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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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

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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.

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**Respondents/Appellants Heather Crespo and Gabriel Crespo's Final Respondent's Brief**

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Feb. 9, 2026

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## STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING CORRECTLY DENIED JOSEE RIVIERE'S MOTIONS TO SEVER HER CASE FROM THE CASE AGAINST RHETT RIVIERE?

II. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING JOSEE RIVIERE'S MOTION FOR A CURATIVE INSTRUCTION AS TO THE EFFECT OF RHETT RIVIERE'S INVOCATION OF HIS FIFTH AMENDMENT RIGHTS?

III. DID THE TRIAL COURT ABUSE ITS DISCRETION BY ADMITTING A LIMITED NUMBER OF VIDEOS OF OTHERS UNDER RULES 403 AND 404(B), SCRE, TO SHOW A REPETITIVE DECEPTIVE ACT AS REQUIRED UNDER THE UNFAIR TRADE PRACTICE ACT?

IV. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING JOSEE RIVIERE'S MOTIONS FOR INVOLUNTARY NONSUIT, DIRECTED VERDICT, AND JNOV BECAUSE THERE WAS EVIDENCE THAT JOSEE RIVIERE ENGAGED IN UNFAIR OR DECEPTIVE ACTS?

V. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING JOSEE RIVIERE'S MOTION FOR A NEW TRIAL ABSOLUTE AS TO THE UNFAIR TRADE PRACTICES CAUSE OF ACTION AND FINDING THAT THE VERDICT WAS NOT GROSSLY EXCESSIVE?

VI. DID THE TRIAL COURT ABUSE ITS DISCRETION BY PRECLUDING JOSEE RIVIERE'S ATTORNEY FROM ARGUING THAT THE INVOCATION OF THE FIFTH AMENDMENT BY RHETT RIVIERE COULD NOT BE USED TO INFER GUILT ON THE PART OF JOSEE RIVIERE?

VII. DID THE TRIAL COURT ABUSE ITS DISCRETION BY FINDING THAT JOSEE RIVIERE WILFULLY ENGAGED IN UNFAIR TRADE PRACTICES AND TREBLED THE DAMAGES PURSUANT TO THE UNFAIR TRADE PRACTICES ACT?

VIII. DID THE TRIAL COURT ABUSE ITS DISCRETION BY AWARDING PLAINTIFFS ATTORNEYS' FEES BASED UPON THE UNFAIR TRADE PRACTICES ACT?

IX. DID THE TRIAL COURT COMMIT CUMMULATIVE ERRORS WHICH DEPRIVED JOSEE RIVIERE OF A FAIR TRIAL AND/OR RESULTED IN AN EXCESSIVE VERDICT?

## 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 (“Heather”) and Gabriel Crespo (“Gabriel”) (collectively “Plaintiffs” or the “Crespos”) filed separate actions against Appellants and Josee Riviere, shortly after discovering that they had been surreptitiously recorded by a hidden video 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. (R. 98, at ¶ 19; R. 100, at ¶ 30). The video contained explicit images of the Crespos, including them in their private bathroom and engaging in sexual activity. (R. p. 1121, at lines 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. (R. p. 1281, at lines 4-22; and p. 1282 at line 6 to p. 1283, at line 5).

In 2001, the Crespos had recently married and were traveling the polo circuit where Gabriel was a well-known polo player. (R. p. 1794, lines 23-25; p. 1799, lines 1-3; lines 11-17; p. 1800, line 24 to p. 1801, line 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. (R. p. 1801 lines 4-18; p. 1802, lines 8-10). In late 2019, Rhett Riviere’s ex-fiancé, Katherine Thomas, found two SD cards containing videos and images of people undressing or nude in the bedrooms and bathrooms of the Riviere’s rental properties. (R. p. 1034, lines 23-24; p. 99, ¶ 25). Ms. Thomas contacted law enforcement, and SLED began an investigation. (R. p.

1032, lines 12-17; p. 1034, lines 10-13). Pursuant to search warrants, SLED agents discovered numerous recording devices and thousands of video recordings spanning a twenty-year period. (R. p. 1034, lines 10-24; p. 1037, lines 3-6; p. 1054, lines 19-21; p. 1082, lines 21-25; 1083, lines 21-25; p. 1084, lines 15-22; p. 1102, lines 5-13; p. 1136, lines 21-25; p. 1192, line 23 to 1193, at p. 2).

On July 29, 2022, Rhett Riviere was charged with two counts of “Voyeurism,” in violation of S.C. Code Ann. § 16-17-470. (R. p. 2660 and 2662) 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. (R. p. 2658 and 2668). 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. (R., p. 101 to 107, at ¶¶’s 46-100). With the parties’ consent, the trial court consolidated these cases for trial, (R., p. 2771, fn. 1), 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 R. p. 891, lines 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. (R., p. 2499). 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. (R., pp. 25 to 48). 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. (R., pp. 44 to 48).

Appellants filed several post-trial motions. (R. p. 418; p. 471; p. 479; p. 408). Josee Riviere also filed post-trial motions. (R., p. 464; p. 464).

