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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-000150
Case No. 2022-CP-2023
Case No. 2022-CP-2024

Heather Crespo,

Respondent/Appellant,

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC, and
R.C. Riviere Properties, LLC,

Defendants,

AND

Gabriel Crespo,

Respondent/Appellant,

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC, and
R.C. Riviere Properties, LLC,

Defendants,

of which Rhett Riviere, Chase Enterprises, LLC, and
R.C. Riviere Properties, LLC, are the

Appellants/Respondents,

and

Josee Riviere is the

Respondent/Appellant.

Respondents/Appellants Heather Crespo and Gabriel Crespo's Initial Respondents' Brief

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STATEMENT OF ISSUES ON APPEAL

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II. DID THE TRIAL COURT ABUSE ITS DISCRETION BY ADMITTING PRIOR ACTS OF RHETT RIVIERE ONCE HIS CO-DEFENDANT OPENED THE DOOR BY ELICITING TESTIMONY FROM A WITNESS THAT THE WITNESS DID NOT LIKE RHETT RIVIERE?

III. DID THE TRIAL COURT ABUSE ITS DISCRETION BY ADMITTING EVIDENCE OF OTHER BAD ACTS COMMITTED BY RHETT RIVIERE PURSUANT TO THE EXCEPTIONS IN RULE 404(B), SCRE?

IV. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR SEVERANCE AND MISTRIAL BASED ON THE CUMULATIVE ADMISSION OF EVIDENCE WHICH HE ERRONEOUSLY CONTENDS WAS IMPROPER?

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XII. DID THE TRIAL COURT ABUSE ITS DISCRETION BY RULING THAT RHETT RIVERE COULD NOT TESTIFY ONLY AS TO HIS FINANCIAL CONDITION IN THE PUNITIVE PHASE OF THE TRIAL WITHOUT WAIVING HIS FIFTH AMENDMENT RIGHTS WHEN HE HAD ASSERTED HIS FIFTH AMENDMENT PRIVILEGE THROUGHOUT THIS LITIGATION, INLCUDING IN RESPONSE TO FINANCIAL INQUIRIES DURING DISCOVERY?

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XIV. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR MISTRIAL BASED UPON COUNSEL'S CLOSING ARGUMENT?

STATEMENT OF THE CASE

This is an appeal from consolidated actions arising from an egregious invasion of privacy by Appellants/Respondents Rhett Riviere (“Riviere” or “Rhett Riviere”), Chase Enterprises, LLC, (“Chase”) and R.C. Riviere Properties, LLC, (collectively “Appellants”) and Respondent/Appellant Josee Riviere (“Josee Riviere”). On October 10, 2022, Respondents/Appellants Heather Crespo and Gabriel Crespo (collectively “Plaintiffs” or the “Crespos”) filed separate actions against Appellants and Josee Riviere, shortly after discovering that they had been surreptitiously recorded by a camera that had been positioned to capture images in the bedroom and bathroom of the house they had rented from the Rivieres in Aiken, South Carolina, in 2001. (Compls. ¶¶ 19, 30). The video contained explicit images of the Crespos, including them in their private bathroom and engaging in sexual activity. (Trial Tr. Vol. 2, 171:17-22). SLED Agent David Britton Dove testified that the video had been placed on the hard drive of the desktop computer in 2007 and moved to an external hard drive in 2012. (Trial Tr. Vol 3, 32:4-22; 33:6-34:5).

In 2001, the Crespos had recently married and were traveling the polo circuit where Gabriel Crespo (“Gabriel”) was a well-known polo player. (Trial Tr. Vol 5, 54:23-25; 59:1-3; 59:11-17; 60:24-61:4). At that time, Rhett Riviere and Josee Riviere were also married and living in Aiken County, and they rented a house to the Crespos for several months during the polo season that year. (Trial Tr. Vol. 5, 61:14-18; 62:8-10). In late 2019, Rhett Riviere’s ex-fiancé, Katherine Thomas, found two SDs card containing videos and images of people undressing or nude in the bedrooms and bathrooms of the Riviere’s rental properties. (Trial Tr. Vol. 2, 84:23-24; Compl. ¶ 25). Ms. Thomas contacted law enforcement, and the SLED began an investigation. (Trial Tr. Vol. 2, 82:12-17; 84:10-13). Pursuant to search warrants, SLED agents discovered numerous recording devices

and thousands of video recordings spanning a twenty-year period. (Trial Tr. Vol. 2, 84:10-24; 87:3-6; 104:19-21; 132:21-25; 133:21-25; 134:15-22; 152:5-13; 186:21-25; 242:23-243:2).

On July 29, 2022, Rhett Riviere was charged with two counts of “Voyeurism,” in violation of S.C. Code Ann. § 16-17-470. (Crim. Case Nos. 2022-A-02-10700181 & -182) as a result of the videotaping of the Crespos. Riviere had earlier been arrested and charged with “Voyeurism,” related to events alleged by another victim who had stayed in an Airbnb owned by Riviere and Chase. (Crim. Case No. 2021-A-02- 10700228 & Civil Case No. 2021-CP-02-00889). To date, however, the criminal charges against Riviere remain pending.

The Crespos filed separate complaints alleging six claims against Appellants and Josee Riviere: (1) negligence and/or gross negligence; (2) invasion of privacy; (3) Intentional Infliction of Emotional Distress (“IIED”); (4) constructive fraud/misrepresentation; (5) negligence per se; and (6) S.C. Unfair Trade Practices Act (“UTPA”) violations, S.C. Code Ann. § 39-5-10 et seq. (Compls. generally & ¶¶ 46-100). With the parties’ consent, the trial court consolidated these cases for trial, (Sept. 12, 2024 Order granting Pls.’ Consent Mot. to Consolidate), and set a trial date of September 16, 2024, (Aug. 15, 2024 Order granting Pl.’s Mot. for a Continuance & Date Certain Trial). Pursuant to Defendants’ election to bifurcate the trial, pursuant to S.C. Code Ann. § 15-32-520, the trial was conducted in two phases – one for liability and the second phase for punitive damages. *See* Sept. 15, 2024 Letter from Jim Griffin; Trial Tr. Vol. 1, 161:6-7.

After seven days of testimony and arguments, the jury returned a verdict in favor of Plaintiffs and awarded actual damages, and in a separate proceeding, awarded punitive damages to Plaintiffs. (Sept. 24, 2024 Verdict Forms). Specifically, for each Plaintiff, the jury awarded \$500,000 in actual damages and \$500,000 in punitive damages for the negligence claim against each of the Appellants. (Sept. 24, 2024 Verdict Forms and Sept. 25, 2024 Punitive Damages Verdict

Forms). The jury awarded: 1) \$500,000 in actual damages and \$1,500,000 in punitive damages for the negligence claim against each Appellant; 2) \$500,000 in actual damages for the UTPA claims against each Appellant and Josee Riviere; 3) \$1,500,00 against Rhett Riviere for the negligence per se claim; 4) \$3,000,000 in actual damages and \$1,00,000 in punitive damages for the IIED claim against Rhett Riviere; 5) \$5,000,000 in actual damages and \$2,000,000 in punitive damages for the invasion of privacy claim against Rhett Riviere; and 6) \$500,000 in actual damages and \$500,000 in punitive damages for the constructive fraud claim against Rhett Riviere. *Id.* Thus, the jury awarded each Plaintiff actual damages of \$11,000,000.00 against Rhett Riviere, \$1,000,000,00 against each Chase and R.C. Riviere Properties; and \$500,000 against Josee Riviere. Additionally, the jury awarded each Plaintiff punitive damages of \$4,000,000 against Rhett Riviere and \$500,000 against each Chase and R.C. Riviere Properties. As to the UTPA clam, the trial court made a finding of willfulness and trebled the amount of damages for each Plaintiff under this claim to \$1,5000,000 against Rhett Riviere and Josee Riviere and awarded attorneys' fees and costs to the Crespos with the amount to be determined at a later date. (Sept. 25, 2024 Form 4 Order).

Appellants filed several post-trial motions.(Defs.' Mot. for JNOV; Defs.' Mot. for New Trial, or Alternatively for New Trial Nisi Remittitur; Defs.' Mot. to Reduce Punitive Damages; Defs.' Supp. Mot. for Election of Remedies, New Trial, New Trial Nisi Remittitur, or to Set Aside Verdicts; and Defs.' Mot. to Reduce Damages in Accordance with the UTPA and Constructive Fraud). Josee Riviere also filed post-trial motions. (Josee Riviere's Mot. for JNOV, or Alternatively for a New Trial, or Alternatively for a New Trial Nisi Remittitur; Josee Riviere's Supp. Mot. for JNOV, or Alternatively for a New Trial, or in the Alternative for a New Trial Nisi Remittitur; Josee Riviere's Am. Mem. in Supp. of Mot. for JNOV).

