THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Judge

Appellate Case Number 2020-000818

Civil Action Number 2014-CP-42-1759

Lisa Styles . . . . . Respondent - Appellant,

v.

Southeastern Grocers, Inc. and BI-LO, LLC . . . . . Appellants-Respondents.

INITIAL BRIEF OF RESPONDENT - APPELLANT

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III. STATEMENT OF ISSUE ON APPEAL

Did the trial court err in finding that SEG/BI-LO was entitled to a direct verdict on Styles's claim for malicious prosecution because SEG/BI-LO had not instituted a proceeding when, in fact, SEG/BI-LO called the police, urged prosecution, provided a "packet" of selected information to the police, and protested the judge's decision to not issue a warrant?

IV. STATEMENT OF CASE

Styles commenced this action on June 8, 2018. (R. p. ___). Initially, this action named the corporate defendants (Appellants or "SEG/BI-LO")[1] as well as three individuals (Michael Craig Brickman, Ken Miller, and Ronnie Duncan). (*Id.*)

Styles' Complaint set forth five causes of action: (1) Abuse of process; (2) malicious prosecution; (3) false imprisonment; (4) interference with contract (solely against then Defendant Brickman); and (5) fraud. (*Id.*)

On December 3, 2019, Plaintiff voluntarily dismissed the individual defendants (Brickman, Miller, and Duncan) as well as Count IV (Interference with Contract). (R. p. _____). That left the claims for abuse of process, malicious prosecution, false imprisonment, and fraud as to SEG/BI-LO.

The case proceeded to trial, which commenced on March 9, 2020. At trial, Styles voluntarily dismissed Count I (abuse of process). (Tr. 798:18-22). Judge Sprouse granted SEG/BI-LO's renewed Motion for Directed Verdict as to Count II (malicious prosecution), which is the basis for this cross appeal. (Tr. 806:3-16). Counts 3 (false imprisonment) and 4 (fraud) were submitted to the jury, which returned verdicts totaling $110,000 for Plaintiff on Count III and a verdict for SEG/BI-LO on Count IV.

Styles filed a timely post trial Motion regarding the grant of the Motion for Directed Verdict on March 23, 2020. (R. p. at pp. 1-5). Judge Sprouse denied the Motion on April 23rd. (R. p. ___). SEG/BI-LO timely served a Notice of Appeal on

[1] Because this is a cross appeal and for purposes of simplicity, Appellants will be referred to herein as the "SEG/BI-LO."

May 13, 2020, which was then filed on May 22, 2020. (R. p. ____). Styles served her Notice of Cross Appeal on May 19, 2020, which was filed on May 22, 2020. (R. p. ____).

V. REQUEST TO PROCEED AS CONDITIONAL CROSS APPEAL

SEG/BI-LO initiated the appeals in this matter related to the false imprisonment verdict. Although this cross appeal involves a different claim, Styles is willing to accept the jury's result, and she did not intend to initiate an appeal in this matter if SEG/BI-LO would accept the outcome of the trial.

Accordingly, Styles requests that this Court accept Styles's appeal as a conditional cross appeal. Should this Court neither grant a new trial nor find that judgment for SEG/BI-LO is proper as to the false imprisonment claim, then Styles stipulates that she is willing to withdraw this appeal.

If, on the other hand, this Court is not willing to accept this stipulation and request to appeal the directed verdict conditionally, then Styles respectfully requests that it be resolved on its own merits.

VI. FACTS[2]

A. Background

Southeastern Grocers, LLC ("SEG") and its subsidiary, BI-LO, LLC (collectively "SEG/BI-LO"), operate BI-LO Store 5566 in Pendleton. (Tr. 425:10-12 (Ellison)).[3] Lisa Styles is a lifelong resident of Anderson County. (Tr.147:1-5 (Styles)). Styles joined BI-LO after high school and, after leaving and re-joining the company, she rose through the ranks at BI-LO, from a $7.50 per hour part-time cashier to a $49,500 customer service manager whom SEG identified as having potential for even higher advancement. (Tr. 149:8 – 150:1; id. 151:14 – 153:13 (Styles); tr. r. 637:22-24; id. 440:20 – 441:3 (Ellison); *see also* tr. 499:14-16 (Brickman)).

B. Styles and others complain about new store manager, Michael Brickman

Styles and other employees began to complain in 2017 about the conduct of their new store manager, Michael Brickman. (Tr. 153:14 – 157:8; 232:22 – 233:12 (Styles); Pl. Exh. 5). Styles first complained to then district manager, Randy Ellison, on behalf of herself and others. (Tr. 233:22 – 235:16; id. 236:1 –

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[2] As discussed in the Argument section, the facts directly bearing on the limited issue as to what is a "proceeding" or "process" for purposes of the tort of malicious prosecution are quite limited. Additional facts are provided here for context, which is necessary to understand Styles's belief that she needed to pursue the course she pursued given the threats made by SEG/BI-LO and the statements made by law enforcement.

[3] The BI-LO managers are employed by SEG. (Tr. 423:19-22 (Ellison); tr. 451:3-4 (Duncan)). The human resource function is handled by SEG corporate in Jacksonville, Florida. (Tr. 441:12 – 443:6 (Furnas); tr. 566:8-9 (Miller)).

237:18 (Styles); tr. 422:1-6; id. 424:7-25; id. 425 – 426:6; id. 427:13 -19; tr. 624:6-11; tr. 632:21 – 633:9 (Ellison)). Within a week of one of Styles's complaints, Ellison met with employees at the store. (Tr. 428:17-22; id. 429:16-24 (Ellison)). Ellison put written documentation in Brickman's file, which SEG/BI-LO referred to as a "write up," but that no defendant ever produced. (Tr. 446:18 – 448:6 (Furnas); Pl. Exh. 19; tr. 558:23 – 559:3 (Brickman);[4] tr. 637:5 (Ellison testifying that he gave Brickman a copy)).

