front of the jury because one 21 of you might say yes and the other one no. How 22 about ten after 10:00 having you-all come back in? 23 10:10, does that give you- all time to go out, and 24 walk the street, get some gravy, eggs, biscuits, or 25 do you-all want to go a little bit longer? Let's do</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX</p> <p>1 2 3 4 PROCEEDINGS 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 4</p>	<p style="text-align: right;">Page 5</p> <p>1 10:15. I'll call Court to recess. 10:15, can 2 everybody gather back in? We'll try to get 3 everybody back in the deliberation room at that 4 time, get you working. So with that in mind, the 5 Court will be in -- the jury will be dismissed until 6 ten minutes -- or 10:15, and the other attorneys 7 will be subject to recall upon notice to the Court 8 here in a few minutes. We'll go into recess until 9 10:15 or until otherwise notified by the Court or 10 the attorneys. 11 (OFF THE RECORD) 12 JUDGE HALL: Come to order. The Court -- we - 13 - we'll go back on the record in Case number 19-CI- 14 233. 15 MALE ATTORNEY: Counsel approach? 16 MALE ATTORNEY: May we approach? 17 JUDGE HALL: Sure. 18 MALE ATTORNEY: Thank you, Your Honor. 19 JUDGE HALL: Let's scramble our noise a little 20 bit. I've got a... 21 (BENCH CONFERENCE) 22 MALE ATTORNEY: We -- we -- scramble. 23 JUDGE HALL: Excuse me. There we go. 24 MALE ATTORNEY: We've been talking, and we 25 think right now, the best thing for the jury --</p>

EXH: 000003 of 000011

Page 6

1 because if they do begin deliberations, we want them
 2 to be fresh, and we're still -- we're negotiating,
 3 talking, and figuring out what we're going to do.
 4 If we could dismiss them until after lunch, around
 5 12:30?
 6 JUDGE HALL: Okay.
 7 MALE ATTORNEY: Hate to do it, but we -- we're
 8 -- we're just waiting on --
 9 MALE ATTORNEY: It's -- we've got to talk to
 10 the decisionmaker from our side.
 11 MALE ATTORNEY: Takes what it takes.
 12 MALE ATTORNEY: Yeah.
 13 MALE ATTORNEY: Takes what it takes. So if we
 14 could dismiss them until 12:30, that way, if they do
 15 begin deliberations, they're not, you know, tired
 16 from sitting in that gallery all day or that room.
 17 JUDGE HALL: Right. 12:30.
 18 MALE ATTORNEY: 12:30.
 19 JUDGE HALL: Okay. We'll do it.
 20 (END OF BENCH CONFERENCE)
 21 JUDGE HALL: Ladies and gentlemen of the jury,
 22 the parties are talking, and I wish I could tell you
 23 what's going on, but I can't. When this is all over
 24 -- you can come back and we'll sit around and tell
 25 you everything that happened after it's all over.

Page 7

1 Of course, we don't have to know what you-all do in
 2 the jury room. That's pretty sacred. But what
 3 we're doing, when this is all over, we'll tell you
 4 where we're at, what we're doing. But I do want you
 5 to know that, you know, your time's important.
 6 People want to get on with the deliberations, but
 7 there's a -- we want to make sure we do it right.
 8 And we're working on a couple things that would
 9 affect -- maybe affect that. Probably won't. We'll
 10 probably just bring you back in and send you
 11 straight back to deliberations, but we're talking
 12 about a couple things that need to be discussed
 13 before we let you-all go back to deliberating. With
 14 that in mind, I'm going to go ahead and -- rather
 15 than to have you-all run back in, feel like you're
 16 having to stay within beeper range of the building,
 17 we'll let you-all just come back at 12:30. Does
 18 anybody have a problem with that, rather than
 19 keeping you right here? That way, you can go on, do
 20 some things you need to do, or whatever you need to
 21 do here in downtown or -- if you wouldn't mind to
 22 stay close and kind of report back at 12:30. Is the
 23 -- or -- I want to admonish you, though. You-all
 24 have heard -- it -- I get a little more worried once
 25 we start deliberations because -- for a couple

