THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-01127

Appellate Case No. 2020-000818

Lisa Styles,

Respondent-Appellant,

v.

Southeastern Grocers, LLC
And BI-LO, LLC.

Appellants-Respondents.

INITIAL BRIEF OF APPELLANTS-RESPONDENTS

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COUNSELS FOR APPELLANTS-RESPONDENTS

I. TABLE OF CONENTS

II. TABLE OF AUTHORITIES

Court Rules

Cases

Other Authorities

III. STATEMENT OF ISSUES ON APPEAL

1. Whether the Trial Court abused its discretion by denying Defendants' post-trial motions where the evidence admitted at trial did not support the jury's false imprisonment verdict.
2. Whether the Trial Court's admission of highly prejudicial evidence during the trial was an abuse of discretion resulting in prejudicial error entitling Defendants to a new trial.
3. Whether the Trial Court abused its discretion by denying Defendants' post-trial motions where the evidence admitted at trial did not support the damages awarded by the jury.

IV. STATEMENT OF THE CASE

Plaintiff, Lisa Styles ("Plaintiff") worked for Defendants Southeastern Grocers, LLC ("SEG") at its subsidiary, Bi-Lo, LLC, ("Bi-Lo") (collectively referred to herein as "Defendants") as a Customer Service Manager at its grocery store in Pendleton, SC. (Tr. 498:17-21 (Brickman)). In March 2018, the Pendleton Store Manager, Michael Brickman ("Brickman"), reviewed the store's security footage in order to determine whether the women's restroom had been deep-cleaned per a company directive. (Tr. 503:10 – 504:20 (Brickman)). While reviewing the footage, Brickman noticed that Plaintiff was not in the customer service area where she was supposed to be working and where Brickman expected to see her. (Tr. 505:10-19 (Brickman)). So, Brickman began checking different store video channels to determine where Plaintiff was in the store. (Tr. 505:20-25 (Brickman)). In the process, Brickman observed videos showing Plaintiff taking a large box filled with merchandise from behind a register, putting the box in a shopping cart, wheeling the shopping cart to the parking lot and putting the box in her vehicle. (Tr. 506:21-24, 507:5-13 (Brickman)). Brickman reviewed additional videos in an effort to identify the contents of the box. (Tr. 507:23 – 508:6 (Brickman)). Brickman observed Plaintiff putting various items from the store shelves in the box behind a register without paying for them. (Tr. 508:1-15 (Brickman)). Brickman telephoned and then texted his designated SEG Loss Prevention/Regional Asset Protection Manager, Ronnie Duncan ("Duncan") on April 11, 2018, and reported what he observed on the videos. (Tr. 510:4-13; 516:18 – 517:2 (Brickman); 650:11-21 (Duncan); Defendants' Trial Ex. 20). Duncan told Brickman to send him the details of what he had found. (Tr. 652:1-10 (Duncan)).

On April 30, 2018, Duncan began his investigation of the alleged incidents involving Plaintiff. (Tr. 653:19- 654:2 (Duncan); Defendants' Trial Ex. 19). Duncan reviewed the subject security videos and confirmed that Plaintiff had gathered the merchandise during the course of the

day, stored those items in the floral department, and then took the merchandise out to her car near the end of her shift just before the store was about to close. (Tr. 659:4-19 (Duncan); Defendant's Trial Ex. 19). Duncan further testified that through his investigation he was able to determine that Plaintiff had not paid for the items she took to her car. (Tr. 661:10-21 (Duncan)). Duncan contacted his supervisor to discuss his investigation and findings and was instructed to interview Plaintiff to ascertain why Plaintiff removed the items without paying for them. (Tr. 664:1-14 (Duncan)). Duncan then asked SEG's Human Resources Business Partner, Ken Miller ("Miller"), to accompany him on his interview with Plaintiff to act as a witness. (Tr. 569:18-24 (Miller); 664:24-25 (Duncan)). Duncan's testimony was clear that Defendants' Asset Protection department, and Duncan as a Regional Manager in that department, were solely responsible for the investigation of Plaintiff and the manner, method and timing of that investigation. (Tr. 698: 1- 699:17 (Duncan)). Duncan further confirmed that Brickman as the store manager had no influence or involvement in the investigation into Plaintiff other than his initial reporting of the situation to Duncan. (Tr. 698:1-25; 699:8-17 (Duncan)).

The interview took place on May 23, 2018, in the manager's office at the Pendleton store. (Tr. 333:4 – 334:16 (Styles); 569: 1 (Miller); 697:11-16 (Duncan); Defendants' Trial Ex. 7). Plaintiff began her shift that day at noon and was asked to come into the manager's office at approximately 12:16 pm. (Tr. 665:10-12; 666:2-8 (Duncan); Defendants' Trial Ex. 7). Duncan and Miller were already in the office and when Plaintiff arrived, she sat in the chair closest to the door. (Tr. 335:8-11 (Styles); 579: 669:18-21 (Miller)). Duncan intentionally placed the chair by the door prior to the interview so that Plaintiff could leave at any time. (Tr. 571:20-23 (Miller); 670:1-6 (Duncan)). The door to the manager's office was not locked from the inside. (Tr. 335:20-22 (Styles)). In addition, there were no physical barriers or objects blocking the door on either side.

(Tr. 357:21- 358:2 (Styles)). Plaintiff testified that within the first five to six minutes after entering the room she knew she "had a problem." (Tr. 343:24 – 344:6 (Styles)).

When questioned about the missing merchandise, Plaintiff admitted that she had removed Easter-related and other merchandise from the store without paying for them. (Tr. 573:24-25 (Miller); 667:17-19; 668:3-4, 23-25; 669:1-3 (Duncan)). While Plaintiff stated that she donated the Easter items to charity, she also acknowledged that she took other products for herself and that she did not have approval from Defendants to remove any of these items, including those she allegedly donated. *Id.* Plaintiff admitted to Duncan and Miller that she knew her actions were wrong. (Tr. 576:16-20 (Miller); Defendants' Trial Ex. 19). Plaintiff estimated that she removed approximately $450 to $500 worth of products from the store without authorization and offered to pay $450 to Defendants in restitution. (Tr. 360:12-17 (Styles); 672:7-25 (Duncan)). At Duncan's request, Plaintiff then prepared a written statement in her own words indicating the value of the products she had removed from the store and her reasons for taking the items. (Tr. 578:2-7 (Miller); 673:3-20 (Duncan); Plaintiff's Trial Ex. 12). Plaintiff finished writing her statement and provided it to Duncan and Miller at 12:42 p.m. (Tr. 296:9-10; Plaintiff's Trial Ex. 12). Plaintiff then requested to leave the interview room to smoke a cigarette outdoors. (Tr. 283:2 (Styles); 578:22-25 (Miller)). Video evidence presented at trial showed that Plaintiff left the meeting room at 12:56 p.m. to take a smoke break outdoors. (Tr. 333:15-22; 334:1-16 (Styles); Defendants' Trial Ex. 7; Plaintiff's Trial Ex. 23). The evidence showed Miller walking outside with Plaintiff. (Tr. 580:1-7 (Miller)). Plaintiff admitted that, once outside the store, she never asked Miller if she could leave. (Tr. 344:13-17 (Styles)). In addition, Miller told the jury that he accompanied Plaintiff outside as part of his role as the "human resource people person." (Tr. 580:16-18 (Miller)). Miller recognized that it had not been an easy day for Plaintiff, and he went outside with her in case she had questions

or concerns. (Tr. 580:18-20 (Miller)). Miller testified that he did not go with her in order to watch or coerce her, but rather to be a resource if she needed assistance. (Tr. 580:20-23 (Miller). He was not directed by anyone to follow or "keep an eye" on Plaintiff. (Tr. 581:22 – 582:9 (Miller)). Duncan and Miller testified that at no point during the interview did Plaintiff make any other request to leave the room (Tr. 572:11-18; 578:22-25 (Miller); 669:7-17; 676:8-14; 680:12-17 (Duncan)).

