

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BOBBIE JOHNSON

APPELLANT

VS.

NO. 2006-CA-01696

ST. DOMINIC-JACKSON MEMORIAL HOSPITAL

APPELLEE

**Appeal From The Circuit Court
For The First Judicial District Of Hinds County, Mississippi**

Brief For Appellee

ORAL ARGUMENT NOT REQUESTED

John E. Wade, Jr., MSB No. [REDACTED]
Sharon F. Bridges, MSB No. [REDACTED]
Jonathan R. Werne, MSB No. [REDACTED]
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
1400 Trustmark Building
248 East Capitol Street
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: 601-948-3101
Facsimile: 601-960-6902

Counsel for Appellee

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BOBBIE JOHNSON

APPELLANT

VS.

NO. 2006-CA-01696

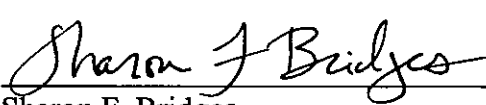
ST. DOMINIC-JACKSON MEMORIAL HOSPITAL

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Bobbie Johnson, Appellant
2. St. Dominic-Jackson Memorial Hospital, Appellee
3. Honorable Bobby B. DeLaughter, Circuit Court Judge
4. John E. Wade, Jr., Esq., Sharon F. Bridges, Esq., Jonathan R. Werne, Esq.,
Brunini, Grantham, Grower & Hewes, PLLC, Counsel for Appellee
5. Hiawatha Northington, II, Esq. and Felecia Perkins, Counsel for Appellant


Sharon F. Bridges
Attorney of Record for Appellee

Permitted
JRW

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF ISSUES	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. STANDARD OF REVIEW	3
II. ST. DOMINIC NURSE PROPERLY ADMINISTERED THE INTRAMUSCULAR INJECTION OF PHENERGAN.....	5
A. <i>St. Dominic Nurse Properly Administered The Intramuscular Injection With A One And One-Half Inch Needle.</i>	5
B. <i>St. Dominic Nurse Properly Administered The Intramuscular Injection Without Using The Z-Track Method.</i>	7
III. JUROR TESTIMONY STATING THE JURY MAY HAVE MISINTERPRETED THE JURY INSTRUCTIONS IS IMPERMISSIBLE UNDER MISSISSIPPI LAW.....	9
A. <i>The Misinterpretation Of The Jury Instruction Is Not A Clerical Error As Defined Under Mississippi Law.</i>	9
B. <i>This Case Is Distinguishable From The Martin Case Cited By Appellant.</i>	11
IV. CONCLUSION.....	12
CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

CASES

<i>3M Co. v. Johnson</i> , 895 So. 2d 151 (Miss. 2005).....	3, 4
<i>Berryhill v. Byrd</i> , 348 So. 2d 1026 (Miss. 1980).....	10
<i>Bobby Kitchens, Inc. v. Miss. Ins. Guar. Ass'n</i> , 560 So. 2d 129 (Miss. 1989).....	4
<i>C & C Trucking Co. v. Smith</i> , 612 So. 2d 1092 (Miss. 1992)	4
<i>City of Jackson v. Locklar</i> , 431 So. 2d 475 (Miss. 1983).....	3, 4
<i>Cummins v. Century 21 Action Realty, Inc.</i> , 563 So. 2d 1382 (Miss. 1990)	4
<i>Henson v. Roberts</i> , 679 So. 2d 1041 (Miss. 1996)	4
<i>Martin v. State</i> , 732 So. 2d 847 (Miss. 1998).....	9, 10, 11
<i>McFarland v. Entergy Miss., Inc.</i> , 919 So. 2d 894 (Miss. 2005).....	3
<i>Peveto v. Sears, Roebuck & Co.</i> , 807 F.2d 486 (5th Cir. 1987)	10
<i>Robles v. Exxon Corp.</i> , 862 F.2d 1201 (5th Cir. 1989).....	10, 11, 12
<i>Smith v. Crawford</i> , 937 So. 2d 446 (Miss. 2006)	3
<i>Smith v. State</i> , 925 So. 2d 825 (Miss. 2006).....	3
<i>Spradlin v. Smith</i> , 494 So. 2d 354 (Miss. 1986)	3
<i>U.S. v. Daniel</i> , No. CRIM. 5:05-CR-19, 2006 WL 2269036 (S.D. Miss. Aug. 08, 2006)	12
<i>U.S. v. Dotson</i> , 817 F.2d 1127 (5th Cir. 1987).....	10
<i>White v. Stewman</i> , Nos. 2005-CA-00069-SCT, 2005-IA-00022-SCT, 2006 WL 1644061 (Miss. June 15, 2006).....	10