Page 8

1 reasons. One, we don't have the two extra jurors on
 2 board like we did and -- because it's imperative we
 3 get all 12 of you back. But also it's -- you-all
 4 have already started deliberating. That makes it
 5 even more sensitive. It's awful tempting not to --
 6 you-all have been talking to each other. Then you
 7 break, and you go outside. It's awful tempting to --
 8 -- if you see each other, not so much if you see
 9 other people because other people don't know
 10 anything about this case, not enough -- just to --
 11 like, you know, be awful tempting to start talking
 12 to each other about it. That's -- that's the big
 13 temptation. So try to avoid that at all possibility.
 14 If someone tries to talk to you a little bit about
 15 it, just say, "Well, let's wait until we get back
 16 in." You-all know how to professionally and -- and
 17 nicely handle that. Just like I do when I'm --
 18 people call me at home to try to tell me all about a
 19 case. I have to remind them that, hey, you know, if
 20 you've -- if you tell me any more, I'll have to get
 21 out of the case, or if you tell me any more, you're
 22 going to ruin this process. So I have to do the
 23 same thing that you're doing right now because I'm
 24 not supposed to know a lot about the cases until
 25 they're heard. Certain things I'm allowed to hear

Page 9

1 and not hear as cases progress. So with that in
 2 mind, everybody needs -- everybody needs to examine
 3 themselves and their role in the process. And your-
 4 all's jobs, as jurors, is -- when there's a recess
 5 like this is not to continue your deliberations but
 6 wait until we get you back in the jury room at
 7 12:30. With that in mind, we'll go ahead and excuse
 8 the jury at this time until 12:30 p.m. We'll be --
 9 the attorneys will stay close, though, in case we
 10 need to -- I'll be here --
 11 MALE ATTORNEY: Yes, sir.
 12 JUDGE HALL: -- in case we need to call the
 13 Court back into order, not for the jury. But for
 14 jury purposes, 12:30. Thank you-all.
 15 (JURY EXITS COURTROOM)
 16 JUDGE HALL: Court is going to reluctantly and
 17 painstakingly go ahead and sustain the motion to
 18 strike that particular juror and in turn strike --
 19 declare a mistrial with apologies to everyone that
 20 that happened. Secondly, the Court also wants us to
 21 get some benefit out of a ten-day trial. And by
 22 that, we're going to go ahead and let the jury
 23 deliberate, return a verdict, that it may assist
 24 parties in future negotiations because what better
 25 way? The Court's not involved in -- I've always

Page 10

1 made a policy to not -- to be one of the least
 2 intrusive judges in the state as far as trying to
 3 make people settle. But if you can be of
 4 assistance, and the system can be of assistance
 5 toward that, value - - can assist the parties in
 6 valuing a case, what better way to do it than let a
 7 jury go ahead and return a verdict? What more
 8 realistic circumstances can you get than a full two-
 9 week trial? So with that in mind, we're going to go
 10 ahead and let the jury return a verdict with the
 11 record being made that the motion has been sustained
 12 on both removing a juror and -- I just thought about
 13 it. What if that juror comes in and says they never
 14 said that?
 15 MALE ATTORNEY: I say we don't even go
 16 (Inaudible).
 17 JUDGE HALL: We're not going to have a trial -
 18 - we can't have a trial amongst the jurors, can we?
 19 MALE ATTORNEY: Well, no, I know it --
 20 JUDGE HALL: Well, the -- the motion -- the
 21 order's been made --
 22 MALE ATTORNEY: We contemplated --
 23 JUDGE HALL: Ruling's been made.
 24 MALE ATTORNEY: We contemplated that
 25 possibility.

Page 11

1 JUDGE HALL: Ruling's been made.
 2 MALE ATTORNEY: It's -- it seems pretty clear
 3 that there has been an impact on --
 4 JUDGE HALL: Uh-huh.
 5 MALE ATTORNEY: -- other jurors. I mean,
 6 there's -- so --
 7 JUDGE HALL: Yeah. So let's go on back. We'll
 8 let the jury return at 12:30 and proceed as though -
 9 - that it is not a de facto trial. Let them go out
 10 and deliberate. Hopefully, they won't be upset. I
 11 think they'll appreciate -- if they do find out what
 12 we got, they'll appreciate it as well.
 13 (OFF THE RECORD)
 14 JUDGE HALL: Okay. Back on the record, 19-CI-
 15 233. Ready -- the jury has returned back to the
 16 jury -- back to the courtroom. Gave you that
 17 admonition that you not talk to each other during
 18 the recess. Remove that now, so you can go back to
 19 deliberating, if you would. But the bailiff will be
 20 there available or find the sheriff. And if you
 21 need him, just holler. He'll be available for you -
 22 - drop of a hat. With that in mind, we'll go ahead
 23 and let the jury return to the jury room. We
 24 appreciate it.
 25 (JURY EXITS THE COURTROOM)