After Plaintiff provided her written statement, Duncan instructed Brickman to call the police. (Tr. 678:21-24 (Duncan)). Pendleton Police Department Officer Glenn arrived thereafter. Officer Glenn was provided with Plaintiff's statement and then spoke with Plaintiff. (Tr. 787:8-17 (Glenn)). Plaintiff admitted to Officer Glenn that she had taken the subject items from the store. *Id.* Plaintiff was not arrested for removing these items from the store nor was a warrant for her arrest ever issued. (Tr. 294:5-7; 378:2-8 (Styles)). At trial, Plaintiff conceded she did not tell Officer Glenn that she was being kept at the store against her will or was being prevented from leaving the store. (Tr. 348:22-24 (Styles); 788:18-24 (Glenn)). The record evidence established that at 1:29 p.m., after Officer Glenn had been to the store, and after she left the room for a smoke break, Plaintiff purchased a money order to pay for the items she had taken. (Tr. 355:13-16 (Styles); Plaintiff's Trial Ex. 13). After Plaintiff gave Miller the money order, Miller terminated Plaintiff's employment and told her to log into the computer and print her last pay stub. (Tr. 356:14-16 (Styles)).

Plaintiff admits that at no time during the meeting with Miller and Duncan was she touched or physically threatened. (Tr. 336:22 - 337:3 (Styles)). She also admits that she was not threatened with the loss of her employment or otherwise threatened with any type of harm to herself, her

family or her friends. (Tr. 337:4-13 (Styles)). Plaintiff further acknowledged that she was being paid for her shift during the period she was being interviewed. (Tr. 356: 20-25 (Styles)).

Over Defendants' objections, Plaintiff was allowed to submit testimony in furtherance of her unsupported theory that she had been "set up" by her store manager, Brickman, as retaliation for complaining about him even though the record was clear that Brickman was not the person who decided to interview Plaintiff, nor was he involved in the actual interview. To this end, Plaintiff submitted evidence to the jury that she had previously complained about Brickman to her supervisors and had gathered statements from other employees also complaining about Brickman and his treatment of employees. (Tr. 240:2-22 (Styles); Plaintiff's Trial Ex. 7). Plaintiff testified that she sent these statements to Defendants' Human Resources representative, Allison Furnas ("Furnas") at the corporate office but that no one ever followed up with her or any of the other complaining employees or investigated their complaints about Brickman. (Tr. 269:4-10; 272:1-2 (Styles)). Plaintiff was also allowed to submit Furnas's deposition testimony wherein Furnas stated that during her employment with Defendants she had conducted between 1100 and 1200 investigations of human resources related issues. (Tr. 443:11-17 (Furnas)). In addition, Plaintiff testified about and submitted into evidence, over Defendants' objections, two anonymous customer complaints about Brickman's alleged treatment of certain female employees. (Tr. 285-287 (Styles); Plaintiff's Trial Exhibit 11). Plaintiff was similarly permitted to submit evidence relating to Brickman being told by his supervisor in early 2018 to be less "harsh or negative" with employees. (Tr. 543:3-24 (Brickman). The jury was also told that at the end of 2017, Plaintiff relayed complaints about Brickman made by other employees to his supervisor, Randy Ellison. (Tr. 424:21 – 425:15 (Ellison)). Ellison's testimony was that these were "general" complaints about Brickman's communication style being "harsh" and "short." (Tr. 425:18-426:6 (Ellison)).

In addition, excerpts from Ellison's deposition were read to the jury wherein Ellison recalled speaking to six employees in early 2018 (one male and five females) and that three of them had "issues" with the way Brickman spoke to them. (Tr. 430:19-20). All of this evidence was admitted even though it was undisputed that Brickman had no knowledge that Plaintiff had ever complained about him when he reported his video findings to Duncan on April 11, 2018, and that Brickman was not involved in deciding whether to interview Plaintiff about the stolen merchandise. (Tr. 500:19-23; 518:21 – 519:1-13 (Brickman); Plaintiff's Trial Ex. 19).

Over objection, the Court also allowed Plaintiff to present testimony and evidence about matters which took place days after the interview (when the alleged false imprisonment occurred). Specifically, Plaintiff was allowed to testify that the day after the interview she went to the Pendleton Police Department and met with its Chief of Police, Doyle Burdette. (Tr. 298:7-18 (Styles)). Over Defendants' Motion in Limine on the subject and objection at trial, Chief Burdette testified that Plaintiff came to see him to tell her side of the story. (Tr. 403:17-19 (Burdette)). He told the jury that on the day after she met with him, May 25, 2018, he went to the Bi-Lo store to investigate and interview Brickman who he stated appeared "nervous." (Tr. 405: 7-10 (Burdette)). Chief Burdette testified that he took the information from his investigation to a judge who decided not to issue a warrant for Plaintiff's arrest. (Tr. 408:14-21 (Burdette)). Chief Burdette told the jury that there was no probable cause to issue a warrant. (Tr. 409:3-9 (Burdette)).

On June 8, 2018, Plaintiff filed the Complaint in this action seeking compensatory and punitive damages from Defendants for abuse of process, malicious prosecution, false imprisonment and fraud. (R. p. ___). In her Complaint, Plaintiff alleged that the interview conducted by Defendants' agents constituted false imprisonment, that Defendants committed fraud by calling the police even after she purchased a money order to pay for the stolen items, and that

Defendants' complaints to the police constituted malicious prosecution and abuse of process. Plaintiff also filed a Charge of Discrimination with the EEOC mirroring the substantive allegations in her Complaint and alleging that her termination was in retaliation for her prior complaints to management about store manager Brickman whom she claimed engaged in gender discrimination. After filing her initial charge with the EEOC, Plaintiff did not pursue her civil rights claims further.

Prior to the trial, Defendants filed a Motion for Summary Judgment which was heard on March 6, 2020 (the Friday before the commencement of trial). (R. at ___). Defendants' motion sought summary judgment on all of Plaintiff's claim and (in an effort to streamline the matter and avoid the jury's confusion and potential prejudicial effect of the above-referenced evidence) specifically pointed out that Plaintiff's claims for malicious prosecution and abuse of process were particularly deficient because, as a matter of law, no arrest was made nor was any warrant issued—both of which are essential elements to those asserted claims. The Court denied these motions. (R. at ___).

