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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-001254
Case No. 2020-CP-10-03043

Eric Bernard Bowman, Appellant,

v.

Wallace Blair Crosby, Respondent,

AND

Samantha Albert, Respondent.

v.

Eric Bernard Bowman, Appellant.

FINAL BRIEF OF RESPONDENTS

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STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, appellate courts may only correct errors of law. Factual findings of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d773, 774 (1976).

In ruling on a motion for directed verdict, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126, 130 (1999). When the evidence yields only one inference, a directed verdict in favor of the moving party is proper. *Id*. The Trial Court can only be reversed on appeal when there is no evidence to support the ruling below. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict and the jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). Neither a directed verdict nor judgment notwithstanding the verdict should be granted unless only one

reasonable inference can be drawn from the evidence. *Sauers v. Poulin Bros. Homes, Inc.*, 328 S.C. 601, 605, 493 S.E.2d 503, 505 (Ct. App. 1997). If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. *Futch v. McAllister Towing of Georgetown*, 335 S.C. 598, 611, 518 S.E.2d 591, 597 (1999).

"[I]n ruling on a motion to set aside a verdict, the trial court is concerned with the existence of evidence, not its weight." *State v. Gunter*, 273 S.C. 347, 350, 256 S.E. 2d 317, 319 (1979).

STATEMENT OF FACTS

This lawsuit was filed by Eric Bernard Bowman ("Appellant" or "Bowman") against Wallace Blair Crosby ("Respondent" or "Crosby").

On October 5, 2018, Crosby was a patron of Dunleavy's Pub on Sullivan's Island, South Carolina, and Samantha Albert Crosby ("Albert"), who was Crosby's girlfriend at the time of the incident but now his wife, was bartending. Bowman and his wife went to Dunleavy's, amassed a sizeable bar tab, and attempted to leave without paying their bill. Despite his claim that they were regulars at the bar, Bowman ignored Dunleavy's long-standing policy of not accepting American Express credit cards. Rather than offering a solution or alternative to ensure the bill would be paid, Bowman attempted to leave Dunleavy's without paying the tab. Crosby attempted to question Bowman about paying his bill before he left, and Bowman responded by striking Crosby twice with his golf cart, accelerating into him two (2) separate times. Crosby sustained severe injuries because of Bowman's reckless and admittedly intentional actions and is now permanently physically impaired. Despite being the clear aggressor on the evening in questions, *Bowman* then sued Crosby for false imprisonment, assault, battery, malicious destruction of property, intentional infliction of emotional distress, and slander.

Crosby filed an Answer and Counterclaim against Bowman, denying Bowman's claims and counterclaiming negligence, battery, infliction of emotional distress, abuse of process, and defamation. Albert joined Crosby as a Third-Party Plaintiff because she witnessed the entire incident and was in close proximity to Crosby when Bowman struck him with his golf cart.

The parties consented to Albert's dismissal as a Third-Party plaintiff, and she filed a subsequent lawsuit against Bowman, which was then consolidated with this suit.

Bowman was arrested by the Sullivan's Island Police Department the next day. They were unable to locate and arrest him on the night of the incident, as he had fled the scene. Bowman was charged with: 1) Assault and Battery Second Degree and 2) Leaving the Scene of Accident. Bowman pled guilty to a reduced charge of Assault and Battery in the Third Degree on November 30, 2023, before the Honorable Jennifer McCoy. "A person commits the offense of assault and battery in the third degree if the person unlawfully injuries another person, or offers or attempts to injure another person with the present ability to do so." S.C. Code Section 16-3-300 (E)(1). A necessary element of the charge Bowman pled guilty to is that the injury to Crosby was unlawful.

Since this incident, Crosby has endured three (3) separate surgeries and months of rehabilitation. He remains in a diminished physical condition. His medical expenses associated with his injuries approach $400,000. [R. pp. 206, 448-451].

In addition to the testimony of Crosby and Albert, two eyewitnesses and the investigating Sullivan's Island Police Officer testified that Bowman was the aggressor and intentionally ran into Crosby two times and then fled the scene.

ARGUMENT

I. The Circuit Court Correctly Denied Appellant's Motion for a New Trial Because Respondent's Closing Argument Did Not Include a Reference to Evidence Not Introduced in the Trial and Because Respondent Did Not Preserve this Issue for Appeal.

As a starting point, this issue is not ripe for appellate review as it was not preserved at trial. The very limited statement made during Closing Argument consists entirely in these two sentences: "How do you punish a rich guy (inaudible)? You make every mistake (inaudible) huge household, sold the Battey the Charleston Battery for a pile of money, sold his company for a pile of money."