Page 12

1 JUDGE HALL: Thank you, Jimmy. I always have a
 2 feeling that something good will happen.
 3 MALE ATTORNEY: Can we go off the record,
 4 Judge?
 5 JUDGE HALL: We...
 6 (OFF THE RECORD)
 7 JUDGE HALL: Yeah. There we go. That's right.
 8 Okay. I'm starting to wear a little bit. Some
 9 people are perceptive, aren't they?
 10 UNIDENTIFIED MALE SPEAKER: Oh, no.
 11 JUDGE HALL: Some are more perceptive than
 12 others. With that in mind, we can make jokes about
 13 that now. We can't -- you've got to be careful
 14 about making jokes about jurors or anything during
 15 the trial. If Mr. Mead (phonetic) was here, I was
 16 going to abuse him. I was going to wait until after
 17 the trial's over, although I did grow up down there
 18 around Mr. Mead. His son was a city policeman here
 19 for years, and -- and then he worked -- then he went
 20 to Coca-Cola and retired, so I do -- you'll never
 21 know people like you know the people that grew up in
 22 your neighborhood. There's a different kind of
 23 relationship there. You'll never -- you can -- if
 24 they grow up to be a judge, you can threaten to kill
 25 them. They can -- so let's go ahead and look

Page 13

1 through the instructions. I'm going to tell you-
 2 all, the -- if this was emotional for you as
 3 emotional for me, you can imagine being the parties,
 4 the attorneys. They've invested a chunk of their
 5 life into it. You-all have invested a chunk of your
 6 life. It's not military service. It's not like
 7 being called up for a duty for military service, but
 8 it's close. And you've answered your call. You've
 9 answered your duty. You've given a part of your
 10 soul to this. I've never gone through a trial that
 11 I didn't change. It changed me as a person, either
 12 when I was a juror, as an attorney, I've prosecuted
 13 some cases through the county system that -- seen
 14 some things I wish I hadn't seen, got to see -- it's
 15 almost like a war, like I said. It's a -- it's an
 16 emotional time in your life, and we appreciate you-
 17 all answering that call. No one'll thank you later
 18 because they'll just say, oh, why didn't you try to
 19 get out of that? Couldn't you have found a way out
 20 of that? You know, people don't -- I mean, that --
 21 right here is where the thank you is going to come
 22 from because we're the only ones that know what
 23 you've been through. And in turn, you-all are the
 24 only ones that know what they've been through.
 25 We're -- this -- the -- we're in this together here

Page 14

1 in some ways, all -- even though we all have
 2 different roles in -- in what will happen. I'm
 3 going to quickly read the instructions, and when we
 4 do, I -- only thing I want to tell you-all -- and we
 5 -- I'm asked this quite often because a lot of times
 6 people want to know things after a trial. I had one
 7 case recently where somebody called up and tried to
 8 jog a juror for information, saying that they --
 9 something was done improper, something -- I said I
 10 didn't like that. But generally calling you up to
 11 see if you want -- if you want to share some
 12 thoughts or something, I have no problem with that,
 13 but then you don't have to answer those. There's no
 14 rule that says that I can stop you or that anybody
 15 can stop you. There is no rule that says you have
 16 to answer anything either. So that confidentiality
 17 belongs to you, okay? And that's up to you-all. It
 18 was the duty of Pikeville Medical Center and its
 19 employees in its care of Mary Gauze to exercise the
 20 degree of care and skill that would ordinarily
 21 expected of a reasonable and prudent hospital and
 22 acting under similar circumstances. Do you believe
 23 from the evidence Pikeville Medical Center failed to
 24 comply with this duty? The answer is yes, signed by
 25 nine; one, two, three, four, five, six -- ten,