Tommy Brown succeeded Ellison in early 2018. (Tr. p. 238:7-12 (Styles); tr. 792:11-16 (Brown)). Styles complained to Brown during his first visit. (Tr. p. 239:15 – 240:2 (Styles)). Brown told Styles to gather statements from herself and the other employees. (Tr. 240:5-7). After Styles did so, SEG's associate relations representative from Jacksonville, Allison Furnas, called Styles and they spoke briefly. (Tr. 242:2-6; 268:16-25; id. 383:25 – 384:11 (Styles)). Furnas requested that Styles send her the written statements, which Styles emailed to Furnas on April 20. (Tr. 240:11 – 241:12; id. 242:12-21; id. 243:2-18 (Styles); Pl. Exh. 7).

The first sign of trouble came when neither Furnas nor anyone else from corporate ever followed up with Styles (or the other employees). (Tr. 269:4-7 (Styles)). Nor did anyone come to Pendleton to investigate the concerns. (Tr. 269:8-10 (Styles)).[5] On May 9, Plaintiff finally reached out to Furnas, who indicated that, without interviewing anyone who had concerns, she had concluded

[4] Brickman told corporate that Ellison "tore him up," and that "he was so nervous and made that he really wasn't listening." (Pl. Exh. 19 at 261).

[5] Brown testified that he learned of the investigation from Brickman. (Tr. 792:21 – 793:10 ((Brown)). In any event, SEG/BI-LO assured Brickman that nothing would come of the employee complaints. (Tr. 549:25 - 551:4 (Brickman)).

her investigation. (Tr. 269:11 - 271:13 (Styles); Pl. Exh. 10). Still, nobody from SEG/BI-LO checked to see if anything changed or improved, or to assure the employees that there would be no retaliation. (Tr. 271:19 – 272:2; id. 272:25 – 273:11 (Styles)). The ruse of an investigation served no apparent purpose other than to tip off and further enrage Brickman, who knew his job was in jeopardy from the prior writeup that Ellison put in his file.

Ellison and Brown made clear to Styles that Brickman knew of her complaints. (Tr. 327:19-24 (Styles)). Brickman's early knowledge of the complaints also is evident from the fact that, when Brown succeeded Ellison, Brickman gloated that "[n]ow I can talk to y'all any way that I want." (Tr. 239:11-14 (Styles)).[6]

[6] Even at trial, Brickman continued to deny that he was aware of any complaints from Styles prior to Furnas calling him (in April). (Tr. 500:19 – 501:11 (Brickman)). Contrary to Ellison's testimony and documentation, Brickman flatly denied that Ellison never conveyed concerns of Styles or other employees. (Tr. 542:24 – 543:2 (Brickman)). Brickman attempted to persuade the jury that the 2017 writeup that made him so "nervous" and "mad" had to do with "chang[ing] something in the lobby" that "wasn't like the way [Ellison] wanted it." (Tr. 540:2 – 542:23 (Brickman)). Brickman ducked and dodged questions about Ellison's later visit to the store and post-visit counseling regarding employee issues, stating that he could not recall the conversation but maybe it had to do with him "look[ing] harsh or critical or mean or something. I don't know." (Tr. 543:7- 24 (Brickman)). Incredibly, Brickman also swore that Ellison told him that all the employees liked him. (Tr. 544:6-23 (Brickman)).

C. SEG/BI-LO sets up Styles with "evidence" of theft that were known donations.

After Styles had complained to Ellison and Brown, Styles and others observed Brickman holed up in his office watching store security video for hours at a time. (Tr. 243:22 – 246:20 (Styles); Pl. Exh. 9).[7] Styles did not learn until later what Brickman was up to. Brickman had been isolating snippets of videos of Styles taking items, which he reported to the asset protection department. (Def Exhs. 20-21; tr. 511:18 – 514:13 (Brickman)).

Brickman knew he could readily find video of Styles taking items because he had earlier approved donations of store items to AIM (formerly Anderson Interfaith Ministries), and he was aware of Styles's actions in gathering and taking the items. Styles discussed the items being donated with Brickman, and Styles provided Brickman handwritten lists of all donated items, as she had in the past when the store donated items. (Tr. 246:21 – 250:3; id. 250:19 – 251:8; id. 253:10-22; id. 267:16 – 268:15; id. 363:17 – 364:14 (Styles)). SEG/BI-LO dropped the pretense that there were no such donations after AIM's Marla Cobb provided pictures and testified about BI-LO's past and pertinent donations and about Styles

[7] Brickman claimed that he just happened to come across April video of the front end/floral area of the store and of Styles putting items in her car while looking at video of a March "deep clean" of the store and watching video of the cleaning of the men's bathroom. (Tr. 501:12 – 508:20 (Brickman)). Brickman claimed this caused "all kinds of concern" (tr. 508:18 (Brickman)), which he, of course, never discussed with Styles. On cross examination, Brickman could not explain how looking at videos of the bathroom led him to focus on cameras at the front of the store when there are no bathrooms in that area. (Tr. 527:24 – 528:14 (Brickman)). Nor could he explain why he was looking at April 10 video of Styles when the "deep clean" occurred almost a month earlier. (Tr. 530:13 – 19 (Brickman)).

delivering donated BI-LO items to AIM. (Tr. 126:25 – 142:13 (Cobb); Pl. Exhs 1-4)).

The first AIM donation, for example, consisted of Easter baskets and basket contents (candy, grass, eggs, etc.), which Styles selected using a list provided by Cobb that identified ages of the children, as well as any issues like food allergies. (Tr. 251:15 – 252:18 (Styles); Pl. Exh. 1). Styles gathered the items during the day when she had time and stored them in the floral department, which is at the front of the store. (Tr. 254:11 – 257:11 (Styles)). The floral area/front end has the most employees and management present, as well as security cameras, something about which Styles was well aware. (Tr. p. 257:12 – 259:1; id. 259:9-13 (Styles); tr. 706:1-3 (Duncan)). In the very videos relied upon by SEG/BI-LO, Styles is gathering the items and moving them around in plain sight and in broad daylight in front of other employees to the point that even SEG/BI-LO's witness admitted that she did not conceal anything. (Tr. 701:5 – 702:25; id. 704:16 – 705:25 (Duncan)). In the evening, Styles carried the items out to her car through the front doors directly under the cameras, and even left on one occasion with the store's bookkeeper. (Tr. 259:16 – 263:5; id. 263:13-17 (Styles); Pl. Exh. 22; tr. 706:4-9 (Duncan)). Styles took the Easter items home so that she and her daughters could assemble the baskets for the children based on Cobb's list, and Styles then delivered the assembled baskets to Cobb, which were put to the intended use. (Tr.