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. (R., pp. 49 and 62). 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." (R., p. 55; p. 54). 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. (R., pp. 50 and 64). Thus, the trial court reduced the damages on the UTPA claim to \$12,960.00 for Heather and to \$7,575.00 for Gabriel. (R., pp. 56 and 68). 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). (R., p. 56). Accordingly, the trial court reduced the damages on this claim to \$2,400. *Id.* at 9. Appellants and Josee Riviere filed Notices of Appeal, (R. pp. 2719 and 2809), and the Crespos cross-appealed (R., p. 2765).

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. (R., p. 77). Appellants filed Notices of Appeal of this Order. (R., p. 653-718). The Crespos cross-appealed. (R., p. 718).

## **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).

#### **Award of Attorney’s Fees**

The decision to award or deny attorneys’ fees and costs will not be disturbed on appeal absent an abuse of discretion. *S.C. Dep’t of Transp. v. Revels*, 411 S.C. 1, 8, 766 S.E.2d 700, 703 (2014). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” *Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (citation omitted).

## **ARGUMENT**

As an initial matter, Josee Riviere’s initial brief was untimely and fails to comply with the South Carolina Appellate Court Rule 208(b) in many respects, including that it exceeds the maximum page limit and does not include a table of contents. Further, the pages and arguments are not numbered making it difficult to cite to her arguments. Moreover, in the “Factual Background” section, many of the “facts” she sets forth are disputed and she improperly and repeatedly includes arguments, even bringing up Saint Michael and a band of Angels. *See* Rule 208(b)(1)(C), SCACR (“The statement shall not contain contested matters . . .”). Finally and most importantly, the brief lacks a Statement of Issues on Appeal. Rule 208 provides that “[o]rdinarily, no point will be considered which is not set forth in the statement of issues on appeal.” Rule 208 (b)(1)(B). Notwithstanding these deficiencies, the Crespos have attempted to address the issues raised throughout the brief.

**I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING JOSEE RIVIERE’S MOTIONS TO SEVER PLAINTIFFS’ CLAIMS AGAINST HER FROM THEIR CLAIMS AGAINST HER CO-DEFENDANT RHETT RIVIERE.**

On September 11, 2024, citing to South Carolina Rules of Civil Procedure 20, 21, and 42, Josee Riviere moved for a severance on the ground that she could not receive a fair trial if she were to be tried with Rhett Riviere. (R., pp. 352 to 357). She alleged that none of the events occurred when she was married to Rhett Riviere and that the graphic nature of the evidence would be prejudicial to her. *Id.* at 3. On September 16, 2024, the Court denied Josee Riviere’s Motion to Sever in a Form 4 Order stating:

Plaintiffs have alleged acts by both defendants individually, in concert, and pursuant to their ownership and involvement in the defendant LLC sufficient to have the cause of action against the defendants in a single trial for the purpose of judicial economy and due [to] the nature of the allegations. The court has considered Josee Riviere's

assertion that the criminal nature of her co-defendant's acts and the voluminous evidence against him could inflame the jury. At this time, this motion is denied.

(R., p. 536, fn. 1).

Josee Riviere renewed her motion to sever at the beginning of the trial. (R., p. 896, line 18 to p. 897, line 9). The trial court again denied the motion stating:

at this point as in the plaintiffs have alleged that your client at least had some involvement through the business, joint enterprise or otherwise, during the time that they were together and potentially after they were divorced, and had some sort of conduct in the renting of these properties, not necessarily the one the Crespos did, but properties, and I think that is why she is properly before the Court at this time. You can renew later and we may come to a different idea.

(R., p. 897, lines 11 to 21). Josee Riviere then renewed her motion to sever several times, (R., p. 1265, lines 6-9; p. 1426, lines 1 to 24; p. 1767, lines 7-25), and each time the trial court denied the motion. (R., p. 1760, lines 18-19; p. 1782, line 11 to p. 1783, line 3).

On appeal, Josee Riviere argues that the trial court erred in denying her motions for severance based on two grounds: (1) “[t]he introduction of inflammatory videos unrelated to her actions; and (2) the use of Rhett Riviere’s Fifth Amendment invocation to prejudice Josee Riviere’s case created bias and confusion, preventing the jury from making a reliable judgment about her guilt.”

First, towards the end of the trial on September 20, 2024, after Rhett Riviere had testified and the videos had been played for the jury,<sup>1</sup> Josee Riviere’s counsel argued that the trial court should grant Rhett Riviere a mistrial and proceed only against her:

I’m well satisfied, Your Honor, that we can move forward with the case against Josee Riviere, and ***I believe I have sufficiently separated her in the case so that any -- any evidence against Rhett Riviere is not going to affect the jury.*** I’m confident of that, and I’m confident of my ability and Your Honor’s ability to judge

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<sup>1</sup> Rhett Riviere’s testified on September 18-19, 2024 (R., p. 1480, line 21 to p. 1593, line 25) and the videos were played during his testimony. (R., p. 1483, line 23; p. 1491, line 10; p. 1493, lines 1-17; p. 1496, lines 16-17; p. 249, lines 1-2; p. 1499, lines 8-9).

the evidence. We haven't gotten to the directed verdict stage. So I agree with them that a mistrial should be declared as to Rhett Riviere. I believe that Your Honor can proceed forward with the case on Josee.