There was no objection made in trial court related to or arising from this statement. Bowman's counsel said nothing about this statement during or after the closing argument. Furthermore, the testimony giving rise to this statement came out of the direct testimony of Eric Bowman.

Q. You were living there (Sullivans Island) when this incident occurred?

A. Yes, sir.

Q. That's a five-bedroom, four and a half bath, 4,945 foot – square foot house on Sullivan's Island?

A. Probably. Close to that.

Q. It was listed for rent with the monthly rental in November of 2023 for monthly income of $39,500 per month?

A. I did not list it.

Q. You (audible).

A. Possibly.

Q. You used to own the Charleston Battery soccer team and everything that came with it?

A. I did not at – I owned part of the team. I believe the stuff that came with it was owned by a trust.

Q. Did it get sold in 2019?

A. Yes. November of 2019.

Q. And you were an owner of SPARC that you described previously?

A. Correct.

Q. It was sold in 2015 for $53 million.

A. That's not accurate.

Q. What did you sell it for?

A. I don't know offhand.

Q. And you received approximately $27 million?

A. That's not accurate.

Q. How much did you receive to your benefit?

A. I don't know offhand.

[R. pp. 130-131]

Again, there was no objection made during this line of questioning. So not only did the statement included in the closing argument come directly from the testimony of Eric Bowman, it was not objected to in either the original testimony or during the closing argument.

In order to preserve a trial error for appellate review, the Appellant's objection at trial must be contemporaneous to the introduction of the objectionable evidence. *State v. Byers*, 392 S.C.428, 710 S.E.2d 55 (2011). Appellant's brief references a motion in limine filed seeking to exclude testimony related to an irrevocable trust. First, Judge McCoy made no ruling on the motion in limine. Regardless, the granting or denying of a motion in limine does not remove the need to make contemporaneous objection at trial. *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993).

Second, the evidence / testimony at issue relates to Bowman's assets, including the value of the house he lives in, how much he received from his sale of the Charleston Battery, and what he received from the sale of his company. There were no questions about trust assets. Third, there was no objection to the line of questioning at issue. Finally, the reliance on the unruled upon motion in limine is baseless. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). Here, the issue was neither raised at the trial level nor ruled upon by the court. The court must rule upon the issue for it to be preserved for review. *Id*.

The very limited two sentence unobjected to statement in closing argument was not prejudicial. It was based on the prior sworn testimony of Bowman. It did not create jury confusion and should not be a basis to grant a new trial.

II. The Circuit Court Correctly Denied Bowman's Motion for a New Trial *Nisi Remittitur* and New Trial Absolute, as the Jury Verdict was Reasonable and Supported by the Evidence.

The jury verdict in this case was $1,865,483.20 (actual damages) and $2,798,224.80 (punitive damages). There was significant evidence introduced at trial detailing the extensive injuries Crosby suffered as a direct and proximate result of Bowman intentionally crashing his low-speed vehicle / golf cart into Crosby two times. The evidence established the medical expenses totaled $386,452.61 [R. pp. 206, 448-451]. Crosby testified that following the incident he felt like he "had been run over by a train." [R. p. 195]. From the date of the incident until today Crosby is a totally different person. He was diagnosed with a left shoulder SLAP tear, a right shoulder SLAP tear, and complete rotator cuff tear. [R. p. 251]. After conservative treatments failed he had to undergo two separate shoulder surgeries. [R. p. 256]. Between the two surgeries

and after the second shoulder surgery Crosby had to undergo months of extensive and painful physical therapy. [R. pp. 260-261, 264]. Dr. Adam Schaaf testified that even after the two surgeries and months of physical therapy, Crosby still had a 15% left shoulder impairment rating and a 20% right shoulder impairment rating. [R. p. 267].

Crosby also suffered a lower back injury. He was diagnosed with an annular tear at L5-S1 by Dr. Richard Frisch. [R. pp. 296-297]. After receiving multiple epidural injections to alleviate the pain, Crosby ultimately had a lumbar spinal fusion with bone graft surgery. [R. pp. 298-319]. Crosby then continued to go to extensive physical therapy to deal with his back injury. [R. pp. 321-322]. The evidence at trial established Crosby was in continuous medical treatment for over a year and a half.