Page 15

1 right? I guessed nine because I figure when you got
 2 your nine you came in. Now I got my answer. There's
 3 nine on the next one. If you answered yes to
 4 instruction 2, do you further believe from the
 5 evidence that Pikeville Medical Center's failure to
 6 comply with the duty mentioned in instruction two
 7 was a substantial factor causing injury to Mary
 8 Gauze? Yes, signed by nine. If you answered yes to
 9 instruction 3, do you further believe from the
 10 evidence Pikeville Medical Center failed to comply
 11 with the duty mentioned in instruction number 2 was
 12 a substantial factor in causing the death of Mary
 13 Gauze? Nine of you say yes. If you answered yes to
 14 instruction 3, you'll determine from the evidence
 15 the sum of money that will fairly and reasonably
 16 compensate Mary Gauze the element of damages listed
 17 below. As you believe from the evidence, it has
 18 reasonably sustained a direct result of Mary Gauze's
 19 injuries. Nine people have signed 6 million.
 20 Instruction number 6, if you answered yes to
 21 instruction 3, you will determine from the evidence
 22 the sum of money that will fairly and reasonably
 23 compensate Nicky Gauze the elements of damages
 24 listed below as you believe from the evidence he has
 25 reasonably sustained as a direct result of Mary

Page 16

1 Gauze's injuries. Nine people signed 2 million.
 2 The funeral expenses, nine people say -- that
 3 doesn't say yes or no on it. It just asks you for --
 4 - to put an amount. And that was the 7,491.78.
 5 Nine people signed it. If you answered yes, number
 6 8, Nicky Gauze's loss of services, assistance, aid
 7 to society, companionship, conjugal relationship
 8 with Mary Gauze not to exceed 7 million, that one
 9 was filled in at 1 million, signed by nine people.
 10 If you answered yes to instruction number 4, you
 11 determine -- the evidence the money that will fairly
 12 and adequately compensate Joey Gauze. Okay. That's
 13 one for Joey Gauze's loss of love, affection,
 14 guidance, care, comfort, and protection of Mary
 15 Gauze, not to exceed 5 million. That one is singed
 16 in at half a million or 500,000. Instruction number
 17 10, Cody Gauze's loss of love, affection, guidance,
 18 care, comfort, and protection of Mary Gauze, not to
 19 exceed 5 million. That one's filled in at one half
 20 million or 500,000. Is this indeed -- does either
 21 side desire the jury polled?
 22 MALE ATTORNEY: No, sir.
 23 MALE ATTORNEY: No, sir, Your Honor.
 24 JUDGE HALL: Okay. Ladies and gentlemen, I
 25 told you next week is a jury ver -- jury trial

Page 17

1 Tuesday, and I think there's one set the 21st.
 2 Judge Coleman's going to be tied up the rest of the
 3 month, and I believe your-all's term ends at the end
 4 of the month unless you ask to stay over. So with
 5 that in mind, I'm going to go ahead and discharge
 6 this jury with thanks and stay in touch with the
 7 answering service. Again, they've -- the forms that
 8 you've filled out and gave to the attorneys, they
 9 have those available. Without going into detail,
 10 they may really want to ask you some questions in
 11 this particular case. Let me have you-all approach
 12 real quick. Do you care if you approach real quick
 13 before they leave?
 14 (BENCH CONFERENCE)
 15 JUDGE HALL: Scramble. There you go. Should
 16 we -- should we tell them anything at all right now
 17 or just let it go?
 18 MALE ATTORNEY: Just dismiss them.
 19 JUDGE HALL: We can decide --
 20 MALE ATTORNEY: Just dismiss them.
 21 JUDGE HALL: Dismiss them? Got you.
 22 MALE ATTORNEY: Uh-huh. Thank them and dismiss
 23 them.
 24 JUDGE HALL: Do you believe that one guy
 25 spotted it right off the -- the last person up there

Page 18

1 that I thought would spot that spotted it.

2 MALE ATTORNEY: I -- that's hilarious.

3 JUDGE HALL: Hey, you can't predict -- you just

4 don't know. You don't know.

5 MALE ATTORNEY: Copies from the Court?

6 JUDGE HALL: Huh?

7 MALE ATTORNEY: Copies from the Court? Could

8 we get copies of the jury form?

9 JUDGE HALL: Oh, sure. Sure. Yeah, they --

10 they've got a copy right here.