After a hearing, the trial court entered separate orders denying the post-trial motions with one addressing Appellants' post-trial motions and the other addressing Josee Riviere's post-trial motions. (Jan. 3, 2025 Orders). Despite denying the post-trial motions, the trial court determined that the damages for the Crespos' UTPA claim against Appellants and Josee Riviere were limited to "ascertainable loss of money or property." (Jan. 3, 2025 Order as to Appellants at 7; Jan. 3, 2025 Order as to Josee Riviere at 6). The court then specifically limited damages on the UTPA claim to the amount paid for the rental and counseling costs. *Id.* The trial court determined that the rental amount was \$2,400 and Heather Crespo ("Heather") incurred \$1,920 for counseling sessions and Gabriel incurred \$125. (Jan. 3, 2025 Order as to Appellants at 2; Jan. 3, 2025 Order as to Josee Riviere at 3). Thus, the trial court reduced the damages on the UTPA claim to \$12,960.00 for Heather and to \$7,575.00 for Gabriel. (Jan. 3, 2025 Order as to Appellants at 8; Jan. 3, 2025 Order as to Josee Riviere at 7). After specifically reiterating its finding that the UTPA violation was willful, the trial court then trebled the now reduced UTPA damages. *Id.* The trial court also determined that the measure of damages for the constructive fraud claim against Appellants was the bargained for value of the rental (\$2,400) versus what the value of the rental that was actually received (\$0). (Jan. 3, 2025 Order as to Appellants at 8). Accordingly, the trial court reduced the damages on this claim to \$2,400. *Id.* at 9. Appellants and Josee Riviere filed Notices of Appeal, (Riviere Defs.' Jan. 27, 2025 NOA; Def. Josee Riviere's Feb. 5 & Feb. 6, 2025 NOA), and the Crespos cross-appealed (Pls.' Feb. 3, 2025 NOA).

On March 14, 2025, the trial court awarded some attorney's fees and costs pursuant to the UTPA, reducing the fees awarded to 1/6 of the amount requested based upon the UTPA being one of six claims brought by Plaintiffs. (Mar. 14, 2025 Order re: Attys.' Fees & Lit. Costs at 8).

Appellants filed Notices of Appeal of this Order. (Def. Josee Riviere’s Mar. 27, 2025 NOA; Rhett Riviere Defs.’ Apr. 3, 2025 NOA). The Crespos cross-appealed. (Pls.’ Apr. 4, 2025 NOA).

STANDARD OF REVIEW

Admission of Evidence

“The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court’s ruling will not be disturbed on appeal.” *Vaught v. A.O. Hardee Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

Mistrial

The denying of a motion for mistrial is within the sound discretion of the trial judge. *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 118, 512 S.E.2d 510, 521 (Ct. App. 1998).

Directed Verdict/JNOV

“When reviewing the trial court’s ruling on a motion for directed verdict or a JNOV, this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012). The Court will “reverse only when there is no evidence to support the ruling or when the ruling is governed by an error of law.” *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 42, 691 S.E.2d 135, 145 (2010).

New Trial Absolute

“The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

New Trial Nisi Remittitur

“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.” *Sapp v. Wheeler*, 402 S.C. 502, 512, 741 S.E.2d 565, 571 (Ct. App. 2013) (citation omitted).

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING A LIMITED NUMBER OF ADDITIONAL VIDEOS OF OTHER INDIVIDUALS WHO WERE SURREPTIOUSLY RECORDED BY RHETT RIVIERE AND ALLOWING ONE REFERENCE TO THERE BEING THOUSANDS OF OTHER VIDEOS AND IMAGES WHICH WERE SEIZED FROM APPELLANTS’ PROPERTIES.

“The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court’s ruling will not be disturbed on appeal.” *Vaught*, 366 S.C. at 480, 623 S.E.2d at 375. “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” *Id.* “ “[T]he appellant must prove both error and resulting prejudice meaning “there is a reasonable probability that the jury’s verdict was influenced by the wrongly admitted evidence.” *Id.*

On appeal, Appellants argue that the trial court erred in admitting nine videos of other people who were surreptitiously recorded while in Appellants’ properties and allowing testimony that thousands of other videos existed. (Appellant Brief at 11). While Appellants state in their issue that the trial court also erred in allowing testimony about the number of videos seized from Riviere, they do not address this ground in his argument. Moreover, Appellants did not make a contemporaneous objection to this testimony. (Trial Tr. Vol. 2, 242:23-243:2). In any event, as noted herein, the SLED agent was stating a fact and reasonably describing the evidence that was seized, which was not improper.

Appellants first argue that the admitted videos were not relevant because evidence of bad acts found on devices in 2019 did not make it more likely that Riviere invaded the Crespos' privacy in the rental cottage in 2001. (Appellant Brief at 13). Second, they contend that the videos were not admissible under the motive or intent exceptions in Rule 404(b) because “[m]otive and intent are rarely issues in sex crimes cases.” *Id.* at 12. Third, they argue that the videos were not logically related to the crime with which the defendant has been charged. *Id.* at 12-13. And finally, they argue that the prejudice from the admission of these videos outweighs their probative value under Rule 403. *Id.* at 12-13; 15-16. Reviewing each of these arguments in turn below, the trial court did not abuse its discretion in admitting this evidence and, even if the trial court erred (which it did not), Appellants have not shown any prejudice.

a. The videos were relevant and admissible under Rule 404(b), SCRE.

Generally, “[a]ll relevant evidence is admissible. “Rule 402, SCRE. “Evidence is relevant and admissible if it tends to establish or make more or less probable some matter in issue.” *Johnson v. Horry Cnty. Solid Waste Auth.*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010) (citing Rules 401 and 402, SCRE). However, “evidence of a person’s prior bad acts is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” *Judy v. Judy*, 384 S.C. 634, 682 S.E.2d 836, 840 (Ct. App. 2009); Rule 404(a), SCRE. Pursuant to Rule 404(b), “evidence of other crimes, wrongs, or acts may be admissible to establish (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof on one tends to establish the other, or (5) the identity of the perpetrator.” *Judy*, 384 S.C. 634, 634 S.E.2d at 840.

SLED Agent David Britton Dove testified that he examined over 40 devices in his investigation of Rhett Riviere, and he bookmarked “thousands of images and videos.” (Trial Tr.

Vol. 2, 237:2-8; 242:23-243:2). The Crespos sought to introduce fifty other videos to show that Defendants acted intentionally; to establish a common scheme or plan; and to establish that Defendants' acts have an adverse impact upon the public as required for a UTPA claim. (Trial Tr. Vol. 1, 130:11-15). Appellants acknowledged that some videos were "arguably relevant to the same time period, the same location" (Trial Tr. Vol. 1, 137:16-138:4) and "arguably admissible" (Trial Tr. Vol. 1, 162:1-5). However, he argued against the admission of some of these videos on the grounds that they were from 2000 through 2019 and of unidentified persons who were recorded at different locations from the rental where the Crespos were recorded and without any proof that the videos were non-consensual (Trial Tr. Vol. 1, 130:19-131:16; 136:23-137:1).

Prior to the trial beginning, the trial court reviewed the videos and limited the number of videos to be admitted to ten: the video of the Crespos and videos of Rhett Riviere adjusting a camera and of other people obviously being surreptitiously recorded using the bathroom, undressing, and engaged in sexual activity with their faces blurred. (Vol. 1, 164:23-25; Vol. 2, 11:25-12:1; Exhibits 18 and 19).¹ In deciding to admit these videos, the trial court specifically referred to the UTPA claim, which "include[s] repetitive conduct to indicate a public-interest factor" (Trial Tr. Vol. 1, 165:12-15; 169:10-14); a pattern of behavior to show intent as to the IIED claim (Trial Tr. Vol. 1, 170:2-6; Vol. 2, 12:5-6); and that the videos to establish a common scheme or plan. (Trial Tr. Vol. 2, 11:25-12:4).

When considering the admissibility of prior acts, a court's primary concern is to ensure that the evidence is not being used for the purpose of propensity. Here, as the trial court found, the

¹Riviere describes only one video as showing Riviere adjusting the camera in the Grace Avenue Cottage. To be clear, two of the videos show him adjusting the hidden cameras.

other videos were not offered to prove character, but to show intent and to establish that the acts were part of a common scheme or plan that was capable of repetition.

Although Appellants argue that motive and intent are rarely at issue in a sex crimes case, this was not the typical sex crime case. Riviere's conduct of surreptitiously recording others while in the bedrooms and bathrooms on his properties establishes his intent to purposely record them and makes it less likely that he accidentally or mistakenly recorded Plaintiffs. The use of hidden recording devices in the rental properties or other properties controlled or managed by Appellants and the sheer number of recordings makes it impossible to believe that the recording of Plaintiffs was a mistake, unintentional, or accidental. Moreover, Appellants overlook that several claims required that Plaintiffs establish intent or that the acts have the potential for repetition. Thus, the other recordings were admissible under the intent exception to Rule 404(b).

Additionally, this evidence was also offered and admitted to show a common scheme or plan. Recently, the South Carolina Supreme clarified the common scheme or plan exception in *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020). When evidence is offered to show the existence of a common scheme or plan, the standard to be applied is the "logical connection test" set out in *State v. Lyle*, 25 S.C. 406, 118 S.E. 803 (1923). *Id.* at 41, 842 S.E.2d at 663. "Where there is a pattern of continuous misconduct, as commonly found in sex crimes, that pattern supplies the necessary connection to support the existence of a plan. *State v. Tutton*, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003) "Presumably, this is so because the same evidence that establishes the continuous nature of the assaults will generally suffice to prove the existence of the common scheme or plan as well." *Id.* "[T]he sheer volume of repeated occurrences, together with the close similarities in the assaults, [can] evidence[] a pattern of continuous illicit conduct." *Id.*

Here, Riviere created a unique plan or scheme to surreptitiously record renters or guests in his properties in private areas while they were undressing or engaging in intimate activities and they executed that plan through the numerous recordings over many years. The other recordings are strikingly similar in both content and how they were captured. All of the recordings were surreptitiously taken of people in bedrooms or bathrooms of property owned or managed by the Appellants. There is the necessary connection between the prior bad acts and the conduct alleged in the Complaint. The other recordings demonstrate a logical connection or relationship between themselves and the conduct alleged in the Complaint.