In addition to the medical expenses and procedures, there was extensive testimony about the impact this incident had on Crosby's physical health and quality of life. Crosby testified:

> "Every aspect of my life has changed. As far as doing things like around the house, for example, simple things that you wouldn't even think twice of. Now, I've got to find somebody to do it. If I can't do it or my wife can't do it, we've got to hire somebody to do it. My -- as far as things like with my -- with our daughter for example, like there are limitations that I have of things that I would like to be able to do with her that I can't do. I got to depend on somebody else to do. Simple things like going grocery shopping, you might think like, "Oh, I'll take -- I'll carry -- it'll take me two trips to carry this stuff into the house." It'll take me five if I don't have someone there to help me. So it is just -- it's extremely slowed down my life and has taken away at least half, if not more than what I used to be able to enjoy. And physical and outdoor activities and just -- not just that, but things that I would do with family and friends that I'm no longer a part of because I can't do it." [R. pp. 207-208]

His wife Albert testified:

> Q. How has this impacted your -- and again, this is only your observation, what has this done to him emotionally?
>
> A. So when this happened, Zoe was six years old and her and her dad were very close. As I said, she was with us most of the time. We-- all three of us were very close and very bonded. And the biggest part is him not being able

to do things with her, which upsets him. And he's not one to cry in front of -- especially in front of Zoe. So numerous times after she would go to bed, I would spend time with him while he just unloaded and cried. "And I'm -- I'm sorry, I'm not the man I used to be. I'm sorry, I can't do this to help you. I'm sorry that you're having to take care of me. I'm -- I'm sorry that I can't help my child." Just things that he had not ever experienced. And neither had I.

Q. Has it impacted his relationship with the (inaudible)?

A. Absolutely. So one of the things that we all used to do is they did it prior to me coming along, but we continued until this happened is we would go to the fair every year. We would pick one day and BJ and Zoe and I would go to the fair from the time it opened till the time it closed. And once this happened, he could no longer ride rides with her. And like I said, she was six, she didn't understand. So I would ride rides with her. I would have to do everything with her. When she was six years old on her birthday, prior to this happening, her birthday was in May and this happened in October. She got a hover board for her birthday and BJ had bought a hover board as well so that he could go out and ride with her and teach her how to ride it. And that was no more. So she kind of lost interest in that because that was something that they would do together. She was in karate at seven years old. She had been in it for a couple years and once she -- he couldn't practice with her and stuff, she lost interest in it. She didn't want to do it anymore. When she was eight, she got a trampoline for Christmas from her grandmother. BJ couldn't put it together, so I had to get my nephew to come over and put that together. BJ was really upset over it because it's a big gift for an 8-year-old. When she was nine, she got a basketball goal. Again, he couldn't put it together. We didn't want to deny her these things. We had to figure out a way to put these things together and get somebody to help us. When she was eight, she had a roller-skating party. He couldn't roller skate with her when she was nine, she had a bowling party. He couldn't bowl with her. She -- the earlier times, 6, 7, 8 years old, she would get very emotional. She wanted her dad to do these things with her. But as she's gotten older and she's 12 now. Now, her biggest question is why would somebody do this to my dad? She understands. She still gets frustrated. We took her to the water park last week. "Dad, please ride a slide with me." "I can't." She knows that, but she's never going to stop asking him to do it with her because she wants her dad to participate.

[R. pp. 353-355]

"In South Carolina, an appellate court must uphold a jury verdict if it is possible to reconcile its various features. Furthermore, a jury verdict should be upheld when it is possible to

do so and carry into effect the jury's clear intention. When the jury's verdict is inadequate or excessive, the trial [court] has the discretionary power to grant a new trial *nisi*. Compelling reasons, however, must be given to justify invading the jury's province in this manner. The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial [court] and [its] decision will not be disturbed on appeal unless [its] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. This [c]court has the duty to review the record and determine whether there has been an abuse of discretion amounting to an error of law." *Sapp v. Wheeler*, 402 S.C.502, 741 S.E.2d 565 (Ct. App. 2013) (internal citations omitted).

Here, there is ample evidence to support the jury's verdict. It is not excessive based on the extensive and painful injuries suffered. Additionally, the specific dollar figure awarded shows the jury took its deliberations seriously and evaluated the damages carefully when make its decision. There is no compelling reason to invade the jury's province and disturb its verdict. There was no abuse of discretion by the Court.

Finally, Appellant's brief argues that the Jury's question related to asking for the list of items that apply to actual damages shows they were confused. The list of items at issue was a list of the available elements allowed in South Carolina for actual damages. The list came directly from the Court's jury charges. There was no objection made at the time the list was presented or when the jury asked its question. It was nothing more than a written list of allowable damages taken from the Court's jury charges. It created no confusion and, additionally, this issue was not preserved at trial.

