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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.

BRIEF OF RESPONDENT

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I. STATEMENT OF ISSUES ON APPEAL

1. Have Appellants preserved issues for appeal where they failed to make contemporaneous objections, failed to argue issues in a directed verdict motion, and failed to pose their arguments in post-trial motions.

2. Have Appellants shown a basis for a judgment notwithstanding the verdict when there was conflicting testimony and even Appellants' own witnesses contradicted each other.

3. Can Appellants show any basis for new trial when they can point to neither any error by the trial court, they confuse the Rules of Evidence, and they don't even attempt to show how any evidence at issue was prejudicial.

4. Can Appellants show that damages were excessive when they are less than those found to be reasonable in less egregious cases and, as to punitive damages, the ration is a $\frac{1}{10}$:1 ratio.

II. STATEMENT OF CASE

Styles commenced this action on June 8, 2018. (R. p. 13-19). Styles' Complaint set forth five causes of action: (1) Abuse of Process; (2) Malicious Prosecution; (3) False Imprisonment; (4) Interference with Contract (solely against then Brickman); and (5) Fraud. (*Id.*)

Initially, this action named Appellants as well as three individuals (Michael Craig Brickman, Ken Miller, and Ronnie Duncan) as defendants. (*Id.*) On December 3, 2019, Styles voluntarily dismissed the individual defendants as well as Count IV (Interference with Contract). (R. p. 30).

The case proceeded to trial, which commenced on March 9, 2020. Styles voluntarily dismissed Count I (Abuse of Process). (R. p. 670, lines 18-22). Judge Sprouse granted Appellants' renewed Motion for Directed Verdict as to Count II (Malicious Prosecution), which is the subject of Styles's conditional cross-appeal. (R. p. 678, lines 3-16).

Judge Sprouse submitted Counts 3 (False Imprisonment) and 4 (Fraud) to the jury. (R. p. 678, lines17-18). The jury returned a verdict for Appellants on Count IV. (R. p. 787, lines14-15). As to Count III (False Imprisonment), the jury returned a verdict of $100,000 in damages. (R. p. 786, line 20 – p. 787, line 13). At Appellants' request, Judge Sprouse earlier bifurcated the issue of punitive damages. (R. p. 215, lines19-24). The parties introduced evidence of Appellants' financials and made arguments regarding punitive damages, and Judge Sprouse charged the jury without exception. (R. p. 788, line 14 – p. 799, line 22). After further deliberation, the jury returned a punitive damage award of $10,000. (R. p. 800, lines 3-22).

Appellants filed timely post-trial Motions on March 23, 2020. (R. pp. 78-95). Styles filed a response on April 13, 2020. (R. pp. 103-38). Judge Sprouse denied Appellants' Motions on April 23rd. (R. pp. 6-12). Appellants timely served a Notice of Appeal on May 13, 2020, which was then filed on May 22, 2020. (R. pp. 150-68).

III. STANDARDS OF REVIEW

A. New Trial Absolute

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual

finding by the jury will not be disturbed unless a review of the record discloses that there is **no evidence** which reasonably supports the jury's findings." *Erickson v. Jones St. Publishers., LLC*, 368 S.C. 444, 464, 629 S.E.2d 653, 663-64 (2006) (emphasis added) (citing *Townes Assoc, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976)); *Ralph v. McLaughlin*, 428 S.C. 320, 339-40, 834 S.E.2d 213, 223 (Ct. App. 2019).

B. New Trial Nisi

> "The denial of a motion for a new trial nisi is within the [circuit court]'s discretion and will not be reversed on appeal absent an abuse of discretion." *Vinson*, 324 S.C. at 406, 477 S.E.2d at 723. "This [c]ourt has the duty to review the record and determine whether there has been an abuse of discretion amounting to an error of law." Id. at 406, 477 S.E.2d at 723-24. "We will only reverse if the [circuit court] abused [its] discretion in deciding a motion for new trial nisi additur to the extent that an error of law results." *Green v. Fritz*, 356 S.C. 566, 570, 590 S.E.2d 39, 41 (Ct. App. 2003). "The [circuit court] who heard the evidence and is more familiar with the evidentiary atmosphere at trial possesses a better-informed view of the damages than this [c]ourt. Accordingly, great deference is given to the [circuit court]." *Vinson*, 324 S.C. at 405-06, 477 S.E.2d at 723 (internal citation omitted). "Therefore, on appeal of the denial of a motion for a new trial nisi, this [c]ourt will reverse when the verdict is grossly inadequate or excessive requiring the granting of a new trial absolute." *Id.* at 406, 477 S.E.2d at 724.

Ralph, 428 S.C. at 340, 834 S.E.2d at 223-24.

