THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Presiding Judge

Civil Action No. 2011-CP-07-04796
Appellate Case No. 2014-000550

Rodney Allgire, Respondent,

v.

Marshall Blanton, Appellant.

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE CASE

On November 15, 2011, Respondent Rodney Allgire ("Allgire") filed this action in the Court of Common Pleas for Beaufort County, asserting causes of action against Appellant Marshall C. Blanton ("Blanton") for negligence and recklessness, and assault and battery, and seeking actual and punitive damages arising out of as a result of an incident that occurred on November 13, 2011 (R. pp. 2-8). Blanton timely answered, denied the allegations of negligence and recklessness, and assault and battery, but admitted an incident took place. (R. pp. 9-11). Blanton also asserted several affirmative defenses, including that Blanton acted in self defense and with due care (R. pp. 11-15).

The parties pursued discovery, and the matter came for a jury trial on January 6, 2014. (R. p. 16). Presentation of the evidence began at 1:20 p.m. (R. p. 23, line 23). Allgire presented (1) live testimony from various fact witnesses including Doug Trogon, Dennis Robinson, Officer M.L. Brewton, Brent Cooper, John Anthony Zucker, Charles Hrabanek, and Terri Allgire, Allgire's wife, (2) Allgire's own testimony, (3) live testimony from Dr. Edward Blocker, and (4) the deposition of Dr. Craig Boatright. (R. pp. 17-18). At the close of proceedings on Day One of trial, counsel for Allgire

requested a net worth figure for Blanton on the issue of punitive damages, and the trial court indicated at that time that, while the issue of punitive damages had not yet been ruled upon, that Blanton should be prepared to give some type of net worth evaluation. (R. p. 177, line 19-p. 178, line 12).

At the close of Allgire's case, Blanton made a Motion for Directed Verdict on the grounds that Allgire had failed to meet the elements to prove a cause of action for assault and battery, or negligence and recklessness. (R. p. 250, lines 5-12). Blanton also made a Motion for Direct Verdict on issue of punitive damages. (R. p. 250, line 23-p. 251, line 4). These motions were denied by the trial judge. (R. p. 250, lines 13-17; R. p. 251, lines 7-11). Blanton then presented (1) live testimony from fact witnesses Eugene Miller, Jarrett Cook, Joey Blythe, Scott Osborne, Chris Carlisle, Dennis March, and (2) Blanton's own testimony. (R. p. 18). At the close of Blanton's case, Blanton renewed the Motion for Directed Verdict and argued that the evidence taken in the light most favorable to Allgire showed that Blanton acted in self-defense and with due care. (R. p. 368, line 8 – p. 369, line 24.) The Motion was again denied. (R. p. 368, lines 12-19; p. 369, lines 5-15; p. 369, line 24). The trial court also ruled on the punitive damages issue, and, although the trial court had previously suggested that Blanton prepare a net worth figure, Allgire never requested it again. (R. p. 549, lines 16-23). The

Financial Statement of Net Worth was filed with Blanton's Memorandum in Support of Motion for New Trial. (R. pp. 516-521).

The jury began deliberating at 2:50 p.m. on January 8, 2014. (R. p. 389, lines 16-17). Around 4:30 p.m., the jury returned to the courtroom with a verdict. (R. p. 390, lines 12-20). After the trial judge allowed publication of the verdict, the clerk announced that the jury awarded Allgire actual damages of $400,000 and punitive damages of $100,000. (R. p. 1). At the request of Blanton's attorney, the clerk polled the jurors, all of whom confirmed the verdict. (R. p. 391, line 3-p. 393, line 21).

On January 16, 2014, Blanton filed a Motion for New Trial, New Trial Nisi Remittitur, and New Trial JNOV. (R. pp. 504-507). The Motion was argued on February 18, 2014, at which time the trial judge denied the Motion on all grounds. (R. pp. 567–574). Blanton then filed this appeal.