As the trial court noted:

[Riviere's] conduct of video recording occurred over decades. There is no evidence that any of the unknown persons recorded in bathrooms and bedrooms of places he rented ever consented to being recorded. The placement of the cameras shows that the cameras were in walls, behind curtains, and placed in corners of interior rooms. They could not be for security purposes. No explanation for the recordings was provided at trial. No theory of explanation was provided at trial. More than one video shows Mr. Riviere adjusting the cameras in a bedroom and a bathroom.

...

There is no denying the reprehensible nature of defendants' conduct. As stated by the court in trial, the shocking and unnerving nature of these acts are the core of the litigation. The court cannot shelter the jury from the act that was done and cannot alter it to make it somehow easier to view when the act of invasion is itself the most disconcerting aspect.

(Jan. 3, 2025 Order re: Appellants at 11). Moreover, because the other recordings were inextricably intertwined with the conduct alleged in this case, they are not subject to exclusion under Rule 404(b). Because the other recordings are inextricably intertwined and intrinsic to the conduct alleged in the Complaint, their admissibility is not subject to exclusion pursuant to Rule 404(b). *See State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (holding testimony regarding another "incident" was relevant to show the complete, whole, unfragmented story regarding defendant's offenses). *See also Howard v. City of Durham*, 68 F.4th 934, 955 (4th Cir. 2023)

(holding other-act evidence that is “intrinsic” to the case falls outside scope of Federal Rule of Evidence Rule 404(b)(1)’s exclusion). *See also Elliot v. Turner Const. Co.*, 381 F.3d 995, 1004 (10th Cir. 2004) (holding evidence intrinsic to plaintiff’s negligence claim admissible as “part of the same tortious event” and essential to illustrate events leading up to plaintiff’s injuries). In this case, all of the events are intertwined so that the prior videos are all part of the same wrongdoing. Because the other recordings are intrinsic evidence that provides context and completes the story, the other recordings do not constitute character evidence under Rule 404(b).

b. The videos were admissible under Rule 403, SCRE, because their probative value substantially outweighed any unfair prejudice from their admission.

After determining that the prior bad act evidence is admissible, the court must determine if the probative value substantially outweighs any unfair prejudice. Rule 403, SCRE. “A trial [court]’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in ‘exceptional circumstances.’” *Hamilton v. Reg’l Med. Ctr.*, 440 S.C. 605, 631, 891 S.E.2d 682 (Ct. App. 2023) (citation omitted). Here, as the trial found, any prejudice from the admission of the videos was substantially outweighed by their probative value.

The videos were undoubtably highly probative based on the similarities between the other recordings and the conduct underlying the Crespos’ claims. As the trial court noted, the probative value of the videos was “showing exactly what happened.” (Trial Tr. Vol. 3, 8:18-21). Even Appellants acknowledge that the videos had probative value, albeit he argues the probative value was only “marginal.” (Appellants’ Brief at 16). Moreover, Plaintiffs are not relying on witness testimony which often boils down to a question of credibility; the evidence consists of video recordings which speak for themselves. The videos were necessary to establish Plaintiffs’ claims.

“Courts and juries cannot be too squeamish about looking at unpleasant things, objects, or circumstances in proceedings to enforce the law and especially if truth is on trial.” *Hamilton*, 440

S.C. at 630, 891 S.E.2d at 695 (citation omitted). “The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.” *Id.* at 630, 891 S.E.2d at 695-96 (citation omitted). “Even the most gruesome photographs may be admissible if they tend to shed light on any issue, to corroborate testimony, or if they are essential in proving a necessary element of a case, are useful to enable a witness to testify more effectively, or enable the jury to better understand [the] testimony.” *Id.* at 630, 891 S.E.2d at 696 (citing *Nichols v. State*, 100 So. 2d 750, 756 (Ala. 1958)). “Numerous jurisdictions have found that photos are not inadmissible merely because they are gruesome, especially where the photos simply mirror the unfortunate reality of the case.” *State v. Collins*, 409 S.C. 524, 535-36, 763 S.E.2d 27, 28 (2014).

As discussed above, the videos were relevant to several issues at trial and corroborated evidence that Riviere purposefully and repeatedly recorded renters and guests with a hidden camera in the bathrooms and bedrooms of his properties. While explicit, the videos simply mirrored the realities of this case and were necessary for Plaintiffs to establish their claims. The danger of unfair prejudice did not substantially outweigh the probative value of these videos. Thus, the trial court did not abuse its discretion in admitting the videos.

“[T]he standard is not simply whether the evidence is prejudicial;” rather the standard is “whether there is a danger of *unfair* prejudice that substantially outweighs the probative value of the evidence.” *Hamilton*, 440 S.C. at 631, 891 S.E.2d 682 (emphasis in original). “Unfair prejudice means an undue tendency to suggest a decision on an improper basis.” *Johnson v. Horry Cnty.*, 389 S.C. at 534, 698 S.E.2d at 838 (internal quotation marks omitted). Here, any prejudice to Appellants was not *unfairly* prejudicial in the context of this trial. Any prejudice resulting from the videos was simply a reflection of the nature of underlying subject matter in this case. “A trial

[court]'s balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence.” *Abel v. Lack’s Beach Servc.*, 2025 WL 1943929, * 9, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. July 16, 2025) (internal quotation marks and citation omitted). The trial court did not abuse its discretion in admitting the videos because their probative substantially outweighed any unfair prejudicial effect. Finally, Appellants have not shown he was prejudiced. *See Vaught*, 366 S.C. at 480, 623 S.E.2d at 375 (“To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice” (emphasis added)); *Fields v. J. Hayes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008) (holding [p]rejudice is a reasonable probability that the jury’s verdict was influenced by the challenged evidence. . .”). Accordingly, this issue is without merit.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY RULING THAT JOSEE RIVIERE’S QUESTIONING OF A WITNESS OPENED THE DOOR TO THE ADMISSION TESTIMONY PERTAINING TO RHETT RIVIERE.

Appellants contend that the trial court erred in allowing testimony elicited by co-defendant Josee Riviere from Susan Hook about a specific instance of Riviere climbing down from a tree in her yard. (Appellant Brief at 16). During cross-examination, Josee Riviere’s counsel, Mr. Harte, asked Ms. Hook if she was fond of Rhett Riviere and she testified no without any objection. (Trial Tr. Vol. 2, 217:6-8). On re-direct, Plaintiffs’ counsel reminded Ms. Hook that she had testified she was not fond of Rhett Riviere, and Appellants objected to any further inquiry. (Trial Tr. Vol. 2, 219:10-19). The trial court held a side bar and ruled that Josee Riviere’s counsel had opened the door and allowed the questioning. *Id.*; Trial Tr. Vol. 2, 221:6-222:2.

Ms. Hook then testified that she was not fond of Rhett Riviere because he would frequently come onto her property uninvited and one time she and her ex-husband found him coming out of a tree. (Trial Tr. Vol. 2, 220:5-14). She testified that Rhett Riviere stated that he was getting his mother's peacocks and that she thought he was a "extremely unusual man." *Id.* Counsel objected and the trial court sustained the objection and counsel moved on. (Trial Tr. Vol. 2, 220:15-18). Josee Riviere objected to a question regarding her knowledge and the jury was sent out. (Trial Tr. Vol. 2, 220:20:20-221:4). After discussing that objection and prior to any further re-direct, Plaintiffs' counsel asked the trial court if she could ask Ms. Hook about the location of the tree. (Trial Tr. Vol. 2, 229:20-231:9). Appellants' counsel objected to it as "improper reply" because neither Defendant had asked Ms. Hook about the tree. (Trial Tr. Vol. 2, 230:18-20). The trial court ruled that Plaintiffs' counsel could ask Ms. Hook about the location of the tree because the testimony that she was not fond of Riviere because he visited uninvited and she found him climbing out of a tree trying to get his mother's peacock had not been objected to. (Trial Tr. Vol. 2, 230:21-231:8). Thereafter, Ms. Hook testified that the tree was located outside of her bathroom and bedroom area. (Trial Tr. Vol. 2, 233:6-13).

Appellants subsequently moved for the trial court to reconsider and asked the court to strike Ms. Hook's testimony and give a curative jury instruction. (Trial Tr. Vol. 3, 11:4-14). Appellants' counsel noted that "in and of itself, that's not an objectionable question, and it did not occur to [him] at that instant that that would, in any way, open a door." (Trial Tr. Vol. 3, 11:22-25). He also questioned whether a co-defendant could "open the door" and acknowledged that he could not find a case holding that a co-defendant could not. (Trial Tr. Vol. 3 12:14-25). Based on this testimony, Appellants also moved to sever. (Trial Tr. Vol. 3, 13:1-12). The trial court denied these motions. (Trial Tr. Vol. 3, 20:18-21:1).

On appeal, Appellants argue that the trial court had ruled in a pre-trial motion that this incident was not admissible. (Appellants' Brief at 16). While the trial court preliminarily ruled that it thought the evidence *might* be character evidence and limited the testimony, the court also correctly noted it was a preliminary ruling and that anything can happen in trial. (Trial Tr. Vol 6, 2 13:10-17; 15:8-19). During this preliminary discussion of the admissibility of this incident, Plaintiffs' counsel stated that she would not ask about the tree looking into Ms. Hook's bedroom. However, she asked the trial court if she could ask if Ms. Hook ever saw Rhett Riviere on her property without her permission. (Trial Tr. Vol. 2, 16:6-18). The trial court responded that "it's a very fine line" and that they would see how the questioning went. (Trial Tr. Vol. 2, 16:17-18; 17:13-14). Because a ruling on a motion in limine is preliminary and subject to change, a contemporaneous objection must be made again when the evidence is presented at trial. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997).