When the trial commenced on March 9, 2020, Defendants asked the Court to renew consideration of these issues noting the fatal absence of an arrest or warrant essential to these claims and explained to the Court that the inclusion of the malicious prosecution and abuse of process claims would involve the potential introduction of a broad swath of evidence which would be irrelevant to the remaining claims and cause likely and irreparable confusion to the jury to the Defendants' prejudice. This request was denied. (Tr. 57:2 – 58:24).

Defendants also submitted five (5) Motions in Limine to the Court seeking to exclude several highly prejudicial issues including, but not limited to, the following: (1) evidence related to Plaintiff's complaints that Brickman harassed or discriminated against her and other female employees because of sex and the Defendants' investigation of that complaint; (2) the testimony

of Chief Burdette; and (3) evidence regarding Plaintiff's termination and any alleged damages related thereto including emotional distress damages related to her loss of employment. (R. at ___). Defendants' motions to exclude this evidence were denied.

Upon conclusion of the Plaintiff's case, Defendants moved for directed verdict on all counts. The Court denied the motion as it related to Plaintiff's claim for false imprisonment, but deferred ruling on the remaining claims, allowing the additional examination and submission of evidence from Plaintiff regarding matters which were not only irrelevant but also unduly and highly prejudicial to the false imprisonment and fraud claims. (Tr. 483:8-21).

At the conclusion of evidence, Defendants renewed their motions for directed verdict as to all counts. In response thereto, Plaintiff voluntarily abandoned her abuse of process claim, and the Court directed a verdict for Defendants on Plaintiff's malicious prosecution count. (Tr. 798:18-22; 816:1-6; 807:1-5). The jury rendered a verdict in favor of the Defendants on the fraud count and in Plaintiff's favor on the false imprisonment claim. (R. at __). The jury awarded Plaintiff $100,000 in compensatory damages on the lone false imprisonment count. (R. at __). Following this verdict, Defendant moved the Court to deny submission of Plaintiff's punitive damages claim to the jury as the evidence did not support a claim that the Defendants' conduct was either willful or wanton. The Court denied the motion and the jury subsequently rendered a verdict of $10,000 in punitive damages. (R. at __).

Defendants filed post-trial motions with the Court requesting the entry of judgment notwithstanding the verdict, or, in the alternative, a new trial based on the Thirteenth Juror Doctrine, a new trial absolute or a new trial *nisi remitter*. (R. at ___). The Court summarily denied all of these motions. (R. at __).

V. STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, the jurisdiction of the Court of Appeals extends to correct errors of law. *Milliken & Co. v. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828 (Ct. App. 2009). A jury's factual finding will only be disturbed if there is no evidence which reasonably supports the finding. *Felder v. K–Mart Corp.*, 297 S.C. 446, 448, 377 S.E.2d 332, 333 (S.C 1989); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 412, 717 S.E.2d 765, 769 (Ct. App. 2011).

While the trial court has broad discretion in controlling the examination of witnesses and admission of evidence, as well as ruling on post-trial motions, an abuse of discretion amounting to an error of law warrants reversal. *North Greenville College v. Sherman Constr. Co.*, 270 S.C. 553, 557, 243 S.E.2d 441, 442 (S.C. 1978); *Riley v. Ford Motor Co.*, 414 S.C. 185, 192-92. 777 S.E.2d 824, 828-29 (S.C. 2015) (the discretion of a trial judge in ruling on a motion for new trial is not absolute and it is the duty of the reviewing court in a proper case to review and determine whether there has been an abuse of discretion amounting to error of law); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 42, 691 S.E.2d 135, 145 (S.C. 2010) (when reviewing a trial judge's grant or denial of a motion for judgment notwithstanding the verdict (JNOV), the reviewing court reverses only when there is no evidence to support the ruling or when the ruling is governed by an error of law); *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (on appeal of denial of motion for new trial *nisi*, reviewing court will reverse when verdict is grossly inadequate or excessive, requiring granting of new trial absolute).

To warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice; prejudice is a reasonable probability that the fact-finder's determination was influenced by the challenged evidence or the lack thereof. *Hill v.*

South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 14 698 S.E.2d 612, 619 (S.C. 2010); *see also Burke v. Republic Parking System, Inc.*, 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017) (determining whether prejudice exists from the admission or exclusion of evidence, so as to warrant reversal as an abuse of discretion, depends on the circumstances, and the materiality and prejudicial character of the error must be determined from its relationship to the entire case).

VI. ARGUMENT

A. The Trial Court abused its discretion by failing to grant Defendants' Motion for Judgment Notwithstanding the Verdict where the record clearly shows that Plaintiff did not produce sufficient evidence upon which a reasonable juror could conclude that Plaintiff was falsely imprisoned by Defendants.

When reviewing a motion for judgment notwithstanding the verdict (JNOV), an appellate court must employ the same standard as the trial court. *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006). The appellate court will reverse the trial court when there is no evidence to support the ruling below and if no reasonable jury could have reached the challenged verdict. *Welch v. Epstein,* 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000)

The Trial Court's denial of Defendants' Motion for Judgment Notwithstanding the Verdict was error and an abuse of discretion because Plaintiff failed to produce sufficient evidence upon which a reasonable juror could conclude that she was falsely imprisoned by Defendants pursuant to South Carolina law. *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (S.C. 1998) (motion for judgment notwithstanding the verdict should be granted if no reasonable jury could have reached the challenged verdict); *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (S.C. 2003) (trial court should grant motion when the evidence is insufficient to support the verdict).

Under South Carolina law, to prevail on a claim for false imprisonment, the plaintiff must prove three elements: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (S.C. 2006) (citations omitted)). "The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification." *Id.* While liability does not require that an individual be confined within a prison or within walls, or be physically assaulted or even touched, the tort of false imprisonment does require the actual restraint of a person. *Westbrook v. Hutchison*, 195 S.C. 101, 109, 10 S.E.2d 145, 148 (S.C. 1940). For example, sufficient restraint to state a cause of action was found where a store employee caused a group of four people to surround a customer, and that same employee stood inside the driver's side door of the customer's car preventing him from closing it and leaving. *Callum v. CVS Health Corporation*, 137 F. Supp. 3d 817 (D.S.C. 2015). Similarly, United States Air Force officials and agents were found to have sufficiently restrained civilian employees to support false arrest claims where the employees were told that they could not leave the officers' club until their interviews were completed, were denied food and water, and were denied use of telephones or use of bathroom facilities without escort. *Zimbelman v. Savage*, 745 F. Supp. 2d 664 (D.S.C. 2010).

