THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-00910
Appellate Case No. 2017-001750

Darris Hassell, ... Respondent,

v.

City of Columbia, ... Appellant.

INITIAL BRIEF OF APPELLANT

Teresa A. Knox # 64212
W. Michael Hemlepp, Jr. # 64264
OFFICE OF THE CITY ATTORNEY
P.O. Box 667
(803) 737-4242
taknox@columbiasc.net
wmhemlepp@columbiasc.net

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases from Other Jurisdictions

Statutes and Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court erred in refusing to order a new trial when potential jurors were asked during voir dire if they had ever been arrested by the City of Columbia and when the eventual foreman remained silent, failing to disclose his arrest from a year before trial.

II. Whether the verdict of $200,075 is so large that it lacks a sensible basis in this record, is not a rational estimate of the plaintiff's damages, and is grossly excessive requiring reversal.

STATEMENT OF THE CASE

This case arises out of a traffic stop. Darriss Hassell was arrested for DUI after he was stopped by a City of Columbia police officer at 1:30 in the morning in February of 2014.

Some parts of the encounter are disputed. The police officer claimed Mr. Hassell's vehicle made an improper left turn. (Trial Tr.p.127, lines 7-14). Mr. Hassell disputes making an improper turn. (Id.p.58, lines 1-11). The police officer says he arrested Mr. Hassell because Mr. Hassell failed field sobriety tests. (Id.p.128, line 9 - p.134, line 25). Mr. Hassell disputes he failed the tests. (Id.p.61, lines 3-17).

Other parts of the encounter are not disputed. The parties do not dispute Mr. Hassell told the officer he never drank alcohol and could not be impaired. (Id.p.60, lines 6-8; p.112, line 15 - p.113, line 1). The parties also do not dispute Mr. Hassell's breath test returned a reading of 0.0 when that test was administered at the police station, after Mr. Hassell had already been arrested. (Id.p.69, lines 18-19; p.135, lines 10-16). There are no allegations of abuse or mistreatment. The arresting officer said Mr. Hassell was cooperative and compliant throughout the encounter. (Id.p.112, lines 3-8). Mr. Hassell said the officer was respectful and "somewhat polite but short." (Id.p.60, lines 13-14; p.92, lines 12-13).

The arresting officer left employment with the City of Columbia police department in August of 2014. (Id.p.136, lines 15-16). He left the department in good standing. (Id.p.161, lines 7-14). There are no allegations of misconduct or that he was fired.

In October of 2014 Mr. Hassell's charges were dismissed and his record was expunged. (Id.p.104, ll. 13-14; p.118, ll. 16-20). The City did not have the video recordings of the field sobriety tests. The City had also failed to test Mr. Hassell's urine sample. The officer, who was then a private citizen, suggested the dismissal. (Id.p.137, ll. 3-20).

The urine sample had not been tested by mistake. The arresting officer had correctly placed the urine sample in the evidence locker at the police department. (Id.p.125, lines 7-20). He incorrectly believed another officer would take the sample from the evidence locker to the South Carolina Law Enforcement Division for testing. *Id.* The correct procedure called for the arresting officer to retrieve the sample from the evidence locker as soon as practical and deliver it to SLED himself. (Id.p.125, line 21 - p.126, line 3).

Mr. Hassell filed this lawsuit in February of 2016, two years after the arrest. His complaint alleged claims for false arrest, malicious prosecution, defamation, and negligent supervision. (Complaint, pp.1-2).

The case was tried over four days in May of 2017. Five witnesses testified: Mr. Hassell, the arresting officer, a deputy police chief, Mr. Hassell's former teaching assistant, and a physician. (Trial Tr.p.2).

The plaintiff's theory of the case was that the arresting officer did not know what he was doing and had either misinterpreted or misrepresented Mr. Hassell's performance on the field sobriety tests. The arresting officer had twice consulted a written manual when

administering the field sobriety tests. (Id.p.72, line 12 - p.73, line 3). Mr. Hassell said this gave him the impression the officer was inexperienced. *Id.* Mr. Hassell also said the officer appeared not to know the process of obtaining a urine sample. (Id.p.73, lines 4-12).

