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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No.: 2024-001254

Eric Bernard Bowman,

Appellant,

v.

Wallace Blair Crosby

Respondent,

AND

Samantha Albert

Respondent.

v.

Eric Bernard Bowman

Appellant.

APPELLANT'S PETITION FOR REHEARING

Raymond D. Turner (SC Bar #101593)
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INTRODUCTION

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant hereby files this Petition for Rehearing on Opinion No. 2026-UP-355, which was filed on July 8, 2026. Appellant respectfully requests rehearing on the basis that this Court overlooked the two objections made regarding Appellant's assets and Respondent's prior injuries and misapprehended the application of collateral estoppel.

STATEMENT OF THE CASE

This lawsuit arises out of an incident that occurred on October 5, 2018, outside of Dunleavy's Pub ("Dunleavy's") on Sullivan's Island. Appellant Eric Bowman ("Bowman") and his wife were attempting to leave Dunleavy's in their golf cart. Bowman had an outstanding bar tab at Dunleavy's, which he intended to pay at a later date. Bowman was unable to pay his bar tab on the date of the incident as Dunleavy's did not accept American Express credit cards. As Bowman and his wife were leaving, Respondent Wallace Crosby ("Crosby") stood in front of Bowman's golf cart, demanding that he pay his outstanding bar tab. Bowman struck Crosby with his golf cart, resulting in injuries to Crosby.

Bowman was charged with assault and battery in the third degree. Bowman pled guilty to assault and battery in the third degree on November 30, 2023.

Appellant filed his Summons and Complaint in the Charleston County Court of Common Pleas on July 21, 2020 against Crosby. [R. pp. 18-26]. The Complaint alleged causes of action for false imprisonment, assault, battery, malicious destruction of property, intentional infliction of emotional distress, and slander. On September 18, 2020, Respondents filed their Answer, Counterclaim and Third-Party Complaint. [R. pp. 27-37]. Crosby and Respondent Samantha Albert ("Albert") alleged causes of action for negligence/negligence per se/gross negligence,

assault, intentional infliction of emotional distress. Crosby alleged causes of action for battery, malicious prosecution, abuse of process, and defamation/defamation per se. Bowman filed his Answer to the Counterclaim and Third-Party Complaint on September 30, 2020. [R. pp. 38-43].

This matter went to trial on June 10, 2024, before the Honorable Jennifer B. McCoy and concluded on June 13, 2024. The jury returned a verdict for Respondent Crosby, awarding him \$1,865,483.20 in actual damages, and \$2,798,224.80 in punitive damages. [R. pp.12-15].

On June 21, 2024, Appellant filed a Motion for Judgment Notwithstanding the Verdict, a New Trial Absolute and Motion for a New Trial *Nisi Remittitur*. [R. pp. 44-53]. Appellant argued that the trial court erred by not allowing the issue of resisting unlawful arrest and the misdemeanor status of failure to pay a bar tab to go to the jury, by allowing statements regarding assets contained in an irrevocable trust, and that the verdict was not justified based on the evidence. [R. pp. 44-53]. On June 21, 2024, Appellant also filed a Motion for Post-Trial Review of Punitive Damages. [R. pp.54-55]. On July 1, 2024, the trial court found that the jury's award of punitive damages was proper. [R. pp. 6-7]. On July 18, 2024, the trial court denied Appellant's Motion for JNOV. [R. pp. 3-4].

ARGUMENT

I. The Court overlooked the two prior objections made by Appellant's counsel regarding comments about irrevocable trusts and other assets.

The Court failed to appreciate that there was both a Motion in Limine regarding Appellant's assets and a contemporaneous objection made during the cross-examination of Appellant. Appellant's counsel filed a Motion in Limine to exclude all evidence concerning assets that were not in Bowman's name, or that were held in any irrevocable trusts.¹ [R. pp. 56-58].

¹ The trial court declined to rule on whether evidence regarding the Bowman's assets would be admissible until such a time arose. [R. p. 80, Lines 8-14].

During trial, Respondents' counsel sought to elicit testimony regarding assets held in an irrevocable trust, such as the proceeds of the sale of the Charleston Battery and the sale of Bowman's business. Appellant's counsel objected during this line of questioning, which the Court sustained. [R. p. 132, Lines 1-7]. There was no evidence admitted regarding the irrevocable trust and the assets held within it. It was completely inappropriate, and contrary to South Carolina case law, for Respondents' counsel to make remarks about the trust's assets during closing arguments when no such evidence had been introduced. Further, Appellant had made two objections, once through a Motion in Limine and once as a contemporaneous objection, to the introduction of such evidence. The Appellant properly preserved its argument for this Court's review.

However, during closing arguments, Respondents' counsel stated the following:

"How do you punish a rich guy (inaudible)? You make every mistake (inaudible) huge household, sold Battery the Charleston (inaudible) for a pile of money, sold his company for a pile of money."

[R. p. 408, Line 24 – p. 409, Line 3].

Respondents' counsel made statements during closing arguments that had previously been objected to and sustained by the trial court. Therefore, the trial court erred in denying Bowman's Motion for a New Trial based on these statements made in error.

II. The Court overlooked Respondent's prior medical history and the jury's clear confusion regarding actual damages.

The Court overlooked Respondent's prior medical history and the jury's note regarding actual damages which supports Appellant's argument that the jury verdict was excessive and unsupported by the evidence. As stated in Welch v. Epstein, a verdict may be reduced because it is merely excessive or a new trial absolute may be granted "if the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence." Welch v.

Epstein, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000). Here, the damages awarded were \$1,865,483.20, nearly six times the amount of damages claimed.