STATEMENT OF THE FACTS

On November 13, 2011, Allgire was playing golf at the Ocean Creek Golf Links on Fripp Island, South Carolina, with a group of men from Beaufort, South Carolina (collectively referred to as "the Glover Group"). (R. p. 33, lines 5-7). The Glover Group is a group of between fifteen (15)

and thirty (30) men that plays golf every Sunday and rotates golf courses around Beaufort County (R. p. 33, lines 8-15). That day, there were probably sixteen (16) to twenty (20) people, which would have been about four (4) or five (5) groups. (R. p. 52, lines 14-17). Blanton was part of a group of men from Myrtle Beach, South Carolina (collectively referred to as "the Blanton Group"). Allgire was playing with Paul Cole, and they were paired with Doug Trogdon and Dennis Robinson. (R. p. 33, lines 20-24). They played through nine (9) holes without incident, and as they reached the next hole, they noticed a foursome ahead of them playing rather slow. (R. p. 34, lines 4-16; p. 148, lines 11-22). This foursome was part of the Blanton Group, and it consisted of Joey Blythe, Coach Ron, Matt Bullock, and Jeff from West Virginia. (R. p. 269, lines 6-9). Eventually, Mr. Robinson called up ahead and said, "You are out of position. Please move up." (R. p. 54, lines 2-10). According to Mr. Blythe, Mr. Robinson used profanity and told them to hurry up. (R. p. 270, lines 8-16). Someone from the Blanton Group then yelled back, and words were exchanged between the two groups (R. p. 63, lines 1-7; p. 91, lines 4-8; p. 99, lines 11-15; p. 125, lines 14-21; p. 149, lines 13-16).

Play then continued without incident, until Allgire and his foursome reached the 18th green. (R. p. 35, lines 13-15). When Mr. Robinson finished

his round, he went back to his bag with his putter, and a gentleman from the Blanton Group approached him. (R. p. 54, lines 20-21; p. 126, lines 10-12). This man was not Blanton. (R. p. 56, lines 10-12). This was Joey Blythe. (R. p. 271, lines 16-20). According to Mr. Robinson, the man apologized for playing slowly, but stated that he did not appreciate getting called out on the golf course. (R. p. 55, lines 16-23). Mr. Blythe testified that he apologized to Mr. Robinson, and then Mr. Robinson walked so close to him that he almost brushed him. (R. p. 271, lines 21-23). Blanton saw the exchange, and observed that Mr. Robinson had his putter in his hand was basically backing Mr. Blythe up towards the back of the cart. (R. p. 331, lines 11-18). Mr. Robinson told him to "Get the [expletive] out of my face." (R. p. 55, line 25; p. 271, lines 22-23). According to Mr. Robinson, Mr. Blythe then said, "I understand that you run the real estate division and I wouldn't by an [expletive] thing on this island and if you don't like that, I'll whip your [expletive]." (R. p. 55, lines 21-23). According to Allgire, curse words were exchanged, "back and forth." (R. p. 150, lines 16-25). Mr. Robinson then got his things together and went to his car. (R. p. 56, line 2). He then left Fripp Island. (R. p. 57, lines 2-4).

Meanwhile, Mr. Trogdon stayed at the 18th green and watched the rest of the groups coming in. (R. p. 45, lines 18-20). Mr. Blythe went back to

clubhouse, and told the members of the Blanton Group about the words he had exchanged with Mr. Robinson. (R. p. 272, lines 6-20). Mr. Trogdon heard the group on the clubhouse deck talking. (R. p. 46, lines 10-20). Allgire and Mr. Cole dropped off a club cover that someone had left behind, and drove their cart to the truck and unloaded their clubs. (R. p. 92, line 15 – p. 93, line 9; p. 127, lines 13-25; p. 151, lines 21-25). As they were driving off, someone from Blanton Group yelled, "Keep going, you don't want to come back up here." (R. p. 92, line 24-p. 93, line 2). In response, Mr. Cole yelled back, "Don't worry. I'm just going to put my clubs back and I'll be right back." (R. p. 93, line 2-4; p. 157, line 14-21). Allgire heard him say, "I'm going to go put my clubs up and I'll be back there in a minute." (R. p. 152, lines 23-25). This exchange was observed by a member of the Glover Group, Brent Cooper, who testified that he saw Mr. Cole "hollering back" to several members of the Blanton Group, who were on the clubhouse patio. (R. p. 116, lines 17-18; p. 117, lines 8-9; p. 118, lines 4-8). Another member of the Blanton Group, Jarrett Cook, also heard the argument. (R. p. 264, lines 1-6). He heard one of member of the Glover Group shout, "Don't worry, buddy, we'll be back." (R. p. 264, lines 16-18). A third member of the Blanton Group, Scott Osborne, also heard the argument and heard one of the members of the Glover Group say, "I'll be right back." (R. p. 300, lines