(R., p. 1767, lines 11-21) (emphasis added). Clearly, after the introduction of the videos and after Rhett Riviere had testified and invoked his Fifth Amendment rights, Josee Riviere waived any argument that she was prejudiced by being tried with Rhett Riviere.

Second, Rule 18(c), SCRCP, provides that the court may order separate trials in furtherance of convenience, to avoid prejudice, or for economy. A single trial often promotes judicial economy; by lessening delays, expenses and inconvenience to all concerned. This trial took two weeks to try and, even if the Rivieres were tried separately, all of the same evidence would be admissible. Trying the defendants together promoted convenience and judicial economy.

Third, contrary to Josee Riviere's protestations, there was evidence Josee Riviere was heavily involved in the leasing and managing of this rental property and others. The testimony and all the inferences established that Josee Riviere was an active participant in the rental of the property to the Crespos. She showed them the property before they moved in, presented them with a lease, accepted their rent check, and provided Plaintiffs with the keys to the property.

Gabriel Crespo testified that both Rhett Riviere and Josee Riviere showed the Crespos the rental cottage. (R., p. 1803, line 22 to p. 1804, line 4). Gabriel testified that Josee Riviere had the lease agreement, and Gabriel signed it and gave her the entire rental fee for the three months. (R., p. 1808, lines 2- 6). Josee Riviere had keys to the entire rental unit where the recording occurred. Josee Riviere did not deny or dispute this testimony; she repeatedly testified that she did not recall the Crespos leasing the rental property. (R., p. 1642, line 11 to p. 1643, line 16; p. 1644, lines 22-23; p. 1645, lines 4-12; p. 1647, line 13 to p. 1648, line 7).

Additionally, Josee Riviere had full access to the property and was on the property daily. Gabriel testified that Josee Riviere was on the property two to three times a day to care for her horses. (R. p. 1803, lines 13-21). Heather Crespo also testified that Josee Riviere was at the property every day, 2-3 times a day, training and caring for her horse(s), (R., p. 1643, line 24 to p. 1644, lines 13-21), and that they saw each other almost every day. Josee Riviere referred to the barn where she kept her horse(s) on the subject property as “my barn.” (R., p. 1645, line 25 to p. 1646, line 2).

The evidence established that Josee Riviere showed Plaintiff the rental property prior to them signing a lease. She accepted the signed lease from Plaintiffs and took the rental check for the entire rental period from Plaintiffs. She provided the Plaintiffs with keys to the rental property. She gave Plaintiffs’ access to the rental when they accidentally locked themselves out. These are the actions of a property manager.

Moreover, the earliest recovered videotapes of renters were dated February 2000 – which coincides with the beginning of Josee’s relationship with Rhett Riviere. (R., p. 1636, line 13 to p. 1637, line 5). Josee Riviere testified that the bulk of the videos that were found by SLED were recorded during the courses of her marriage to Rhett Riviere. (R., p. 1637, lines 6-9). When SLED executed search warrants on Rhett Riviere’s properties and found the videos, Rhett Riviere sent Josee Riviere a Ring video of SLED surrounding his house without any written explanation (R., p. 1638, lines 2-6). After seeing this Ring video, Josee testified that she did not ask Rhett Riviere anything about the search or otherwise respond. (R., p. 1637, line 24 to p. 1638, line 1). At her deposition she testified that she never spoke to Rhett Riviere about the videos that were discovered during the search, but at trial, she testified that she asked Rhett Riviere about them once she was sued in 2022. (R. p. 1642, lines 3-10).

Finally, the verdicts do not support Josee' Riviere's argument. The Crespos alleged several claims against Josee Riviere and Rhett Riviere: claims of negligence and/or gross negligence; constructive fraud; negligence per se; and violations of the UTPA. However, the different verdicts rendered against Josee Riviere in comparison to those rendered against Rhett Riviere do not support the argument advanced by Josee Riviere that the jury was prejudiced by the failure of the Court to grant her severance motion. The fact that the jury returned verdicts on all the claims against Rhett Riviere but returned a verdict only on the UTPA claim against Josee Riviere evidences the exact opposite; it shows unequivocally that the jury did not impute all of the evidence against Rhett Riviere and simply find against Josee Riviere on every claim they found against Rhett Riviere. The trial court did not abuse its discretion by denying Josee Riviere's motions to sever.

## **II. THE COURT CORRECTLY DENIED JOSEE RIVIERE'S MOTION FOR A CURATIVE INSTRUCTION AS TO THE EFFECT OF RHETT RIVIERE'S INVOCATION OF HIS FIFTH AMENDMENT RIGHTS.**

As to Rhett Riviere's invocation of his Fifth Amendment privilege, Josee Riviere contends that the trial court erred in allowing Plaintiffs' counsel to ask Rhett Riviere incriminating questions about Josee Riviere. She argues this invited the jury to draw adverse inferences against her based on Rhett Riviere's silence. Further, she contends that the trial court erred in failing to give a curative instruction.