RULES

Miss. R. EVID. 606(b)	9
-----------------------------	---

STATEMENT OF ISSUES

- I. Whether the Hinds County Circuit Court abused his discretion in denying Appellant's Motion for Judgment Notwithstanding the Verdict, or in the alternative, for New Trial.
- II. Whether the Hinds County Circuit Court abused his discretion in denying Appellant's request to reconvene the jury based upon testimony relating to how the jury interpreted or misinterpreted a jury instruction.

SUMMARY OF THE ARGUMENT

St. Dominic did not breach the applicable standard of care in treating Ms. Johnson. At trial, St. Dominic presented evidence that the nurse who administered the injection of Phenergan used the proper needle length and technique. Further, St. Dominic presented evidence that Ms. Johnson's injuries would not have been prevented even if the nurse had used the technique suggested by the Appellant. St. Dominic presented a sufficient amount of evidence that a reasonable and fairminded jury could have returned a verdict for St. Dominic. Moreover, the overwhelming weight of the evidence supports the jury's verdict in favor of St. Dominic.

The trial court did not abuse his discretion in denying Appellant's request to reconvene the jury based on a letter sent from the jury foreman to the trial judge via email regarding the court's instructions. The jury foreman's letter suggested that the jury may have misinterpreted one of the instructions provided by the court. This type of jury testimony is impermissible under Rule 606(b) of the Mississippi Rules of Evidence as testimony to the jury's mental processes.

As a result, the trial court did not abuse his discretion in denying Appellant's Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial.

ARGUMENT

I. STANDARD OF REVIEW

The Supreme Court applies an abuse of discretion standard to the review of a trial court's denial of a motion for judgment notwithstanding the verdict or a motion for new trial. *Smith v. Crawford*, 937 So. 2d 446, 447 (Miss. 2006)(stating "[t]he standard of review for considering a trial court's decision denying a motion for a new trial is whether the trial court abused its discretion"); *Smith v. State*, 925 So. 2d 825, 831 (Miss. 2006)(stating "[t]he standard of review for a post-trial motion, like a motion for judgment [notwithstanding the verdict], is abuse of discretion").

The motion for judgment notwithstanding the verdict¹ tests the legal sufficiency of the evidence supporting the verdict and further, asks a court to hold, as a matter of law, that the verdict may not stand. *McFarland v. Entergy Miss., Inc.*, 919 So. 2d 894, 900 (Miss. 2005); *Spradlin v. Smith*, 494 So. 2d 354, 355 (Miss. 1986). All of the evidence, not just evidence which supports the non-movant's case, must be considered by the trial court in the light most favorable to the party opposed to the motion. *McFarland*, 919 So. 2d at 900; *Spradlin*, 494 So. 2d at 355. The non-movant must also be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *3M Co. v. Johnson*, 895 So. 2d 151, 160 (Miss. 2005); *Spradlin*, 494 So. 2d at 355.

If the facts and inferences considered in this manner point so overwhelmingly in favor of the movant that reasonable persons could not have arrived at a contrary verdict, the court is required to grant the motion. *Johnson*, 895 So. 2d at 160; *City of Jackson v. Locklar*, 431 So. 2d

¹ Although Appellant argues that the lower court erred in failing to grant her motion for judgment notwithstanding the verdict and her motion for a new trial, she does not present any legal support in her brief demonstrating how the trial judge abused his discretion in denying her motion for judgment notwithstanding the verdict. In her brief, Appellant only addresses whether the trial judge abused his discretion in denying her motion for a new trial. (Brief of Appellant at 12)(hereinafter referred to as "App. Brf.").