253:20 – 254:10; id. 263:6 – 265:11; id. at 369:1-3 (Styles); tr. 133:1 – 134:20; id. 145:6-16 (Cobb); Pl. Exhs. 2-3).[8]

Knowing that he had approved these donations, Brickman nonetheless handed off the video excerpts to district risk loss manager, Ronnie Duncan. (Tr. 650:7-24; Def. Exh. 20).

D. SEG/BI-LO detains and coerces Styles to sign a confession and to pay money with the false inducement that it would prevent prosecution when, in fact, SEG/BI-LO used her acts to pursue prosecution.

Nobody from SEG/BI-LO ever let on to Styles that there was any allegation against her. (Tr. 273: 24 – 274:3; id. 276:21-24 (Styles)). Duncan had the district's human resource business partner, Ken Miller, accompany him to the store on May 23rd. (Tr. 664:22-25 (Duncan)). Miller purportedly was to serve as the corporation's "witness" for the meeting with Styles. (Tr. 594:4-10; tr. 599:19-21 (Miller)).[9]

Miller and Duncan did not attend the meeting oblivious of the context. Despite their denials, Miller and Duncan were aware of Styles's complaints about

[8] The second donation Brickman approved consisted of personal care products that Cobb had requested. (Tr. 136:1 – 138:4 (Cobb)). Styles again listed these out for Brickman and delivered them directly to AIM, which AIM also acknowledged. (Tr. 265:15 – 266:21; id. 267:8-11; id. 368:21-25 (Styles); tr. 137:12 – 138:4; id. 139:2 – 141:11 (Cobb); Pl. Exh. 4). Styles was clear that she did not take any items from either donation for her own use. (Tr. 265:12-14; id. 267:12:15 (Styles)).

[9] Duncan had visited stores *hundreds* of times for investigations and, while Miller was the only HR person in his district, Duncan never had Miller accompany him on any investigation until the meeting with Styles. (Tr. 716:14-24 (Duncan)).

Brickman, and both Miller's[10] and Brown's[11] denials to the contrary simply fell apart.

SEG/BI-LO's bad faith also was evident from the fact that, in addition to Duncan's discussion about Brown getting a new manager, supra n. 11, Miller procured approval to terminate Styles even *before* the May 23rd meeting when he made his supervisor aware of the circumstances, that he was "going to hear what the reasoning was," and that "if there was theft involved, what the decision would be." (Tr. 613:11-20 (Miller)).

Duncan and Miller called Styles into the small manager's office, which is visible from the store through a door window. (Tr. 273:13 – 276:3 (Styles)). Styles was alone in the closed room with Duncan and Miller. (Tr. 276:4-6; id. 276:25 – 277:4 (Styles)). Duncan told Styles that they were investigating her taking product. (Tr. 276:16-20 (Styles)). From the start, Styles tried to explain the situation with

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[10] Miller denied that either Ellison or Brown had told him of Styles complaints. (Tr. 589:23 – 592:7 (Miller)). Ellison told Miller about both the 2017 complaint and about Styles' second complaint in February 2028 because it was Miller's responsibility to address. (Tr. 624:13-14; id. 427:24 – 428:11; id. tr. 429:10-15; see also id. 633:16-18; id. tr. 635:8-17 (Ellison)). Ellison also repeatedly testified that he spoke to Miller after speaking to the other employees. (Tr. 430:3-23; id. 633:10-11; id. 633:19 – 634:24 (Ellison)). Brown also discussed Styles' complaints with Miller on the same day that she made them (i.e. the very first day he visited the store). (Tr. 793:25 – 794:10 (Brown)). Ellison testified plainly that dealing with these matters was "[Miller's] responsibility," but Miller argued that, as the HR "people person," his job did not involve handing complaints in his own District. (Tr. 594:1-3 (Miller)).

[11] Duncan claimed that he had spoken to Brown prior to meeting with Styles on May 23rd. (Tr. 714:3-5 (Duncan)). Duncan tried, however, to claim under oath that he had no knowledge whether Brown knew about Styles' complaints. (Tr. 714:6-8 (Duncan)). Duncan was impeached with his prior testimony in which he clearly stated that Brown "was aware of it." (Tr. 714:9 – 715:17 (Duncan)). In fact, Brown told Duncan prior to the meeting to let him know if Duncan spoke to Styles so Brown could get another manager. (Tr. 715:18-23 (Duncan)).

the product and the AIM donations, including that Brickman had approved the donations and that she had provided written lists to Brickman. (Tr. 277:5-20 (Styles)). Duncan and Miller were hearing none of it. Without even speaking to Brickman (who was in the store), leaving the room, or communicating with anyone electronically, Duncan summarily responded that it would be Styles's word against Brickman's, indicating that Duncan knew all about the situation and that he was confident that Brickman would simply deny it. (Tr. 277:21 – 280:1 (Styles)). Neither Duncan nor Miller ever inquired as to the assertions made by Styles.[12]

Styles quickly realized that she had a problem. (Tr. 343:24 – 344:6 (Styles)). Styles told Duncan and Miller that she believed that the confrontation was a result of the complaints about Brickman that she had made to SEG. (Tr. 280:2-7 (Styles)).

To intensify the pressure on Styles, Duncan and Miller repeatedly rebuffed her requests to leave. (Tr. 280:14 – 281:1; see id. 284:1-6; id. 342:20-21; id. 357:19-20 (Styles)).[13] Duncan and Miller also would not allow Styles to be alone.

