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SC Court of Appeals

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.

**RESPONDENT-APPELLANT'S
MOTION FOR LEAVE TO SUPPLEMENT
RECORD ON APPEAL**

In preparing the final brief, Respondent identified six pages inadvertently omitted from Respondent's Designation of Material but that are cited in the Initial Brief.

Pursuant to Rule 212(b), Respondent moves for leave to file an appendix containing transcript pages 145, 431-34, and 704-05. Counsel for Respondent has requested consent from counsel for Appellants, but has not heard back as to whether they consent to this request.

A copy of the propose Appendix is attached.

Respectfully submitted this 1st day of March 2021.

For Respondent-Appellant:

s/ Brian P. Murphy
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Appendix to Record on Appeal

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ATTORNEY FOR RESPONDENT-APPELLANT

1 say, "Well, we should -- some words to the effect
2 of, "We should donate more," and she -- and then
3 she, in fact, donated shampoos and feminine products
4 and so forth; is that correct?

5 A. Yes.

6 Q. Okay. And when did she go and drop off the
7 items? Was that in the exhibit?

8 A. I don't have a specific date for that.

9 Q. I'm sorry. Hang on one second. And then
10 Plaintiff's Exhibit 2 -- I'm sorry -- Exhibit 2,
11 yes. There's the e-mail from Lisa Styles to you
12 where she says, "Sounds great. I'll be by about
13 4:30." And that's got a date of March 28th of 2018;
14 is that right?

15 A. Yes. That donation was for the Easter baskets.

16 Q. Right. Right. That was the Easter baskets.

17 A. Correct.

18 Q. And so she came on March 28th. She did the
19 tour. And then subsequently, she donated the
20 hygiene products?

21 A. Correct.

22 Q. Is that correct?

23 A. That is correct.

24 MR. SHANKMAN: Got it. Okay. That's all I
25 got. Thank you very much.

1 THE COURT: Yes, sir.

2 (Sidebar discussion.)

3 THE COURT: Mr. Bailiff, would you take our
4 jury to the jury room, please?

5 THE BAILIFF: (Complying.)

6 (At 10:36 a.m., jury left the courtroom.)

7 THE COURT: All right. Yes, sir, Mr. Shankman?

8 MR. SHANKMAN: Your Honor, thank you.

9 Obviously, we had an en camera discussion about
10 these designations. And on page 50 at line 19,
11 there was a reference. I'll start above that where
12 Mr. Ellison says, "and that they felt he did not
13 respect their opinion as females, that I had three,
14 one male, two females that had no issue other than
15 they felt like he was instilling discipline. People
16 were upset about that discipline in the store."

17 But, obviously, the Court had been consistent
18 in keeping out evidence about whether they felt he
19 did not respect their opinion as female. All that
20 testimony has not been permitted so far. And while
21 I understand I did not raise that specific objection
22 to the Court, I've raised multiple other objections
23 to the exact same topic, and -- and the Court has --
24 had identified that as evidence to be excluded.

25 I stopped the reading and interrupted because I

1 didn't want this to be -- number one, I don't
2 believe this should be read -- this should be in.
3 Number two, I don't believe that -- I want to make
4 sure this doesn't -- if it is this section that
5 we're in, I don't want this section to be construed
6 as opening the door to an entire discussion about
7 gender discrimination. And that's -- and that's
8 really my ---

9 THE COURT: Let me see the -- let me see the
10 excerpt again.

11 MR. SHANKMAN: (Complying.) Do you have a
12 copy?

13 MR. MURPHY: Yeah, I have a copy.

14 THE COURT: All right. Mr. Murphy?

15 MR. MURPHY: Your -- Your Honor, you can't give
16 half an answer. There's no objection to this.
17 Now -- now that the jury's heard it, we can't put
18 that genie back in the bottle. I mean, they're --
19 you can't -- that's why I said respectfully, and
20 then we put some redactions. We've done redactions,
21 but we can't hear -- let the jury hear half the
22 story now, especially when there was no objection
23 and have it shut down. He's already test ---

24 THE COURT: Now, what was the last thing she
25 said that -- what was the last part she read? Tell

1 us -- the question, "What did you tell Mr. Miller?"
2 on line 13? And how far did she get? She told him
3 that I had spoken to six people. I had spoken to
4 five females and one male. All right. And I
5 believe that's when the objection came. How far did
6 she get?

