**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

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**APPEAL FROM ANDERSON COUNTY**
**Court of Common Pleas**

*The Hon. R. Scott Sprouse, Circuit Court Judge*



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**Case No. 2018-CP-04-01127**

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**Appellate Case No. 2020-000818**

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Lisa Styles,

Respondent-Appellant,

v.

Southeastern Grocers, LLC
And BI-LO, LLC.

Appellants-Respondents.

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# REPLY BRIEF OF APPELLANTS-RESPONDENTS TO INITIAL BRIEF OF RESPONDENT

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*COUNSELS FOR APPELLANTS-RESPONDENTS*

## I. TABLE OF CONENTS

## II. TABLE OF AUTHORITIES

**Cases**

**Rules**

## II. ARGUMENT IN REPLY

In the Initial Brief in response to the Appeal filed by Defendants Southeastern Grocers, LLC ("SEG") and its subsidiary Bi-Lo, LLC ("Bi-Lo") (collectively referred to herein as "Defendants"), Plaintiff Lisa Styles ("Plaintiff") continues to pursue her misguided strategy of obfuscating the straightforward legal issues at bar and to argue matters which are simply immaterial. At trial, Plaintiff presented evidence intended to improperly villainize Defendants, in general, and Plaintiff's store manager, Michael Brickman ("Brickman"), in particular. As set forth in Defendants' Initial Brief, this highly prejudicial evidence was intended to (and, in fact, did) improperly prejudice the jury and result in a verdict which was completely unsupported by the law and the record evidence. Now, here again, Plaintiff seeks to cloud the straightforward issues of law and focus on irrelevant matters which are not determinative of the following three issues raised by Defendants in their 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 trial was an abuse of discretion resulting in prejudicial error entitled Defendants to a new trial; and

(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.

While Plaintiff's response brief was approximately 47 pages, it essentially only presented two arguments, to wit: Defendants failed to preserve the subject issues for appeal and Plaintiff presented sufficient credible evidence to support the jury's verdict. As set forth below, however,

both of these arguments fail because the unrefuted case law and record evidence show that Plaintiff did not present sufficient evidence to sustain a jury finding of false imprisonment under South Carolina law and the Trial Court erred in allowing Plaintiff to present evidence, over Defendants' proper objections, which was intended to, and did, improperly prejudice the jury, resulting in Defendants' failing to receive a fair trial. Plaintiff has provided no relevant law or record evidence sufficient to refute Defendants' entitlement to the relief sought.

## A. Defendants Properly Preserved the Issues on Appeal

### 1. The two Motions for Directed Verdict on Plaintiff's false imprisonment claim made by Defendants during the trial were clearly sufficient to preserve the issue for appeal pursuant to South Carolina law.

As the record indisputably reflects, upon the close of Plaintiff's case at trial, Defendants moved for a directed verdict on Plaintiff's false imprisonment claim. (Tr. 475:13-477:22; 479:10-480:14; 481:20-483:2). In support of this motion, Defendants' counsel identified the three elements required to establish a false imprisonment claim under South Carolina law and highlighted how Plaintiff's evidence failed to meet these requisite standards for liability. (*Id.*) Contrary to Plaintiff's allegations, Defendants did, in fact, properly and "effectively" renew this motion at the close of all evidence. Specifically, after the Trial Court determined Plaintiff's fraud claim could proceed and granted Defendants' motion for directed verdict on Plaintiff's malicious prosecution claim, the following exchange occurred on the record:

> The Court: Causes of action will be false imprisonment and fraud that will go back to the jury.
>
> [Defendants' Counsel]: Just solely for keeping things on the record, you had previously denied the three other motions for directed verdict?

> The Court: Correct.
>
> [Defendants' Counsel]: Just we'll renew those, understanding that I don't think that your ruling is going to change obviously.
>
> The Court: False imprisonment, there's clearly evidence in the record to support the elements of false imprisonment. I'm finding there is evidence -- that the evidence in the record support the elements of fraud.
>
> [Defendants' Counsel]: Thank you. And then -- and I was just referring to the course and scope and physical injury.
>
> The Court: Yes, sir.
>
> [Defendants' Counsel]: And I understand that those –
>
> The Court: Yes, sir. My rulings are the same on those issues. So look at --

(Tr. 806:17-807:12).