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[12] Duncan did not even ask whether Styles had copies of the lists or any other proof as to what she was saying. (Tr. 278:4-6 (Styles)). Nor did he interview other witnesses to assess Styles's explanations. (Tr. 706:21–23; id. 708:13-23 (Duncan)). Miller claimed that he did not ask Brickman *any* questions about donations because (somehow) it would not be relevant and because it was not his role. (Tr. 601:19-25; see id. 602:1 – 603:4 (Miller)).

[13] Only after the confrontation with Officer Glenn and the payment of the $450 could Styles leave. (Tr. 297:2-12 (Styles)). In all, SEG/BI-LO detained Styles for somewhere between one hour and one hour and fifteen minutes. The detention began shortly after noon (approximately 12:15) when Styles arrived to work. (Tr. 273:13 – 274:12; id. 333:4-14 (Styles); Def. Exh. 7; see tr. 665:10-12; id. 666:4-8 (Duncan)). Styles apparently signed the confession at or around 12:42. (Tr. 340:11-17 (Styles)). Miller escorted Styles on break at approximately 12:56 pm. (Tr. 333:20-22; id. 342:10-17; Pl. Exh. 23). Miller escorted her back into the store at 1:00. (Tr. 345:14 – 346: 9 (Styles); Def. Exh. 11).[13] Styles could

(Tr. 283:2-3 (Styles)). Styles asked about taking a break, but Duncan and Miller only allowed her to walk around with Miller staying with her. (Tr. 281:9 – 283:14; id. 390:9 – 391:13 (Styles); Pl. Exhs. 23-24).[14]

To facilitate prosecution, Duncan demanded a written confession as a condition of allowing Styles to leave. (Tr. 280:14 – 281:1 (Styles)). Styles made clear that she did not want to write a statement. (Tr. 283:17-25 (Styles)). Duncan told Styles she either had to write one, or she was not going to be allowed to leave. (Tr. 284:1-6 (Styles)). Styles described the predictable effects that Duncan and Miller's actions had:

> In that room, I had two men from corporate of authority telling me what I can and cannot do, what I can and cannot say. When I tell them my side of the story, they're telling me no. They're not even investigating what I'm trying to get help with and tell them my side. I – I was just bullied in that room. I mean, there's no other way to describe it. And I hate to even use that word, but that's what happened.

(Tr. 361:19 – 362:2 (Styles)).

SEG/BI-LO's determination to frame Styles was illustrated by Miller's complete abdication of his own responsibilities. In describing his role that day, Miller testified that he was the "people person," and that he was "just looking out for people." (Tr. 580:16-18; 552:20 (Miller)). When Miller was asked on cross, however, why the "people person" whose role is to "look out for people" made no

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not leave until shortly after 1:30 after she paid the $450. (Tr. 355:8 – 356:19; 359:6-14 (Styles)).

[14] Even though she was not required to attempt such a thing, Styles could not have made "a run for it" because her keys and purse were locked in the office. (Tr. 342:22 – 343:2 (Styles)).

inquiry into Styles's side of the story, his feeble response was that it "wasn't my role." (Tr. 597:21-24 (Miller)).

Duncan and Miller's tactics worked. Styles finally relented and provided them with the written statement they demanded of her. (Tr. 288:4-22 (Styles); Pl. Exh. 12). The extent to which Styles was coerced and pressured is exemplified, in part, by the fact that Duncan required that she make statements that are demonstrably untrue. At Duncan's direction, for example, Styles wrote that "some" of the items she took were donations, when, in fact, she had explained that *all* such items were donated. (Tr. 289:20 – 290:14 (Styles); Pl. Exh. 12). Even the responding officer testified that Styles maintained that *all* the items were donated. (Tr. 790:4-9 (Glenn)). Duncan also made Styles write that what she did was wrong. (Tr. 290:15-19; id. 338:22 – 339:2 (Styles)). Styles explained how SEG/BI-LO's coercion and threats simply broke her will and led her to be willing to write "anything" to escape further mistreatment.[15]

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[15] Styles testified that "I would have wrote anything to get out of that room." (Tr. 291:6-7; see id. 291:18-21; id. 292:19-23 (Styles)):

> Well, of course, my kids. Anderson is just such a small town.
>
> * * * *
>
> How is my husband going to explain to my kids that their mama is in jail? They told me that if – that if I wrote the statement and I paid the $450 that I wouldn't go to jail. I would have done whatever I needed to save my name, save my kids and my mom, my husband.
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> In that room, it was almost like fight or flight. Like an alarm just kept going off. You got to get out of this room. You got to get out of this room. So whatever I needed to do or agree to, yeah, it was wrong. Yeah, I lied, but I just wanted to get out of that room. Customers are walking by seeing me in there. My staff is seeing me in there. I just wanted to get out.

Duncan and Miller also forced Styles to agree, in writing, to pay $450 with the threat that such payment was necessary to keep her out of jail. (Tr. 290:20 – 291:2 (Styles)). This terrified Styles, who has never been arrested, charged with a crime, accused of stealing, or previously fired from a job. (Tr. 312:20 – 313:5 (Styles)).

To further facilitate the sham efforts that culminated in SEG/BI-LO's prosecution efforts, both Miller and Duncan falsely documented the day's events.[16]

E. SEG/BI-LO's inducement to sign the confession was a sham

Duncan did not, of course, have Styles "repay" the $450 to keep her out of jail.[17] Rather, he used it to try to put her in jail. After getting the statement with false admissions, Duncan double crossed Styles and had Brickman call the police. (Tr. 292:24 – 293:1 (Styles); tr. 678:11-14 (Duncan))

(Tr. 292:1-18; see also tr. 313:6-20 (Styles)). Styles also explained how she was "caught off guard" with these accusations, and the fact that nobody was listening to her side of the story rendered her "physically sick." (Tr. 294:14-25 (Styles)).