475, 478 (Miss. 1983). On the other hand, if there is evidence of a quality and weight that reasonable and fairminded persons in the exercise of impartial judgment might reach different conclusions, then the motion should be denied and the verdict allowed to stand. *Johnson*, 895 So. 2d at 160; *Locklar*, 431 So. 2d at 478. Thus, it is only when a directed verdict at the close of the plaintiff's case or at the close of the defendant's case would have been proper that a judgment notwithstanding the verdict will be appropriate. See *C & C Trucking Co. v. Smith*, 612 So. 2d 1092, 1098 (Miss. 1992).

Mississippi case law demonstrates that the motion for a new trial is a special tool utilized in "rare cases when there would be injustice in either allowing the verdict to stand or in granting a j.n.o.v." *C & C Trucking Co.*, 612 So. 2d at 1098. Unlike a motion for j.n.o.v. which challenges the legal sufficiency of the evidence to support the verdict, a motion for a new trial challenges the weight of the evidence. *Henson v. Roberts*, 679 So. 2d 1041, 1045 (Miss. 1996); *Cummins v. Century 21 Action Realty, Inc.*, 563 So. 2d 1382, 1386 (Miss. 1990).

A motion for a new trial may be granted "when the verdict is against the overwhelming weight of the evidence,² or when the jury has been confused by faulty jury instructions, or when the jury has departed from its oath and its verdict is a result from bias, passion, and prejudice." *Bobby Kitchens, Inc. v. Miss. Ins. Guar. Ass'n*, 560 So. 2d 129, 132 (Miss. 1989). When a court considers whether a jury verdict should be disturbed, the court should consider the evidence in the light most favorable to the non-moving party. *C & C Trucking Co.*, 612 So. 2d at 1098.

In the instant case, Appellant has failed to meet any of the requirements for either a judgment notwithstanding the verdict or a new trial.

² In her brief, Appellant only argues that the jury verdict is against the overwhelming weight of the evidence. (App. Brf. at 12).

II. ST. DOMINIC NURSE PROPERLY ADMINISTERED THE INTRAMUSCULAR INJECTION OF PHENERGAN.

A. *St. Dominic Nurse Properly Administered The Intramuscular Injection With A One And One-Half Inch Needle.*

Appellant's first contention is that Kattie Minor, one of the nurses that treated Ms. Johnson during her admission at St. Dominic, did not use the proper needle length to administer Ms. Johnson with an intramuscular (IM) injection of Phenergan in her left buttock. (App. Brf. at 13-15). Nurse Minor testified unequivocally during trial that she used a one and one-half inch needle to administer the IM injection of Phenergan to Ms. Johnson. (Tr. at 207, 211-12). Appellant, however, argues in her brief that Nurse Minor stated in her deposition that she used a one inch needle to administer the IM injection to Ms. Johnson. (App. Brf. at 14). At trial, Appellant never questioned Nurse Minor regarding the needle length used to administer the IM injection to Ms. Johnson. Appellant never attempted to impeach Nurse Minor regarding the length of the needle she used to administer the IM injection using her previous deposition testimony.

At trial, Jo Granderson, another nurse who treated Ms. Johnson at St. Dominic, testified that at each hospital where she had been previously employed over her twenty-nine year career as a nurse, she has only used a one and one-half inch needle to administer an IM injection. (Tr. 232-33). She further stated that St. Dominic only provided nurses with a one and one-half inch needle³ to administer an IM injection. (Tr. 247). Beverly Babb, the Director of Nursing at St. Dominic, further testified that St. Dominic has never used a needle longer than an inch and a half for an IM injection of Phenergan. (Tr. 325). Not only is the fact that Nurse Minor used a one

³ Appellant in her brief argues that St. Dominic should have provided nurses with the variety of needle sizes. (App. Brf. at 17-18). However, Ms. Granderson and Ms. Temple testified that there were alternative routes to administer medication. (Tr. 249, 283-84). Thus, if a nurse determines that a one and one-half inch needle would not reach a patient's muscle via an intramuscular injection, then a nurse may administer the medication using an alternative route such as the deltoid muscle. (Tr. 249, 283-84).

and one-half inch needle to administer the IM injection of Phenergan not against the overwhelming weight of the evidence, but also this fact was virtually uncontradicted at trial.