III. The Circuit Court Correctly Denied Bowman's Motion for JNOV Because the Jury Verdict for Punitive Damages Was Not Excessive.

As stated above when discussing the actual damage verdict, the punitive damage award of $2,798,224.80 should be affirmed. This is based on several considerations. First, Bowman was clearly the aggressor in this incident. He intentionally and unlawfully ran his vehicle into Crosby not once but twice, causing significant personal injuries to Crosby. Second, he fled the scene after striking Crosby and: 1) called 911 and reported that his wife had been kidnapped; and 2) refused to return to the scene to provide a statement. [R. pp. 279-283]. Then, in an effort to undermine his criminal charge, filed a lawsuit against Crosby claiming that Crosby was the aggressor. He then went so far, in the presence of the jury, to deny the very soliloquy on the record with the Judge and Solicitor when he pled guilty to the criminal charge surrounding this event, despite the fact it was quoted from the Court's transcript.

"[W]hen under proper allegations a plaintiff proves a willful, wanton, reckless, or malicious violation of his rights, it is not only the right but the duty of the jury to award punitive damages." *Sample v. Gulf Refining Co.*, 183 S.C. 399, 410, 191 S.E. 209, 214 (1937); *Broom v. Southeastern Highway Contracting Co., Inc*., 291 S.C. 93, 352 S.E.2d 302, 305 (Ct. App. 1986). "In South Carolina punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. Moreover, they serve as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated." *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991).

Bowman was charged with Assault and Battery 2nd Degree and Leaving the Scene of an Accident. He subsequently pled guilt to Assault and Battery 3rd Degree admitting to unlawfully

injuring Crosby. Multiple witnesses at trial testified Bowman was the clear aggressor and intentionally caused this accident.

Crosby testified:

> A. I was wearing shorts and a t-shirt and I had flip-flops on. Once I got hit, I went flailing backwards, throwing my arms backwards in the air, just trying to catch my balance as if you were like falling backwards off a log or anything whatsoever. By the time I finally had regained my balance and just realized, Oh my God, I think I got hit. I -- immediately looked up and then when I looked up, I mean, I guess maybe I had a foot or two's notice to before I could throw my hands up. Otherwise, it would've been my face impacting the windshield. I was able to manage to get my hands up and I got nailed. The last thing I remember upon impact was just seeing the glass just spider webbing all across the windshield. I remember seeing that vision. That's what I say, it's burned into my brain. It still is. Once I went backwards, my tailbone made impact with the asphalt first. The momentum of me flying backwards, then my right shoulder went down and then I was completely laid out.
>
> [R. pp. 187-188]

Albert testified:

> A. At that point, Mr. Bowman told his wife to get off the golf cart and ran into BJ. He kind of went backwards, lost his footing. As he was coming to up on his feet, Mr. Bowman slammed on his gas and ran into him at full speed a second time. I couldn't believe what I was watching. I -- I've never witnessed anything like this before, let alone I had just lost my mom a year prior. This was the person in my life and here I'm watching him get run over like, I'm going to lose him too. I just couldn't believe what I was -- it was in -- it – you just can't believe what you're seeing is really what it is. You are in shock.
>
> [R. p. 344]

Savannah Rippy testified:

> A. Honestly, it was the craziest thing. Mr. Bowman just charged at BJ in the golf cart and violently hit him knocking BJ to the ground.
>
> Q. Okay. Did -- did you -- were you close enough to hear and see everything that was transpiring between them?
>
> A. Yes.

Q. Did BJ do anything or say anything to provoke Mr. Bowman?

A. No, he was just asking him to pay his -- pay his bill at the bar, which is perfectly normal. And anybody would've done, I would've done it. If I was had been there at an earlier time.

Q. Okay. And when he -- when BJ was charged, did that knock him down on the ground?

A. Yes, it knocked him down to his knees and on his hands. And then BJ was attempting to stand up and he put his arms up and Mr. Bowman charged and violently hit him again with the golf cart. He didn't give a warning or anything, it was just like an unprovoked attack. BJ's a pretty reasonable guy from what I had encountered of being around him. Really nice, reasonable guy and for him to just charge BJ was very, very unprovoked and concerning.