11 (END OF BENCH CONFERENCE)

12 JUDGE HALL: Okay. Ladies and gentlemen, with

13 that in mind, we're going to go ahead and discharge

14 you. Again, if you get a call -- phone number from a

15 -- when I see a number I don't know where it is,

16 I'm, like, I believe I'll take it until I find out

17 it's one of my creditors. Then I say, I wish I

18 hadn't took that. But with that in mind, I want to

19 tell you-all -- a lot of things I wanted to say to

20 you, talk to you a little more -- more, but we had

21 this pretty serious -- anything in Circuit's a

22 little more serious. I worked in District Court for

23 30 years, and those cases -- I don't know if you-all

24 have tried any cases down in District. The cases

25 here are the closest, I think -- it's not like TV,

Page 19

1 but it's close. So with that in mind, I want to

2 tell you-all I'd like to visit with you more, but

3 it's just awful hard when I'm opposite sides of the

4 courtroom from you, so to speak, from the floor here

5 from you. So other than Mr. Mead, we had a good

6 relationship, a really good -- I got -- I'm glad to

7 see him go. With that in mind, I'll go ahead and

8 excuse this jury and stay in touch with the

9 answering service, okay? See you guys. Take care.

10 MALE ATTORNEY: Thanks, everybody.

11 (TRIAL RECESSED)

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1 CERTIFICATE OF REPORTER
2 COMMONWEALTH OF KENTUCKY AT LARGE
3

4 I do hereby certify that the said matter was reduced to

5 type written form under my direction, and constitutes a

6 true record of the recording as taken, all to the best

7 of my skill and ability. I certify that I am not a

8 relative or employee of either counsel, and that I am in

9 no way interested financially, directly or indirectly,

10 in this action.

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19 *Sameen Shabbir*

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22 SAMEEN SHABBIR,

23 COURT REPORTER / NOTARY

24 COMMISSION EXPIRES ON: 01/07/2027

25 SUBMITTED ON: 02/17/2023

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TRIAL, held on February 10, 2023

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COMMONWEALTH OF KENTUCKY
PIKE CIRCUIT COURT
DIVISION NO. II

ACTION NO. 19-CI-00233

ESTATE OF MARY E. GAUZE, ET AL

PLAINTIFFS

V.

JURY INSTRUCTIONS

PIKEVILLE MEDICAL CENTER, INC.

DEFENDANT

INSTRUCTION NO. 1

Nine or more of you must agree upon a verdict. If all twelve (12) agree, the verdict need be signed only by the foreperson; otherwise, it must be signed by the nine or more who agree to it.

Nine or more of you may agree as to one verdict but not to the others.

INSTRUCTION NO. 2

It was the duty of Pikeville Medical Center and its employees in its care of Mary Gauze to exercise the degree of care and skill as would ordinarily be expected of a reasonable and prudent hospital and acting under similar circumstances.

Do you believe from the evidence that Pikeville Medical Center failed to comply with this duty?

YES NO

Angie Kendrick
FOREPERSON

Ronald Camry

Ethan Mc

Jacob Beverly

Jim Harrison

Elmer Hwa

Patrick Fitzgerald

Nancy Hill

Roger Williams

Paul Adkins

(If you have answered "YES" to this Instruction, then proceed to the next Instruction. If you have answered "NO" to this Instruction, then inform the bailiff that you are ready to return to the Courtroom.)

INSTRUCTION NO. 3

If you have answered "YES" to Instruction No. 2, do you further believe from the evidence that Pikeville Medical Center's failure to comply with the duty mentioned in Instruction No. 2 was a substantial factor in causing injury to Mary Gauze?

YES NO

Angie Kendrick
FOREPERSON

Jacob Beverly

Char Up

Glenn Ham

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

Roy Williams

Randal Combs

(If you have answered "YES" to this Instruction, then proceed to the next Instruction. If you have answered "NO" to this Instruction, then inform the bailiff that you are ready to return to the Courtroom.)

INSTRUCTION NO. 4

If you have answered "YES" to Instruction No. 3, do you further believe from the evidence that Pikeville Medical Center's failure to comply with the duty mentioned in Instruction No. 2 was a substantial factor in causing the death of Mary Gauze?

YES NO

Ansie Kendall
FOREPERSON

Jacob Beverly

Etha Mc

Edna Hur

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

Roy Williams

Randal Brown

(Please proceed to the next Instruction.)

EXH : 000005 of 000011

INSTRUCTION NO. 5

If you have answered "YES" to Instruction No. 3, you will determine from the evidence the sum of money that will fairly and reasonably compensate the Estate of Mary Gauze for the element of damages listed below as you believe from the evidence it has reasonably sustained as a direct result of Mary Gauze's injuries.

Mary Gauze's mental and physical pain and suffering,
not to exceed \$10,000,000.00.