[16] Miller wrote a memo to his supervisor. (Tr. 604:1- 605:7 (Miller); Pl. Exh. 18). It not only fails to mention any charitable donations, but Miller brazenly misrepresented that Styles said she had no reason for taking the items. (Tr. 605:8 – 606:16 (Miller); tr. 740:23 – 741:6 (Duncan); Pl. Exh. 18). Duncan also authored a memorandum that same day to Brown. (Tr. 737: 24 – 738:15 (Duncan); Pl. Exh. 20). Duncan also documented every assertion that would support prosecution but completely omitted any mention of donations. (Pl. Exh. 20; tr. 739:3 -740:7 (Duncan)). Duncan also failed to document any discussion, or even mention, of the donations Brickman approved. (Tr. 606: 17 – 608:21 (Miller); Pl. Exh. 21).

[17] Styles did pay $450 of her own personal funds before she left based on her prior written promise to do so. (Tr. 295:6 – 296:23 (Styles); Pl. Exh. 13).

Notwithstanding SEG/BI-LO's effort to mitigate Brickman's involvement in the efforts to prosecute Styles,[18] Brickman was, in fact, instrumental in making SEG/BI-LO's prosecutorial desires clear. When Officer Glenn of the Pendleton Police responded, he first spoke to Brickman. (Tr. 790:15 – 18 (Glenn); Def. Exh. 22, p. 5; tr. 388:10 – 389:20 (Styles)). Brickman told Officer Glenn up front that "corporate wanted to press charges." (Tr. 791:3-10 (Glenn)). That was the plan all along and Brickman knew it -- even though he was not in the room when Miller and Duncan interviewed Styles.

SEG/BI-LO's videos exposed another lie that Brickman told the jury. On direct, Brickman testified that he did not have a conversation with the police. (Tr. 520:3-5 (Brickman)). The videos, however, showed an eight-minute conversation between Glenn, Brickman, and another officer, which Brickman tried to say, "could be anything." (Tr. 524:3 – 22; id. 530:8-12 (Brickman); Pl. Exh. 25). Significantly, "anything" includes SEG/BI-LO's false statements aimed at prosecuting Styles. Officer Glenn specifically asked Brickman about the donations, and Brickman denied there were any (just as Duncan had said Brickman would before anyone supposedly had spoken to Brickman about the donations). (Tr. 791:14-19 (Glenn)).

And while SEG/BI-LO would have preferred that the jury continue to believe that Brickman was a passive observer in the efforts to prosecute Styles, it was

[18] Brickman claimed that Duncan was standing there when the officers arrived, and Brickman just let him handle it. (Tr. 520:9-16 (Brickman)). The pictures and video tell a different tale. (See, e.g., Def. Exh. 22 p. 5).

Brickman who signed the police report seeking to have her prosecuted. (Tr. 556:23 – 557:5; id. 560:13 – 23 (Brickman)).

Officer Glenn, whom Styles knew, came into the manager's office (making three men in this small room), and he remarked to an already distraught Styles, "shame, shame, shame. You've been a bad little girl." (Tr. 293:2-19; id. 362:24-25 (Styles); see also tr. 788:9-13 (Glenn admitting he said "shame shame" to Styles)).[19] Glenn then read Styles her Miranda rights. (Tr. 293:20-21 (Styles)). At this point, Styles' "anxiety was through the roof." (Tr. 347:24-25; see id. 348:20-21 ("I was checked out of the whole thing. I needed to go."); id. 350:6-7 (Styles)).

SEG/BI-LO gave Officer Glenn the written confession Duncan and Miller had coerced from Styles. (Tr. 786:16 – 787:4 (Glenn)). SEG/BI-LO also gave Glenn "a packet with video, all the information, all the transaction logs. . . . . Everything that proved what took place." (Tr. 453:23 – 454:1 (Duncan)). Everything, that is, except the information that showed that Styles was innocent.

Glenn told Styles that there would be a warrant issued, that she could turn herself in, that she would be arrested, and that she would have to go before a judge. (Tr. 293:22 – 294:9 (Styles)).

F. SEG/BI-LO facilitated its wrongdoing by repeatedly violating its own policy

Further evidence of the malintent of SEG/BI-LO comes from the myriad violations of SEG/BI-LO's own policy that was necessary to coerce the written

[19] While in the office, Styles had her back to the front door and does not know with whom Glenn spoke before he entered the office and spoke to her. (Tr. 388:2-4).

confession that was the centerpiece of SEG/BI-LO's "open and shut" case. (Tr. 724:6-8; id. 724:14 – 725:2737:20-23; id. 741:7-16 (Duncan)). The voluntariness of providing statements, such as the one Styles produced is, according to SEG, "critical." (Pl. Exh. 17 at 305). The policy itself stresses that the process of procuring subject statements requires "special care" and "[f]ailure to comply with established . . .policies and procedures can serious damage the credibility of an investigation sometimes to the degree in which the integrity of the case is brought into question." (Id.) Towards that end, the policy emphasizes:

> Statements obtained from any individual must be accomplished free from coercion, force, pressure, promise or any attempt to purposely mislead a person to write such a statement. Statements written by individuals must be made of their own free will and be entirely voluntarily. There can be no exceptions to these basic rules.

(Id.) The policy includes a consent form, granting permission to interview. (Pl. Exh. 17 at 321). These also are to be entered into the APIN case management system. (Pl. Exh. 17 at 278). There is no consent form here because Duncan never even showed it to Styles. (Tr. 719:21 – 720:11 (Duncan)).[20]

Likewise, while deemed to be "critically important," there are no witness statements of the May 23rd Styles interview entered into the APIN system.[21] That's

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[20] Duncan's attempt to excuse his noncompliance with the policy was a key piece of testimony upon which the jury could judge his credibility. Duncan maintained under oath that he was orally instructed to not follow the policy, but he could not even identify who told him that. (Tr. 720:13; id. 721:19 – 722:5 (Duncan)).