[R. pp. 168-169]

Q. Would you read the statement on the record, please?

A. "On October 6th around 1:00 a.m. I was leaving Dunleavy's Pub when I heard a commotion outside. I ran towards the noise and saw a man in the golf cart arguing with our bartender, Sam Albert and her boyfriend BJ Crosby. I was by the scene for maybe 20 seconds and I saw the man in the golf cart hit BJ's body. BJ flew back several feet, crawled out of the way and the golf cart struck him again. After the second hit the golf cart sped away from the restaurant. I'm not exactly sure what followed the cart -- what followed the cart, but some men chased it down and fought the driver. Again, I can only hear at this point because it was 1:00 a.m., pitch black. But I know for a fact that it was not BJ because he was standing beside Samantha Albert at the time. After this, I proceeded to go home, but I stayed in case Sam needed me. The man's wife was rude to everyone around that night as well as -- as well and even seemed unbothered by her husband's faults."

[R. pp. 170-171]

Q. What was going through your head when you saw BJ being knocked down the first time or even the second time?

A. I just remember being really worried for BJ and just kind of freaking out, not knowing if the man was going to get more violent with everybody standing around. I kind of was fearful thinking, "What have I got myself wrapped into standing here?" I was like, "Do I need to go inside? Do I

need to" -- like I didn't know if he was going to pull out a gun. He was acting very like possessed and like -- I don't even know how to really explain it in words, but it was kind of like it was frightening. I been at that time in my life. I've never been in any altercation like that or been in around anything violent.

[R. p. 172]

Maura Hagarty-Bannon testified:

Q. And what happened? Who did you notice next?

A. Well, I -- the -- Mr. Bowman, I -- I think Sam went back in. I can't remember. I don't remember everything, but I do remember him moving forward. Mr. Bowman moving forward and striking -- striking BJ. And then it seemed almost before he could gather himself together, he sort of like sideswiped him. And off he went. And I – what I really remember is seeing his head. He seemed to be up in a -- one of those I don't know those bigger golf carts.

[R. p. 234]

Q. Was there anything confrontational that you noticed from BJ towards Mr. Bowman?

A. No. I mean, BJ's kind of, he's a calm guy. He doesn't get really excited about stuff. So I think, you know, he was going like this with his hand. I think if he -- I don't know what he was saying.

Q. Okay. And did you -- did you hear Mr. Bowman give BJ any kind of warnings before he started with the cart?

A. I didn't hear Mr. Bowman say anything.

Q. Did you see Mr. Bowman do anything to attack the golf cart? Did you see the golf cart running -- excuse me. Did you see Mr. Crosby do anything towards the golf cart or did you see Mr. Bowman and the golf cart run into BJ?

A. I didn't see BJ do anything to the golf cart other than just stand there. And then I saw --

Q. From your perspective, was it an unprovoked attack?

A. Oh, I don't -- BJ was just standing there, from what I can remember.

[R. p. 235]

Sergeant Gary Erickson (Sullivan's Island Police Department) testified:

Q. At any time, did Ms. Britton indicate in any manner that she had been kidnapped or attempted to be kidnapped?

A. No.

Q. Did she say anything that the people -- provide a hint that she had been abducted, assaulted. Anything?

A. No, sir.

Q. In fact, based on your observations of -- of what transpired that night did the police officers continue to ask Ms. Britton information about Mr. Bowman and the whereabouts that she could -- refused to provide?

A. She basically, in my opinion, skirted the issue and won't provide a proper answer.

Q. And so when they repeatedly asked where he was, she would never provide a clear answer?

A. No, sir.

Q. And when they repeatedly asked for her to take them to his location she refused?

A. Yes, sir.

Q. Then they repeatedly asked for her home address. They refused -- she refused?

A. Yes.

Q. Then they asked his identity. She never provided his name or last name of (inaudible)?

A. She basically said her husband through most of it. Yes.

Q. And so despite repeated questions by two officers for a lengthy period of time, she refused to provide any information about Mr. Bowman's whereabouts?

A. Yes, sir.

Q. And we have extensive investigative notes and files and various statements and -- and videos, but other than that 911 call, there's absolutely nothing from Mr. Bowman because he never showed up?

A. Not on any of the videos of him returning to the scene.

. . .

Q. Is there any evidence that Mr. Crosby, the gentleman, that was ran over by the golf cart (inaudible) punched Mr. Bowman's golf cart?

A. No, sir. I -- there was no forensics that I understand from a determination whether or not the golf cart had been punched.

. . .

Q. And in fact, (inaudible) Sullivan's Island investigation, you issued an arrest warrant for Eric Bowman for assault and battery, second degree and of leaving the scene of the accident?