The jury was instructed that it may draw an adverse inference against Rhett Riviere that his answers would have been against his interest. Specifically, as to this issue, the trial court instructed the jury as follows:

In this case, Rhett Riviere has invoked his Fifth Amendment privilege. Pursuant to the Fifth Amendment of the U.S. Constitution, a person has the right against self-incrimination. This means that any person can refuse to answer a questions if the

question might incriminate him. *This is a privilege personal to each person.* Defendant Rhett Riviere has invoked his Fifth Amendment right to not answer questions in this civil case. You, the jury, will determine the effect, if any, of his invocation of the Fifth Amendment. In this civil trial, *you may infer that any answer he gave may be unfavorable to him.* This is called an adverse inference, and it is allowed in civil proceedings.

(R. p. 2288, line 22 to p. 2289, line 10) (emphasis added).

In raising this issue with the trial court, the trial court declined to give the requested instruction, but informed counsel that he could “point that out to the jury a thousand times if [he] want[ed] to, and I’m sure you will.” (R. p. 2064, lines 5-7). And counsel responded, “Well, as long as I’m able to point that out, that’s fine, Your Honor.” (R. p. 2064, lines 8-9). Then, there was a discussion about whether Josee Riviere could argue that the adverse inference applies “only” to Rhett Riviere, and the trial court instructed him that he could not use the word “only” based on the unsettled caselaw of imputing an adverse inference to a co-defendant. (R. p. 2064, line 21 to p. 2065, line 16).<sup>2</sup> Counsel stated while he would adhere to the trial court’s ruling, he considered the fact that cannot use the word “only” to be highly prejudicial. (R. p. 2064, lines 11-16). However, the trial court told counsel that he was free to argue essentially the same - that there was no inference to Josee Riviere, *id.*, and he did just that in closing argument. He stated, “Rhett Riviere

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<sup>2</sup>Although there are no South Carolina Cases on point, there is a line of cases that specifically allow a court to instruct the jury that an adverse inference may be imputed to a co-defendant based on the close relationship between the parties. *LiButti v. United States*, 107 F.3d 110 (2d Cir. 1997); *Williams v. Kohl’s Dep’t Store, Inc.*, 2020 WL 3882953, at \*20 (C.D. Cal. June 16, 2020) (citing *LiButti*); *United States v. BlueWave Healthcare Consultants, Inc.*, 2017 WL 11621328, \*9 (D.S.C. Nov. 20, 2017); *John Paul Mitchell Sys. v. Quality King Distribs., Inc.*, 106 F. Supp. 2d 462, 471 (S.D.N.Y. 2000) (citing and applying *LiButti* and holding that “[Defendant’s] first claim—that no adverse inference may be drawn against a party by another party’s invocation of the Fifth Amendment privilege—is incorrect.”); *Willingham v. Cty. of Albany*, 593 F. Supp. 2d 446, 453 (N.D.N.Y. 2006) (“[T]he rationale and analysis of *LiButti* have equal application to a case, as here, where a party invokes the privilege, and the question presented is whether the party’s invocation merits application of an adverse inference against other parties[.]”).

took the Fifth Amendment. It's his constitutional right to do that. The Judge will tell you, I believe, that that applies to him, to him." (R. p. 2160, line 1-3).

On appeal, Josee Riviere contends that trial court erred in failing to give a curative instruction clarifying that no adverse inference could be drawn against her based on Rhett Riviere's invocation of his Fifth Amendment rights. Josee Riviere acknowledges that this issue raises an issue of first impression in South Carolina. She contends that other jurisdictions have consistently held that an adverse inference applies only to the party invoking it privilege and cannot be imputed to a co-defendant who testifies. The cases Josee Riviere cites to, however, merely hold that an adverse inference cannot be granted as to a co-defendant. She does not cite to any cases where jury has been instructed, or must be instructed, to *not* give an adverse inference to a co-defendant. Josee Riviere has not offered any authority for such a charge.

"Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000); *see also Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 379 (2005) (holding that "[t]he trial judge is required to charge only the current and correct law of South Carolina."). Further, because Josee Riviere cites no support for her contention that the jury was required to be given the requested instruction, the Court should decline to address the merits of this issue. *Abel v. Lack's Beach Serv.*, 2025 WL 1943929, \* 8, 446 S.C. 434, 920 S.E.2d 283 (Ct. App. July 16, 2025) (citing *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172-73 (Ct. App. 2016) ("When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue.")).

Moreover, it is well-settled law that the jury is presumed to follow the court's instructions, *see, e.g., State v. Reyes*, 432 S.C. 394, 409, 853 S.E.2d 334, 342 (2020); *State v. Grovestein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999), and because the trial court instructed the jury that it could take an adverse inference against Rhett Riviere, the jury would not need to be instructed to *not* take an adverse inference against Josee Riviere. A reasonable juror unquestionably would have known that he or she could take an adverse inference against Rhett Riviere as instructed, but not Josee Riviere. Accordingly, the trial court did not err in declining to give the jury the instruction requested by Jose Riviere.

**III. 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 PURSUANT TO RULES 403 AND 404, SCRE.**

“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, Josee Riviere argues that “[t]he trial court erred in admitting videos of unidentified individuals engaging in explicit sexual acts at locations other than the rental property rented by the Plaintiffs and on dates that were uncertain” without any proof that they were taken when the Riviere’s were married. She also contends that “the graphic content of the videos inflamed the jury’s emotions and distracted them from the central issues of the case.” Thus, she

contends that the admission of these videos violated South Carolina Rules of Evidence 401, 402, and 403 and prejudiced her.