\$6,000,000.00

Amie Kendrick
FOREPERSON

Jacob Brewer

Elan Mc

Elan Mc

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

Ray Wilkin

Randal Cannon

INSTRUCTION NO. 6

If you have answered "YES" to Instruction No. 3, you will determine from the evidence the sum of money that will fairly and reasonably compensate Nicky Gauze for the element of damages listed below as you believe from the evidence he has reasonably sustained as a direct result of Mary Gauze's injuries.

Nicky Gauze's loss of services, assistance, aid, society, companionship, and conjugal relationship of Mary Gauze, not to exceed \$3,000,000.00.

\$ \$2,000,000.00

Angie Kardish
FOREPERSON

Jacob Brown

Ethan AP

Ben H

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

Ry Williams

Randal Dawson

INSTRUCTION NO. 7

If you have answered "YES" to Instruction No. 4, you will determine from the evidence the sum of money that will fairly and reasonably compensate the Estate of Mary Gauze for the element of damages listed below as you believe from the evidence it has reasonably sustained as a direct result of Mary Gauze's death.

Funeral expenses, not to exceed \$7,491.78.

\$ 7,491.78

Angie Kendrick
FOREPERSON

Jacob Beverly

Ethan W. [unclear]

Ellen Harn

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

Roy Wilkin

Ronald Connor

EXH : 000008 of 000011

INSTRUCTION NO. 8

If you have answered "YES" to Instruction No. 4, you will determine from the evidence the sum of money that will fairly and reasonably compensate Nicky Gauze for the element of damages listed below as you believe from the evidence he has reasonably sustained or is reasonably certain to sustain in the future as a direct result of Mary Gauze's death.

Nicky Gauze's loss of services, assistance, aid, society, companionship, and conjugal relationship of Mary Gauze, not to exceed \$7,000,000.00.

\$ 1,000,000.00

Annie Kerstuit
FOREPERSON

James Berg

Edna Mc

Eden Hwe

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

Ray Williams

Randal Danner

INSTRUCTION NO. 9

If you have answered "YES" to Instruction No. 4, you will determine from the evidence the sum of money that will fairly and reasonably compensate Joey Gauze for the element of damages listed below as you believe from the evidence he has reasonably sustained or is reasonably certain to sustain during his minority as a direct result of Mary Gauze's death.

Joey Gauze's loss of love, affection, guidance, care, comfort, and protection of Mary Gauze, not to exceed \$5,000,000.00.

\$ 500,000.00

Aurice Kordub
FOREPERSON

Jacob Bessaly

Thomas Tye

Elmer Hun

Jim Hermitton

Nancy Hall

Patrick Fitzgerald

Roy Williams

Ronald Damon

EXH : 000010 of 000011

INSTRUCTION NO. 10

If you have answered "YES" to Instruction No. 4, you will determine from the evidence the sum of money that will fairly and reasonably compensate Cody Gauze for the element of damages listed below as you believe from the evidence he has reasonably sustained during his minority as a direct result of Mary Gauze's death.

Cody Gauze's loss of love, affection, guidance, care, comfort, and protection of Mary Gauze, not to exceed \$5,000,000.00.

\$ 500,000.00

Dustin Kadrick
FOREPERSON

Jacob Brumby

Ethan The

Elm Hon

Jim Hamilton

Nancy Hall

Patrick Fitzgerald

By William

Randal Owen

EXH : 000011 of 000011

9:32



The Kentucky Trial Court Review



5d · 🌐

We are updating the "sort of" \$10,000,000 med mal verdict from Friday in Pikeville. Plaintiff, age 41 and the mother of two young children, suffered debilitating symptoms because of the hospital's purported errors in treating a stroke. She died 841 days later.

The hospital replied it met the standard of care.

An ordinary case . . .

The jury deliberated a day. The next day a juror reported to the court the foreperson had said (after the first day of trial) that she'd never take her husband to PMC. PMC moved for a mistrial and Judge Hall granted it. The judge did not interview the juror.

The jury was not apprised of the mistrial and deliberated what the court called an "advisory" verdict.

It found for the plaintiff awarded \$10,007,491 that included, \$6,000,000 for the decedent's suffering, \$2,000,000 for her husband's pre-death consortium and \$1,000,000 more for the post-death Ohio County consortium, and finally \$500,000 for the consortium loss of each child.

Where are we now? It was an empty verdict. There is no \$10,007,491 for the plaintiffs. No judgment. Nothing. Plaintiff has since moved to send the case to mediation.

Ross Mann (Lexington) and Brian Jasper (Louisville) for the plaintiff

Daniel Brown and James Smith (Gazak Brown) Louisville defending.