A. Yes, sir.

Q. And that was based after an extensive investigation by the Sullivan's Island Police Department? All right. And that arrest warrant, if you read, that is Exhibit 16 that this is Sullivan's Island documentation of this arrest of Mr. Bowman for assault and battery in the second degree and leaving the scene of the accident?

A. Yes, sir.

Q. All right. Did Sullivan's Island ever charge Mr. Crosby (inaudible) of a crime?

A. Not to my knowledge.

Q. And did all the documentation have Mr. Crosby listed as the victim?

A. Yes.

Q. And Mr. Crosby, was the only one that was taken away by an ambulance on a stretcher?

A. Yes.

[R. pp. 282-284]

Q. Okay. Is there any -- to your knowledge, based on the Sullivan's Island Police department's investigation, is there any evidence that would cause the Sullivan's Island Police Department to think Ms. Britton had been kidnapped?

A. No, sir. Not to my knowledge.

Q. Now, had Mr. Bowman had been imprisoned or falsely arrested in any way?

A. Not to my knowledge.

Q. Had -- has he been assaulted by BJ Crosby or anybody your knowledge?

A. From the investigation of the two officers did not appear to be so.

Q. In the investigation of the two officers, was the conclusion to charge Mr. Bowman with assault and battery in the second degree (inaudible)?

A. Yes.

[R. pp. 286-287]

There is sufficient evidence to support the jury's punitive damage award. Bowman testified about his sale of the Charleston Battery and his company SPARC. He also testified about the value of the home he lived in on Sullivan's Island. There was significant evidence establishing Bowman intentionally caused Crosby's injuries, then did everything in his power to avoid any responsibility for his actions, including fleeing the scene, claiming his wife had been kidnapped, claiming he had been detained by Crosby, claiming Crosby attacked him, filing a lawsuit against Crosby for false imprisonment, assault, battery, malicious destruction of property, intentional infliction of emotional distress, and slander. He finally capitulated and pled guilty to Assault and Battery 3rd Degree admitting to unlawfully and intentionally harming Crosby by striking him two times with his golf cart.

The jury weighed all this evidence and rendered a fair award. Judge McCoy conducted a thorough post-trial review of the punitive damages award by the jury finding:

1. "Based on the overwhelming majority of the testimony and evidence, it appears that Bowman bore the greatest degree of culpability on the night of the incident – indeed striking Crosby twice with his golf cart / low speed vehicle.

2. Again – Crosby was struck twice – even Bowman admitted he hit him and slammed on brakes to make Crosby fall of the cart.

3. According to testimony, Bowman left the scene after the incident to go home and covered up his golf cart with a tarp, indicating awareness and arguably concealment;

4. No other similar past conduct was admitted as evidence at trial;

5. There is a strong likelihood that the jury's verdict will deter similar conduct in the future- many residents utilize golf carts on Sullivan's Island according to the testimony of several witnesses;

6. Ther jury's award is reasonably related to the actual harm resulting from Bowman's conduct;

7. Testimony of the value of Bowman's Sullivan's Island home and the value of the recent sale of his company would indicate Bowman's worth / ability to pay to be substantial; and

8. The ratio of actual to punitive damages in the jury's award is reasonable and indicates that the jury listened carefully to the evidence presented at trial as well as the arguments of the attorneys, particularly the closing arguments. Furthermore, the jury deliberated for a reasonable amount of time and asked for a calculator at one point, indicating thorough thought went into the amounts awarded. Given the verdict, no analysis under S.C. Code Ann. Section 15-32-530 is required."

[R. pp. 6-8]

Based on the overwhelming evidence establishing Bowman's culpability and efforts to escape punishment for his actions, together with his continued failure to accept any responsibility, including at trial, the jury was justified in finding that Bowman was willful, wanton, reckless, or acted with a malicious violation of Crosby's rights. "Only when the trial court's discretion is abused, amounting to an error of law, does it become the duty of this Court to set aside the award."

Id. In this instance there is not abuse of discretion. The Trial Court performed the appropriate post trial review affirming the jury's Punitive Damage award.

IV. The Circuit Court Appropriately Granted Crosby's Motion for Directed Verdict on Assault and Battery.

Prior to the jury trial giving rise to this appeal, Bowman pled guilty to the charge of Assault and Battery in the Third Degree on November 30, 2023, before the Honorable Jennifer McCoy. "A person commits the offense of assault and battery in the third degree if the person unlawfully injuries another person, or offers or attempts to injure another person with the present ability to do so." S.C. Code Section 16-3-300 (E)(1).