During trial, Respondent Crosby introduced evidence of three surgeries and claimed medical costs totaling approximately \$358,000 as a result of the accident. However, Crosby's treating physician, Dr. Richard Frisch testified that Crosby suffered from degenerative changes, which predated the accident. [R. p. 326, Line 25 – p. 327, Line 6]. Evidence was introduced suggesting that Crosby's alleged medical costs were not the result of the accident. Testimony was presented that Crosby had pre-existing issues, going all the way back to 2008. [R. p. 297, Lines 5-11]. Further, evidence was presented that Crosby had been in two motorcycle accidents prior to the incident. [R. p. 365, Lines 14-17]. Further, evidence was presented that Crosby was able to engage in activities after the incident that he claimed he was unable to. Yet, the jury still awarded Crosby \$1,865,483.20 in actual damages. [R. pp. 12-15].

In addition, during deliberations, the jury submitted a note which read: "can we have the list of items that apply to actual damages?". [R. p. 415, Lines 17-19]. The trial court declined the jury's request, and stated:

THE COURT: That's the problem with throwing out these extra things and then they're confused as to why they don't have it all.

[R. p. 416, Lines 10-12].

It is clear from the record that, not only was there a lack of evidence to support the jury's award, but also the jury was confused about actual damages. The jury's award was actuated by passion and prejudice based on counsel for Respondents' remarks during closing arguments regarding Bowman's wealth and assets. These remarks were inflammatory remarks, which resulted in clear prejudice. Moreover, the jury's award of actual damages was the result of confusion.

Therefore, the trial court erred in denying Bowman's Motion for a New Trial Absolute and New Trial *Nisi Remittitur*.

III. The Court misapprehended the collateral estoppel argument as Appellant was not barred from arguing if he was unlawfully detained by Respondent or whether Respondent was the initial aggressor.

The Court of Appeals misapprehended the application of collateral estoppel because Appellant had not previously litigated any actions of the Respondent nor any defenses of the Appellant. For collateral estoppel to apply, it must be shown that the issue was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; (3) necessary to support the prior judgment." "A party asserting the defense of collateral estoppel has the burden of proving all of the elements, including whether the issue was actually litigated." Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767, 770 (Ct. App. 2001). The party asserting collateral estoppel "must show that the issue was actually litigated and directly determined in the prior action and that the matter or fact directly in issue was necessary to support the first judgment." Beall v. Doe, 281 S.C. 363, 371, 315 S.E.2d 186, 191 (Ct.App.1984).

Here, during trial, Respondents' counsel moved for a directed verdict on all of Bowman's claims. The trial court granted Respondents' directed verdict with respect to their claims for assault and battery based on collateral estoppel. [R. p. 374, Lines 6-8]. The statement of facts read into the record during Bowman's guilty plea did not concern or address the actions of Mr. Crosby or any defenses of Bowman. [R. pp. 423-447].

During the trial, Respondents' counsel argued that Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224 (2008), estopped Bowman from charging the jury with assault and battery. However, the facts of Zurcher are distinguishable from the case at bar. In Zurcher, the Court held that "so

long as a defendant has entered a guilty plea freely and voluntarily, an admission of guilt fully and fairly litigates the matter in the same manner as a contested trial in which a defendant is adjudicated guilty. Id. at 136. Interestingly, the court noted that only guilty pleas punishable by death or imprisonment in excess of one year were admissible under the hearsay exception found in Rule 803(2). Id. at 138 n.3. The court stated that “[t]herefore it appears that Zurcher’s guilty plea to simple assault and battery, a misdemeanor carrying a \$500 fine or 30 days imprisonment ... was inadmissible hearsay evidence in the first instance.” Id. However, the court ultimately held that Zurcher was estopped from denying liability for the assault in the subsequent civil action. Id. at 137.

Here, Bowman was not denying that he was liable for assault and battery against Crosby, like in Zurcher. During cross-examination, Bowman testified that he sustained injuries during the altercation. When asked why Bowman did not present this during his guilty plea, Bowman responded as follows:

Q: Why didn’t you – you tell Judge McCoy all this when you were pleading guilty?

A: I didn’t have a chance to testify or do anything. It was not relevant at that time.

[R. p. 127, Lines 17-20].

In addition, Bowman was claiming that Crosby *also* committed an assault and battery against Bowman. As the case law above notes, there is a distinction between civil causes of action for assault and battery and criminal charges of assault and battery. Furthermore, counsel for Bowman objected to his guilty plea being read into evidence, as it was inadmissible hearsay, as was noted by Zurcher. [R. p. 154, Lines 4-7]. It was an error for the trial court to find that collateral estoppel applied.

Notwithstanding the collateral estoppel issue, Bowman presented evidence that Crosby placed Bowman in reasonable fear of bodily harm and that Crosby struck Bowman’s golf cart. A

motion for directed verdict must be denied when either the evidence yields more than one inference or its inference is in doubt. Turner v. Med. Univ. of S.C., 430 S.C. 569, 582, 846 S.E.2d 1, 7 (Ct. App. 2020). Here, the evidence presented at trial created more than one inference concerning whether Bowman was liable for assault and battery. Therefore, the trial court erred in granting Respondents' Motion for a Directed Verdict.

CONCLUSION

The Court of Appeals overlooked the two previous objections made regarding the Appellant's assets, overlooked the Respondent's prior medical history and juror confusion resulting in an excessive verdict, and misapprehended the application of collateral estoppel. Therefore, Appellant respectfully requests rehearing on Opinion No. 2026-UP-355.

Respectfully Submitted by:

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On this 21st day of July 2026
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PROOF OF SERVICE

The undersigned attorneys hereby certify that a true copy of Appellant's Petition for Rehearing in the above referenced case has been served on up on counsel of record by electronic delivery, as set forth below, and as evidenced by the attached email:

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Signature page to follow

July 21, 2026

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