18-25). Joey Blythe also testified that this man looked right at him and said, "I'll be right back." (R. p. 273, lines 13-21). At that point, Mr. Blythe became concerned that they might come back with a gun. (R. p. 274, lines 1-7). He asked Mr. Blanton, "What if that guy is going to the car to get a gun? What if he shoots me or you, Mark? You've got three or four kids. What if he just goes and gets a gun and comes back and shoots us?" (R. p. 274, lines 4-7). According to Blanton, Mr. Blythe was also concerned because Allgire was so much bigger than Mr. Blythe. (R. p. 335, lines 8-18). Blanton told Mr. Blythe that if Allgire and Mr. Cole came back like they said they were, he would protect Mr. Blythe. (R. p. 464, lines 18-21).

Blanton observed Mr. Cole and Allgire in the parking lot, and was hoping they were going to leave. (R. p. 337, lines 15-25). Cole and Allgire put their clubs in the vehicle, then took the golf cart back to the cart barn, and started walking to the clubhouse. (R. p. 93, lines 6-13; p. 128, lines 6-16; p. 153, lines 11-24). Blanton felt threatened for himself and for his group. (R. p. 338, lines 8-10; p. 340, lines 14-18). Allgire was walking ahead of Mr. Cole. (R. p. 93, lines 8-9). Mr. Cook heard another argument ensue when they came back. (R. p. 264, lines 21-24). Mr. Cook described the scene as a group of six (6) or eight (8) men arguing back and forth. (R. p. 265, lines 3-6). Mr. Osborne testified that he saw Blanton and Allgire face to

face, jawing back and forth. (R. p. 301, lines 15-18). However, members of the Glover group contended at trial that, as Mr. Cole and Allgire approached the steps to the clubhouse, Blanton came towards them, and hit Allgire without warning. (R. p. 93, lines 21-23; p. 156, lines 1-2). Allgire testified that as he got near the steps, he had his head down looking at the sidewalk and the next thing he knew, a man had hit him. (R. p. 128, line 22-p. 129, line 15). He may have been unconscious for a brief period of time, and Mr. Cole and Mr. Trogden then helped him up. (R. p. 95, lines 4-10; p. 129, lines 5-13). He then recalled Blanton being brought back to the incident scene, and the security guard was with him. (R. p. 130, lines 13-17). As soon as Blanton got out of his vehicle, he admitted that he hit the wrong person and he apologized. (R. p. 51, lines 3-6; p. 267, lines 12-13). Blanton said something along the lines of, "I hit the wrong guy. I'm sorry." (R. p. 121, lines 2-3; p. 131, lines 15-18). At least one member of the Glover Group, Mr. Cole, thought Blanton had meant to hit him instead of Allgire. (R. p. 104, lines 1-10). After Blanton apologized, Allgire responded, "To hell with your sorry. You're going to jail." (R. p. 131, lines 17-18). Officer Brewton then completed his investigation, and Blanton was arrested and transported to the Beaufort County jail. (R. p. 75, lines 1-4; p. 131, lines 19-22; p. 267, lines 14-16).

After the incident, Allgire drove Mr. Cole home, and Allgire then went to the hospital because his back was hurting. (R. p. 131, line 24-p. 132, line 5; p. 160, line 23-p. 218, line 6; p. 182, line 1- 3). Several x-rays and a CT scan were performed, but Allgire was not admitted to the hospital. (R. p. 161, lines 7-11; p. 182, lines 2-3). He missed three (3) weeks of work immediately after this incident, and then worked only a few hours a day for the next two (2) weeks. (R. p. 144, lines 6-17). He stated that at that time his gross salary was around $1,100.00, and he netted $825.01 per week (R. p. 142, line 24-p. 143, line 19). About nine (9) days after the incident, Allgire went to Dr. Edward Blocker, an Orthopaedic surgeon at Lowcountry Medical Group. (R. p. 133, lines 10-15; p. 161, lines 12-18). His chief complaint was low back pain and neck pain. (R. p. 181, lines 9-14). The low back pain occasionally radiated into his left leg. (R. p. 182, lines 4-9). After reviewing the imaging studies taken at the hospital, Dr. Blocker ordered an MRI. (R. p. 133, lines 14-15; p. 3-20). The MRI confirmed a mild compression fracture at the T12 vertebra, but also showed some degenerative changes. (R. p. 183, lines 18-23; p. 201, lines 8-13; p. 202, lines 22-25).