**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.

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 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 that plan that was capable of repetition.

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.” (R., p. 1187, lines 2-8; 1192, line 23 to p. 1193, line 2). The Crespos sought to introduce fifty other videos to show intent; to establish a common scheme or plan; and to establish that Defendants’ acts had an adverse impact upon the public as required for a UTPA claim. (R., p. 860, lines 11-15).

Prior to the trial beginning, the trial court reviewed the videos and limited the number of videos to be admitted to ten: which included the video of the Crespos; 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. (R., p. 894, lines 23-25; p. 961, line 25 to p. 962, line 1; Exhibits 18 and 19). 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” (R., p. 895, lines 12-15; p. 899, lines 10-14); a pattern of behavior to show intent as to the IIED claim (R., p. 890, lines 2-6; p. 962, lines 5-6); and that the videos to establish a common scheme or plan. (R., p. 961, line 25 to p. 962, line 4).

Surreptitiously recording others while in the bedrooms and bathrooms on their properties establishes intent to purposely record them and makes it less likely that Plaintiffs were mistakenly or accidentally recorded. The use of hidden recording devices in the rental properties or other properties controlled or managed by the Rivieres and the sheer number of recordings makes it impossible to believe that the recording of Plaintiffs was a mistake, unintentional, or accidental. Moreover, these videos also establish that the acts have the potential for repetition, a necessary element for a UTPA claim. Thus, the other recordings were admissible under 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, the other recordings establish a common scheme or plan. The videos 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 Rivieres. 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.

(R. p. 59). 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). In sum, the videos were relevant and properly admitted under Rule 404 for several purposes.

**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 undoubtedly 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." (R. p. 1257, lines 18-21). 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.

Josee Riviere argues that the graphic content of the videos inflamed the jury and prejudiced her. However, “[c]ourts 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.

Moreover, “the 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 Josee Rivier 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, 446 S.C. 434, 920 S.E.2d 283 (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.

Josee Riviere has not shown that she was unfairly 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. . .”). Josee Riviere merely argues that the due to the graphic content the videos inflamed the jury. Again, the jury returned a verdict against Josee Riviere on only one claim, evidencing that the jury was not inflamed by the admission of this evidence and their admission did unfairly prejudice her. Accordingly, this issue is without merit.

#### **IV. THE TRIAL COURT CORRECTLY DENIED JOSEE RIVIERE’S MOTION FOR INVOLUNTARY NONSUIT, DIRECTED VERDICT, AND**

**JNOV BECAUSE THERE WAS EVIDENCE THAT JOSEE RIVIERE ENGAGED IN UNFAIR OR DECEPTIVE ACTS.<sup>3</sup>**

After Plaintiffs had presented their evidence at trial, Josee Rivere move for a directed verdict or involuntary nonsuit based on the insufficiency of evidence. (R. p. 1962, lines 16-22). After trial, she moved for a JNOV again raising the alleged insufficiency of the evidence. Viewing the evidence in a light most favorable to Plaintiffs, the trial court denied these motions. As discussed below, the trial court did not err as there is evidence supporting the trial court's decision.

“A motion for a JNOV is merely a renewal of the directed verdict motion.” *RFT Mgmt. Co.*, 399 S.C. at 331, 732 S.E.2d at 171 (2012). Therefore, “only the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion.” *Id.* at 331, 732 S.E. 2d at 170-71. “When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this [c]ourt must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *Id.* at 331-32, 732 S.E.2d at 171. “The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt.” *Id.* at 332, 732 S.E.2d at 171. “Moreover, “[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” *Id.* (alteration in original) (quoting *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)). “In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony

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<sup>3</sup> Josee Riviere argues that there was a lack of evidence that she engaged in any deceptive acts in three separate sections of her brief in the contexts of motions for involuntary nonsuit, directed verdict, and JNOV. Plaintiffs have addressed these three arguments in one section because they raise the same issue as to the sufficiency of the evidence.

or the evidence.” *Id.* “An appellate court will reverse the trial court’s ruling only if no evidence supports the ruling below.” *Id.*

To recover in an action under the UTPA, the plaintiff must show “(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). The SCUPTA states “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” S.C. Code Ann. § 39–5–20. “An act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is ‘deceptive’ when it has a tendency to deceive.” *Johnson v. Collins Entm’t Co., Inc.*, 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002).

Josee Riviere argues the trial court erred in denying her motions for directed verdict and JNOV as to the UTPA claim because “there is direct evidence that [she] personally engaged in or authorized the placement of the secret cameras and the circumstantial evidence viewed in the light most favorable to the Plaintiff does not contain evidence which should lead a reasonable jury to conclude that Josee Riviere knew about or was involved in the alleged unfair or deceptive act.”