For his part, the arresting officer admitted his mistake in handling the urine sample, explaining this was his first DUI arrest where he collected bodily fluids. (Id.p.113, lines 17 - p.114, line 7). The officer nevertheless maintained his belief Mr. Hassell had been impaired. (Id.p.135, lines 10-16). The officer insisted he would not have made the arrest for any other reason. *Id.* The officer said he always read the field sobriety instructions aloud in order to ensure accuracy when administering those tests. (Id.p.134, lines 2-9). He also apologized for the distress Mr. Hassell experienced as a result of the arrest. (Id.p.123, lines5-9).

The City's chief theory at trial was to defend the arrest as valid based on the officer's testimony that Mr. Hassell failed the field sobriety tests. (Id.p.219, lines 14-25). However, the City also conceded a verdict in Mr. Hassell's favor would be appropriate if the jury determined there had *not* been probable cause for the arrest. *Id.* The City proposed the jury compensate Mr. Hassell at the rate of $400 per hour if it believed damages were appropriate and suggested the verdict could account for Mr. Hassell's 16 hours in jail, time for the two trips Mr. Hassell had to make to court before his charges were dismissed, and the $75 Mr. Hassell had to pay as a result of his car being towed. (Id.p.223, line 1 - p.225, line 22).

Plaintiff's counsel initially requested an award of four times Mr. Hassell's $48,000 annual salary. (Id.p.208, lines 1-6). Then, after the City's closing argument, the request increased to five times Mr. Hassell's annual salary. (Id.p.229, lines 7-8). The basis for this increase was the City's argument that a reasonable view of the evidence supported a defense

verdict. (Id.p.219, lines 7-13). The plaintiff apparently interpreted that argument as showing "they [the City] still don't get it." (Id.p.229, lines 7-10).

The circuit court charged the jury on false arrest, malicious prosecution, and negligent supervision. None of the objections to the jury charge are relevant to the appeal.

On May 19, 2017 the jury returned a general verdict of $200,075. (Verdict form).

On May 30, 2017 the City filed a written motion for a new trial. This was the first business day following the Memorial Day holiday. Among other grounds, the City argued the amount of the verdict was grossly excessive and that the plaintiff's closing argument had improperly suggested the jury needed to award a large verdict in order to make the City "care," "pay attention," and "show up in court." (5/30/17 Mot.pp.2 & 5); see also (Trial Tr.p.199, line 5; p.208, lines 20-22; p.209, lines 5-7).

The City filed an amended motion for a new trial the following day, however, this motion did not materially differ from the original motion and is irrelevant to the appeal.

The circuit court heard these post-trial motions on June 2, 2017 and denied them in a Form 4 order filed June 27, 2017. (Form 4).

On June 30, 2017 the City filed a final motion for a new trial. This motion alleged the City had recently learned the jury foreman did not disclose during voir dire that he had been arrested by the City roughly a year before the trial occurred. (6/30/17 Motion p.1). The City attached the incident report from the foreman's arrest to this motion. (Id.Ex.1). The City also attached the portion of the transcript from voir dire demonstrating potential jurors had been asked if they had ever been arrested by the City. (Id.Ex.2). One person responded affirmatively to the question. (Trial Tr.pp.20-21). The eventual foreman did not.

The City served and filed a notice of appeal on August 18, 2017.

The circuit court did not hear the City's last motion for a new trial until June 27, 2018; nearly a year after the motion had been filed. (6/27/18 Tr.p.1). The court conducted this hearing pursuant to a limited remand from this Court for post-trial motions.

On July 27, 2018, the circuit court entered a written order denying the City's motion. A subsequent order was filed August 22, 2018 to correct a page's inadvertent omission from the prior order. (Both 8/22/18 Orders).