7 MR. MURPHY: I thought she got farther than
8 that.

9 MR. SHANKMAN: She -- she did not get to the
10 sentence -- to the section that I just identified to
11 the Court.

12 THE COURT: The next sentence says, "At the end
13 of the day, three of them had issues with the way
14 Mike was talking to them, you know, as far as with
15 mannerisms and communication. They all said that
16 they felt that he did not respect their opinion as
17 females."

18 MR. SHANKMAN: That -- that last sentence I
19 think was partially addressed, but it was -- and the
20 Court reporter can tell us, but the -- there was --
21 the reference to "did not respect the opinions of
22 females" that the Court just read was -- was not
23 read by the witness.

24 THE COURT: "Then I had three -- three, one
25 male, two females that had no issue other than they

1 felt like he was instilling discipline in the --
2 having discipline in the store."

3 Okay. I think Mr. Murphy is correct that
4 the -- him not respecting their opinion answers what
5 was asked, but I also think Mr. Shankman is correct.
6 To be consistent as females gets into different --
7 so I -- this is what I'm going to order, that the
8 words "as females" not be read.

9 So, ma'am, you understand when you -- when
10 you -- when you read that sentence, you will just
11 stop at "he did not respect their opinion." That
12 will allow the answer to be given fully to where
13 that response is understood without us getting into
14 gender discrimination.

15 Now, Mr. Shankman, do you have any other
16 objections? This should've been brought up in
17 chambers.

18 MR. SHANKMAN: Judge, you're 100 percent right
19 and my sincere apologies. I -- I ---

20 MR. MURPHY: Well, Your Honor -- Your Honor ---

21 MR. SHANKMAN: --- sincerely apologize for
22 that.

23 MR. MURPHY: --- I understand the ruling, but I
24 don't want to -- I don't want to put in the things
25 that they say were favorable said and the things

1 box.

2 Q. And -- and you could see the barcode or the sku
3 or the product?

4 A. No, sir.

5 Q. You were here yesterday. Your counsel couldn't
6 see those lip glosses that were in her one hand,
7 could he?

8 A. No, sir. You can't see the UPCs.

9 Q. Okay. So you don't know what the products
10 were? You couldn't compare them to the receipts and
11 say, "Oh, she paid for this one. She didn't pay for
12 that one"?

13 A. Yes, you can. You can compare what comes down
14 the register and what is on that receipt, and that's
15 what I did.

16 Q. Here's Lisa coming out of that back office
17 again. You see here's some other employees moving
18 around in the same area. See her walking towards
19 the cart with the box now?

20 A. Yes, sir.

21 Q. Do you know who that gentleman is walking in?

22 A. I assume it's a third-shift stocker.

23 Q. That's Daniel. Do you know Daniel?

24 A. No, sir.

25 Q. It is a third-shift stocker. It's Daniel. So

1 he's coming in, so we have these other employees
2 here. We have Daniel walking in, right?

3 A. Yes, sir.

4 Q. And there she is passing Daniel, correct?

5 A. Yes, sir.

6 Q. She's heading back to that big box, right?

7 A. Correct.

8 Q. She's taking that box and pushing it right out
9 the door?

10 A. Yes, sir.

11 Q. That's one of the thefts, isn't it?

12 A. Yes, sir.

13 Q. In plain view of all these other employees in
14 the store?

15 A. Yes, sir. It was in plain view.

16 Q. And there's no view of her grabbing items off
17 the shelf, looking around to make sure nobody sees
18 her, and going and sticking them in floral, is
19 there?

20 A. No. She carries them over and drops them in
21 the box.

22 Q. She just carries everything over in plain view?

23 A. Drops in the box.

24 Q. Didn't conceal a thing, did she?

25 A. No, sir.