As an initial matter, under this argument, Josee Riviere also briefly argues that the public interest requirement was not satisfied in this case. However, in her directed verdict motion as to the UTPA claim, Josee Riviere did not argue that public interest requirement was not satisfied.<sup>4</sup>

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<sup>4</sup>Josee also incorporated Rhett Riviere’s grounds for a directed verdict. (Josee Riviere Mot. for Directed Verdict filed Sept. 22, 2024 at 17-18). However, as to the UTPA claim, Rhett Riviere moved for a directed verdict on the two grounds: 1) the Plaintiffs failed to present evidence of a cognizable damages; and 2) Plaintiffs failed to present evidence that Defendants Chase Enterp[rise or RC Properties owned, controlled, or rented the cottage to Plaintiffs. (Rhett Riviere’s Mot. for Directed Verdict, filed Sept. 23, 2024 at 8-9).

Accordingly, Josee Riviere’s arguments regarding the UTPA claim—other than her argument that there was a lack of direct evidence that she placed or knew about the cameras as set out above—are not preserved for appellate review because they were not raised to the trial court nor ruled upon by the trial court in Josee Riviere’s directed verdict motion. Even if preserved, this argument is without merit.

Josee Riviere argues that “Plaintiffs have not provided evidence that [her] actions, even if they were connected to the alleged conduct, have the potential to impact the public interest or to be repeated in other transactions.” Josee Riviere’s general argument that she did not personally commit any wrongdoing because she did not place the cameras or know of their existence is without merit. Section 39–5–140(d) provides that “a willful violation occurs when the party committing the violation knew *or should have known* that his conduct was a violation of § 39–5–20.” S.C. Code Ann. 39-5-140(d) (emphasis added). The statutory definition of a willful violation has been construed by our Court of Appeals to mean: “if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful.” *State v. Nest Egg Society Today, Inc.*, 290 S.C. 124, 348 S.E.2d 381 (Ct. App.1986). The statutory standard is therefore “not one of actual knowledge, but of constructive knowledge.” *Id.* at 384. In other words, the statutory standard is met if a defendant “should have known” that his or her conduct was violative of the UTPA.

Gabriel Crespo testified that both Rhett Riviere and Josee Riviere showed he and his wife the rental cottage. (R., p. 1803, line 22 to 1804, line 4). The cottage was a studio with a bathroom and another room on the other side which was Rhett Riviere’s office. (R., p. 1804, lines 9-14). The bathroom had two doors – one leading into the studio and the other, which was usually locked, lead into Rhett Riviere’s office. (R., p. 1804, lines 15-24; p. 1808, lines 10-11; 1847, lines 3-6; p.

1854, line 21 to p. 1855, line 3). Gabriel Crespo testified that Josee Riviere had the lease agreement and Gabriel signed it and gave her the entire rental fee for the three months. (R., p. 1759, line 6). Josee Riviere had keys to the entire rental unit where the recording occurred. She had full access to the property and was on the property daily, and she was more closely connected to the property than anyone, except perhaps Rhett Riviere.

Specifically, there was testimony at trial that Josee Riviere was on the property often and that she frequently interacted with the Crespos. Heather Crespo testified Josee Riviere was at the property every day, 2-3 times a day, training and caring for her horse(s), (R., p. 1643, line 24 to p. 1644, line 6; p. 1803, lines 13-21), and that they saw each other almost every day. Josee Riviere referred to the barn where she kept her horse(s) on the subject property as “my barn.” (R., p. 1645, line 25 to p. 1646, line 2).

Josee Riviere testified that she was married to Rhett Riviere for twelve years and the bulk of the videos that were found occurred during her marriage to Rhett Riviere. (R., p. 1637, lines 6-15). There was also testimony that the camera in the house rented by the Crespos was placed in a bathroom that had a door to Rhett Riviere’s office. Josee Riviere had full access to the rental and was involved in showing the property to the Crespos before rental, meeting the Crespos at the rental, having the Crespos sign the lease, collecting the rent, and giving the Crespos access when they were locked out of the rental. There was also evidence of Josee Riviere’s continued relationship with her ex-husband, Rhett Riviere, including that they texted frequently every day (R., p. 1640, line 17 to p. 1641, line 1; p. 1658, line 23-25 and p. 1765, lines 6-16) and that she retained a potential financial interest in the rental properties and his financial condition since their divorce.<sup>5</sup> As

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<sup>5</sup> As the trial court noted, “All of this evidence was introduced by means other than the questioning of Rhett Riviere.” (R. pp. 49 to 69).

discussed above, there was sufficient evidence presented to the jury that Josee Riviere should have known that failing to discover and disclose the cameras in the rental property violated the UTPA.

**V. THE JUDGE CORRECTLY DENIED JOSEE RIVIERE’S MOTION FOR A NEW TRIAL ABSOLUTE AS TO THE UNFAIR TRADE PRACTICES CAUSE OF ACTION AND FINDING THAT THE VERDICT WAS NOT GROSSLY EXCESSIVE.**

“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. “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. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983). 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.

The trial court did not find that the verdict was grossly excessively so as to warrant a new trial and found no compelling reason to invade the province of the jury. (R. p. 53). The evidence

supports the trial court's decision. In denying Josee Riviere's Motion for a New Trial Absolute, the trial court specifically held that it was evident that verdict was not governed by passion or caprice and that the jury distinguished between the Defendants. "[T]he jury's award itself indicates that the jury was not governed by passion or caprice. Several causes of action were submitted to the jury with request for specific findings and damages as to each cause of action. The jury found Josee Riviere liable on only one cause of action, UFTPA." (R. p. 52). Further, as the trial court also noted, the verdict against Josee Riviere was the lowest amount of damages. *Id.*

In sum, as the trial court determined, the verdict against Josee Riviere was supported by the evidence and testimony presented at trial and did not shock the conscience. Further, there is nothing demonstrating any juror confusion, or anything which clearly indicates the verdict was 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.