According to Dr. Blocker, the most common treatment for a compression fracture is to do nothing, much like the treatment of a rib

fracture. (R. p. 184, lines 15-20; p. 188, lines 12-16). Dr. Blocker testified that the mild T-12 compression fracture would heal in about six (6) to ten (10) weeks, and the pain should be gone in about three (3) months. (R. p. 194, lines 15-24). Dr. Blocker referred Allgire to physical therapy. (R. p. 193, lines 14-16). Allgire went to see Dr. Blocker a total of about five (5) or six (6) times. (R. p. 161, lines 19-21). On December 8, 2011, Allgire reported that his symptoms were improving. (R. p. 203, lines 15-17). In fact, the pain that had been radiating into the left leg had resolved. (R. p. 203, lines 22-24).

After being treated by Dr. Blocker, Allgire's symptoms changed, and he began having pain radiating down the right leg. (R. p. 195, lines 15-17). On May 25, 2012, Allgire indicated that he had a one (1) month history of new complaints of right lower extremity paresthesias in the right buttocks down to the top of the foot. (R. p. 209, lines 14-21). This was a different complaint than his previous complaints of left radiating problems. (R. p. 209, lines 22-24). As a result, Dr. Blocker ordered additional x-rays, which showed that the T-12 compression fracture had healed. (R. p. 210, lines 15-18; p. 213, lines 11-14; p. 214, lines 7-10). He also ordered another MRI, which showed some degenerative changes at L4-5 and a pars defect at L5-S1. (R. p. 210, line 22-p. 211, line 22). Dr. Blocker testified that these

degenerative changes were not related to the fall on November 13, 2011. (R. p. 211, line 23-p. 212, line 16). Dr. Blocker then referred Allgire to Dr. Craig Boatright, a spine specialist, for these new problems. (R. p. 213, lines 3-5).

Dr. Boatright testified that he began treating Allgire on June 19, 2012. (R. p. 491, lines 21-23). Dr. Boatright could not testify to a reasonable degree of medical certainty that the right leg pain was related to the T-12 compression fracture. (R. p. 492). In fact, he felt that this pain was probably from some fluid leaking from the L4-5 disk, which probably had a small tear in it. (R. p. 493). As a result, he performed two (2) epidural steroid injections at L4-5 and L5-S1. (R. p. 493). This was the location of the pars defect, the spondylolisthesis, and the L4-5 disk bulge. (R. p. 493).

Allgire also complained that he had broken ribs as a result of this accident. On December 19, 2011, Allgire was having chest pain, so he went to Doctor's Care. (R. p. 163, lines 5-8; p. 172, lines 15-19). They took x-rays, and found that he had fractured ribs. (R. p. 163, lines 12-17). Allgire denied any falls or other incidents; therefore, he testified that the fractured ribs must have been result of the incident at the golf course. (R. p. 163, line 18–p. 164, line 6). Dr. Blocker reviewed these records, and stated that it was "hard to say" whether the fracture were new or old. (R. p. 192, lines 11-25).

He could not testify to a reasonable degree of medical certainty that the rib fractures were from the subject incident. (R. p. 204, line 16-p. 205, line 8). No physicians from Doctor's Care testified at trial. (R. p. 17-18).

Allgire claimed that his total medical expenses were $26,063.00, and he claimed an additional $3,000 in lost wages. (R. p. 173, lines 3-5; p. 175, lines 20-24).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN FAILING TO DIRECT A VERDICT IN FAVOR OF BLANTON BECAUSE THE EVIDENCE SHOWED THAT BLANTON ACTED IN SELF DEFENSE AND WITH DUE CARE.

The need to defend one's self or others may invalidate an assault and battery claim:

> The privilege of self-defense rests upon the necessity of permitting a person who is attacked to take reasonable steps to prevent harm to himself, where there is no time to resort to the law...The privilege extends to the use of all reasonable force to prevent any threatened harmful or offensive bodily contact, or any confinement, whether intended or negligent. PROSSER § 19 at 124, See also Restatement §§ 64, 66, 68.

To establish self- defense, the defendant is required to prove:

(1) The defendant must be without fault in bringing on the difficulty.

(2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

(3) If his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to [strike the fatal blow] [shoot the fatal shots] in order to save himself from serious bodily harm or the loss of his life. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to [strike the fatal blow] [shoot the fatal shots] in order to save himself from serious bodily harm or the loss of his life.