Appellant further contends even if Nurse Minor used an inch and a half needle length to administer the IM injection, Nurse Minor should have used a two-inch needle. (App. Brf. at 13). St. Dominic's expert, Suzy Temple, testified that Nurse Minor properly administered the IM injection with a one and half inch needle. (Tr. 280-81). Ms. Temple opined that a one and one-half inch needle was long enough to reach the Ms. Johnson's muscle. (Tr. 281). Ms. Temple further testified that she had never used, taught, or seen Phenergan administered with a needle in length greater than one and one-half inches. (Tr. 281). Nurse Minor, Nurse Minor and Ms. Babb each testified that they had administered an IM injection with a one and one-half inch needle to patients weighing more than Ms. Johnson without any problems. (Tr. 211-12, 233, 325). In fact, Nurse Minor testified that she had given this same injection in her twenty-five years as a nurse over a thousand times without any complication. (Tr. 207, 211-12). Based upon the testimony presented at trial, Nurse Minor did not breach the applicable standard of care by administering the IM injection of Phenergan to Ms. Johnson with a one and one-half inch needle.

Last, Appellant makes references to "St. Dominic's policies and procedures" requiring the use of various needle sizes at the Hospital. (App. Brf. at 16). Appellant, however, is not referencing St. Dominic's actual policies and procedures, but the Springhouse Manual, which is simply used as a guideline for nurses to refresh particular skills. Nurse Minor, Ms. Temple and Ms. Babb each testified that the Springhouse Manual is simply a guideline for nurses. (Tr. 216-17, 302-03, 323). This manual does not mandate the use of a two inch needle on patients the size of Ms. Johnson and is not a policy of St. Dominic. Furthermore, Nurse Minor, Ms. Temple and Ms. Babb each testified that administering an IM injection is a basic skill taught and perfected in

nursing school and as such, nurses would not reference the Springhouse Manual to refresh themselves on such a basic skill. (Tr. 226, 303).

It is clear from the evidence presented during trial that a reasonable juror could have found that Nurse Minor used a one and one-half inch needle to administer the IM injection to Ms. Johnson. The jury heard testimony from three witnesses for St. Dominic, Nurse Minor, Nurse Minor, and Ms. Babb, testifying that Nurse Minor used a one and one-half inch needle. Further, it was a reasonable that the jury found Nurse Minor properly administered the IM injection using a one and one-half inch needle. The jury heard testimony from the expert for St. Dominic that Nurse Minor properly administered the IM injection using a one and one-half inch needle. The evidence presented demonstrates that this portion of the verdict is not against the overwhelming weight of the evidence. Thus, this Court should affirm the lower court's decision to deny Appellant's motion for judgment notwithstanding the verdict or, in the alternative, a new trial.

B. *St. Dominic Nurse Properly Administered The Intramuscular Injection Without Using The Z-Track Method.*

Appellant's second contention is that Nurse Minor failed to use the proper technique in administering the IM injection of Phenergan to Ms. Johnson. (App. Brf. at 13). Ms. Temple, the expert for St. Dominic, testified that the standard of care does not require nurses to administer Phenergan utilizing the Z-Track method.⁴ (Tr. 276). Ms. Temple opined that Ms. Johnson's injury would not have been prevented had Nurse Minor administered the IM injection using the Z-Track method. (Tr. 279-80). On cross-examination, even Ms. Limbach, Appellant's expert, testified that the Z-Track method would not always prevent the backtracking of medication into the subcutaneous tissue. (Tr. 156-57). Thus, it was reasonable for the jury to conclude that

⁴ The Z-Track Method is an additional step in administering an injection. (Tr. 275). Once a site is found by the nurse and before the nurse administers the injection, a nurse moves the superficial tissue to the side to prevent the medication from backtracking to the surface of the skin (Tr. 275-78).