The circuit court denied relief citing a number of grounds including that the City supposedly did not offer any evidence of who discovered the foreman's prior arrest, how the arrest was discovered, or how burdensome it would have been for the City to discover the arrest during jury selection or before the verdict. The court ultimately concluded the City either knew or should have known of the foreman's prior arrest. The court believed these things defeated the City's arguments that it was entitled to rely on receiving honest answers during voir dire and that the foreman's prior arrest would have been a material factor in the City's exercise of peremptory strikes.

Between the original and amended orders, the plaintiff filed a motion seeking sanctions against the City. (8/16/18 Mot.pp.1-2). The City filed a response and the plaintiff filed an amended sanctions request. (Response & Am. Mot.). This issue remains pending. The City believes it is affected by the appeal and stayed per Rule 205, SCACR. (Response).

STANDARD OF REVIEW

The denial of a new trial based on a juror's failure to give accurate responses during voir dire is reviewed under the abuse of discretion standard. *Long v. Norris & Assocs.*, 342

S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000). This Court also gives substantial deference to the jury's assessment of damages but must reverse if the verdict "is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence[.]" *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993).

ARGUMENT

This case is both easy and difficult.

It is easy because the law is straightforward. "Intentional concealment" occurs when a voir dire question is reasonably comprehensible to the average juror and when the subject matter of the question is so significant that a juror's failure to respond would be *un*reasonable. There can be no dispute this question was straightforward and that the subject matter—a prior arrest—is significant. There can also be no dispute that this information would have been a material factor in the City's use of peremptory strikes.

Reversal is reinforced by the size of the verdict. Nobody doubts the experience of being arrested was humiliating. The Court also must take as true the jury's finding that there was no probable cause. Still, it is difficult to see a sensible basis for an award of $200,000 in non-economic damages in this case. This is confirmed by the record and by precedent.

The case is difficult because the record shows Mr. Hassell is a fine and upstanding person. Reversing will prolong this litigation, as it does any litigation. But it is impossible to overlook that the circuit court did not apply the test for intentional concealment, that the ruling the City was negligent in failing to discover the arrest sooner conflicts with precedent, and that there was a direct plea for the jury to amplify its verdict based on the perceived need to make the City "care." These things were wrong. This Court should reverse.

I. The circuit court erred in refusing to order a new trial based on the foreman's failure to disclose his prior arrest.

The circuit court erred in refusing to order a new trial based on the foreman's failure to disclose his prior arrest. The court did not articulate or apply the test for "intentional concealment." Also, the court's ruling that the City was negligent in failing to discover the foreman's arrest sooner rather than later appears to directly conflict with precedent. Finally, the court mis-applied other legal principles, reciting some standards that were irrelevant and others that were wrong. This Court should reverse and remand for a new trial.

a. The circuit court did not apply the test for intentional concealment.

A series of cases explain the standard for a new trial based on voir dire responses.

The Supreme Court's decision in *Thompson v. O'Rourke* is one of several precedents articulating a three-part test. That case explains a party seeking a new trial because one of the jurors was "disqualified" must show (1) the fact of disqualification; (2) that the grounds for disqualification were unknown prior to the verdict; and (3) that the moving party was not negligent in failing to learn of the disqualification before the verdict. 288 S.C. 13, 14, 339 S.E.2d 505, 506 (1986).

Thompson also explains "disqualification" does not mean the juror was disqualified from service. A new trial is required if the concealed information would have supported a challenge for cause *or* if the concealed information would have been a material factor in the use of peremptory strikes. *Id.* at 15, 339 S.E.2d at 506.

The final case needed for a full summary of the law is the case defining "intentional concealment." In *State v. Woods*, the Supreme Court cited *Thompson* as mandating a new

trial when there has been intentional concealment and when the concealed information would have supported a challenge for cause or been a material factor in peremptory strikes. *Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). Then, the Court held:

> intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable.

Id. at 588, 550 S.E.2d at 284.

The order denying the City's motion for a new trial never cited *Woods* and never applied the intentional concealment test. (8/22/18 Or.pp.1-11). The circuit court did not examine whether the voir dire question was straightforward and the court did not explain whether the subject matter of the question was of such significance that the foreman's failure to respond was unreasonable.