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. If, however, the defendant was on his own premises, he had no duty to retreat before acting in self-defense. As to a house guest, a lawful guest attacked in the home of another person has no duty to retreat where the attacker is an intruder. This principle is inapplicable where the attacker is the homeowner.

Battle v. State, 305 S.C. 460, 409 S.E.2d 400 (1991). In South Carolina, the privilege extends to the defense of others so long as the other person defended would also be entitled to the privilege. State v. Hayes, 121 S.C. 163, 113 S.E. 362 (1922).

The evidence in this case showed that there were clearly several verbal altercations with increasing intensity that began on the golf course. There was then another verbal altercation near the 18th green, and near the clubhouse steps. Witnesses for both parties admitted that words and profanities were exchanged. At that point in time Blanton had not become involved in the argument. The matter then became increasingly heated, at which time Mr. Cole shouted to the Blanton Group as he rode away on the golf cart, "I'll be back." Those words indicated that something further would occur. In fact, Joey Blythe was concerned that Mr. Cole was going to his car to get a gun, and relayed this concern to Mr. Blanton. Blanton did not become involved in the altercation until Mr. Blythe, a smaller man, indicated to Blanton that they were in danger. Thus, Blanton was without fault in bringing on the difficulty.

Blanton then observed Mr. Cole and Mr. Allgire put their belongings in their vehicle and approach the clubhouse. As they approached, Blanton felt threatened for himself and for his group. He believed there was no other option than to defend himself and the members of his group. The evidence at trial showed that he felt he was in imminent danger. This was a reasonable fear. He did not know Allgire or Cole personally. His only information at that point in time was that the Glover group had become hostile to his group

on the golf course, and, despite the attempt by Mr. Blythe to diffuse the situation, they still appeared hostile. Both parties were approaching each other and in Blanton's mind, there was no escape. As such, the court should have directed a verdict for Blanton.

II. THE CIRCUIT COURT ERRED IN NOT GRANTING BLANTON A NEW TRIAL ABSOLUTE OR NEW TRIAL NISI REMITTITUR BECAUSE THE VERDICT RESULTED FROM PASSION, PREJUDICE, BIAS, OR OTHER CONSIDERATION NOT BASED IN THE EVIDENCE.

If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). A new trial absolute should be granted where the verdict was so excessive, so as to shock the conscience of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. Cock-n-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996); McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995); Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993); O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993); Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (S.C.App.,1996). When a verdict is grossly excessive and

the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other consideration not founded on the evidence, it becomes the duty of this Court, as well as the trial court, to set aside the verdict. Sanders v. Prince, 304 S.C. 236, 403 S.E.2d 640 (1991). A trial judge's refusal to grant a new trial absolute when the verdict is grossly adequate or excessive is an abuse of discretion. See O'Neal, supra.

A motion for new trial nisi remittitur, reducing the verdict is appropriate where the verdict is merely excessive. James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). "The consideration for a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dep't of Health & Envtl. Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006).

At trial, Allgire claimed his total medical expenses were $26,063.00, and he claimed an additional $3,341.25 in lost wages. The evidence at trial showed that Allgire sustained a "mild" compression fracture to the T-12 vertebra. Dr. Blocker testified that the mild T-12 compression fracture would heal in about six (6) to ten (10) weeks, the pain should be gone in about three (3) months, and that a usual course of treatment for a

compression fracture would be benign neglect. Later imaging studies did confirm that the compression fracture had completely healed. Thus, there was objective and uncontroverted evidence that the compression fracture had completely healed within six (6) months of the incident. Although Allgire then began seeing Dr. Craig Boatright for a new range of symptoms after the compression fracture had healed, Dr. Boatright could not testify to a reasonable degree of medical certainty that new range of symptoms, including the right leg pain, were related to the T-12 compression fracture. In fact, he felt it was probably related to the L4-5 disk, a different location altogether than the compression fracture, which is where he began a series of epidural injections to treat Allgire's new pain complaints. Therefore, a verdict of $400,000 in actual damages was clearly grossly excessive given the testimony at trial, that the compression was completely healed within six (6) months of the incident, and based on the amount of medical expenses and lost wages claimed by Allgire. This verdict indicates that the jury confused or did not understand that medical evidence that was presented.