Appellants argue that because he did not open the door, this testimony should not have been allowed and the testimony about Riviere climbing out of a tree was disproportionate and actually introduced to establish that he is a peeping Tom. (Appellant Brief at 17-18). However, as noted by the trial court, Appellants failed to make a contemporaneous objection to the questioning from co-defendant's counsel which opened the door for the responsive testimony explaining that Ms. Hook found Riviere climbing out of a tree on her property. It was only when Plaintiffs' counsel sought to ask about the tree's location that Appellants objected on the ground that this was improper on reply because defense counsel had not asked about the tree – not that it was disproportionate. In any event, Ms. Hook's testimony that Riviere would frequently go onto her property uninvited and that she found him climbing out of a tree outside of her bedroom while he was looking for his mother's peacock was offered to establish why Ms. Hook was not fond of

Riviere and was not improper character evidence. As the trial court noted, her testimony was not that Riviere was “peeping in on her.” (Trial Tr. Vol. 5, 7:7-13).

Finally, Appellants argue that this ruling was particularly problematic because it created a conflict of interest between the defendants and also an attorney-client conflict based on Mr. Harte’s earlier representation of Rhett Riviere in the criminal matter and other civil matters and his current representation of Josee Riviere at this trial. (Appellants’ Brief at 18).² However, it was not the trial court’s ruling which created any conflicts of interest. As the trial court specifically noted, any conflict was created by Mr. Harte’s prior representation of Rhett Riviere on criminal charges and in two civil cases related to these videos and the potential for divergent interest had been the basis for several other motions, including a pre-trial severance motion. (Trial Tr. Vol. 5, 17:6-22:9-14). The trial court did not abuse its discretion in allowing this testimony.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS MOTION FOR A NEW TRIAL BASED ON THE CUMULATIVE ADMISSION OF EVIDENCE OF OTHER BAD ACTS COMMITTED BY RHETT RIVIERE.

Appellants contend that they objected “ad nauseum” to the introduction of improper Rule 404(b) evidence and the cumulative effect denied them a fair trial. (Appellants’ Brief at 18-20). First, Riviere failed to specifically raise all of these grounds as a motion for a new trial. *See generally*, Rhett Riviere’s Mot. for New Trial filed Oct. 10, 2024. “The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial.” *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). The cumulative error doctrine is subject to the rule that an issue must be raised to and ruled

² Appellants raised this argument as grounds for a mistrial and severance as they requested that the trial continue against only Josee Riviere. (Trial Tr. Vol. 5, 16:18-17:5; 23:11-14).

upon by the trial court. *Id.* at 236, 746 S.E.2d at 489. While Rhett Riviere argued generally that there was a cumulative effect of what he contends was inadmissible character evidence, he did not raise all of the same grounds before the trial court or in his motion for a new trial and thus the trial court did not rule on this issue. Therefore, this argument is not preserved for review. *See State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (holding, for an objection to be preserved for appellate review, the objection must be made with sufficient specificity to inform the trial court of the point being urged by the objector).

As to the merits, in addition to the testimony from Ms. Hook, discussed above, he points to: testimony from Christina Neuhaus who expressed concern over whether she had been recorded because she noticed an unplugged modem in a cottage rented to her by Riviere in 2017 which had been plugged back in a few days later; testimony from an ex-girlfriend of Rhett Riviere who stated that Rhett Riviere told her that the FBI did not find some evidence and that a bag of thumb drives belonging to him had disappeared from her car; testimony from Gabriel's therapist about an attorney who was prosecuting related cases; and Gabriel's testimony that Riviere needed to be stopped. (Appellants' Brief at 19-20). This issue is essentially the same as those in Argument IV. For the reasons set forth below as to that issue, these grounds also do not support Appellants' argument as to the denial of their motion for a new trial, i.e., they were not prejudiced. Accordingly, this issue is without merit.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR SEVERANCE AND MISTRIAL BASED UPON THE CUMULATIVE ADMISSION OF EVIDENCE WHICH THEY CONTEND WAS PREJUDICIAL.

Similarly, to the preceding issue, Appellants argue that the trial court erred in denying his motion for severance and mistrial based on the cumulative admission of allegedly prejudicial hearsay testimony, inflammatory exhibits, and testimony about other recordings and victims.

(Appellants' Brief at 20). Appellants specifically include a list of evidence. *Id.* (citing Trial Tr. Vol. 5, 6:21-25; 7:1-8:20). They also argue that Gabriel Crespo's allegedly improper "Golden Rule" testimony that "it could be any of you" and testimony that Riviere has done this for "four" decades and needs to be stopped were "character assassination." *Id.* Furthermore, Appellants include another alleged error relating to Josee Riviere's testimony. (Appellants' Brief at 20). Her counsel asked her during cross-examination, "Did anyone ever tell you anything about Rhett Riviere having any sort of reputation that was not good?" (Trial Tr. Vol. 4, 24-25). Josee responded, "No, everybody liked him." *Id.* at 160:1. Appellants objected to this testimony and requested a sidebar after which the Court instructed the jury "not to consider the last question and answer given by this witness to the question." *Id.* at 9- 6. Appellants argue that the cumulative effect of these alleged errors allowed evidence to be admitted that only "establish[ed] in the minds of the jury that Riviere is a 'sicko,' 'who needs to be stopped,' and that this could happen to 'any of you,' and denied them a fair trial, "as is evident by the \$36 million jury verdict." (Appellants' Brief at 22). This argument fails for several reasons.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *Beekman*, 405 S.C. at 237, 746 S.E.2d at 490. However, "[a]n appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id.*

The granting or denying of a motion for mistrial is within the sound discretion of the trial judge. *Creighton*, 334 S.C. at 118, 512 S.E.2d at 521. Absent an abuse of discretion, the decision of the trial judge will not be overturned on appeal. *Id.*

First, in moving for a mistrial towards the end of Plaintiffs' case, while Appellants did raise several of these as examples, they did not raise all of them in support of their motion for a mistrial or severance. In fact, they concentrated on whether Josee Riviere opened the door and the trial court's instruction to the jury to disregard the question and answer. While Appellants argued generally that there was a cumulative effect of what they contend was inadmissible character evidence, they did not raise all of the same grounds before the trial court in his motions for severance and mistrial. Thus, the trial court did not rule on these issues. *Beekman*, 405 S.C. at 236, 746 S.E.2d at 489. Therefore, this argument is not preserved for review. *See Byers*, 392 S.C. at 444, 710 S.E.2d at 58 (holding, for an objection to be preserved for appellate review, the objection must be made with sufficient specificity to inform the trial court of the point being urged by the objector).

As discussed below, Appellants did not object to much of this testimony they now raise as having been erroneously admitted. Moreover, even if some testimony was erroneously allowed, Appellants have failed to show that the cumulative effect adversely affected their right to a fair trial so as to warrant a mistrial. Addressing the testimony raised on appeal, in turn:

- The SLED Agents Dove and Busby's references to the number of videos and description of the videos found were not improper testimony, as discussed above.
- Sue Hook's testimony, as discussed above, was not erroneously admitted.
- Appellants did not contemporaneously object to Mr. Treeza's testimony that Plaintiffs' counsel was prosecuting related cases. (Trial Tr. Vol. 4, 15-22).
- Ms Neuhaus testified that she had rented Appellants' properties three times (Trial Tr. Vol. 3, 193:20-24) and that when Katherine Thomas, Riviere's ex-fiancé, first discovered the SD cards, she and Katherine looked at a video on one of Riviere adjusting a camera pointed at a bed and in another, she saw a women starting to undress before she turned it off. (Trial Tr. Vol. 3, 199:22-200:25). Appellant only objected to the question whether she had any fear she might have been recorded on the ground that it was leading. (Trial Tr. Vol. 3, 202:13-21).

- An ex-girlfriend of Riviere testified without objection about missing thumb drives from a grocery bag and a comment from Riviere that the FBI did not seize certain electronic devices. (Trial Tr. Vol. 3, 170:11-19; 171:11-172:6)
- Josee Riviere testified that Rhett Riviere “was a kind and generous man” and that “the sicko who took these -- whoever took these videos is not that person.” Appellants objected to this testimony and the trial court sustained this objection. (Trial Tr. Vol. 4, 104:15-25). Thus, any error is not preserved for review. *McKisick v. J.F. Cleckley & Co.*, 325 S.C. 327, 479 S.E.2d 67 (Ct. App. 1996) (if objection is sustained and appellant does not move for a curative instruction or request mistrial, he cannot complain on appeal).
- Riviere’s invocation of his Fifth Amendment privilege when asked if he videotaped young girls, and others without their consent for years. Surely, Riviere’s invocation of this Fifth Amendment right is not an error which would support his mistrial motion.
- During questioning by her own counsel, Josee Riviere testified Rhett Riviere had a good reputation and “everybody liked him.” (Trial Tr. Vol. 4, 159:24-160:1). Appellants objected and, after a side bar, the trial court instructed the jury not to consider this testimony. (Trial Tr. Vol. 4, 160:5-16). Generally, a curative instruction is deemed to have cured any alleged error. *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct.App.1999). “If the trial judge sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured.” *Id.* at 658, 623 S.E.2d 129-130. A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission. *Id.* at 659, 623 S.E.2d at 130.

Finally, Appellants’ argument regarding Gabriel’s testimony is not preserved for appellate review. Appellants failed to make a contemporaneous objection to this testimony. (Trial Tr. Vol. 5, 79:1-80:6). They waited until counsel had finished her direct examination of Gabriel to raise the matter to the trial court and move for a mistrial. (Trial Tr. Vol. 5, 80:1-6; 82:12-21). A contemporaneous objection is required to preserve issues for appellate review. *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005).