In stark contrast here, Defendants' actions did not come close to the type of conduct which supports a finding of "restraint" needed to support a false imprisonment claim. Indeed, at trial, Plaintiff failed to establish the first two elements of false imprisonment; *i.e.*, that she was restrained by Defendants and the restraint was intentional. Defendants admitted the following undisputed evidence at trial to show that Plaintiff was not intentionally restrained:

- Plaintiff voluntarily entered the manager's room for the interview at 12:16 p.m. on May 23, 2018. (Tr. 333:4 – 334:16 (Styles); Tr. 569:1 (Miller); Tr. 697:11-16 (Duncan); Defendants' Trial Ex. 7).
- At the time of the interview, Plaintiff was on-duty and being compensated for her time. (Tr. 356: 14-16 (Styles); Tr. 665: 10-12; 666: 2-8 (Duncan)).
- Plaintiff was not physically restrained, touched or assaulted. (Tr. 336:22 – 337: 3 (Styles)).
- The only other people in the room were Duncan and Miller. (Tr. 571:20-23 (Miller)).
- There was a desk in the room and Duncan and Miller sat on the opposite side of the desk from Plaintiff. (Tr. 336:3-21 (Styles)).
- Plaintiff was seated closest to the door; Duncan and Miller were seated behind a desk in front of her, and she had an unobstructed path to the door behind her. (Tr. 335:8-11 (Styles)).
- The door to the room was closed but it had a window and was not locked from the inside, so that anyone from inside the room could open it and walk out of the room at any point. (Tr. 275:15-16; 335:16-22 (Styles)).
- The door was closed in the same fashion as it was during all other meetings Plaintiff had attended in that room while working for Defendants. (Tr. 358:3-8 (Styles)).
- There was nothing in front of the door preventing Plaintiff from leaving. (Tr. 357:24 – 358: 2 (Styles)).
- Plaintiff was not threatened with the loss of employment or otherwise threatened with any kind of harm to her or her family or friends. (Tr. 337:4-13 (Styles)).

- Officer Glenn, who was called to the store after the interview, confirmed that Plaintiff never indicated that she was being prevented from leaving the office. (Tr. 788:18-24 (Glenn)).

At trial, the only "evidence" Plaintiff presented to support her claim of intentional restraint was her own self-serving testimony. But even that testimony supported Defendants' position that she was not intentionally restrained. For example, Plaintiff testified that within five to six minutes of entering the interview room at 12:16 p.m. she realized she had a "problem" and wanted to leave. (Tr. 343:24 – 344:12 (Styles)). Plaintiff claimed, however, that she was told she was "not allowed" to leave the interview room without giving a written statement—which statement she provided at 12:42 p.m. (Tr. 280:23-25; 343:7-10 (Styles); Plaintiff's Trial Ex. 12).[1] Yet, after submitting the requested statement, the undisputed evidence showed that Plaintiff did not leave the interview room or even attempt to leave until seventeen (17) minutes later at 12:59 p.m., when she went outside to smoke a cigarette. (Tr. 342:10-12 (Styles); Plaintiff's Trial Ex. 23). Moreover, although Plaintiff claimed that she was told Miller had to escort her outside, Miller refuted that allegation and testified that no one directed him to escort her outside and that, as a human resources representative, he walked outside to be a resource for her in the event she needed assistance of any sort. (Tr. 580:16-23; 582:3-5 (Miller)). In addition, a photograph admitted into evidence showed Plaintiff at the front of the store on her way back inside after her break, with Miller nowhere in the scene—contradicting Plaintiff's testimony that Miller was charged with watching her and stayed three to four feet from her during this break. (Tr. 283:9-10 (Styles); Defendants' Trial Ex. 11). Notably, the photograph also showed that after Plaintiff finished her cigarette break, she

[1] Neither Duncan nor Miller corroborated Plaintiff's contention that she was told she could not leave the room without providing a written statement. (Tr. 280:23-25 (Styles); Tr. 579:13-17 (Miller); Tr. 673:4 – 676:14; 733:9-10 (Duncan)).

voluntarily returned to the office at 1:05 p.m. (Defendants' Trial Ex. 11). Accordingly, even if the jury believed Plaintiff's disputed testimony that she was restrained from leaving the room until providing a written statement and was still restrained during her outdoor smoke break, Plaintiff's acts of voluntarily staying in the room another seventeen (17) minutes after giving the statement and then voluntarily returning to the interview room after her smoke break undermines her claims of constraint. *See Beraho v. South Carolina State College*, 302 S.C. 129, 131, 394 S.E.2d 28, 29 (Ct. App. 1990) (it is critical that "[f]orce of some sort must be used, and it must be a detention against the will... for if [the plaintiff] voluntarily place[s] himself in a situation where another may lawfully do that which has the effect of restraining liberty, especially if he refuse[s] to depart when he may, he cannot complain that he is unlawfully imprisoned against his will." (citations omitted)); *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 229, 317 S.E.2d 748, 754 (Ct. App. 1984) (no one can enforce a right arising out of a transaction which he has voluntarily assented to).

In addition, even if Plaintiff presented sufficient (or any) evidence of intentional restraint (which she did not), there are **no** uncontroverted issues of fact on which reasonable persons could differ with respect to the issue of whether such restraint was unlawful. South Carolina law dictates that it was Plaintiff's burden at trial to establish a lack of probable cause for the alleged restraint. *Jackson v. City of Abbeville*, 366 S.C. 662, 667, 623 S.E.2d 656, 659 (Ct. App. 2005). Specifically, Plaintiff must establish that, at the time of questioning her on May 23, 2018, Duncan, acting on behalf of Defendants, did not have a good faith belief that she was guilty of stealing. *Id.* (recognizing that the determination of probable cause is not an academic exercise in hindsight.). This essential element of the claim required Plaintiff to show that Duncan's belief did not rest on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances,

to believe likewise. *Id.* If Duncan had probable cause, it does not matter whether Plaintiff was restrained; she is not entitled to recover because the restraint was not unlawful. *Faulkenberry v. Springs Mills, Inc.*, 271 S.C. 377, 379, 247 S.E.2d 445, 446–47 (S.C. 1978) ("Since we conclude that the actions of appellant's agents were done with legal justification we need not determine whether the delay or restraint of respondent at the gatehouse as she left work constituted the restraint required to make out false imprisonment. [citation omitted] If appellant was legally justified in restraining respondent, she is not entitled to recover.").

Plaintiff did not, however, sustain this burden. Specifically, Plaintiff failed to refute Defendants' evidence showing that Duncan—who was undeniably the person responsible for conducting the investigation and interview of Plaintiff on behalf of Defendants—had probable cause to believe Plaintiff engaged in misconduct by removing merchandise without paying for it. *State v. George*, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (S.C. 1996) (whether probable cause exists depends upon the totality of the circumstances surrounding the information at the detainer's disposal); *Deaton v. Leath*, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (S.C. 1983) (probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the detaining person's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime); *Jones v. City of Columbia*, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (S.C. 1990) ("'Probable cause' is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.").