**VI. THE TRIAL COURT CORRECTLY PRECLUDED JOSEE RIVIERE'S ATTORNEY FROM ARGUING THAT THE INVOCATION OF THE FIFTH AMENDMENT BY RHETT RIVIERE COULD NOT BE USED TO INFER GUILT ON THE PART OF JOSEE RIVIERE.**

First, this specific issue as framed is addressed above. The trial court declined to give the requested instruction, but informed counsel that he could "point that out to the jury a thousand times if [he] want[ed] to, and I'm sure you will." (R., p. 2064, lines 5-7). And counsel responded, "Well, as long as I'm able to point that out, that's fine, Your Honor." (R., p. 2064, lines 8-9). Then, there was a discussion about whether Josee Riviere could argue that the adverse inference applies "only" to Rhett Riviere, and the trial court instructed him that he could not use the word "only" based on the unsettled caselaw of imputing an adverse inference to a co-defendant. (R.,

p. 2064, line 21 to p. 2065, line 16). The trial court told counsel that he was free to argue that there was no inference to Josee Riviere., *id.*, and he did just that in closing argument. He stated, “Rhett Riviere took the Fifth Amendment. It’s his constitutional right to do that. The Judge will tell you, I believe, that that applies to him, to him.” (R., p. 2160, lines 1-3).

Under this issue on appeal, Josee Riviere now raises a completely different issue regarding the trial court’s “*sua sponte* interruptions of counsel for Josee Riviere” during closing arguments that she alleges “could be deemed prejudicial if they improperly influenced the jury or deprived her of a new trial.”<sup>6</sup> She then addresses each interruption and argues that taken altogether the “unjustified” interruptions during closing argument constituted prejudicial error adversely affecting her right to a fair trial.

Josee Riviere did not raise this issue to the trial court during the trial or move for a mistrial on this ground.<sup>7</sup> Accordingly, this issue is not preserved. In her post-trial motion for a new trial, Josee Riviere raised for the first time that the Court’s *sua sponte* interruptions created the appearance that the Court improperly favored the Plaintiff’s side of the case. (R. p. 438 to 440). In its order denying Josee Riviere’s post-trial motions, the trial court noted that Josee Riviere argued that “the court’s interruption of her attorney in closing arguments tainted the jury against her and created an inference or implied statement by the court in opposition of Josee Riviere.” (R., p. 52). The trial court stated that it had “instructed the jury several times to not weigh any comments or

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<sup>6</sup> As noted earlier, Josee Riviere’s initial appellate brief does not comply with Rule 208, SCACR, for several reasons, including the lack of a Statement of the Issues on Appeal. The presentation of this issue under the heading of an entirely separate issue illustrates the reasoning of the rule. The Court should decline to address this issue which is not only not set out in a Statement of the Issues but also is not even set forth as a separate issue in the body of the brief.

<sup>7</sup> Josee Riviere moved for a mistrial numerous times throughout the trial. *See, e.g.*, R. p. 1974, line 17 to 1975, line 1; p. 2108, line 18 to p. 2109, line 6; p. 2111, lines 4-5.

rulings by the court for or against any party but merely the rulemaking of the court procedural process.” *Id.*

The determination of the conduct of closing arguments are matters left to the sound discretion of the trial court. *See Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 599, 344 S.E.2d 157, 164 (Ct. App. 1986) (holding that “[i]t has long been settled that closing arguments and objections thereto are left largely to the sound discretion of the trial judge ‘who is on the scene and in much better position than an appellate court to judge as to what is improper argument under the circumstances.’ ”). Additionally, “[i]n a closing argument to the jury, an attorney may not make such remarks which are unfairly calculated to arouse passion or prejudice.” *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 231, 317 S.E.2d 748, 755 (Ct. App. 1984). A trial court is obligated to ensure that counsel does not misstate the law in closing or make impermissible arguments.

The logic of this principle is self-evident: having heard the entire case and observed the demeanor of the litigants, witnesses, and counsel, the trial judge normally has a much better sense of the nature and tone of a closing argument than does an appellate court, which must rely solely on the transcript. Undoubtedly, in some cases, the deference accorded to the trial judge is particularly critical because the transcript may not reflect the true nature of a particular closing argument.

*Maytag Corp. v. Clarkson*, 875 F. Supp. 324, 330 (D.S.C. 1995), *aff’d sub nom. R.J. Clarkson Co. Inc. v. Jenn-Air Co.*, 85 F.3d 616 (4th Cir. 1996). Here, the interruptions from the trial court were either based upon counsel’s improper injection of his personal perspective and/or beliefs into the case or his improper references to the conduct of opposing counsel. Thus, the trial court properly interrupted counsel’s argument into these improper areas and redirected his argument. Josee Riviere cannot show prejudice.