Nurse Minor properly administered the injection of Phenergan to Ms. Johnson without using the Z-Track method.

Appellant again argues that St. Dominic's own policies and procedures required Nurse Minor to use the Z-Track method when administering Phenergan via an IM injection. (App. Brf. at 14). As previously stated, the document to which the Appellant is referring is the Springhouse Manual, which is used by nurses to refresh themselves regarding particular skills. (Tr. 216-17, 302-03, 323). Appellant could not cite any literature that required the use of the Z-Track method when administering an IM injection of Phenergan. To the contrary, St. Dominic presented evidence that neither the Physicians Desk Reference or the Phenergan package insert required the Z-Track method when administering Phenergan. (Tr. 276, 279). Ms. Temple testified that iron dextran is the only medication of which she is aware that requires the use of the Z-Track method since the medication will stain the tissue. (Tr. 277-79). Even if Nurse Minor had used the Z-Track method, which was not required, Ms. Temple opined that Ms. Johnson's injury would not have been prevented. (Tr. 279-80).

Based on the testimony presented during the trial, a reasonable juror could have found that Nurse Minor properly administered the IM injection of Phenergan without using the Z-Track method. Ms. Temple testified that the standard of care did not require the use of the Z-Track method when administering an IM injection of Phenergan. The jury also heard Ms. Temple testify that Ms. Johnson's injury would not have been prevented even if Nurse Minor had the Z-Track method, which was not required. Clearly, the evidence presented demonstrates that this portion of the verdict is not against the overwhelming weight of the evidence and according, the jury verdict should stand.

III. JUROR TESTIMONY STATING THE JURY MAY HAVE MISINTERPRETED THE JURY INSTRUCTIONS IS IMPERMISSIBLE UNDER MISSISSIPPI LAW.

A. *The Misinterpretation Of The Jury Instruction Is Not A Clerical Error As Defined Under Mississippi Law.*

Appellant argues that the jury verdict in this case “does not represent the true verdict of the jurors in this case, and was the result of error as defined by the Supreme Court of Mississippi in *Martin v. State*, 732 So. 2d 847 (Miss. 1998).” (App. Brf. at 18).

In *Martin v. State*, the Mississippi Supreme Court affirmed the general rule that “jurors may not be heard to impeach their verdict” and delineated limited exceptions to this general rule. *Martin*, 732 So. 2d at 852-54. Rule 606(b) of the Mississippi Rules of Evidence states, “a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon his or any other juror’s mind or emotions” MISS. R. EVID. 606(b). The purpose of Rule 606(b) has been noted by this Court: “Public policy requires a finality to litigation. And common fairness requires that absolute privacy be preserved for jurors to engage in the full and free debate necessary to the attainment of just verdicts.” *Martin*, 732 So. 2d at 852 (citation omitted). Moreover, “[j]urors will not be able to function effectively if their deliberations are to be scrutinized in post-trial litigation. In the interests of protecting the jury system and the citizens who make it work, rule 606 should not permit any inquiry into the internal deliberations of the jurors.” *Id.* (citation omitted).

A juror may only testify on the question of: (1) “whether extraneous prejudicial information was improperly brought to the jury’s attention”; or (2) “whether any outside influence was improperly brought to bear upon any juror.” MISS. R. EVID. 606(b). Looking to federal decisions⁵ for additional guidance, the Mississippi Supreme Court noted additional exceptions not explicitly mentioned in Rule 606(b): “Rule 606(b) does not prohibit testimony or

⁵ “[I]t is proper and helpful to look to federal decisions [to see] how those courts have dealt with situations similar to the one presented in this case.” *Martin*, 732 So. 2d at 851.

affidavits of jurors, stating that the verdict reached was not their true verdict, but was instead a mistake due to [1] the recording of the verdict, [2] transmission of the verdict, or [3] a clerical error.” *Martin*, 732 So. 2d at 851. These additional exceptions are only applicable to those “few and far between” cases. *Id.* at 852 (quoting *U.S. v. Dotson*, 817 F.2d 1127, 1130 (5th Cir. 1987)).