Duncan testified to clearly seeing Plaintiff stealing merchandise on Defendants' security video—acts which Plaintiff subsequently admitted committing in the interview, in her written

statement, in her discussion with Officer Glenn[2] and even at trial. (Tr. 508:1-15 (Brickman); Tr. 653:19 – 654:2; 659:4-19; 661:10-21 (Duncan); Tr. 787:8-10 (Glenn); Plaintiff's Trial Ex. 12). Plaintiff's misguided attempts to shift the focus (and the blame) to Brickman by attacking his character and delving into his alleged ulterior motives for "retaliating" against Plaintiff are the ultimate red herring. First and foremost, the record is clear that Brickman was not involved in the decision to interview Plaintiff nor was he involved in the interview itself. (Tr. 699:8-17 (Duncan)). Accordingly, Brickman's motivations at the time of the false imprisonment are completely irrelevant. Second, Plaintiff's entire theory of retaliation as a motive was undermined by the evidence showing that when Brickman told Duncan about the video showing Plaintiff stealing merchandise on April 11, 2018, Brickman was not aware that Plaintiff had even complained about him. (Tr. 500:19-23; 518:21 – 519:1-13 (Brickman); Plaintiff's Trial Ex. 19). The evidence also showed that prior to the interview on May 23, 2018, Duncan—the decision-maker here—was not aware of any complaints Plaintiff had made concerning Brickman. (Tr. 697:17-23 (Duncan)). This evidence is fatal to Plaintiff's theory of retaliation as motive because the law is clear that a decision-maker's true motive can only be determined based upon his knowledge at the precise moment when he made the employment decision. *See Crapp v. City of Miami Beach*, 242 F.3d 1017, 1020 (11th Cir. 2001); *Turnes v. Amsouth Bank, N.A.*, 36 F.3d 1057, 1062 (11th Cir. 1994) (stating a decision-maker cannot be motivated by knowledge he did not have at the time); *Lloyd v. Georgia Gulf Corp.*, 961 F.2d 1190 (5th Cir. 1992) (upholding exclusion of employer's testimony about facts unknown to decision-maker at the time of decision because those facts were wholly irrelevant). Rather, the only relevant evidence concerns what the decision-maker; i.e., Duncan,

[2] This direct admission was included in Officer Glenn's report which was excluded from evidence at trial. (Court's Trial Ex. 8).

knew at the time of the allegedly wrongful action. *Id.; Walker v. Mortham*, 158 F.3d 1177, 1182 n. 8 (11th Cir. 1998) (employer's proffered non-discriminatory reasons must include facts which the decision-maker knew at the time the decision at issue was made).

Further, the record evidence clearly shows that Defendants' actions under the circumstances were not only justified, but indisputably reasonable. Duncan and Miller questioned Plaintiff while she was on-duty, at work, in private, and away from other employees. (Tr. 356:14-16 (Styles); Tr. 665:10-12; 666:2-8 (Duncan)). Plaintiff was neither physically restrained nor blocked from the room's exit at any time and she was not threatened in any way. (Tr. 336:22 – 337:3; 337:4-13; 357:24 – 358:2 (Styles)). Plaintiff entered the room at 12:16 p.m., knew she had a "problem", admitted she took the merchandise and claimed she wanted to leave approximately six minutes later only to be told by her employer's Regional Asset Protection Manager that she was required to complete a written statement. She completed a written statement 20 minutes later at 12:42 p.m. and then inexplicably remained in the room until she left for a cigarette break at 12:59 p.m. (Tr. 343:24 – 344:12 (Styles); Defendants' Trial Ex. 7; Plaintiff's Trial Exhibits 12 and 23). Even if the jury were to believe Plaintiff's spurious claims that she was not allowed to leave until she provided a statement, the record shows that the statement was provided within 20 minutes of when she first wanted to leave, yet she remained in the room, then left the room, then returned to the room where she admitted her misconduct to Pendleton Police Officer Glenn. Clearly, based on the evidence submitted, Duncan's decision on behalf of Defendants to interview a member of the management team about removing items from the store without paying for them was both lawful and reasonable under South Carolina law. *See Faulkenberry*, 271 S.C. at 380-81, 247 S.E.2d at 447 (finding employer's actions reasonable where evidence conclusively showed employee was not physically restrained, was asked to come to the security gatehouse to speak with the security

guard, after checking out was asked but refused to open her purse and was told the reason for the request and then left after approximately 20 minutes without hinderance). The evidence admitted at trial could only yield one conclusion: Duncan, acting on behalf of Defendants, had probable cause to believe that Plaintiff had taken merchandise from the store without paying for them, and Defendants actions in interviewing and requesting a statement from their employee (which only took 20 minutes) were reasonable and justified.

Allowing this verdict to stand would result in unintended and untenable consequences for every South Carolina employer. The following illustrations present just a few scenarios one can reasonably assume occur regularly:

- A supervisor asks an employee to meet to discuss his poor job performance. The employee replies that he does not want to participate in the meeting because he knows he is in trouble. The supervisor insists that the employee participate, and the employee remains. Affirmation of this verdict would permit a claim for false imprisonment.
- In the same scenario as above, the supervisor tells the employee if he leaves the room (thereby refusing to participate in the meeting), he will be terminated from employment, so he stays unwillingly to keep his job. Is the threat of termination in a common law master/servant relationship now the basis for a false imprisonment claim?
- Federal employment laws require employers to investigate and remediate allegations of harassment deemed unlawful under Title VII of the Civil Rights Act of 1964, as amended. If an employee complains of harassment, and the Employer sits with the alleged harasser and requests a statement as part of the investigation – again a common event in the workplace – is the Employer liable to the alleged harassing employee for asking for a statement simply because the employee initially said s/he did not want to

provide one? Is there a difference if the Employer advises the harasser that failure to provide a statement will result in termination of his/her employment?

- In the scenario above, assume the employee declines to write a statement and the supervisor says nothing so as to avoid a claim for false imprisonment, and the employee leaves. Now the supervisor terminates the employee as the only recourse to the employee's request to leave without exposure to a claim for false imprisonment. Does South Carolina's legitimate prohibition against false imprisonment extend so far that employers are forced to terminate employees as the remedy available to rectify poor job performance and an employee's refusal to address it?

If this verdict is permitted to stand, every employer/employee meeting will now support a claim for false imprisonment because any employee can simply claim, after the fact, that he or she felt pressured to attend the meeting for fear of being fired for refusing to meet with her superior to address an event that occurred at the workplace. This is not and cannot be the law of this State.

The jury's verdict in favor of Plaintiff on the false imprisonment claim must be vacated as there is no sufficient evidence showing that Defendants restrained Plaintiff, intentionally or otherwise and, even if such restraint could be found, Defendants' actions were lawfully based on sufficient probable cause and the alleged restraint was conducted in a reasonable manner.

B. The Trial Court erred in admitting highly prejudicial evidence which was not relevant to Plaintiff's false imprisonment claim and which was designed to, and did, improperly appeal to the jury's emotions and materially and unfairly prejudice Defendants.