Clearly, Defendants renewed their motion for directed verdict on the false imprisonment claim at the close of all evidence and such renewed motion was acknowledged and ruled upon by the Trial Court. Given the clear record reflecting both Defendants' original and renewed motions, Plaintiff's argument that this issue was not properly preserved is puzzling at best—as is Plaintiff's interpretation of the applicable case law. For example, Plaintiff cites *Connolly v. People's Life Ins. Co. of S.C.*, 299 S.C. 348, 284 S.E.2d 738 (1989) to support her contention that Defendants' "perfunctory arguments" were not specific enough to put the Trial Court on notice of the grounds argued on appeal. Yet, *Connolly* is clearly distinguishable from the case at bar. In *Connolly*, the defendant moved for a directed verdict on the plaintiff's claim for unfair trade practices and argued that the record did not contain sufficient evidence of "unfair" conduct by the defendant. 299 S.C. at 350, 284 S.E.2d at 739. The trial court denied the motion based upon this ground. *Id.* Upon review of the appellate court's reversal of this denial, the *Connolly* court found that the appellate

court erred because its reversal was not based upon an insufficiency of evidence of unfairness, but rather on a totally different basis; *i.e.*, that the alleged practices did not violate the Unfair Trade Practices Act as a matter of law because they were unconnected with "trade or commerce" as those terms are defined by the Act. 299 S.C. at 351, 284 S.E.2d at 740. The *Connolly* court found that because defendant's motions for directed verdict neither raised nor encompassed such an argument, the trial judge could not have understood the basis for the defendant's motion to be that the acts were unconnected with "trade or commerce" and therefore, the appellate court's reversal based upon this ground was improper. *Id.* Plaintiff's reliance on the other cases cited in support of this argument is similarly misplaced. *In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001) (finding no JNOV claim preserved for review where no grounds were raised in the directed verdict motion); *Smith v. Ridgeway Chems., Inc.*, 302 S.C. 303, 305-06, 395 S.E.2d 742, 743-44 (Ct. App. 1990) (holding that where no directed verdict motion was made at the conclusion of trial, no motion for relief is available as a matter of law after the jury verdict) (citing Rule 50 SCRCP); *State v. Rosemond*, 348 S.C. 621, 627-28, 650 S.E.2d 636, 640 (Ct. App. 2002) (holding that directed verdict issue was not preserved where defense counsel did not renew his directed verdict motion at the conclusion of the evidence).

Here, the record is unmistakably clear: Defendants' motions for directed verdict on Plaintiff's false imprisonment claim were based on Plaintiff's failure to establish the three elements required for liability: (1) the defendant restrained the Plaintiff, (2) that the restraint was intentional and (3) unlawful. (Tr. 475: 13-17). *See Law v. S.C. Dep't of Corr.*, 368 S.C.424, 440, 629 S.E.2d 642, 651 (2006) (to prevail on a claim for false imprisonment under South Carolina law, the plaintiff must prove three elements: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful). (citations omitted) The Trial Court clearly

understood that the basis for Defendants' argument was that Plaintiff failed to provide evidence to prove this cause of action. It is also clear that the Trial Court understood Defendants were renewing their directed verdict motion on false imprisonment at the close of all evidence as the Court issued a ruling on the renewed motion. Moreover, despite Plaintiff's assertions to the contrary, this is the exact same issue which Defendants have now brought before this Court on appeal. Plaintiff's arguments to the contrary are simply incorrect.

**2. Defendants sufficiently preserved the evidentiary issues related to the Trial Court's improper admission of highly prejudicial evidence which improperly influenced the jury's verdict.**

Plaintiff also argues that Defendants failed to preserve their objections to the Trial Court's evidentiary rulings allowing the admission of highly prejudicial evidence which improperly appealed to the jury's emotions, because Defendants did not contemporaneously object to the admissions and, to the extent Defendants did contemporaneously object, their objections were insufficient because they did not state the specific grounds for each objection. Here again, it is difficult to reconcile Plaintiff's arguments with the clear record evidence and South Carolina law which both contradict Plaintiff's position.