Judge Howard Keith Hall called balls and strikes.

Mary Gauze and Nicky Gauze,

PLAINTIFFS

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500 W. Main Street, Suite 312
Frankfort, KY 40601

Brigitte Prinzivalli-Rolfe, M.D.

Serve: Kentucky Office of the Secretary of State
Summons Branch
700 Capitol Ave., Suite 86
Frankfort, KY 40601

To Serve: Brigitte Prinzivalli-Rolfe, M.D.
500 W. Temple St., Suite 375
Los Angeles, CA 90012

Brigitte Prinzivalli-Rolfe, M.D.
Rancho Los Amigos Rehab Center
7601 E. Imperial Highway HB 145
Downey, CA 90242

and

John Does 1 through 3,
Unknown Defendants



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Angie Kendrick

whoah! seriously?! I had never spoken to that man until deliberations. Was he just trying to sabotage the jury process? I know the juror you're talking about. He was very odd during deliberations, and didn't seem to understand most of the trial.

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7 👍 😂 😮



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The Kentucky Trial Court Review



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verdict" is less useful from a settlement perspective because of the tainting? (To me, it would be different if the juror was deemed improper for reasons that didn't potentially influence other jurors, but then again, wouldn't you just use the alternate at that point in time?). It just seems to me that an "advisory verdict" from a tainted jury is simply not helpful.

5d Like Reply



Angie Kendrick

[Christine Carey Steele](#) there was no preconceived bias though. That opinion was stated after hearing the evidence.

5d Like Reply



Christine Carey Steele

[Angie Kendrick](#) ok, I think!? It wasn't clear from the summary exactly what it was - the statement was made after the first day of trial. I cannot tell if the Court did due diligence finding out what it was or not - but if the jury is tainted sufficient to declare a mistrial, how is the "advisory verdict" not tainted?

5d Like Reply



Angie Kendrick

[Christine Carey Steele](#) I'm not saying

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[Angie Kendrick](#) ok, I think!? It wasn't clear from the summary exactly what it was - the statement was made after the first day of trial. I cannot tell if the Court did due diligence finding out what it was or not - but if the jury is tainted sufficient to declare a mistrial, how is the "advisory verdict" not tainted?

5d Like Reply



Angie Kendrick
[Christine Carey Steele](#) I'm not saying what you're wrong about your opinion. I was just telling you, I'm the person they are talking about, and I made that statement during deliberations, not while the trial was going. The judge never questioned me or any other jurors about it. The whole situation is suspicious.

5d Like Reply 1 👍



Christine Carey Steele
[Angie Kendrick](#) hmmm interesting - I would have thought the Court would have spoken to you in detail before declaring a mistrial. Strange.

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Angie Kendrick

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sure others on the jury held similar feelings; they just didn't express them verbally. Plus, this was during deliberations and after listening to specific testimony about a hospital's malfeasance. Is this really such a surprising statement? I would like to know more about her actual statement, whether it was a long standing belief or not, and whether she lied during voir dire.

5d Like Reply

6 👍 😮



Angie Kendrick

[Randy Gardner](#) I can answer that. I made that statement DURING deliberations, and AFTER the trial. I made it very clear that I came to that opinion after hearing the evidence.

5d Like Reply

8 👍 ❤️ 😮



Write a reply...



Renea Buckles

This is insane

5d Like Reply

2 👍



Loren Caviness

[Renea Buckles](#) can you put this in layman terms?

5d Like Reply

1 👍

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 **Angie Kendrick**
[Karen N Lee Smith](#) There wasn't. I met with the judge and lawyers from both sides this morning to clear this up. What was posted on this page isn't the whole story on why there was a mistrial. They couldn't go into details but all agreed my name being dragged through the mud on the internet is bullshit. That being said, that case is still ongoing. I'm done talking about it. Everyone should take what they read on the internet, with a grain of salt. It's not all true, people.


4d Like Reply 2  

 **Author**
The Kentucky Trial Court Review
[Angie Kendrick](#) I'm glad you, the judge and the lawyers got it all cleared up. I know a lot of people have been concerned.

4d Like Reply 1 

 Write a reply...

 **Tawanna Huffman**
[Karen N Lee Smith](#) every attorney/party in the case agreed to a mistrial. All counsel had two hours to discuss with each other and their clients about the result/effect on the outcome of the trial should a mistrial

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