It was clear throughout the course of this litigation and prior to trial that although Plaintiff had not brought employment claims against Defendants, she was clearly seeking redress for alleged civil rights violations related to her employment—as opposed to the tort claims stated in her Complaint. As expected, during trial, Plaintiff's evidence intentionally drew the jury's focus

away from the very straightforward facts of this case (i.e., she removed merchandise from the store without paying for the items) so that she could argue her unsupported, emotional and clearly irrelevant theory that her store manager, Brickman, was the true "bad actor" because he allegedly subjected her to gender discrimination and then retaliated against her by reporting to Defendants that she had stolen merchandise when he allegedly had given Plaintiff permission to donate those items. Even though the evidence was clear that Brickman was not the "decision-maker" for Defendants in charge of Plaintiff's interview, over Defendants' objections Plaintiff was allowed to present the following irrelevant and highly prejudicial evidence to the jury:

- Plaintiff had difficulty working with Brickman. (Tr. 233:11-12 (Styles)).
- Plaintiff had requested to transfer from Brickman's store. (Tr. 236:7 (Styles)).
- Plaintiff complained to supervisors about Brickman and gathered statements from other female employees who also complained about Brickman. (Tr. 240 (Styles); Plaintiff's Trial Ex. 7).
- After Plaintiff complained about Brickman to Defendants, Brickman would "hole up" in his office watching store security video for hours with the door locked and shut. (Tr. 244:8-12 (Styles)).
- Plaintiff submitted two anonymous customer complaints describing a man speaking down to female employees and also describing the store manager as a "jerk." (Tr. 285-287 (Styles); Plaintiff's Trial Ex. 11).
- In 2017, Plaintiff relayed "other" employee complaints about Brickman to one of Defendants' regional managers who described the complaints as "general" complaints that Brickman's communication styles was "harsh" and "short." (Tr. 424:21 – 426:6 (Ellison)).

- In early 2018, Brickman was told by a supervisor to be less "harsh or negative" with employees. (Tr. 543:3-24 (Brickman)).
- In early 2018, Brickman's supervisor spoke to six employees in the store (five females and one male) and three of them had "issues" with the way Brickman spoke to them. (Tr. 430:19-20).

The prejudicial nature of this vague and general "bad person" evidence against Brickman was further amplified by the Court allowing Plaintiff to submit testimony regarding Defendants' alleged "failure" to properly investigate Plaintiff's complaints about Brickman. On this point, Plaintiff submitted the following objected to testimony:

- Plaintiff complained about how Brickman communicated with female employees, including herself, and she sent her complaint and the statements she collected from other employees to Defendants' Human Resources representative in the corporate office, Allison Furnas ("Furnas"). (Tr. 269:4-10; 272:1-2 (Styles); Plaintiff's Trial Ex. 7).
- According to Plaintiff, no one from Defendants' corporate office ever came to the store to investigate her complaints about Brickman. (Tr. 269:8-10 (Styles)).
- No one from corporate headquarters "got back" with Plaintiff about her complaints until she reached back out to Furnas. (Tr. 269:4-7, 11-13 (Styles)).
- After Plaintiff submitted her complaint about Brickman to Furnas, Plaintiff was never told by Defendants that she would be protected from retaliation for making her complaints. (Tr. 273:1-11 (Styles)).

- After submitting her complaint about Brickman, no one from "any level" of Defendants' employees got back to Plaintiff to see if she was still having problems with Brickman. (Tr. 271:19-22 (Styles)).
- After submitting statements from other employees about Brickman, Plaintiff did not believe Defendants' followed up with any of those other employees. (Tr. 271:23 – 272:2 (Styles)).
- During her employment with Defendants, Furnas had conducted between 1100 and 1200 investigations. (Tr. 443:11-17 (Furnas)).
- Furnas only visited one store for an investigation. (Tr. 443:18-20 (Furnas)).
- Furnas never went to the Pendleton store. (Tr. 444:3-5 (Furnas)).

As stated previously, while Plaintiff only brought tort claims in this action, she was allowed to turn this trial into a case about gender discrimination, harassment and retaliation. The above-referenced evidence was unduly prejudicial to Defendants as well as confusing and misleading to the jury as it related to claims that were not at issue and should have been excluded. South Carolina Rule of Evidence 403 provides that "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The purpose of Rule 403 is clear: if the probative value of the evidence sought to be admitted "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," the trial court, upon proper objection, may exclude the evidence. *State v. Williams*, 430 S.C. 136, 151, 844 S.E.2d 57, 65 (S.C. 2020); *Jamison v. Ford Motor Co.*, 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) (rule defining relevant

evidence is subject to balancing requirement of rule requiring a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative).

Plaintiff's evidence relating to anonymous customer complaints and generalized criticisms about Brickman's treatment of women was not relevant to Plaintiff's false imprisonment claim and should have been excluded. It was introduced to the jury in an effort to paint Brickman in a bad light and fuel the jury's emotions. Similarly, Plaintiff's evidence relating to the quality of Defendants' "investigation" into Plaintiff's complaints was misleading and prejudicial. The clear implication was that Defendants had some legal duty under the claims presented to the jury to act on Plaintiff's complaints—which it did not—and not only did they fail to do so in this case, but they also were lead to believe that Furnas, Defendants' HR representative, mishandled "1200" other employee complaints. Here again, Plaintiff was trying to improperly and unfairly appeal to the jury's emotions and get them to look past the record evidence and punish Brickman and Defendants for their alleged "bad acts" unrelated to the claims at issue. None of this evidence should have been admitted, but because it was allowed, Defendants were unfairly prejudiced. *Morin v. Innegrity, LLC*, 424 S.C. 559, 576, 819 S.E.2d 131, 140 (Ct. App. 2018), reh'g denied (Oct. 18, 2018) (noting that the main use of Rule 403 is to allow the presiding judge to ensure fairness of the trial by "excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect.") (citations omitted).

To the extent this evidence was relevant to Plaintiff's abuse of process or malicious prosecution claim, the Court erred by failing to provide the jury with Defendants' proposed curative instructions to disregard it as the abuse of process claim was dropped by Plaintiff and a directed verdict was entered on Plaintiff's malicious prosecution claim, as well as an instruction that the jury only consider the knowledge of the decision-maker (i.e., Duncan) at the time of the

interview. (Tr. 817:8 – 825:11). *See Burns v. South Carolina Com'n for Blind*, 323 S.C. 77, 80, 448 S.E.2d 589, 591 (Ct. App. 1994) (refusing to give requested jury charge is reversible error when general instructions to jury are insufficient to enable it to understand fully law of the case and issues involved.).