[21] Miller was the corporation's "witness" for the meeting with Styles. (Tr. 594:4-10; tr. 599:19-21 (Miller); tr. 722:10-11 (Duncan)). SEG/BI-LO's policy repeatedly stresses the "critical" importance of the witness taking notes, and even how he or she is positioned slightly behind the person interviewed. (Pl. Exh. 17 at 296; see also id. at 300; see id. at 301. ("It is important that all witnesses take detailed notes during the course of any interview. Those notes and subsequent

because SEG/BI-LO remarkably claims that, in violation of the policy, nobody took notes with Miller and Duncan blaming each other and each refuting the other one's account. (Tr. 599:22 - 600:2 (Miller); tr. 710:6; 725:6-7 (Duncan)); see tr. 710:6; id. 710:16-20; id. 724:11-12 (Duncan); tr. 600:8-13 (Miller)).

Duncan acknowledges that his story and Styles's story about what occurred on May 23rd are irreconcilable. (Tr. 719:10-12 (Duncan)). That was by design. SEG/BI-LO policy allows for Duncan to simply record the interview. (Pl. Exh. 17 at 321 ("I further give permission to record this interview using audio and video equipment and to use and publish this recording . . . for any purpose they deem necessary.")). That would have eliminated any doubt as to what occurred.[22] But SEG/BI-LO knows this also would have hampered its prosecutorial efforts. This was all simply an effort to build an "open-and-shut case" for prosecution.

Witness statements for the May 23rd interview are not all that is missing under SEG's policy. The APIN system allows him to enter all documents and details regarding the communications surrounding an investigation. (Tr. r. 708:24 – 19; id. 710:24 – 711:5; id. at 709:20-23 (Duncan)). Yet, Duncan neither documented his calls with Brickman, nor did he include certain text messages in

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write-up documenting [sic] what occurred during the interview is [sic] critical in order to document what was said and more importantly what occurred."); see tr. 725:8 – 726:3 (Duncan)). The SEG/BI-LO policy requires that all such notes be entered into APIN in their entirety. (Pl. Exh. 17 at 308; tr. 726:4-19; id. 728:10-17 (Duncan)).

[22] Duncan argued, however, that they are not allowed to do that, but he could not point to where the policy has ever been changed. (Tr. 720:19 – 721:8 (Duncan)).

the APIN system. (Tr. 709:23-25; tr. 711:18-24 (Duncan)).[23] It is not hard to understand why SEG/BI-LO intentionally omitted these required items while seeking to have Styles prosecuted.

Further, Miller and Duncan (both male) met alone with Styles in the 8 x 10 room. (Tr. 599:8-10 (Miller)). Recognizing the inherent coercion that can exist in these situations, SEG/BI-LO's policy also states, "In an effort to defend an interviewer's actions, the interview should always have a witness present of the same sex." (Tr. 722: 12-20 (Duncan); Pl. Exh. 17 at 300). Of course, what should "always" happen did not happen here. Again, this is no accident. A female witness to corroborate what really happened in that room would have frustrated the efforts to whipsaw Styles into signing a confession to be used for the prosecution SEG/BI-LO sought.

G. Styles was compelled to confront the complaint

After Styles made it home and was able to speak to her husband the night of May 23rd, she decided she would confront the legal jeopardy Glenn described to her. Even though she had been given a Miranda warning, and even though she had been told that she would be arrested, Styles drove herself to the Pendleton Police Department the next day and met with Chief Doyle Burdette on her own volition. (Tr. 298:2 – 299:4 (Styles); tr. 403:11-16 (Burdette)). Styles told Chief Burdette what she had told Duncan and Miller about the donations, about the

[23] At first, Duncan defended the decision to not include the actual information in APIN because he claimed he had entered the dates in the APIN. That led to an admission that the dates of his communications that he documented were wrong (and clearly manipulated to occur after Brickman had been cleared by corporate). (Tr. 712:7 – 713:20 (Duncan)). None of this is a mistake.

matters addressed in her written statement, and why she paid $450 to SEG/BI-LO. (Tr. 403:24 – 404:8; id. 306:10 - 307:4 (Styles)).

Chief Burdette investigated precisely what SEG/BI-LO did not want to come to light. First, the day after Styles spoke to Burdette, he interviewed Brickman (in person) about Styles's claims, which neither Duncan nor Miller would do. (Tr. 404:13 – 405:6 (Burdette)). Brickman appeared nervous, described the encounter as an "interrogat[ion]," and told Chief Burdette falsely that he had no involvement in the investigation other than to provide video, and he flatly denied approving any charitable donations. (Tr. 405:7-25 (Burdette); tr. 499:24 – 500:10; id. 552:16-17 (Brickman)).[24]

Chief Burdette did not allow this to become – as Duncan described it – a "your word against his" scenario. Chief Burdette followed up with Styles and allowed her to provide emails from Cobb/AIM, proving the donations Duncan and Miller would not allow Styles to explain. (Tr. 406:4 – 18 (Burdette); id. 307:5–25 (Styles); Pl. Exhs. 1, 15). Burdette did not request anything from Styles that she did not provide. (Tr. 406:24 – 407:1 (Burdette)).

H. The criminal procedure had already begun, and it resulted in judicial action.

The procedure/practice for prosecution in Pendleton involves judicial action at an early stage. The process begins by someone making a complaint, which is what SEG/BI-LO made in this instance. (Tr. 400:2-12; id. 401:6-9 (Burdette)).

[24] Once again, however, Brickman claimed to lack recall on what was discussed. (Tr. 552:10-15 (Brickman)).

After speaking to those involved, including the victim (which was BI-LO) (tr. 400:19 – 401:5 (Burdette)), the police take the matter to a judge, who determines whether there is probable cause. (Id. 401:29-23). Accordingly, the determination of whether probable cause exists itself involves judicial action. (Tr. 401:24 – 402:3 (Burdette)).

Chief Burdette took the information he obtained from all parties to the judge, including Styles's signed confession, and the judge made the determination that probable cause did not exist. (Tr. 407:14 – 408:21 (Burdette)). Without Styles coming forward and providing the facts that SEG/BI-LO would not consider or provide to the police, Burdette would only have had the confession and video/evidentiary "packet" from Duncan to present to the judge for that determination. (Tr. 408:7-13 (Burdette)).