A clerical error is defined as “discrepancies between the verdict delivered in court and the precise verdict physically or verbally agreed to in the jury room, not to discrepancies between the verdict delivered in court and the verdict or general result which the jury testifies it ‘intended’ to reach.” *Martin*, 732 So. 2d at 854 (adopting definition set forth in *Robles v. Exxon Corp.*, 862 F.2d 1201, 1208 n.9 (5th Cir. 1989)). A clerical error “would be the case where the jury foreperson wrote down . . . a number different from that agreed upon by the jury, or mistakenly stated that the defendant was ‘guilty’ when the jury had actually agreed that the defendant was not guilty.” *Robles*, 862 F.2d at 1208.

In this case, the Appellant solely relies on a letter⁶ sent from the jury foreman to the trial judge via email regarding the court’s instructions. (App. Brf. at 19-20). In the letter, the jury foreman stated that the jury may have misinterpreted one of the instructions provided by the court. R.E. 1. This type of jury testimony is not permitted under Rule 606(b) or any of its exceptions. “[T]he error alleged here goes to the substance of what the jury was asked to decide, necessarily implicating the jury’s mental processes insofar as it questions the jury’s

⁶ Appellant does not argue that the Court provided erroneous instructions. Even if the trial court provided erroneous instructions on the law to the jury, “other means of correcting discernible error are available without inquiring into the jurors’ mental processes.” *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486, 489 (5th Cir. 1987). One of those means is to object to the instruction provided to the jury. *Peveto*, 807 F.2d at 490. Appellant did not object to the jury instruction provided by the trial court to the jury. Due to Appellant’s failure to object to the jury instruction, Appellant cannot base her motion for a new trial on the confusion of the jury instruction. See *Berryhill v. Byrd*, 348 So. 2d 1026, 1029 (Miss. 1980); *White v. Stewman*, Nos. 2005-CA-00069-SCT, 2005-IA-00022-SCT, 2006 WL 1644061, at *29 (Miss. June 15, 2006)(suggesting that a party’s failure to object to the form of the verdict at trial prevented basing a motion for a new trial on the verdict).

understanding of the court's instruction and application of those instructions to the facts of the case." *Robles*, 862 F.2d at 1208. In fact, testimony relating to how the jury interpreted or misinterpreted a jury instruction "unquestionably constitutes testimony as to a 'juror's mental processes' that is forbidden by [Rule 606(b)]." *Id.* Thus, the trial court did not abuse his discretion in denying Appellant's request to reconvene the jury since the jury foreman's letter related to how the jury misinterpreted one of the court's jury instructions.

B. *This Case Is Distinguishable From The Martin Case Cited By Appellant.*

This case is distinguishable from the *Martin* case cited by the Appellant. (App. Brf. at 18-19). In *Martin*, the jury returned a guilty verdict against Martin and his wife for possession of morphine. *Martin*, 732 So. 2d at 848. One of the jurors later contacted the Martins' counsel informing him that the jurors intended to render a "not guilty" verdict for the morphine charge. *Id.* In response, Martin's counsel filed a motion requesting the trial court to set aside the judgment and to enter a judgment of acquittal due to the mistake. *Id.* Counsel for the Martins attached affidavits of all twelve jurors stating a mistake was made in rendering the verdict; specifically, the affidavits stated, "the [j]ury voted unanimously to find the [d]efendants . . . 'Not Guilty' on the charge of possession of morphine" *Id.* at 850. The trial judge, however, denied Martin's motion to set aside the judgment. *Id.* The Mississippi Supreme Court admitted that, "this is one of those cases where the jury reported a verdict of 'guilty', but actually voted and agreed to find the defendant 'not guilty.'" *Id.* at 854. The Court remanded the case to the trial court to determine whether a clerical error occurred in the jury's delivery of its verdict. *Id.* Here, Appellant has not alleged that the jury incorrectly reported the verdict to the court. Thus, *Martin* is inapplicable to this case.