In addition, Plaintiff improperly bolstered her case by calling the Chief of the Pendleton Police Department, Chief Burdette. Chief Burdette testified as to how Plaintiff came to him the day *after* the interview (the alleged false imprisonment) to tell "her side" of the story. (Tr. 403:17-19 (Burdette)). He described how he personally investigated these shoplifting claims and specifically how he spoke to Brickman, who Chief Burdette opined as having appeared "nervous." (Tr. 405:7-10 (Burdette)). None of this testimony was probative of the elements of false imprisonment—which focuses on what the Defendants knew at the time of the alleged restraint. *See, e.g., Crapp*, 242 F.3d at 1020. Chief Burdette was not a witness to or participant in any of the alleged incidents that formed the basis for Plaintiff's false imprisonment claim. He was not present when Plaintiff took items from the store without paying for them; when Duncan on behalf of Defendants viewed the security video capturing Plaintiff's actions; when Duncan on behalf of Defendants investigated Plaintiff's actions and then interviewed Plaintiff; when Officer Glenn was called and Plaintiff admitted to him that she had stolen Defendants' property; or when Plaintiff offered to repay $450 to Defendants for the goods she stole. The only knowledge Chief Burdette had was information he obtained after-the-fact and consisted entirely of inadmissible hearsay which was highly prejudicial and should have been excluded. SCRE 403 and 801; *State v. King*, 422 S.C. 47, 66, 810 S.E.2d 18, 28 (S.C. 2017) (finding an officer's testimony to be hearsay when offered to prove that defendant fired more than one gunshot where testimony was based exclusively on what the witnesses told the officer during a subsequent neighborhood canvas).

Chief Burdette was also allowed to tell the jury that he spoke to a judge about Plaintiff who decided not to issue a warrant because of the lack of "probable cause."[3] (Tr. 408:14-21; 409:3-9 (Burdette). It is abundantly clear that Chief Burdette's testimony was elicited to improperly provoke and completely confuse the jury. In order to prove her false imprisonment claim, Plaintiff had to establish there was a lack of "probable cause" for the restraint. *Jackson,* 366 S.C. at 667, 623 S.E.2d at 359. This required Plaintiff showing that Duncan's belief did not rest on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. *Id.* Accordingly, the only relevant evidence here was what the decision-maker; i.e., Duncan, knew at the time of interview. *Lloyd,* 961 F.2d at 1197 (5th Cir. 1992) (finding decision maker's motivation for decision could only have been based on events he knew of at the time). Chief Burdette's after-the-fact investigation and his appearance as an expert testifying to the determination that there was no probable cause of a crime as to justify Plaintiff's subsequent arrest is completely irrelevant to the determination of whether Duncan had probable cause to interview Plaintiff on May 23, 2018. The only purpose of his testimony was to improperly bolster Plaintiff's claims and to appeal to the jury's emotions. His testimony was completely irrelevant to the case at issue because as stated by the court in *Jackson,* "[t]he determination of probable cause is not an academic exercise in hindsight." *Jackson,* 366 S.C. at 667, 623 S.E.2d at 359. Indeed, in closing argument, Plaintiff's counsel took that emotional bias to its high point by telling the jury we should "Thank God for the chief of police of Pendleton." (Tr. 855:7-8).

Because the only relevant consideration regarding probable cause for false imprisonment is what the person knew at the time of the alleged detention, Chief Burdette's testimony should

[3] While the Court did not allow Chief Burdette's report to be admitted into evidence, it nonetheless allowed him to testify from it. (Tr. 396:24 – 397:9).

never have been permitted. But, once admitted, the jury should have been given Defendants' requested curative instructions which limited the jury's consideration (in terms of probable cause) to what Duncan (the decision-maker) knew and what he decided to do and identified what evidence the jury could consider in determining damages. (Tr. 817:8-825:11). Defendants' requested instructions were not given to the jury.

Reversal of the jury's verdict is required here. This misleading, irrelevant and prejudicial evidence clearly confused and prejudiced the jury, as the record is completely devoid of sufficient evidence actually supporting the jury's verdict on Plaintiff's false imprisonment claim. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (S.C. 2008) (to warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice). It is reasonably probable that the challenged evidence prejudiced the jury as they clearly disregarded both the law and the record evidence in finding for Plaintiff on her false imprisonment claim. *Austin,* 387 S.C. at 37, 691 S.E.2d at 143 (S.C. 2010) (in order to demonstrate prejudice based on an evidentiary ruling, there must be a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof). The jury was inundated with an enormous amount of highly prejudicial, irrelevant, incomplete and confusing information. This information was presented solely to distract them from Plaintiff's woefully inadequate evidence of Defendants' alleged wrongdoing and to appeal to their emotions—and, that is exactly what occurred. As a direct result, Defendants' did not receive a fair trial.

C. The Trial Court erred in denying Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative Defendants' Motion for New Trial Absolute or Nisi Remittitur where the jury's damage awards were not supported by the evidence and were excessive in light of the evidence presented at trial.

1. *The evidence admitted at trial did not support the jury's compensatory and punitive damage awards and warranted a judgment notwithstanding the verdict.*

In a claim for false imprisonment, the basic injury is the deprivation of the plaintiff's liberty. *Caldwell v. K-Mart,* 306 S.C. 27, 30, 410 S.E.2d 21, 23 (Ct. App. 1991). Such things as humiliation, indignity, and mental suffering are general damages that naturally and proximately result from false imprisonment. The jury in this case awarded Plaintiff compensatory damages in the amount of $100,000 and punitive damages in the amount of $10,000. Yet, Plaintiff did not present any evidence at trial upon which the jury could have based these damage awards. The record was clear that Plaintiff was interviewed in private and away from other employees. (Tr. 356:14-16 (Styles); 665:10-12; 666:2-8 (Duncan)). She testified that she knew she had a problem and wanted to leave at 12:22 p.m. (approximately six minutes after she entered the room at 12:16 p.m.), she was told she could not leave the room until she provided a statement, and she provided the statement at 12:42 p.m. (Tr. 343:34 – 344:6 (Styles); Plaintiff's Trial Ex. 12). Only 20 minutes elapsed from the first time Plaintiff allegedly wanted to leave the room until she gave the statement she claims was required before she could leave. Plaintiff also testified that she did not seek any medical treatment for anything resulting from her experience on May 23, 2018. (Tr. 322:18-22). While Plaintiff did testify that her salary with Defendants was $49,000 when she was terminated, she also stated that she obtained a new job on July 31, 2018, with a salary of $45,800. (Tr. 378:9-18 (Styles). Even while this salary comparison falls drastically short of the jury's $100,000 compensatory damage award, it is nonetheless irrelevant as any damages incurred by Plaintiff's loss of her employment are not casually related to her alleged false imprisonment—they are the direct result of Plaintiff admittedly stealing merchandise from Defendants. Plaintiff's claimed concerns about being arrested and having her reputation tarnished were similarly unsubstantiated and of no consequence as the record is clear that she was never arrested. (Tr. 378:2-8 (Styles)).

"The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (S.C. 2000) (citations omitted). "The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred." *Id.* Actual damages are certainly not intended to give Plaintiff a windfall as is the case here. Indeed, based on the jury's award, Plaintiff received $5000 for every minute of the 20 total minutes she was in a private room, while on-duty and being paid, sitting by the door, unrestrained in any manner being questioned by her employer as to why she was captured on security video removing merchandise from the store without paying for it.