Oddly, the circuit court purported to find as a fact that the foreman was *not* disqualified, explaining the foreman would have remained in the jury pool if he had disclosed his arrest and answered that he nevertheless believed he could be impartial. (Id.pp.5-6). That finding misapplies the disqualification analysis from *Thompson* and *Woods*. The test is not actual disqualification, but whether the information would have supported a challenge for cause or been a material factor in the use of peremptory strikes.

It is difficult to see how this could be anything other than intentional concealment. The question was straightforward: "[H]ave you or a close family member ever been arrested by a City of Columbia police officer?" (Trial Tr.p.20, lines 2-3). The subject matter of the question—being arrested—seems significant enough that the failure to disclose a prior arrest

is objectively unreasonable. Nobody disputes the foreman was arrested on May 20, 2016 for driving with a suspended license and that he spent over 24 hours in jail. (6/30/17 Mot.Ex.1). This was almost exactly a year before the trial.

This voir dire question even came up at the beginning of trial. During opening statements, plaintiff's counsel said "[y]esterday the judge asked this jury panel whether or not anybody had been arrested, and there were no hands." (Trial Tr.p.47, lines 7-8). Again, it is hard to see how this could be anything other than intentional concealment.

b. The circuit court's ruling that the City was negligent appears to conflict with precedent.

A central feature of the circuit court's decision was its conclusion that the City was negligent in failing to learn of the foreman's prior arrest at an earlier point in the litigation. The circuit court held the City should have discovered this "before the verdict." (8/22/18 Or.p.9). The court found the City "failed to adequately review the abundant, public information relevant to prospective jurors" and that the City was seeking relief from its own "negligence" in "inadequately defending" this case. *Id.*

Parties have a right to receive truthful answers during voir dire. That was a key feature of this Court's decision in *Long v. Norris & Associates*, where this Court specifically rejected the argument that the moving party should have obtained background information on potential jurors before trial. This Court explicitly declined "to expand the duty of parties and attorneys to include investigation of prospective jurors." 342 S.C. 561, 571-572, 538 S.E.2d 5, 11 (Ct. App. 2000). *Instead* of parties having to do background checks on the entire venire, the court conducts voir dire for "the dual purposes of enabling the court to

select an impartial jury and assisting counsel in exercising peremptory challenges." *State v. Wise*, 359 S.C. 14, 23, 596 S.E.2d 475, 479 (2004). The point is that the foreman failed to answer, not that the information could have also been obtained by searching the public index.

The circuit court said *Long* was distinguishable because the moving party in that case presented "evidence" supporting the motion for a new trial. (8/22/16 Or.p.10).

It is hard to understand that purported distinction. *Long* was a suit for assault and battery arising out of a car repossession. Potential jurors were asked during jury selection if they had ever had an automobile repossessed. 342 S.C. 561, 569, 538 S.E.2d 5, 10 (Ct. App. 2000). Someone with a prior repossession failed to respond to the question and was seated on the jury. The defendants in the case learned about the prior repossession after the trial. *Id.* at 566, 538 S.E.2d at 8.

There is no meaningful difference between that case and this one. The only "evidence" in *Long* was an affidavit from the juror admitting his prior repossession and an affidavit from the lender who had repossessed the juror's car. Here, nobody disputed the foreman had been arrested and had failed to disclose the arrest. It is hard to see why any affidavits would be needed or useful. The City pressed the similarity between this case and *Long* at the hearing and in its proposed order that would have granted the motion for a new trial. (Tr.pp.22-23; Prop.Or.pp.4-5). There is no principled distinction between the cases.

c. The circuit court mis-applied other principles, reciting standards that were irrelevant and wrong.

The circuit court repeatedly mentioned that the City's lead counsel at trial did not attend the hearing on the City's motion for a new trial. The court also "found" that the

lawyer who handled the new trial hearing for the City had not properly appeared in the case because there was no order substituting this lawyer as counsel. (8/22/16 Or.p.10, ¶3).