Moreover, this issue is without merit. Appellants contend that Gabriel’s testimony that “it could be any of you” and testimony that Riviere has done this for decades and needs to be stopped were “character assassination.” First, as reflected in the official transcript, Gabriel did not testify that Riviere has done this for “four” decades; he simply repeated the word “for.” (Trial Tr. Vol. 5,

79:1-2). Importantly, English is not Gabriel's first language and he was extremely emotional during his testimony. (Trial Tr. Vol. 5, 93:3-4). He frequently repeated words or phrases throughout his testimony, (see, e.g., Trial Tr. Vol. 5, 78:5-11; 79:16), as people often do when speaking in another language. Gabriel was simply searching for the right words in English and stumbled.

As to the Golden Rule argument, once the issue was raised, the trial judge admonished Gabriel to refrain from comments about how anyone else would feel. (Trial Tr. Vol. 5, 87:18-22). This issue is not preserved because Appellants did not move for a mistrial or curative instruction. *McKisick*, 325 S.C. 327, 479 S.E.2d 67 (if objection is sustained and appellant does not move for a curative instruction or request mistrial, he cannot complain on appeal). Additionally, this issue fails on the merits.

The Golden Rule argument is one where counsel suggests that the jurors put themselves in the shoes of one of the parties. *State v. Rice*, 375 S.C. 302, 334, 652 S.E.2d 409, 425 (Ct. App. 2007), *overruled by State v. Byers*, 392 S.C. 438, 710 S.E.2d 55 (2011). Such an argument tends to destroy the jury's impartiality arousing passion and prejudice. *Id.* First, Gabriel's testimony did not rise to the level of a Golden Rule argument. *Rice*, 375 S.C. at 337, 652 S.E.2d at 427. Second, it is critically important to consider the context of Gabriel's testimony. Appellants first raised the issue of why Gabriel and Heather did not bring the lawsuits in the name of John and Jane Doe when questioning the Crespos' therapists. Appellants were attempting to make the argument on cross examination that the Crespos' embarrassment could have been avoided by bringing the lawsuits anonymously. During his testimony, Gabriel was explaining why he brought this lawsuit in his name, rather than as a John Doe, (Trial Tr. Vol 3, 88:8-14; 165:6-25; Trial Tr. Vol. 4, 88:8-14):

I'm not John Doe. I am me. I have a reputation. I teach my kid -- I have only one kid, so I only have one chance to do this right. So I tried my best to raise my kid

based on love, respect, and telling her to stand up for what is right. What I'm doing today is the right thing to do. What we are doing here is the right thing to do. I want everybody in the community knowing me or not knowing me to know that this guy did this to us, so it could be any of you. There's a lot of people that you've seen on these videos who have no idea. My -- my -- my tape was named Heather and Gabriel. What was the point for me to be John Doe? How long can I keep it as John Doe, even if I filed as a John Doe? As soon as you walk into court, they know who John Doe is, so what's the point of being John Doe? And besides that, it goes against my beliefs. I'm not John Doe. I am who I am. Like me or not, but I am who I am.

(Trial Tr. Vol. 5, 79:7-23).³ Gabriel was not asking the jury to place themselves in his shoes; rather, he was explaining why he sued in his name and not anonymously. His testimony was not improper Golden Rule testimony. Moreover, Appellants' counsel also stated in closing arguments that Gabriel wanted everyone to know about this video and "refused the opportunity to bring what's called a Jane or John Doe lawsuit. . . he didn't want that opportunity." (Trial Tr. Vol. 6, 227:12-16).

Furthermore, other than their conclusory argument based solely on the amount of the verdict, Appellants fail to show that any of these alleged errors prevented them from receiving a fair trial. *See State v. Cottrell*, 421 S.C. 622, 640, 809 S.E.2d 423, 433 (2017) ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof."). Accordingly, this issue is without merit.

V. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR A DIRECTED A VERDICT ON THE NEGLIGENCE AND NEGLIGENCE PER SE CLAIMS BECAUSE THERE WAS EVIDENCE OF PHYSICAL INJURY AND/OR PROPERTY DAMAGE.

3

In moving for a directed verdict on the negligence claims, Appellants argued to the trial court that Plaintiffs failed to present any evidence of physical injury or property damage. (Rhett Riviere’s Mot. for Directed Verdict filed Sept. 23, 2024 at 2). They argued that “Plaintiffs’ evidence of damages is strictly limited to emotional distress, which is not recoverable under a negligence claim unless accompanied by a physical injury.” *Id.*; see also Trial Tr. Vol. 5, 5:22-6:25. Plaintiffs pointed to the testimony about physical manifestations they suffered and property damage, and the trial court denied the motion for a directed verdict. (Trial Tr. Vol. 5, 58:11-12).

a. Plaintiffs sufficiently established damages under the negligence claims.

On appeal, as to the negligence claims, Appellants contend that the Crespos failed to establish a physical injury. (Appellants’ Brief at 23). He cites *K.S. ex rel. Seeger v. Richland Sch. Dist. Two*, 445 S.C. 111, 120, 912 S.E.2d 240, 244–45 (2025), for the proposition that the physical harm may take one of two forms: physical harm caused by physical impact from an external or outside force, or physical harm consisting of the physical manifestations caused by emotional distress. In *K.S.*, the court specifically stated that:

Our decision today addresses only those negligence cases where damages for emotional harm are sought where the plaintiff has also suffered physical harm caused by a physical impact from an external force. It does not concern negligence cases where it is alleged the defendant’s negligent conduct did not cause a physical impact but caused an emotional harm that later manifests into physical symptoms.

Id. This case is simply inapplicable. In any event, Plaintiff presented evidence of physical injury and property damage. Both Plaintiffs testified about receiving counseling and manifesting physical injuries (Trial Tr. Vol. 5, 77:2-8; 129:6-16; 130:16-131:16) and that they suffered property loss in the amount of \$2400, the rent paid for the property (Trial Tr. Vol. 5, 67:9-13). In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party; if more than one inference can be drawn, the case must be submitted to

the jury.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). Thus, the trial court did not abuse its discretion in denying Appellants’ motion for directed verdict, renewed motion for directed verdict, and motion for JNOV.

b. The statute was intended to protect the public in real estate transactions.

First, Appellants argue that it would be unconstitutional to apply this statute to short-term, vacation rental property managers. (Appellants’ Brief at 24) (citing *Ladd v. Real Est. Comm’n*, No. 321 M.D. 2017, 2022 WL 19332047 (Pa. Commw. Ct. Oct. 31, 2022) (Wallace, J. single-judge opinion)). In *Ladd*, an unreported, non-binding single-judge opinion which only may be cited for its persuasive value, the court held that the Pennsylvania licensing scheme was an unconstitutional infringement upon the petitioner’s right to pursue her chosen occupation under the Pennsylvania Constitution as applied to short-term vacation property management services.⁴ While Appellants made the same vague constitutional argument to the trial court, (Defs.’ Mot. for JNOV at 4), the trial court did not make any ruling regarding constitutionality, and Appellants did not file a Rule 59(e) motion. *See Lynch v. Langley*, No. 2022-001006, 2025 WL 326572, at *2 (S.C. Ct. App. Jan. 29, 2025) (citing *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) for the proposition that “[a] party *must* file [a Rule 59(e) of the South Carolina Rules of Civil Procedure] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original)). Accordingly, this issue is not properly before the Court.

Appellants also contend that the Crespos failed to establish that they fall within the class protected by S.C. Code Ann. § 40-57-20, or that the statute applies to short-term rental property managers. (Appellants’ Brief at 24). “The cardinal rule of statutory construction is to ascertain and

⁴ *See* Rule 126(c)(2), Pa.R.A.P. *Thiam v. Bureau of Prof. & Occupational Affs.*, 301 A.3d 942, 950 n. 12 (Pa. Commw. Ct. July 25, 2023).

effectuate the intent of the legislature.” *Centex Int’l, Inc. v. S.C. Dep’t of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013). “In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.” *Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.” *Lockwood Greene Eng’rs, Inc. v. S.C. Tax Comm’n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). Whe[n] the terms of the statute are clear, the court must apply those terms according to their literal meaning. An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute. *Brown v. S.C. Dep’t of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (citation omitted). The General Assembly stated that it intended to protect the public when involved in real estate transactions. If the General Assembly had wanted to exclude short-term rentals, it easily could have done so. Moreover, as a practical matter, there is no definition of what qualifies as a “short-term rental.” Interpreting the statute to exclude short-term rentals would limit the statute’s application and run contrary to the canons of statutory construction. *Centex Int’l*, 406 S.C. at 139, 750 S.E.2d at 69.

As to whether the Crespos were a member of the statute’s protected class, the South Carolina Real Estate Commission was created “to regulate the real estate industry so as to protect the public’s interest when involved in real estate transactions.” S.C. Code Ann. § 40-57-10. Section 40-57-20 prohibits someone from acting as a real estate broker or real estate property manager without an active, valid license. Section 40-57-5 provides that this chapter applies to “real estate brokers, associates, and property managers,” which it defines as someone who negotiates rentals or leases or is involved in real estate transactions. S.C. Code Ann. § 40-57-10. By showing, leasing,

and managing rental properties, Riviere was engaged in real estate transactions acting as a broker and/or property manager when he rented the cottage to the Crespos for valuable consideration.

Finally, Appellants' argument that the Crespos failed to present any evidence to support a finding that if Riviere had been licensed that the invasion of privacy would not have occurred is not supported the record. (Appellants' Brief at 25). Again, this issue is not preserved as the trial court did not specifically rule on this issue and Appellants did not file a Rule 59(e) motion. In any event, if Riviere had been properly licensed, he would have been subject to many requirements and potential disciplinary proceedings. Appellants also overlook that Plaintiffs' claim was based on the duty to disclose a latent issue that a licensed broker knew or should have known about. *See Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009). Accordingly, this issue is without merit.

VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR A DIRECTED VERDICT OR JNOV ON THE IIED DISTRESS CLAIM BECAUSE THERE WAS EVIDENCE THAT PLAINTIFFS SUFFERED EXTREME OR SEVERE EMOTIONAL DISTRESS.

Appellants argue that the trial court erred in denying his motion for a directed verdict on the IIED claim because the Crespos failed to present evidence of severe or extreme emotional distress. (Appellants' Brief at 25). In denying this motion for JNOV as to the IIED claim, the trial court correctly found "more than sufficient basis for the tort of [IIED] upon which the jury awarded its verdict." (Jan. 3, 2025 Order re: Rhett Riviere at 6).

In South Carolina, to establish an IIED claim, a plaintiff must show that "the conduct on the part of the defendant was extreme and outrageous, and that the conduct caused distress of an extreme or severe nature." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007) (quotation marks and citation omitted). In deciding a motion for JNOV, the evidence

and all reasonable inferences must be viewed in the light most favorable to the nonmoving party; if more than one inference can be drawn, the case must be submitted to the jury.” *Gastineau*, 331 S.C. at 568, 503 S.E.2d at 713.

Appellants argue that the Crespos suffered only “ordinary symptoms” and their feelings of humiliation or anger are similar to the symptoms asserted by the plaintiff in *Hansson*. (Appellants’ Brief at 25). In *Hansson*, the Court explained that “the [trial] court plays a significant gatekeeping role in analyzing a defendant’s motion for summary judgment[]” in order to prevent claims for [IIED] from becoming a panacea for wounded feelings rather than reprehensible conduct[.]” 374 S.C. 352, 650 S.E.2d at 72 (internal quotations and citations omitted). “[T]he court must look for something ‘more’—in the form of third party witness testimony and other corroborating evidence—in order to make a prima facie showing of “severe” emotional distress.” *Id.* There was more than enough testimony and evidence to support the IIED claim.

The Crespos and each of their therapists, Bill Trezza and Tom Portney, testified as to the emotional distress caused by Riviere’s egregious actions. (Trial Tr. Vol. 3, 151:18-24; Trial Tr. Vol. 4, 62:8-65:1; 78:13-79:5; Trial Tr. Vol. 5, 72:9-73:9; 73:23-74:6; 77:2-23; 101:15-25; 103:2-15; 125:10-14; 128:16-129:2; 131:4-21). Trezza diagnosed Gabriel Crespo with a trauma disorder, specifically PTSD. (Trial Tr. Vol. 4, 63:2-7; 86:12-17). Portney testified that Heather Crespo was traumatized and in a flight or fight mode experiencing shame, humiliation, agitation, helplessness, and nightmares. (Trial Tr. Vol. 3, 151:18-152:17; 154:22-155:14). Additionally, the trial court, who was in the best position to assess the demeanor of the witnesses, noted “both plaintiffs were very emotional during their testimony.” (Jan. 3., 2025 Order re: Rhett Riviere at 6). The trial court also noted that Heather suspected that she was having a heart attack following her deposition, and “[a]lthough that was due to the litigation process, her questioning in deposition was a product of

the acts by defendants and result of recounting of the harm imposed by defendant's acts. " *Id.* Further, as the trial court stated, "the plaintiffs will never have full confidence of where their images are, who may watch them, and if they will ever be presented in a more public fashion." *Id.* Additionally, Plaintiffs' close friends, Laura Phillips and Diego Ferreria, also testified that the Crespos have endured, and will continue to endure, severe emotional distress and that this case has had a significant impact on their emotional and physical well-being.

This case is clearly not one simply about wounded feelings. Viewing the evidence and inferences in the Crespos' favor, the trial court correctly held that there is evidence from which the jury could find that they suffered damage so severe that no reasonable person would be expected to endure it. *See McSwain v. Shei*, 304 S.C. 25, 402 S.E.2d 890 (1991), overruled on other grounds by *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002), (holding that jury could find outrageous and intolerable the conduct of an employer who forced employee to perform exercises that exposed her incontinence problem to others). Accordingly, this issue is without merit.

VII. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR A DIRECTED VERDICT OR JNOV ON THE CONSTRUCTIVE FRAUD CLAIM BECAUSE THERE WAS EVIDENCE OF A FAILURE TO DISCLOSE THE HIDDEN CAMERAS.

Appellants contend that, as to the constructive fraud claim, Plaintiffs failed to present sufficient evidence of a false representation, a fiduciary duty between the two parties, and resulting financial loss. (Appellants' Brief at 26-27). Viewing the evidence and all reasonable inferences in the light most favorable to Plaintiffs, however, the trial court did not err in denying Riviere's Motions for Directed Verdict or JNOV. *Gastineau*, 331 S.C. at 568, 503 S.E.2d at 713.

To establish fraud, a party must prove: "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent

that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 365, 474 S.E.2d 819, 823 (Ct. App. 1996). "Non-disclosure is fraudulent when there is a duty to speak." *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432, 445 (App. 2003). Such a duty arises: "(1) where there exists a preexisting definite fiduciary relation between the parties; (2) where one party either expressly or (by virtue of the specific circumstances of the case) implicitly reposes a trust and confidence in the other with reference to the particular transaction in question; or (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure." *Thomas Daniels Agency, Inc. v. Nationwide Ins. Co. of Am.*, 122 F.Supp.3d 448, 452 (D.S.C. 2015) (citing *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601, 605 (1967)). "Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." *Anthony v. Padmar, Inc.*, 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995). Examples of such fiduciary relationships include a real estate broker and his client. *Crowe v. United Community Bank*, No. 8:20-cv-1048-TMC, 2022 WL 18584370, *8 n.10 (D.S.C. Jan. 24, 2022) (addressing fraud claim under South Carolina law and citing *Steele v. Victory Sav. Bank*, 368 S.E.2d 91, 93 (S.C. Ct. App. 1988)).

Rhett Riviere were acting as a real estate broker when renting the property to Plaintiffs. Additionally, the Crespos testified that they knew the Rivieres and accepted the opportunity to rent the cottage based on the relationship of trust they believed they had with them. (Trial Tr. Vol. 5, 63:1-3; 113:17-22). Rhett Riviere invoked his Fifth Amendment rights when asked if the Crespos trusted him (Trial Tr. Vol. 4, 25:13-17), and Josee Riviere's testified to a complete lack of recall,

as opposed to a denial, as to the rental transaction (Trial Tr. Vol. 4, 105:11-19; 108:4-12; 110:13-21). Accordingly, viewing the evidence and all reasonable inferences in a light most favorable to Plaintiffs, there was evidence of a fiduciary relationship between the Crespos and Rivieres.

Finally, the proper method to determine damages in a fraud case is the benefit-of-the-bargain approach or the difference between the value Plaintiffs would have received if the Rivieres had not failed to disclose the hidden cameras and the value of the rental the Crespos actually received, together with any proximately caused consequential or special damages. *Schnellmann v. Roettger*, 373 S.C. 379, 645 S.E.2d 239 (2007). It is for the jury to determine whether a rental property with hidden cameras would be worthless or at the very least have a value less than a rental without hidden cameras. Moreover, the Crespos also incurred other financial harm or damages in obtaining medical treatment. Viewing the evidence and all reasonable inferences in a light most favorable to Plaintiffs, there was sufficient evidence to submit this claim to the jury and thus the trial court properly denied Appellants' Motions for Directed Verdict and JNOV.

VIII. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR A DIRECTED VERDICT OR JNOV ON THE UTPA CLAIM BECAUSE THERE WAS EVIDENCE OF COGNIZABLE DAMAGES.

Appellants contend that the Crespos failed to present any evidence of cognizable damages to support their UTPA claim because Gabriel did not testify what the value of the rental would have been if he had been aware of the hidden cameras. (Appellants; Brief at 27-28). However, Plaintiffs presented not only evidence of the rental payment, but they also presented evidence of their medical bills, which are ascertainable losses of money or property under the UTPA.⁵

⁵ Plaintiffs appealed the trial court's determination of what is an "ascertainable loss of money or property" under the UTPA and argued other losses should have been included. However, it not necessary to repeat those arguments here as Appellants raise only an issue with the valuation of the rental.

“In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party; if more than one inference can be drawn, the case must be submitted to the jury.” *Gastineau*, 331 S.C. at 568, 503 S.E.2d at 713. “In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV, neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (alteration in original) (quotation marks and citation omitted). “The jury’s verdict must be upheld unless no evidence reasonably supports the jury’s findings.” *Id.* Moreover, under the highly deferential standard for granting a motion for JNOV, such relief is only permissible if “no reasonable jury” could have reached the challenged verdict. *RFT Mgmt. Co.*, 399 S.C. at 332, 732 S.E.2d at 171.

Section 39-5-140 of the UTAP provides that any person who suffers any “ascertainable loss of money or property, real or personal” may bring an action individually. Under the UTPA, actual damages include special or consequential damages that are a natural and proximate result of deceptive conduct. *Collins Hol. Corp. v. Defibaugh*, 373 S.C. 446, 646 S.E.2d 147 (Ct. App. 2007).