Similarly, the jury's award of $10,000 for punitive damages is improper because the trial record is devoid of any evidence that Defendants acted in willful, wanton or reckless disregard of Plaintiff's rights. *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (S.C. 1996); *cf. Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 162 S.E. 753, 755 (S.C. 1932) (upholding punitive damages where detention was uncalled for and the conduct of defendant was "high–handed and in reckless disregard of plaintiff's rights, causing her needless humiliation").

In *Gamble v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (S.C. 1991), the South Carolina Supreme Court enumerated eight factors a trial court must consider post-verdict in determining whether a jury's award of punitive damages is proper: (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 finally, (8) "other factors" deemed appropriate.

As set forth above, the evidence at trial did not establish that Defendants were culpable for falsely imprisoning Plaintiff. First, Plaintiff was not restrained as the record shows that she was able to leave the interview room at any time. Second, Defendants acted lawfully based on probable cause in questioning Plaintiff about her misconduct while she was on duty and did so within a reasonable time and in a reasonable manner. Further, the investigation was based upon Defendants' – and Duncan in particular -- good faith belief that Plaintiff was stealing and was grounded upon video evidence showing her secreting merchandise while on duty and then taking it out of the store without paying for it. In fact, Plaintiff even admitted to stealing the merchandise during the interview, in her written statement, to Officer Glenn, and at trial. As such, neither the degree of culpability, the duration of Defendants' conduct, or any existence of past similar conduct (there was none) warrant punitive damages. Likewise, there is no reason to believe that an award of punitive damages will deter Defendants or others from questioning employees accused of wrongdoing. To the contrary, employers are required by multiple federal and state laws to investigate wrongdoing and take appropriate remedial measures where potentially unlawful conduct is or has occurred, including giving employees like Plaintiff an opportunity to explain their actions. Upholding this verdict creates the quintessential Hobson's choice; investigate and remediate workplace misconduct, but if there is resistance to cooperate in any investigation, the employer must accede to the lack of cooperation to avoid a claim for false imprisonment. That outcome arising from a daily event occurring in numerous workplaces is a distortion of the common law prohibition against false imprisonment.

Plaintiff attempted to justify her actions at trial by (1) claiming she donated the items she unlawfully took from Defendants and (2) trying to paint her store supervisor, Brickman, as a bad actor who "tricked" Plaintiff (i.e., claiming he gave her permission to steal the items but did not

disclose his alleged permission to do so when relaying the evidence of theft to Duncan). Such actions, even if true, do not rise to the requisite level of culpability to justify a punitive damage award against Defendants. *South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 152, 478 S.E.2d 57, 58 (S.C. 1996) (finding no clear and convincing evidence that employer's conduct in negligently hiring, training, or supervising employee was willful, wanton, or in reckless disregard of the rights of others to justify award of punitive damages against employer). The record is also completely devoid of any evidence that Defendants were aware of any such motivation. As such, this third and final Gamble factor weighs against punitive damages as well.

Clearly, application of the Gamble factors demonstrates that the jury's award of punitive damages in this case are wholly improper. As neither the jury's award of compensatory nor punitive damages are supported by the evidence admitted at trial, these awards must be set aside.

2. *The jury's damage awards were grossly excessive based on the evidence at trial and warranted a new trial absolute or nisi remittitur.*

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27, 602 S.E.2d 772, 781 (S.C. 2004). "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 judge must grant a new trial absolute." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (S.C. 2003) (internal quotation marks omitted) (quoting *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (S.C. 1993)). If the trial court finds the amount of the verdict to be merely inadequate or excessive it has the power to grant a new trial nisi. *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005) (citing

McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (S.C. 1995)); *see also Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 9, 466 S.E.2d 727, 731 (S.C. 1996) (a motion for new trial nisi remittitur requests the trial court to reduce the verdict because it is merely excessive). In considering a motion for a new trial nisi remittitur the trial judge must consider the adequacy of the verdict in light of the evidence presented. *Cf. Vinson,* 324 S.C. at 405, 477 S.E.2d at 723 (Ct. App. 1996) In addition, while the grant or denial of new trial motions rests within the discretion of the trial judge, the Court's decision will not be upheld on appeal if its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Chapman,* 364 S.C. at 88–89, 610 S.E.2d at 856 (Ct. App. 2005); *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000); *Vinson*, 324 S.C. at 405, 477 S.E.2d at 723.

As discussed above, Plaintiff was not able to prove at trial that she was unlawfully restrained as required for a verdict of false imprisonment. In addition, there was no evidence that Plaintiff suffered any damages as a result of a false imprisonment. Plaintiff testified about her increased stress which caused the aggravation of her pre-existing MRSA condition and trouble eating and sleeping. (Tr. 321:18 – 323:23 (Styles)). Notably, however, Plaintiff's stress and the resulting physical effects were not caused by her alleged "imprisonment," but rather were the result of her termination and her fear of arrest for her admitted misconduct. The record is completely devoid of any evidence establishing Plaintiff suffered any damage related to the 20 minutes she was allegedly restrained by Defendants.

There was, however, significant irrelevant, immaterial and highly prejudicial evidence about Plaintiff's manager, Brickman, and how the Defendants allegedly "mishandled" Plaintiff's complaints about Brickman. That testimony was not, however, relevant to any of the claims submitted to the jury. The jury was improperly influenced by the "#metoo" movement in a case

where there was no claim of a hostile work environment or gender discrimination or retaliation under the civil rights laws. Yet, there was substantial testimony permitted to suggest such claims and that Defendants botched the investigation of this and 1200 other investigations. The jury was similarly improperly influenced by the testimony of the highest local law enforcement official, Chief Burdette, who testified, essentially as an expert, that there was no probable cause to charge the Plaintiff with a crime.

This evidence was intended to, and did, improperly ignite the passions and prejudices of the jury and resulted in their award of grossly excessive compensatory and punitive damages based on influences other than the proper record evidence. This jury was hopelessly lost in the lack of guidance from the Trial Court, and left infuriated to find for the Plaintiff based on emotion. The damages awarded do not bear any reasonable relation to the alleged injury suffered by Plaintiff and are not supported by the evidence. The only damage Plaintiff suffered was the loss of her job which she admitted she could not recover for based upon her claims. Moreover, that damage was caused by Plaintiff's decision to steal from Defendants; not by any action of Defendants. The jury's award of actual and punitive damages, if not motivated by passion, caprice, or prejudice, is clearly excessive in light of the evidence presented at trial.

VII. CONCLUSION

The Trial Court abused its discretion by allowing Plaintiff's claim to be considered by the jury, and allowing Plaintiff to submit highly prejudicial evidence to the jury, over the objections of Defendants' counsel. This prejudicial evidence had far-reaching, deleterious, and unfair effects on Defendants' right to a fair trial. The resulting impropriety in the jury's verdict awarding Plaintiff compensatory and punitive damages for its false imprisonment claim is patent. For all the reasons set forth above, the Court should vacate the jury's verdict and enter judgement for Defendants as a matter of law, or in the alternative order a new trial absolute or new trial nisi remittitur.

Respectfully submitted this _21st_ day of October, 2020.

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COUNSELS FOR APPELLANTS-RESPONDENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via email this _21st__ day of October 2020 to:

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