The following is testimony from Mr. Bowman's guilty plea hearing:

THE COURT: Excellent. All right. Mr. Bowman, when you plead guilty you give up several constitutional rights. You are giving up your right to a jury trial, your right to confront the State's witnesses at trial and you're giving up your right to remain silent. You want to give up these rights and plea today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Are you under the influence of any drugs or alcohol or anything right now that would keep you from understanding what's going on?

THE DEFENDANT: No, Your Honor.

THE COURT: All right. Has anybody promised you anything or threatened you or forced you to plea today?

THE DEFENDANT: No, Your Honor.

THE COURT: All right. If you will, please, sir, listen to the solicitor at this time. She's going to tell me more about the facts underlying your arrest on this charge and then we'll come back to you. Okay?

MS. HALIENA: Thank you, Judge. Mallory Haliena for the State. In the late night hours of October 5th of 2018, Samantha Albert was working as a bartender at Dunleavy's Pub on Sullivan's

Island in Charleston County. Dunleavy's had been exceptionally busy that night and had not been sufficiently staffed for the number of customers visiting the establishment. Albert's boyfriend, victim Wallace Crosby, came to Dunleavy's to assist her in performing some barback duties before deciding to wait at the bar for her shift to end. Around that same time, this Defendant arrived at Dunleavy's with his wife and friends. The Defendant opened a tab with Albert at the bar, ordering several drinks and shots. After midnight, both Albert and the victim were outside the bar when Albert observed the Defendant and his wife attempting to leave the premise on a golf cart without paying their tab. Albert told the Defendant that he needed to pay his tab before exiting but the Defendant refused to comply. The victim, who was several feet away at the time, away from the stationary golf cart, spoke up at this time and reiterated that the Defendant needed to go back and pay his tab before leaving. In response, this Defendant hit the gas and intentionally ran his vehicle into the victim. The Defendant's wife extracted herself from the situation and exited the golf cart, walking back into the bar this time. Then, as the victim was attempting to regain his footing, the Defendant, again, intentionally swiped his vehicle into the victim, hitting him to the point where the windshield shattered and the victim hit the ground. The Defendant then sped away on his golf cart. At least one witness attempted to chase after the golf car to stop the Defendant from fleeing but was unsuccessful . . . Law enforcement and EMS responded to the scene. Multiple witnesses were interviewed and all those witnesses, aside from the Defendant's wife who was not there for the entire incident, had consistent accounts of what had occurred and everybody said that the victim had intentionally been hit twice by the golf cart. The victim had windshield glass lodged in the palms of his hands, abrasions, and high blood pressure, so he went to the hospital for treatment. However, over the course of the next several months he had multiple follow-ups with a couple of different doctors. He was diagnosed with flap tears in his shoulder and a right rotator cuff tear. He had two surgeries for those. He also had spinal fusion surgery to reduce some nerve pain that was exacerbated or caused by this gold cart incident. This is the first take on the upcoming December 11th trial docket . . . This Defendant has prior arrests. No prior convictions.

. . .

THE COURT: . . . All right. So Mr. Bowman, you heard the facts or the allegations stated from the solicitor. Those that were stated from the solicitor regarding the events that took place back in October of 2018. Are those correct to the best of your recollection?

THE DEFENDANT: Yes, Your Honor.

[R. pp. 423-447]

In summary, at the guilty plea hearing, Mr. Bowman (again the *Plaintiff* in this lawsuit), admitted, under oath, the following facts as true:

1. While in his golf cart, [Bowman] "hit the gas and intentionally ran his vehicle into the victim [Crosby];"

2. "Then, as the victim was attempting to regain his footing, the Defendant [Bowman], again, intentionally swiped his vehicle into the victim, hitting him to the point where the windshield shattered and the victim hit the ground;"

3. "The Defendant [Bowman] then sped away on this golf cart"; and

4. "The victim had windshield glass lodged in the palms of his hands, abrasions, and high blood pressure, so he went to the hospital for treatment. However, over the course of the next several months he had multiple follow-ups with a couple of different doctors. He was diagnosed with flap tears in his shoulder and a right rotator cuff tear. He had two surgeries for those. He also had spinal fusion surgery to reduce some nerve pain that was exacerbated or caused by this golf cart incident."

[R. pp. 423-447]

In South Carolina, once a person has been criminally convicted, the person is bound by that adjudication in a subsequent civil proceeding based on the same facts underlying the criminal conviction. *Doe v. Doe*, 346 S.C. 145, 146, 551 S.E2d 257 (2001). "[w]hen a conviction is offered in a civil proceeding against the party convicted, the party cannot complain of a difference in the degree of proof when the burden of proof in the criminal proceeding was much higher than the burden of proof in the present civil proceeding." *Id*.