Plaintiffs sustained an ascertainable loss based on the difference between the value of the rental that they should have received and the value of the rental that they actually received, together with any proximately caused consequential or special damages. *Sparrow v. Toyota of Florence, Inc.*, 302 S.C. 418, 422, 396 S.E.2d 645, 647 (Ct. App. 1990) (holding the measure of actual damages was the difference in fair market value); *Schnellmann*, 373 S.C. 379, 645 S.E.2d 239. Gabriel testified that Plaintiffs paid \$2,4000 to rent the property, and it was clear from both Plaintiffs’ testimony that they would never have rented the cottage if they had known they were being videotaped in their bedroom and bathroom. Moreover, as the trial court determined, it was

for the jury to determine whether a rental property with hidden cameras in the bedroom and bathroom is worthless or, at the very least, have a diminished value when compared to a rental without hidden cameras. Plaintiffs presented evidence from which the jury could have determined the approximate loss in regard to the rental property within a reasonable degree of certainty or accuracy. *Collins Ent., Inc. v. White*, 363 S.C. 546, 559, 611 S.E.2d 262, 269 (Ct. App. 2005) (“Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy.”) (citation omitted)). Moreover, Plaintiffs also presented evidence of another ascertainable loss, the expenses they incurred for counseling services, which Appellants do not address.

Viewing the evidence and all reasonable inferences in the light most favorable to Plaintiffs, Appellants have failed to show that “no reasonable jury” could have reached the verdict against her on the UTPA. Thus, the trial court did not abuse its discretion in denying Appellants’ motions for directed verdict and JNOV. Accordingly, Defendants’ arguments are without merit.

IX. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING CHASE OR RC PROPERTIES’ MOTION FOR A DIRECTED VERDICT OR FOR JNOV BECAUSE THERE WAS EVIDENCE THAT THESE ENTITIES OWNED, CONTROLLED OR RENTED THE COTTAGE TO THE CRESPOS.

Appellants contend that Plaintiffs failed to establish that the rental property was owned by Riviere, Chase or R.C. Properties. (Appellants’ Brief at 28). However, Appellants acknowledge that Gabriel testified that he wrote the rental check to a company. *Id.* See also Trial Tr. Vol. 5, 97:8-12. Rhett Riviere was asked whether he formed these LLCs in the year 2000 for the purpose of managing and operating his rental properties and whether he used these LLCs to facilitate his illegal videotaping of people, and he asserted the Fifth Amendment to all of those questions. (Trial Tr. Vol. 4, 41:1-17; 45:5-13). SLED Agent Busbee testified that he obtained search warrants for three houses owned by Riviere and his corporate entities. (Trial Tr. Vol. 2, 132:21-25). Real Estate

Agent Suzy Haslup testified that she assisted in the sale of 115 3rd Avenue which she believed was owned by one of Mr. Rivere's corporate entities and that she understood it was a rental investment property. (Trial Tr. Vol. 3, 141:4-25). Viewing the evidence and all reasonable inferences in a light most favorable to Plaintiffs, the trial court did not abuse its discretion in denying Chase and RC Properties' Motions for Directed Verdict and JNOV.

X. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION FOR A NEW TRIAL BASED ON THE JURY VERDICT FORM.

Appellants argue that the trial court erred by submitting a verdict form which allocated damages for each claim. (Appellants' Brief at 29). They contend that the verdict form was so defective and prejudicial that it was reversible error. The trial court denied Appellants' Motion for a New Trial on the ground that it improperly submitted a verdict form which allocated damages when the measure damages was identical for each claim. (Jan. 3, 2025 Order re: Rhett Riviere at 6). In denying the motion, the trial court noted that while the verdict form allowed for allocation of the verdict amounts by cause of action, it also asked the jury to indicate the total amount of damages, which was added at the request of defense counsel. *Id.* at 6. In fact, defense counsel told the trial court that after looking at the verdict form with the separate findings for each claim and a total amount, he was satisfied with the verdict form. (Trial Tr. Vol. 7, 76:9-77:2). This issue is not preserved because they did not raise this argument to the trial court and indicated that they had no issues with the verdict form. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding "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."). Moreover, as the trial noted, (Jan. 3, 2025 Order re: Rhett Riviere at 7), any inquiry about the verdict should have been raised at the time of the award not in post-trial motions while the jury was still empaneled. *See*

Allegro, Inc. v. Scully, 409 S.C. 392, 419, 762 S.E.2d 54, 69 (Ct. App. 2014) (noting, “[i]f a jury verdict form is [alleged to be] ambiguous or unclear, the jury should be returned to the jury room in order to clarify or conform the verdict to its intent before the jury is excused.”).

Even if this issue was properly preserved, as the trial court concluded that “[i]t is clear the jury intended for a total amount of damages against the defendants to be \$11,000,000.00 against Rhett Riviere, \$500,000.00 as to Josee Riviere, \$1,000,000.00 as to Chase Enterprises, LLC, and \$1,000,000 as to R.C. Riviere Properties, LLC” and any confusion which may have been present regarding damages for negligence and negligence per se, the intent of the total award is clear and does not require an election between the two. (Jan. 3, 2025 Order re: Rhett Riviere at 7). Accordingly, this issue is without merit.

XI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS’ MOTION FOR A NEW TRIAL ABSOLUTE BECAUSE THE JURY’S VERDICT WAS NOT THE RESULT OF PASSION AND PREJUDICE.

Appellants argue that the trial court erred in denying his motion for a new trial absolute. (Appellants’ Brief at 30). They do not argue that the verdict shocked the conscience. Instead, they argue that the verdict is grossly disproportionate to the evidence indicating that it was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives. (Appellants’ Brief at 30). They argue that the Crespos incurred less than \$5,000 in medical expenses and did not miss work and they did not sustain any physical injuries, future lost income, or future medical expenses. *Id.* at 31. Appellants also argue that the jury verdicts were inconsistent for the fraudulent concealment claim and despite the measure damages being identical for the remaining claims, the jury’s assignment of increasingly excessive amounts to each claim based solely on the label of the cause of action demonstrates that it failed to follow the court’s instructions.

“The trial [court] must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption[,] or some other improper motives.” *Vinson*, 324 S.C. at 404, 477 S.E.2d at 723. While trial courts have the authority to grant a new trial if the verdict is inconsistent and reflects confusion, a jury verdict should be upheld when it is possible to do. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983). “South Carolina’s thirteenth juror doctrine is well established as the standard for granting a new trial in state law actions.” *Norton v. Norfolk So. RR Co.*, 350 S.C. 473, 478, 567 S.E.2d 851 (2002) (citation omitted). South Carolina’s thirteenth juror doctrine entitles the trial judge to sit, in essence, as the thirteenth juror when he finds “the evidence does not justify the verdict,” and then to grant a new trial based solely “upon the facts.” *Id.* (citation omitted). As the “thirteenth juror,” the trial judge can hang the jury by refusing to agree to the jury otherwise unanimous verdict. *Id.* However, a jury verdict should be upheld when it is possible to do so and carry into effect the jury’s clear intention. *Parker*, 279 S.C. 132, 303 S.E.2d 95. Upon review, a trial judge’s order denying a new trial will be upheld unless the order is “wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.” *Folkens v. Hunt*, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267 (1990) (citation omitted). This Court’s “review is limited to consideration of whether evidence exists to support the trial court’s order.” *Id.* at 255, 387 S.E.2d at 267.

In challenging the amount for the damages award, Appellants argue that the verdicts were grossly excessive. This argument is not surprising as Appellants discounted Plaintiffs’ claims throughout this litigation. During the trial, Appellants referred to this case as a “money jackpot,” mocking the Plaintiffs’ damages and emotional distress. (Trial Tr. Vol. 2, 44:14-17) Appellants continuously refused to acknowledge the egregiousness of their misconduct; the damages it

caused Plaintiffs and showed a complete an utter lack of remorse. Simply because the jury disagreed with this assessment, however, does not mean that the jury was motivated by passion, prejudice, or other improper motives. Appellants fail to show compelling reasons that would justify the reduction of the damages award by the Court. *See Curtis v. Blake*, 392 S.C. 494, 501, 709 S.E.2d 79, 82 (Ct. App. 2011) (finding no compelling reasons and refusing to disturb the trial court’s denial of motions for a new trial absolute and nisi remittitur where the jury awarded the plaintiff \$450,000 in actual damages while the plaintiff only claimed \$4,530.98 in medical bills and \$2,615.76 in lost wages, and the plaintiff’s doctors believed he had recovered from his pain).

Moreover, the amount of the damages returned by the jury was not “pulled out of thin air.” (Appellants’ Brief at 31). Considering the nature of this case, Plaintiffs’ counsel during closing argument, appropriately suggested a per diem calculation using Plaintiffs’ life expectancy as a method the jury could apply to arrive at a damages award for Plaintiffs. Counsel, however, made clear that whether to award and how much, if any, was entirely up to the jury. *See Edwards v. Lawton*, 244 S.C. 276, 281, 136 S.E.2d 708 (1964) (accepting a per diem calculation as acceptable in a closing argument). In any event, the verdicts were “within the range suggested to the jury.” *See Hassell v. City of Columbia*, 430 S.C. 620, 636, 846 S.E.2d 373, 382 (Ct. App. 2020).

Reviewing the evidence, the trial court stated

Plaintiffs have certainly endured extreme emotional turmoil as evidenced by their testimony. The fact that the emotional turmoil is the overwhelming damage does not negate the evidence of physical injury accompanying the emotional shock and anguish. Each plaintiff presented evidence of counseling fees and sought treatment. The plaintiffs presented evidence of the \$2,400.00 rental fee charged by defendants. Further, the plaintiffs testified as to the ongoing nature of the acts. The unknown locations of the videos, the unknown viewings without consent, the different dates of the actual capture of the videos and then the injury caused in the discovery of the videos. This type of ongoing injury certainly results in a greater compensatory amount if a jury finds there is an injury at all.