The City is not aware of any authority requiring all counsel of record to appear at a hearing. As to the absence of the City's lead trial counsel, the City had submitted a draft order requesting lead trial counsel be relieved on the grounds that she no longer worked for the City. (July 14, 2017 Letter and Proposed Order). This draft order was submitted nearly a year before the hearing on the motion for a new trial but was never executed. Thus, trial counsel remains counsel of record along with the City's additional counsel. The City's additional counsel had filed notices of appearance long before the hearing.

The circuit court cited authorities for the proposition that a new trial will not be granted for "every act of misconduct" and that objections to jurors are waived if they are not made before the jury is impaneled. (8/22/16 Or.pp.3-4). These authorities do not involve intentional concealment or a juror's failure to disclose information during voir dire. They are completely irrelevant.

The circuit court cited other parts of the voir dire as supporting the proposition that the foreman was not disqualified from service because he must have believed he could be fair. (Id.p.6). Precedent directly refutes this analysis. *Woods* rejects the argument that the moving party must demonstrate prejudice or bias, 345 S.C. at 588, 550 S.E.2d at 285, and in *Gray v. Bryant*, the Supreme Court held the trial court erred in relying on the juror's statement she tried her best to be impartial and fair. 298 S.C. 285, 288, 379 S.E.2d 894, 896 (1989). The City did not have to prove prejudice. Prejudice and bias are inferred in cases of intentional concealment. *Woods*, 345 S.C. at 589, 550 S.E.2d at 285.

Finally, the circuit court on several occasions said the City "could have known" earlier about the foreman's prior arrest and that the City did not show it "could *not* have known" earlier. (8/22/18 Or.pp.7, 8, 9, 11). That is not the standard. Juror misconduct is not analyzed as a motion based on newly discovered evidence; it is a separate basis for a new trial. *McCoy v. State*, 401 S.C. 363, 370-371, 737 S.E.2d 623, 627 (2013). While it certainly stands to reason that a party may not move for a new trial if the party was negligent and should have known about the concealment sooner, that is different than requiring the party to prove it could not have known about the concealment sooner. The order's concluding section even found the City had failed to "refute" that it was negligent, suggesting the court applied a presumption of negligence. (8/22/18 Or.p.12, ¶9).

***

The voir dire question was straightforward and it concerned an experience that would be memorable for anyone. A prior arrest would obviously have been a material factor in the City's use of peremptory strikes. This was a lawsuit for false arrest. The question was asked for a reason. The circuit court erred in denying a new trial. This Court should reverse.

II. The verdict of $200,075 lacks a sensible basis in this record and is grossly excessive requiring reversal.

A verdict that lacks a rational relationship to the injury must be reversed. The jury is afforded substantial deference to set damages but its discretion is not boundless. Precedent explains an appellate court must reverse a jury's verdict if it is so excessive that it appears "to be the result of passion, caprice, prejudice, or some other influence outside the evidence." *O'Neal*, 314 S.C. at 527, 431 S.E.2d at 556.

There are no precise standards for determining whether a verdict is grossly excessive. An appellate court is not permitted to reverse a verdict merely because the verdict is large or because the appellate court might have awarded less. *Hyde v. S. Grocery Stores*, 197 S.C. 263, __, 15 S.E.2d 353, 360 (1941). Instead, "all that the Court should do is to see that the jury approximates a sane estimate, and does not exceed a rational appraisal." *Id.*

It is "inherently difficult" to examine a verdict when "there is no tangible factor of damage." *Zorn v. Crawford*, 252 S.C. 127, 137-138, 165 S.E.2d 640, 645-646 (1969). Still, the jury's award may not be "wholly without limitation" and there "must be some semblance of a basis for justifying the verdict." *Id.*

a. It is difficult to explain this verdict as being based on anything other than sympathy, passion, or prejudice.