To properly preserve an objection for appellate review, South Carolina law requires that the objection be made at the time the evidence is presented and with sufficient specificity to inform the court of the point being urged by the objector. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (citations omitted). This requirement is further refined by South Carolina Rule of Civil Procedure 43(c)(1) "Reservation of Rights Unnecessary" which provides that "[i]f an objection has once been made at any stage to the admission of evidence, it shall not be necessary thereafter to reserve rights concerning the objectionable evidence."

Additionally, South Carolina Rule of Evidence 103(a)(1), provides that error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and, in case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, *if the specific ground was not apparent from the context.* (emphasis added). A party is not required to use the exact name of a legal doctrine in order to preserve an argument, but it must be clear that the argument has been presented on that ground. *State v. Stahlnecker*, 386 S.C. 609, 690 S.E.2d 565 (2010); *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003); *State v. Carmack*, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010), cert. denied, (Nov. 28, 2011); *State v. Caldwell*, 378 S.C. 268, 662 S.E.2d 474 (Ct. App.2008); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). *See also State v. Heyward*, 426 S.C. 630, 828 S.E.2d 592 (2019) (a specific objection to an evidentiary ruling is required unless the grounds are apparent from the context under Rule 103(a)(1), SCRE; however, when the appellate court can discern the basis of the objection from the record, the issue is preserved for appeal). It is enough, however, if the record sufficiently demonstrates that the court understands the objection, or it is apparent to the judge in light of discussions with counsel. *State v. Holliday*, 333 S.C. 332, 509 S.E.2d 280 (Ct. App. 1998). Where the judge is aware of the grounds for the objection, counsel is not required to reiterate previous argument. *Id.*

The record here is abundantly clear that, at trial, Defendants not only objected to the prejudicial evidence identified in their Initial Brief at pages 20-27, they presented lengthy and extensive arguments to the Court, out of the presence of the jury, about the prejudicial nature of this evidence. (Tr. 157:8-181:9; 184:22-232:20). In fact, the Court even allowed the Plaintiff to proffer a significant amount of her testimony to which Defendant objected. (Tr. 184:21-200:18). Contrary to Plaintiff's suggestion, Defendants were not thereafter required to lodge new objections

every time previously objected to evidence was presented. *See State v. Simmons*, 423 S.C. 552, 816 S.E.2d 566 (2018) (Supreme Court noted objection to testimony was sufficient to apprise the court of the issue being raised, adding, "a second objection was not necessary in this case. Petitioner was not required to be a jack-in-the-box to [the witness's] response to this question to preserve his objection.") (*citing State v. Burroughs*, 328 S.C. 489, 504 n.4, 492 S.E.2d 408, 415 n.4 (Ct. App. 1997) (finding that while the court's ruling was clearly in error, given that it allowed a much broader range of information to be given than permitted under the applicable rule, objector was not required to re-urge his objection after the trial court ruled).

Moreover, on several occasions the Court acknowledged and confirmed to Defendants that their objections were understood and sufficiently noted on the record. (Tr. 226:16-17; 229:17-18). In fact, the Court even assured the Defendants at one point "[y]our record is protected." (Tr. 232:4-12). *See* Rule 103(a)(1), SCRE.

**3. Defendants preserved their arguments related to the jury instructions**.

Plaintiff's final argument related to alleged failures to preserve error concerning Defendants' objections to the Court's proposed jury instructions. Despite identifying approximately 8 pages in the trial transcript wherein Defendants set forth all of their objections to the proposed jury instructions, Plaintiff seems to suggest that because Defendants failed to use the magic words "curative" or "disregard" in their argument to the Court, they failed to preserve their objections to these instructions. This argument is simply unsupported in law or fact. The record reflects that Defendants' counsel specifically stated the following to the Court:

> My concern is that any reference to arrest and conviction is going to convey inferences to the jury that you should consider the allegations about malicious prosecution and the abuse of process, which has since been dismissed by the Court.