(Jan. 3, 2025 Order re: Rhett Riviere at 4-5). The trial court commended the jury for taking their role seriously and specifically declined to invade the jury's role pursuant to the thirteenth juror doctrine. *Id.* at 9. The trial court stated that, “[a]s stated multiple times in trial, the court cannot change the conduct and its egregious nature. Given that conduct, the verdict is not excessive.” *Id.*

Appellants also contend that Plaintiffs’ counsel sought to inflame the jury by referring to videos of “young girls,” “couldn’t have been older than 15,” “thousands of videos,” and other highly prejudicial character evidence during cross examination which forced counsel to object nineteen times and Plaintiff’s counsel repeatedly attempted to introduce evidence of Riviere’s wealth. (Appellants Brief at 31). While these arguments were raised in their Motion for a New Trial, the trial court did not address this ground, and Appellant did not file a Rule 59, SCRC, motion asking the trial court to rule on this issue. Accordingly, this issue is not preserved.

Even if it was preserved, given the underlying facts and evidence admitted at trial, these references were not baseless, inflammatory statements. They were statements of fact and reasonably described relevant evidence, which was not improper. Moreover, as to Riviere’s wealth, as conceded by defense counsel at trial, there was unobjected to evidence of his wealth, including ownership of numerous rental properties, a yacht, and horses stables (Trial Tr. Vol. 3, 87:5-24; 206:6-13; Vol. 6, 118:2-121:14) Plaintiffs’ unobjected to opening statement contained references to Rhett Riviere’s wealth. (Trial Tr. Vol. 2, 33:12-14; 37:11-13). Additionally, the evidence regarding the other videos was properly admitted and especially relevant to the elements of the UTPA claim and necessary to show that the conduct was capable of repetition.⁶ The fact that

⁶ Plaintiffs must show an unfair or deceptive act or practice adversely impacting the public. *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461, 466 (2004). Such acts have an adverse impact upon the public if those acts have the potential for repetition, which can be demonstrated by either “showing the same kind of actions occurred in the past, thus making it

the evidence of the videos was detrimental to Appellants does not mean that the jury was motivated by passion, prejudice, or other improper motives; the videos simply mirrored the unfortunate reality of this case. *See Collins*, 409 S.C. at 535-36, 763 S.E. 2d at 28. “Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder.” *Id.* at 535, 763 S.E.2d at 28.

In sum, as the trial court determined, the jury found for the Crespos and awarded them adequate verdicts which were supported by the evidence and testimony presented at trial. The verdicts were within the range of damages and did not shock the conscience. Further, there is nothing demonstrating any juror confusion, or anything which clearly indicates the verdicts were the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive by the jury. Accordingly, the trial court did not err, and this issue is without merit.

XII. THE TRIAL COURT DID NOT ERR BY RULING THAT RHETT RIVIERE COULD NOT TESTIFY REGARDING ONLY HIS FINANCIAL CONDITION DURING THE PUNITIVE DAMAGES STAGE OF THE TRIAL WITHOUT WAIVING HIS FIFTH AMENDMENT RIGHT.

During the punitive damages phase of the bifurcated trial, Rhett Riviere informed the trial court that he intended to answer only the question pertaining to his net worth while retaining his right to assert his Fifth Amendment privilege as to all other questions. Thus he intended to give the jury a number which supposedly represented his net worth and then would refuse to answer any questions regarding how the accuracy or truthfulness of that number. He would also refuse to answer questions about alleged fraudulent transfers of assets which could impact his net worth. (Trial Tr. Vol. 8, 30:2-24; 41:19-23). Defense counsel asked the court if they could speak to Riviere

likely they will continue to occur absent deterrence” or “showing the company’s procedures created a potential for repetition of the unfair and deceptive acts.” *Id.*

about the scope of his testimony and his “need to plead the Fifth to like net worth and stuff.” (Trial Tr. Vol. 8, 39:14-18). At his deposition, Riviere invoked his Fifth Amendment privilege and declined to answer any substantive questions. (Trial Tr. Vol. 8, 51:2-11; 58:8-59:9). Thus, the trial court specifically ruled that if he “takes the Fifth, particularly in light of the fact that he took the Fifth in the pretrial discovery, and it would place the parties at a different position to now change that at the trial level.”(Trial Tr. Vol. 8, 55:7-14). However, Riviere does not address the trial court’s specific grounds for its ruling in his brief. Accordingly this issue is not properly before the Court.⁷

Furthermore, even if it was preserved, Riviere cannot show any prejudice. Riviere contends the trial court’s ruling prevented him from presenting evidence of his net worth during the punitive damages phase, which was highly prejudicial. (Appellants’ Brief at 33-34). However, as noted at trial, nothing precluded Riviere from presenting his net worth information through other witnesses. (Trial Tr. Vol. 8, 56:12-18). Accordingly, this issue is without merit.

XIII. BECAUSE THE VERDICT WAS NOT GROSSLY EXCESSIVE, THE TRIAL COURT ERRED BY AMENDING THE JUDGMENT AND AWARDING DAMAGES IN AN AMOUNT DETERMINED BY THE COURT ON THE UNFAIR TRADE PRACTICES AND FRAUDULENT CONCEALMENT CLAIMS.

A trial court has the authority to grant a new trial nisi remittitur when it finds the amount of the verdict to be “merely” excessive. *See Jolly*, 905 S.E.2d at 386. (internal citation omitted). “It is only when the trial court deems the verdict [] excessive—but not grossly so—that the trial court has the authority to grant a new trial nisi.” *Id.* at 387. The trial court must justify its ruling by giving “compelling reasons” for invading the jury’s province. *See, e.g., Riley v. Ford Motor*

⁷ Moreover, while there are no South Carolina cases on point, other courts have precluded witnesses from testifying at trial when they invoked their Fifth Amendment during a deposition. *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903 (9th Cir. 2008); *Bourgal v. Robco Contr. Enter., Ltd.*, 969 F. Supp. 854 (E.D.N.Y. 1997); *F.T.C. v. Sharp*, 782 F. Supp. 1445 (D. Nev. 1991); *Akers v. Prime Succ. of Tenn. Inc.*, 387 S.W.3d 495 (Tenn. 2012); *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 577 (1st Cir. 1989).

Co., 414 S.C. 185, 193, 777 S.E.2d 824, 829 (2015) (citation omitted). “[C]ompelling reasons must be stated in the order as to why it was necessary to invade the jury’s province in this manner.” *Haskins v. Fairfield Elect Co-op.*, 283 S.C. 229, 236, 321 S.E.2d 185, 190 (Ct. App. 1984).

The trial court specifically held that the verdict was not grossly excessive and thus did not warrant a new trial absolute. (Jan. 3, 2025 Order re: Appellants at 9). However, the trial court reduced the verdict for the UTPA and fraudulent claims without stating compelling reasons. The trial court concluded that UTPA damages are limited to “ascertainable loss of money or property” and determined that the damages were the \$2,400 paid in rent and Plaintiffs’ therapy fees. (Jan. 3 2025 Order re: Appellants at 7-8). The trial court then trebled the reduced UTPA damages *Id.* at 8-9. The trial court also reduced the jury’s fraudulent concealment verdict to \$2,400 - the difference in the value of the rental bargained for (\$2,400) and the value of a rental with hidden cameras invading one’s privacy (zero). *Id.* As set out in more depth in their cross-appeal, the trial court erred in reducing the verdict without setting forth any compelling reasons.

XIV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLANTS’ MOTION FOR A MISTRIAL BASED UPON PLAINTIFFS’ CLOSING ARGUMENTS.

Appellants contend the trial court erred in failing to grant a mistrial during the closing argument phase of trial. (Appellants’ Brief at 37). Prior to closing arguments, the trial court cautioned counsel to not make any improper arguments, including Golden Rule arguments, expressions of personal opinion, and attempts to appeal to the jury’s “personal biases or inflame their prejudices in any way.” (Trial Tr. Vol. 6, 102:18–103:20). Appellants objected several times during Plaintiffs’ closing argument, (Trial Tr. Vol. 6, 163:20-164:7; 181:13-20; 191:24-192:15; 192:18–193:2), and moved for a mistrial on the grounds that Plaintiffs’ counsel stated she was not going to apologize and had made a Golden Rule argument “in reverse” by stating that “the Crespos

will never forget your verdict.” (Trial Tr. Vol. 6, 195:7–197:5). The trial court denied the motion stating that the comments did not infect the trial so much that a mistrial was necessary. (Trial Tr. Vol. 6, 200:20-24). The trial court also noted that “with the video [was] out there, [and] they will think about it every day” and that there was evidence from which the jury could make a reasonable inference that the video was placed on a Dropbox link. (Trial Tr. Vol. 6, 200:25-202:1).

A trial court is vested with broad discretion in dealing with the scope and propriety of closing arguments, and an appellate court will not disturb a ruling regarding a closing argument unless the trial court commits an abuse of discretion. *Rice*, 375 S.C. at 315–16, 652 S.E.2d at 415. Improper comments during closing arguments do not require reversal if the appellant fails to prove he was prejudiced and did not receive a fair trial because of the alleged improper argument. *Id.* On appeal, this Court must review the argument in the context of the entire record. *Id.* Doing so, Appellants have failed to prove that the trial court abused its discretion and that they did not receive a fair trial based on the allegedly improper comments. Accordingly, this issue is without merit.

CONCLUSION

Appellants contend they were deprived of a fair trial and request that the Court vacate the judgment and remand this case for a new trial only on the invasion of privacy claim as to Rhett Riviere. For the reason discussed above, the trial court did not abuse its discretion when ruling on the admissibility of the evidence in this case and the Court should affirm the judgment.

Respectfully submitted,

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