Damages for false imprisonment include damages for humiliation, indignity and mental suffering. *Westbrook v. Hutchison*, 195 S.C. 101, __, 10 S.E.2d 145, 150 (1940). Damages for malicious prosecution include harm to the plaintiff's reputation, humiliation, mental suffering, injured feelings, and any economic harm. *Huggins v. Winn-Dixie Greenville*, 252 S.C. 353, 363, 166 S.E.2d 297, 301 (1969).

There is no colorable claim for negligent supervision. The theory of negligent supervision was that the City should have inquired about what happened to the video of the field sobriety tests and to the urine sample. (Trial Tr.pp.153, 184, & 187). These things are not evidence the City knew or should have known employing this officer would create an undue risk of harm to Mr. Hassell or to the public. *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008) and RESTATEMENT (SECOND) OF TORTS § 317(c)

(1965) (discussing when the employment of servants known to engage in misconduct gives rise to direct liability against the employer). Nobody is perfect. Negligent supervision requires more than pointing out that an officer made mistakes during an arrest.

There is no question the experience of being arrested and going to jail was embarrassing and humiliating. At trial, Mr. Hassell explained he noticed people watching as he interacted with the arresting officer on the street. (Trial Tr.p.62, lines 16-20). He also described people looking at him as he was led through the hospital in handcuffs. (Id.p.74, lines 9-14). He said he felt embarrassed, hopeless, and ashamed. (Id.p.77, lines 9-11). Nobody disputes this. This was precisely why the City proposed he be compensated at a rate of $400 per hour. (Id.p.223, line 1 - p.224, line 9).

Yet, as mentioned earlier, the record shows Mr. Hassell is an upstanding person. Mr. Hassell admitted at trial he had not seen any repercussions from the experience. (Tr.p.99, lines 18-23). Mr. Hassell's former teaching assistant explained his high opinion of Mr. Hassell had not changed. (Id.p.173, line 12 - p.174, line 4). Again, nobody disputed Mr. Hassell's entitlement to damages for humiliation and embarrassment if the jury determined the arrest lacked probable cause. Still, it is difficult to articulate any reasonable basis in the evidence for an award of $200,000.

Compare the verdict with others. The plaintiff in *Solanki v. Wal-Mart* received an award of only $50,000 in actual damages after spending six nights in jail. 410 S.C. 229, 763 S.E.2d 615 (Ct. App. 2014). The plaintiff in *Swicegood v. Lott* received an award of $150,000 in actual damages on an abuse of process claim involving extensive publicity and the loss of the plaintiff's job. 379 S.C. 346, 665 S.E.2d 211 (Ct. App. 2008). *Swicegood* is

instructive because the damages appear to be worse than this case. Yet, that verdict is obviously lower than this verdict.

The plaintiff in *Lynch v. Toys "R" Us-Delaware* received a total verdict of $150,000 in actual damages on claims for malicious prosecution, slander, and outrage. 375 S.C. 604, 654 S.E.2d 541 (Ct. App. 2007). *Lynch*, like *Swicegood*, is arguably a significantly lower verdict for damages that appear to be worse.

b. There was also a plea for the jury to amplify its verdict on the perceived need to make the City "care," "pay attention," and "show up."

The Tort Claims Act bars the recovery of punitive damages against a government entity. S.C. Code Ann. § 15-78-120(b) (Supp. ____). At the beginning of trial, the City's counsel requested a ruling barring language commonly used with punitive damages like "punish" or "send a message." (Trial Tr.p.31, lines 10-18). This was granted by consent.

Yet, in arguing damages to the jury, the argument was made that there were no police officers in the courtroom because the City of Columbia did not "get it" and could "care less." (Id.p.199, lines 1-3). Supposedly, it was "reprehensible" that a police officer did not attend throughout the trial. (Id.p.199, lines 6-7). The argument noted the jury could not award punitive damages—"I wish you could. You can't." (Id.p.207, lines 24-25). Then, the "multiplier" of four times Mr. Hassell's salary was proposed as reflecting the full measure of justice because the outcome of an arrest without probable cause might not always turn out with the charges being dismissed and because without such a verdict "[n]obody's going to pay attention." (Id.p.208, lines 1-23). Awarding such a verdict, however, would allegedly lead the City to "show up" next time in court. (Id.p.209, lines 5-8).