Moreover, reviewing the trial transcript, at the beginning of the trial, the trial court twice instructed the jury that they were the sole judges of the facts and that if the trial court made any comment, the jury was not to take it as a comment on any fact on this case (R., p. 976, lines 22-2) and that the trial court never intends to make a comment on the facts that takes the judgment of the facts out of the jury's hands, (R. p. 981, lines 8-11). During final instructions, the trial judge again instructed the jury that they were the sole judges of the facts and "any comments, any expressions I may have made are in any way to take away your role or to comment on the facts of this case." (R., p. 2264, line 20 to p. 2265, line 3). Thus, even "[i]f the remarks were prejudicial, the Court's instruction was sufficient to cure any error." *State v. Elkins*, 312 S.C. 541, 544, 436 S.E.2d 178, 179–80 (1993). Accordingly, this issue is without merit.

**VII. THE TRIAL COURT CORRECTLY FOUND THAT JOSEE RIVIERE WILFULLY ENGAGED IN UNFAIR TRADE PRACTICES AND TREBLED THE DAMAGES PURSUANT TO THE UTPA.**

In its September 25, 2024 Form 4 Order, the trial court specifically found that the "deceptive trade and/or practice to be wilful and knowing pursuant to the UFTPA" and thus granted treble damages, attorneys fees, and cost. (R., p. 13-22). Josee Riviere contends that the trial court erred by failing to explain its finding of willfulness under the UTPA preventing meaningful appellate review. However, in its January 3, 2025 Order, the trial court expounded upon its ruling and stated

In light of the evidence presented at trial and based upon the verdict of the jury, the court finds that defendant Josee Riviere's violation of the SCUFTPA is willful pursuant to the statute. S.C. § 39-5-140(d) defines a willful violation as one which the offender knew or should have known was a violation. As the jury found that defendant Josee Riviere violated the statute with a *Crespo v. Josee Riviere*, 2022 CP 02 2323 & 2324 deceptive or unfair practice, this court finds that she should have known of this deception. The trial testimony was that the camera was placed at or near a door to a room referred to as defendant Rhett Riviere's office. Josee Riviere had full access to this property as indicated by her showing the

property to the Crespos before rental and knowledge of the key to what was described as the cottage. Josee Riviere had knowledge of other properties owned by her husband. She bought investment property for herself and was somewhat versed in the rental market of Aiken County.

(R. pp. 54-55). The trial court did include a factual basis for its willfulness ruling. Further, in her response opposing the Crespos' petition for an award of attorneys' fees, Josee Riviere stated: that "although [she] disagrees with the finding of willfulness because there was no evidence to support that finding and indeed none to support the jury verdict, Josee Riviere concedes that, pursuant to the UTPA, the Court can award attorneys' fees to the Plaintiff." (R. p. 603). Accordingly, this issue is without merit.

#### **VIII. THE TRIAL COURT REDUCED THE AWARD OF ATTORNEYS' FEES.**

Josee Riviere argues that the trial courts erred by failing to reduce the award of attorneys' fees because she successfully defended against three of the four causes of action alleged against her in awarding attorneys' fees. This argument is without merit because the trial court did consider this fact and reduced the award of attorneys' fee under the UTPA claim. The Crespos, however, have appealed the trial court's award of reduced attorneys' fees and costs and rely on their argument in their brief as whether the trial court erred in determining the amount of attorneys' fees.

#### **IX. THE COURT DID NOT COMMIT CUMMULATIVE ERRORS WHICH DEPRIVED JOSEE RIVIERE OF A FAIR TRIAL AND/OR RESULTED IN AN EXCESSIVE VERDICT.**

Josee Riviere contends that because of cumulative errors committed by the trial court, she was denied a fair trial. She contends that cumulative prejudice from the videos and the use of Rhett Rivier's invocation of the Fifth Amendment "more than likely than not influenced the jury" and resulted in an excessive verdict. She also contends that the trial court's denial of her motion to

sever created a “certainty of prejudice” as the excessiveness of the verdict shows that “the jury was acting irrationally” and it was “highly probable that the jury inferred [her] guilt based on Rhett’s refusal to testify.”

“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). 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 cumulative error doctrine is subject to the rule that an issue must be raised to the trial court and ruled upon by the trial court. *Id.* at 236, 746 S.E.2d at 489. Josee Riviere did not raise the cumulative error doctrine before the trial court or in her motion for a new trial and the trial court did not rule on it. Therefore, this argument is not preserved for review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) (holding that “[i]ssues not raised and ruled upon in the trial court will not be considered on appeal.”). Accordingly, this issue is not preserved for review. Even if it were preserved, as discussed the trial court did not err in its admitting the videos, denying Josee Rivier’s motion to sever, and its rulings regarding Rhett Riviere’s invocation of the Fifth Amendment. Moreover, other than speculation and conclusory arguments alleging that prejudice influenced the jury’s decision-making and cause it to render an excessive verdict against her, Josee Riviere fails to demonstrate that any alleged errors which prevented her from receiving a fair trial.

## CONCLUSION

Appellant contends that she was deprived of a fair trial and requests that the Court vacate the judgment and grant a new trial absolute. For the reasons discussed above, the trial court did not abuse its discretion in its rulings in this case and Appellant was not denied a fair trial. Accordingly, the Court should affirm the judgment.

Respectfully submitted,

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