I. SEG/BI-LO persisted in seeking prosecution

After learning of the disposition of the case, Duncan went to see the Chief, asked why SEG/BI-LO was not allowed to present its case and why the police "didn't push for [Styles] to be charged." (Tr. 453:6 – 454:4; id. 454:16 – 455:10; id. 456:3-5; id. 456:18-20 (Duncan)). Duncan understood that the matter had already gone before a judge, and the Chief told him that, "Well, the judge did it and it's up to the judge.". (Tr. 454:7; id. 457:12-14 (Duncan)). Duncan continued to press and seek prosecution, asking "Well, would it do me any good to speak with the judge and present the evidence that we have?" (Tr. 454:10-12 (Duncan)). Notwithstanding these repeated efforts, Chief Burdette did not buckle to SEG/BI-LO's pressure, as Styles had been forced to do.

VII. STANDARD OF REVIEW

In terms of reviewing the evidence presented at trial, this Court recently summarized the standard for reviewing directed verdict grants as follows:

> When considering a motion for a directed verdict, the circuit court must "view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and [must] deny the motion when either the evidence yields more than one inference or its inference is in doubt." *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008). "When reviewing the [circuit] court's decision on a motion for directed verdict, this court must employ the same standard as the [circuit] court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *McKaughan v. Upstate Lung & Critical Care Specialists, P.C.*, 421 S.C. 185, 189, 805 S.E.2d 212, 214 (Ct. App. 2017) (quoting *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010)) . . . . "Essentially, this [c]ourt must resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party's favor." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006). "On review, an appellate court will affirm the granting of a directed verdict in favor of the defendant when there is no evidence on any one element of the alleged cause of action." *Fletcher v. Med. Univ. of S.C.*, 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010). "When considering directed verdict motions, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Estate of Carr, 379 S.C. at 39, 664 S.E.2d at 86.

Turner v. Med. Univ. of S.C., No. 5723, 2020 S.C. App. LEXIS 41, at *12-13 (Ct. App. May 6, 2020).

As to questions of law, however, this court's standard of review is *de novo*. *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009) (citing *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008)).

VIII. ARGUMENT

This appeal presents the focused issue of what constitutes the legal threshold of "proceedings" or "process" for purposes of the first element of the malicious prosecution claim in the context of municipal/magistrate level actions in South Carolina. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006) (reciting the elements as: "(1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.")

In granting SEG/BI-LO's renewed Motion, Judge Sprouse stated:

> I am going to grant a directed verdict on the issue of malicious prosecution that no proceeding was commenced. I understand Mr. Murphy's argument; however. . . part of that is that the prosecution cannot be reinstated. And it's almost like a double jeopardy argument in this – in this case. It's just assembly of work. There's not an issue. There's no statute of limitations on this type of action. And a judge did not issue a warrant, but there was no case number, no dismissal. So I understand . . . your argument, Mr. Murphy, and you're noted for the Record.

(Tr. 806:3-14). In denying Styles' post-trial Motion, Judge Sprouse stated: "The Court finds that there was not sufficient evidence presented to support a cause of action for malicious prosecution." (R. p. _[Order denying post trial motions at 2]_).

A. The trial court erred as a matter of law in determining that the Malicious Prosecution claim failed because there was no "procedure."

The trial court set the legal bar too high in terms of what actions constitute the "institution of" a proceeding for the tort of malicious prosecution. A malicious prosecution claim merely requires "employment of legal process" or "judicial

process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 210, 153 S.E.2d 693, 695 (1967) (citing Am. Jur).

The decision to call the police is all that was necessary to establish this claim. "It has been held that the requirement for instituting and maintaining a prosecution is satisfied where a store manager calls police for the purpose of arresting a customer . . . ." F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts 496 (4th ed. 2011). In support of their treatise, Professors Hubbard and Felix cite *Elletson v. Dixie Home Stores*, 231 S.C. 565, 99 S.E.2d 384 (1957).

In *Elletson*, a store detained a customer after he walked out with a can of coffee in his coat that he did not pay for. The store merely detained the customer and called the police. The store appealed a jury verdict for the plaintiff/customer, arguing that it had not instituted any process against the plaintiff by merely detaining him for arrest. The South Carolina Supreme Court rejected this attempt to narrow the tort, and it made clear that all that is required is that a defendant take steps that start or facilitate the process:

> There is no merit in appellant's contention that it did not institute and maintain the prosecution of plaintiff. Appellant's manager confined respondent to his stockroom until the police officers arrived in response to his call for the purpose of arresting respondent, whereupon he pointed respondent out and stated he wanted him "carried in"; that it was his intention to treat respondent the same as a "professional shoplifter." He restrained respondent, procured, instigated and set the proceedings in motion. The unlawful arrest of respondent was the proximate result of its manager's instigation and conduct and it is liable therefor even though he did not make or sign the affidavit or warrant, *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 30 S.E.2d 307; see also, 54 C. J. S., Malicious Prosecution, §§ 13-14, p. 966."

Id. at 575, 99 S.E.2d at 389.

In the civil context, the Court of Appeals has more recently emphasized that the term “process” should not be given a restrictive interpretation. the *Food Lion* Court made clear that “process” should not be given a narrow interpretation and includes any action incident to the use of legal proceedings:

> [W]e agree with Food Lion that the trial court erroneously circumscribed its meaning by giving it the technical construction found in *Royal Exchange Assurance of London v. Bennettsville & C.R. Co.*, 95 S.C. 375, 79 S.E. 104 (1913). In our view, "process," as it pertains to the abuse of process tort, embraces **the full range of activities and procedures** attendant to litigation. *See Hart v. O'Malley*, 436 Pa. Super. 151, 647 A.2d 542, 551 (Pa. Super. Ct. 1994) ("**The word 'process' as used in the tort of abuse of process has been interpreted broadly and encompasses the entire range of procedures** incident to the litigation process.") (citation omitted); *Nienstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876, 880 (Ariz. 1982) ("'Process' as used in the tort . . . **is not restricted to the [traditionally] narrow sense of that term**."); 72 C.J.S. § 106 at 694 ("For purposes of the tort, the word 'process' may encompass **a range of court procedures incident to the litigation**."); *Harper*, supra, § 4.9 at 4:104, n.52 ("That a tort action, loosely called 'abuse of process,' requires the use of the word process as that word is technically defined in other contexts is no more self-evident than that a tort action loosely called 'false imprisonment' should require a 'prison.'").

Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 70, 567 S.E.2d 251, 253 (Ct. App. 2002) (emphases added).

Even cases in which the claim has been dismissed reject the notion that efforts to prosecute must result in an arrest, even though they arise under a different criminal procedure. In *Clemmons v. Nicholson*, 180 S.C. 54, 185 S.E. 34 (1936), for example, the relative of a decedent swore out warrant, claiming that the plaintiff killed a man and set fire to his home. There were resulting false reports that the plaintiff was arrested and taken to the penitentiary. Upon demand by the

plaintiff, the magistrate held a preliminary hearing even though there was no arrest. The plaintiff testified and there was no evidence, so the case was dismissed. The plaintiff sued, and the defendant successfully had his civil action dismissed on grounds that there was no valid preliminary hearing without an arrest. On appeal the South Carolina Supreme Court reversed the dismissal. The Clemmons Court noted that, "Under the **former** decisions of this Court, in order to maintain an action for malicious prosecution, it is indispensable that there be an arrest. This was decided in the case of *Mathew O'Driscoll v. Hugh M'Burney*, 11 S.C.L. 54, 2 Nott & McC. 54 . . . ." *Clemmons*, 180 S.C. at 57, 185 S.E. at 35 (emphasis added).

The *Clemmons* Court noted that other "old" cases also confused the issue. The Court remarked that older cases stand for the proposition that there just needs to be some proceeding that puts the person in the position of acting to clear their name. *Id.* at 58, 185 S.E. at 36. The *Clemmons* Court then squarely determined that an arrest was *not* required once the process was set in motion:

> '[U]nder these circumstances, the appellant had the right to have his guilt or innocence established by the Court accusing him, and as speedily as possible, and when he voluntarily appeared and submitted himself to the jurisdiction of the Court, and the Court acted thereupon, it cannot be said that there was not at least a constructive arrest.

Id. at 59, 185 S.E. at 36.

Likewise, in *Barber v. Whirlpool Corp.*, 34 F.3d 1268 (4th Cir. 1994), the employer defendant accused the employee plaintiff of stealing painting equipment. The company gave two statements to police, which obtained warrants. The company's HR manager informed the plaintiff of the warrants, and the plaintiff argued he had not stolen anything. The plaintiff then called a lawyer, who

contacted the Sheriff's office. The Sherriff's office informed the plaintiff that he could turn himself in or be arrested. The plaintiff made arrangements to turn himself in. Before the appointed time, however, the employer had second thoughts. Ultimately, the employer decided to terminate the plaintiff, but no charges were pursued by the authorities and the warrants were "eventually dismissed." 34 F.3d at 1277.

The *Barber* Court flatly rejected the argument that, because "Barber was never arrested, proceedings were not instituted against him." *Id.* The Fourth Circuit cited *Gibson v. Brown*, 245 S.C. 547, 550, 141 S.E.2d 653, 654 (1965) for proposition that liability lies if one "causes" a prosecution to be maintained or "voluntarily aids or assists in its prosecution." *Barber*, 34 F.3d. at 1277.

B. Styles provided sufficient evidence to support a malicious prosecution claim.

The trial court's application of the law to this case also was erroneous. Given the correct legal analysis, discussed above, there is no dispute in this case that SEG/BI-LO initiated the process when Brickman called the police and informed them that corporate wanted Styles to be prosecuted.

Nor is there any dispute that the process in place, as described by Chief Burdette, was followed through to a conclusion, which involved judicial action. (*See supra* Section VI(H)).

Finally, there is no question that Styles responded reasonably by meeting with Chief Burdette given the serious consequences she was facing, and the inevitable result had law enforcement and the judge only had the selected "packet" of materials that SEG/BI-LO chose to disclose.

As with the plaintiff in *Clemmons*, Plaintiff was placed in a situation where she had every right to seek a speedy resolution. Like the plaintiff in *Barber*, Plaintiff was told that the matter would proceed to the judge, and that she would have to turn herself in. There is no question that Defendants procured the process and put the wheels in motion. Defendants not only provided documentation, Brickman told the officer that "corporate wanted to press charges," and Duncan persisted in seeking to have Plaintiff charged even after the judge determined that the elements of the crime were not met. Defendants did far more than the actions giving rise to liability in *Elletson*.

Given the established principals in South Carolina's case law on malicious prosecution, the trial court erred in determining that the facts here do not establish that SEG/BI-LO had instituted a proceeding for purposes of the first element of the wrongful discharge tort. *Law*, 368 S.C. at 435, 629 S.E.2d at 648.

IX. CONCLUSION

For the foregoing reasons, this Court should reverse the grant of a directed verdict on the malicious prosecution claim, vacate any judgment awarded SEG/BI-LO on such claim, and remand for a new trial if the Court: (a) grants a new trial on the false imprisonment claim; (b) orders that SEG/BI-LO be awarded judgment as to the false imprisonment claim; or (c) this Court declines to accept Styles's offer to pursue this appeal on a conditional basis. See supra Section V.

Respectfully submitted this 19th day of August 2020.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Judge

Appellate Case Number 2020-000818

Civil Action Number 2014-CP-42-1759

Lisa Styles . . . . . Respondent - Appellant,

v.

Southeastern Grocers, Inc. and BI-LO, LLC . . . . . Appellants-Respondents.

Proof of Service

The Undersigned hereby certifies that on the date indicated below she served counsel for Appellant with a copy of the Initial Brief of Respondent by mailing a copy to:

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