None of these statements are tied to compensating Mr. Hassell for his embarrassment and humiliation. These statements all reflect punishment, deterrence, or vindication for the invasion of Mr. Hassell's rights. Punishment, deterrence, and vindication are the three purposes of punitive damages. *O'Neill v. Smith*, 388 S.C. 246, 252, 695 S.E.2d 531, 534 (2010). They are not components of compensatory damages.

It is fair to point out the lack of objection to the closing argument. As a foreign jurisdiction noted, the lack of an objection is some evidence that the City's trial counsel did not believe the remarks were prejudicial at the time. *Jackowitz v. Lang*, 975 A.2d 531, 537 (N.J. App. Div. 2009). The lack of an objection also prevented the circuit court from taking curative action. *Id.* There were no objections to the closing argument in this case.

Even so, the argument may provide some reason why the jury's verdict is, in the City's view, wildly out of proportion to Mr. Hassell's injuries. In that respect, this case is like *Wachovia v. Beane* and *Sanders v. Prince*. Those cases involved clues the jury attempted to award relief that was not grounded in the evidence. In *Wachovia*, the jury attempted to award attorneys' fees and to forgive the balance on a note. 397 S.C. 612, 616-617 725 S.E.2d 715, 717-718 (Ct. App. 2012). This was a problem because attorneys' fees were not recoverable and the suit did not involve the debt on the note. *Id. Sanders* was a defamation case where the jury asked if it could force the defendant to resign from the school board. 304 S.C. 236, 238-239, 403 S.E.2d 640, 642 (1991). That was not permitted either.

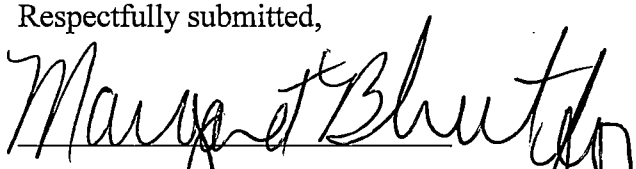
The evidence in this case is not as strong as it was in those cases, but it is nevertheless worth noting there was a direct plea for the jury to amplify its verdict based not on the value of Mr. Hassell's damages, but on the imagined belief the City did not care. This

was not proper. Deterrence, punishment, and the fact that an arrest without probable case does not always end with the charges being dismissed have no relationship to the lawful components of compensatory damages.

CONCLUSION

For the foregoing reasons this Court should reverse and remand for a new trial.

Respectfully submitted,



January 2, 2019

Teresa A. Knox # 64212
W. Michael Hemlepp, Jr. # 64264
OFFICE OF THE CITY ATTORNEY
P.O. Box 667
(803) 737-4242
taknox@columbiasc.net
wmhemlepp@columbiasc.net

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-00910

Darris Hassell, ... Respondent,

v.

City of Columbia ..... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Paul L. Reeves, Esquire
Reeves and Lyle, LLC
PO Box 11126
Columbia, SC 29211

Erin Bridges

January 2, 2019 Erin Bridges

BLUESTEIN ATTORNEYS

BLUESTEIN THOMPSON SULLIVAN, LLC
BLUESTEINATTORNEYS.COM

January 2, 2019

VIA HAND DELIVERY
The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Darris Hassell v. City of Columbia
Appellate Case No.: 2017-001750

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in regards to this matter. I have also enclosed a Proof of Service upon counsel for the Respondent. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC

/emb
Enclosures
cc: Paul L. Reeves, Esquire
W. Mike Hemlepp, Esquire

COLUMBIA:
1614 TAYLOR STREET | PO BOX 7965 | COLUMBIA, SC 29202
P• 803 779.7599 F• 803 771.8097

GRAND STRAND:
1208 3RD AVENUE | CONWAY, SC 29526
P• 843 665.9779