> And then, for example—for example, the bottom of the third page of the Court's instructions or proposed instructions: In addition to the fact that the plaintiff may have been found not guilty of the crime for which the arrest was made does not mean that there was no probable cause for the arrest. So, again, we're addressing two issues and in this—in this phrasing when the second issue doesn't exist anymore.

(Tr. 818:7-21).

Defendants' counsel also objected to the proposed instructions to the extent they suggested, with respect to the false imprisonment claim, the jury consider the knowledge of any one other than the decision-maker in the situation (i.e., Ronnie Duncan, SEG Loss Prevention/Regional Asset Protection Manager). (Tr. 824: 23-825:11). The proposed instructions on damages were also challenged by Defendants. (Tr. 826:15-827-16). Plaintiff's suggestion that Defendants never objected to the jury instructions is simply false. The record plainly reflects Defendants raised their objections with the Court and properly reserved these issues in the record.

### B. The Record Evidence Clearly Indicates Plaintiff Failed to Establish a Claim for False Imprisonment and the Trial Court's Admission of Plaintiff's Highly Prejudicial Evidence Improperly Influenced the Jury's Verdict.

#### 1. Plaintiff's evidence at trial did not support the jury's false imprisonment verdict.

Plaintiff erroneously contends that the jury's verdict was justified because it simply chose to believe her over the Defendants. The fatal flaw in this position is that *even if* the jury chose to believe Plaintiff's version of events over Defendants', the record evidence *still* does not rise to the level of conduct needed to establish liability for false imprisonment. "The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification." *Law*, 368 S.C. 440, 629 S.E.2d at 651. Accordingly, 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).

In this case, Plaintiff was unable to establish she was "restrained" as that term is defined by South Carolina law. In fact, Plaintiff's largest hurdle was trying to show that she did not voluntarily remain in the room with Defendants because (once again) *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 restraint. (Tr.342:10-12 (Styles); Defendants Trial Ex.11). Moreover, contrary to Plaintiff's bald allegation, Defendants properly cited *Beraho v. South Carolina State College,* 302 S.C. 129, 131, 394 S.E.2d 28, 29 (Ct. App. 1990) in support of this proposition as the court therein stated 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) (emphasis added).

**2. The Trial Court's admission of highly prejudicial evidence which was not relevant to the false imprisonment claim improperly influenced the jury and result in its legally deficient verdict.**

Ironically, in her response, Plaintiff challenges Defendants' arguments as to the impropriety of allowing the jury to consider highly prejudicial evidence such as customer complaints about Brickman, Chief Burdette's testimony, anonymous customer complaints about Brickman and potential gender discrimination and retaliation claims, on the basis that it was proper

to admit this evidence because "there with [sic] three other claims (fraud, abuse of process, and malicious prosecution) pending before the jury when the evidence was admitted." (Plaintiff's Response Brief, p. 34). Plaintiff's argument actually highlights the exact problem with the admission of this evidence; i.e., it had nothing to do with the false imprisonment claim considered by the jury and was only slightly probative of causes of action which were not even submitted to the jury. Yet, once the jury heard all of this "bad character," gender discrimination, and retaliatory intent evidence, they were wholly and improperly convinced that Defendants (and especially Brickman who was not even the decision-maker with respect to Plaintiff's interview) had to be guilty of *something*. This evidence was unduly prejudicial to Defendants as well as confusing and misleading to the jury and should have been excluded at the outset. *See* Rule 403, SCRE; *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 the fairness of the trial by "excluding matters of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect.") (citations omitted). Moreover, as set forth more fully above, Defendants sufficiently objected to the introduction of this evidence at trial and also properly objected to the Court's proposed corresponding jury instructions.

## II. CONCLUSION

For all the reasons set forth in Defendant's Initial brief and herein, Defendants respectfully request that the Court vacate the jury's improper verdict and enter judgment for Defendants as a matter of law or, in the alternative, order a new trial absolute or new trial nisi remittitur.

Respectfully submitted this _**8th**_ day of January, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via email this 8th day of January 2021 to:

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