Additionally, the jury was also reminded frequently that the Blanton Group was from the Myrtle Beach area and the Glover Group was from Beaufort County, creating an "us" versus "them" theme throughout the trial. The fact that the jury deliberated for less than two (2) hours, after they had

heard several days of testimony from both fact and medical witnesses, indicates that they had either already made up their minds before entering the jury room, or were concerned with reaching a decision as soon as possible. Therefore, the jury must have acted out of passion, caprice, prejudice, or other consideration not founded on the evidence.

III. THE CIRCUIT COURT ERRED IN NOT GRANTING A NEW TRIAL PURSUANT TO THE THIRTEETH JUROR DOCTRINE

The 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." Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 567 S.E.2d 851 (2002). To reverse the denial of a new trial motion under the thirteenth juror doctrine, the appellate court must, in essence, conclude that the moving party was entitled to a directed verdict at trial. Parker v. Evening Post Publ'g Co., 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 2001). Because, as discussed above, the evidence in this case does not justify the jury's verdict, the trial court should have granted a new trial pursuant to the thirteenth juror doctrine.

IV. THE CIRCUIT COURT ERRED IN FAILING TO STRIKE THE AWARD OF PUNITIVE DAMAGES BECAUSE THERE WAS NO EVIDENCE TO SUSTAIN THE AWARD OF PUNITIVE DAMAGES UNDER THE GAMBLE FACTORS SET FORTH BY THE SUPREME COURT.

A review of the punitive damages award shows that it was also grossly excessive. The practice of awarding punitive damages originated in principles of criminal law "to deter the wrongdoer and others from committing like offenses in the future." Laird v. Nationwide Ins. Co., 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964). Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Atkinson v. Orkin Exterminating Co., 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004).

In Gamble, the Supreme Court developed an eight factor post-verdict review that trial courts are required to conduct to determine if a punitive damages award comports with due process. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). The United States Supreme Court has also set forth three guideposts that trial courts must apply to an award of punitive damages to determine whether the award violates due process. BMW of North America, Inc. v. Gore, 517 U.S. at 575, 116 S. Ct. at 1598-99, 134 L. Ed. 2d at 826.

The Gamble factors are: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will

deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) other factors deemed appropriate. Gamble, 305 S.C. at 111-12, 406 S.E.2d at 354.

In this case, a jury found that the Defendant was culpable in this matter, but the duration of the conduct was minimal. The evidence was that there was only one (1) time that Blanton made contact with the Allgire. As for past similar conduct, the testimony was that the Blanton had one prior charge in his twenties where he was in a fight and a charge brought against him. There was no evidence that Blanton participated in any other conduct of this nature. Furthermore, the incident that led to this suit arose out of threatening words from both groups at the golf course that day, except it appears that both Blanton and Allgire were not initially the individuals exchanging the words. Blanton also returned to the scene with the investigating officer, without incident. He then apologized, so there was no effort to conceal what he had done. Finally, and most importantly, there was no evidence of Blanton's ability to pay. Although the trial court instructed Blanton to prepare a net worth statement, Allgire never asked for the net worth statement and it was never admitted into evidence at trial. The only evidence on the record was that Blanton owned one (1) or more used car

dealerships. (R. p. 554, lines 18-25). However, there was no evidence as to the value of the used car dealerships or the volume of sales, although this information was produced by Blanton in discovery. (R. p. 555, line 15-p. 556, line 1.) In fact, Blanton's net worth statement filed with the Memorandum in Support of Motion for New Trial evidences his net worth at less than $25,000.00. Upholding a verdict of $100,000.00 in punitive damages would result in financial ruin of Blanton and potentially force him into bankruptcy. Therefore, the verdict does not comport with the elements under either Gamble or Gore, and the Circuit Court should have granted Blanton a new trial absolute or substantially reduced the punitive damages award to an amount consistent with the Gamble factors.

CONCLUSION

For the reasons stated, Blanton asks the Court to reverse the decision of the Circuit Court, and remand for a new trial.

DATED this 10th day of December, 2014, at Beaufort, South Carolina, and

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Presiding Judge

Case No. 2011-CP-07-04796

Rodney J. Allgire, Respondent,

v.

Marshall C. Blanton, Appellant.

PROOF OF SERVICE

I certify that on December 10, 2014, I served the *Appellant's Final Brief* on Rodney J. Allgire, by depositing a copy in the United States Mail with postage prepaid and addressed as follows.

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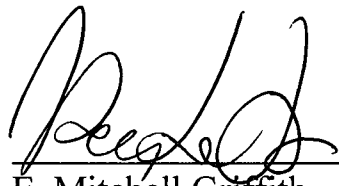

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