This case is, however, more analogous with *Robles v. Exxon Corp.* cited by the Mississippi Supreme Court in *Martin*. In *Robles*, the jury found the plaintiff 51% responsible for

her injuries. *Robles*, 862 F.2d at 1203. The trial judge commented in front of the jury that its verdict barred the plaintiff from recovering any damages under Texas law. *Id.* After discharging the jury, the trial judge received a message from the jury foreperson that there was a “misunderstanding.” *Id.* The trial judge called the jury back to the courtroom where the jurors explained that they did not realize the plaintiff would get nothing if she were found more than 50% at fault. *Id.* at 1203-04. Finding that the jury had misunderstood its instructions, the judge allowed the jury to resume its deliberations. *Id.* at 1204. The second verdict was 49% responsibility to the plaintiff and 51% responsibility to the defendant. *Id.* The Fifth Circuit held that juror’s testimony was inadmissible: “We thus conclude that the only evidence that the jury misunderstood its instructions is deemed incompetent and inadmissible by rule 606(b), and should not have been heard or considered by the district court.” *Id.* at 1208-09.

Similar to *Robles*, the trial court in this case received a letter⁷ from the jury foreman stating the jury may have misinterpreted the jury instruction. Thus, the jury foreman’s letter regarding the jury instructions is inadmissible under Rule 606(b) of the Mississippi Rules of Evidence and the trial court did not abuse his discretion in denying Appellant’s request to reconvene the jury based upon the jury foreman’s letter.

IV. CONCLUSION

This Court should affirm the lower court’s decision to deny Appellant’s Motion for Judgment Notwithstanding the Verdict, or in the alternative, for New Trial. Based on the testimony presented during the trial, a reasonable jury could have found St. Dominic did not breach the applicable standard of care. Nurse Minor testified she used a one and one-half inch needle to administer the IM injection of Phenergan. The expert for St. Dominic testified Nurse Minor properly administered the IM injection using a one and one-half inch needle without using

⁷ See also *U.S. v. Daniel*, No. CRIM. 5:05-CR-19, 2006 WL 2269036 (S.D. Miss. Aug. 08, 2006)(holding a juror’s letter inadmissible under Federal Rule 606(b)).

the Z-Track method. The jury correctly found that Nurse Minor properly administered the IM injection of Phenergan without using the Z-Track method. Furthermore, based upon the testimony and evidence presented at trial, the verdict is not against the overwhelming weight of the evidence. Finally, the Court should not consider the letter from the jury foreman stating that the jury may have misinterpreted one of the instructions provided by the court. This type of testimony is not permissible under Mississippi law. For these reasons, the Court should affirm the lower court's decision and allow the jury verdict to stand.

This the 20th day of April, 2007.

Respectfully submitted,

ST. DOMINIC-JACKSON MEMORIAL HOSPITAL, INC.

By: Sharon F. Bridges w/ permission
Sharon F. Bridges JRW
One of Its Attorneys

OF COUNSEL:

Sharon F. Bridges, MSB No. [REDACTED]
John E. Wade, MSB No. [REDACTED]
Jonathan R. Werne, MSB No. [REDACTED]
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
1400 Trustmark Building
248 East Capitol Street
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: 601-948-3101
Facsimile: 601-960-6902

CERTIFICATE OF SERVICE

I hereby certify that I have this day, via United States mail, first class postage prepaid,
forwarded a true and correct copy of the above and foregoing document to the following:

Hiawatha Northington II
Northington Law Firm
Post Office Box 1003
Jackson, Mississippi 39215-1003

Hon. Bobby B. DeLaughter
Post office Box 27
Raymond, Mississippi 39154

This the 20th day of April, 2007.

Sharon F. Bridges w/ permission
Sharon F. Bridges JRW