At trial, the Court granted Crosby's motion for directed verdict on the assault and battery claims. An assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant. It has been described as "an attempt or offer, with force or violence, to inflict bodily harm on another or engage in some offensive conduct." *Gathers v. Harris Teeter Supermarket,* 282 S.C. 220, 317 S.E.2d 748, 754-55 (Ct. App. 1984). A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree; it is unnecessary that the conduct be by a blow, as any forcible contact is sufficient. *Mellen v. Lane,* 377 S.C 261, 659 S.E.2d 236 (Ct. App.2008). In this instance, by pleading guilty to Assault and Battery 3rd Degree, Bowman has expressly admitted to the unlawful injury to Crosby. In the guilty plea hearing, Bowman agreed with the facts as outlined above, including intentionally and unlawfully running his golf cart into Crosby two times and injuring Crosby. Based on these facts, Bowman was estopped from changing his story in the civil trial.

A defendant who enters a guilty plea "may be collaterally estopped from litigating the same issue in a subsequent civil suit." *Zurcher v. Bilton*, 379 S.C. 132, 666 S.E.2d 224 (2008). That is exactly what Bowman tried to do in the trial of this case – relitigating the issue of whether he was justified in running Crosby over with his golf cart. The trial court found that because his guilty plea stated and concluded that Bowman's actions were intentional and unlawful, he was estopped from arguing a different position at trial. As such, the directed verdict on assault and battery was appropriate. The doctrine of judicial estoppel prohibits a party that has assumed a particular position in a judicial proceeding from adopting an inconsistent posture in subsequent proceedings. *See e.g.*, *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997).

V. The Circuit Court Correctly Denied Bowman's Request for a Jury Charge of Resisting Arrest and Misdemeanor Failure to Pay Bar Tab.

An appellate court will not reverse the trial court's decision regarding jury instructions absent an abuse of discretion. *Cole v. Raut*, 378 S.C. 398, 663 S.E.2d 30 (2008). To warrant reversal on appeal, the trial court's jury instruction must not only be erroneous, but also prejudicial. *Fields v. J. Haynes Waters Builders, Inc*., 376 S.C. 545, 658 S.E.2d 80 (2008).

Appellant's position is the trial court erred when refusing to charge the jury with resisting unlawful arrest. The proposed charge was as follows "There is no right to make warrantless citizen's arrests of any kind in South Carolina except as provided by statute."

There was no credible evidence that anyone was trying to detain or arrest Eric Bowman with this incident occurred. Two unrelated eyewitnesses (Savannah Rippy and Maura Bannon) testified that Eric Bowman was the clear aggressor and that BJ Crosby made no effort to detain Bowman. [R. pp. 168-169, 234-235]. Sergeant Gary Erickson testified that based upon the Sullivan's Island Police Department's thorough investigation, there was no evidence Crosby attempted to detain or arrest Bowman. [R. pp. 283-287]. There was no evidence at trial related to the nature of the criminal charge for not paying the bar tab – it was simply not an issue at trial. Finally, Bowman plead guilty to assault and battery third degree. The charge of assault and battery third degree is the "unlawful" injury of another person. As such, Bowman cannot now argue that he was justified in his actions as he has already agreed his actions were unlawful.

Based on the evidence at trial (and the clear absence of evidence establishing any attempt by Crosby or anyone else to make an arrest) the Trial Court correctly denied Bowman's request to have the citizen's arrest jury charge read. There was also no evidence about a potential misdemeanor criminal charge related to the failure to pay the bar tab. As such, the Court appropriately denied the request to include these jury charges.

CONCLUSION

As shown above, the Trial Court did not err in denying Appellant's Motion for a New Trial, in denying Appellant's Motion for a New Trial *Nisi Remittur* and New Trial Absolute, in denying Appellant's Motion for JNOV, in granting Respondents' Motion for Directed Verdict on the Assault and Battery claims, and in denying Appellant's request for jury charges of resisting unlawful arrest and misdemeanor status of failure to pay a bar tab. Respondents respectfully request the Trial Court be affirmed and the jury's verdict affirmed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-001254
Case No. 2020-CP-10-03043

Eric Bernard Bowman, Appellant,

v.

Wallace Blair Crosby, Respondent,

AND

Samantha Albert, Respondent.

v.

Eric Bernard Bowman, Appellant.

CERTIFICATE OF COUNSEL

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

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