C. Thirteenth Juror Denial

> "A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion was controlled by an error of law." *Folkens v. Hunt*, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267 (1990). "[T]o reverse the denial of a new trial motion under [the thirteenth juror doctrine,] we must, in essence, conclude that the moving party was entitled to a directed verdict at trial." *Parker v. Evening Post Publ'g Co.*, 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 2001).

Curtis v. Blake, 392 S.C. 494, 500, 709 S.E.2d 79, 82 (Ct. App. 2011) (brackets in original).

D. Evidentiary Rulings

> As a general rule, the admission of evidence is a matter addressed to the sound discretion of the trial court. *Gamble v. Int'l Paper Realty Corp. of South Carolina*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996); *Hofer v. St. Clair*, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000). On appeal, therefore, this Court will not disturb a trial court's evidentiary rulings absent a clear abuse of discretion. *Id.* at 439, 540 S.E.2d at 121; *Elledge v. Richland/Lexington School Dist. Five*, 352 S.C. 179, 185, 573 S.E.2d 789, 792 (2002); *see also Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005) (observing admission of evidence will not be reversed absent an abuse of discretion). The trial judge's decision will not be reversed on appeal unless it appears he clearly abused his discretion and the objecting party was prejudiced by the decision. *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 548 S.E.2d 880 (Ct. App. 2001); *Sullivan v. Davis*, 317 S.C. 462, 454 S.E.2d 907 (Ct. App. 1995). "For this Court to reverse a case based on the admission of evidence, both error and prejudice must be shown." *Stevens v. Allen*, 336 S.C. 439, 448, 520 S.E.2d 625, 629 (Ct. App. 1999) (citing *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970)).

Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 241-42, 616 S.E.2d 431, 435 (Ct. App. 2005).

> [W]e observe that "litigants, whether plaintiffs or defendants, are entitled to fair trials but not perfect trials." *Ketterman v. South Carolina Farm Bureau Mut. Ins. Co.*, 302 S.C. 276, 279, 395 S.E.2d 187, 189 (Ct. App. 1990), cert. denied. This notion was cogently expressed by the Supreme Court of South Carolina in Smoak v. *Seaboard Coast Line Railroad Co.*, 259 S.C. 632, 193 S.E.2d 594 (1972), in which the Court stated:
>
> > The defendant is not entitled to a perfect trial, but only a fair trial. Hardly any case is completed without some flaw. If a new trial was required every time a flaw or mere possibility of prejudice occurred, litigation would be unduly prolonged. Our Court has held many times that such matters are basically for the sound discretion of the trial judge.

Id., 259 S.C. at 640, 193 S.E.2d at 598.

Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 349-50, 450 S.E.2d 66, 76-77 (Ct. App. 1994).

IV. FACTS

A. Background

Appellants operate BI-LO Store 5566 in Pendleton. (R. p. 492, lines 10-12 (Ellison)).[1] Lisa Styles is a lifelong resident of Anderson County. (R. p. 147, lines 1-5 (Styles)). Styles joined BI-LO after high school and, after leaving and re-joining the company, she rose through the ranks at BI-LO, from a $7.50 per hour part-time cashier to a $49,500 customer service manager whom SEG identified as having potential for even higher advancement. (R. p. 274, line 8 – p. 275, line 1; r. p. 276, line 14 – p. 278, line 13 (Styles); r. p. 600, lines 22-24; r. p. 498, line 20 – p. 499, line 3 (Ellison); *see also* r. p. 522 lines 14-16 (Brickman)).

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

Styles and other employees began to complain in 2017 about the new store manager, Michael Brickman. (R. p. 278, line 14 – p. 282, line 8; r. p. 358, line 22 – p. 359, line 12 (Styles); r. pp. 818-19). Styles first complained to then district manager, Randy Ellison, on behalf of herself and others. (R. p. 359, line 22 – p. 361, line 16; r. p. 362, line 1 – 363, line 8 (Styles); r. p. 489, lines 1-6; r. p. 491,

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[1] The BI-LO managers are employed by Southeastern Grocers. (R. p. 490, lines 19-22 (Ellison); r. p. 451, lines 3-4 (Duncan)). The human resource function is handled by the corporate office in Jacksonville, Florida. (R. p. 499, line 12 – p. 500, line 6 (Furnas); r. p. 559, lines 8-9 (Miller)).

lines 7-25; r. p. 492, line 5 – p. 493, line 6; r. p. 494, lines 13 -19; r. p. 595, lines 6-11; r. p. 596, line 21 – p. 597, line 9 (Ellison)). Within a week of one of Styles's complaints, Ellison met with employees at the store and wrote up Brickman. (R. p. 495, lines 17-22; r. p. 496, lines 16-24; r. p. 600, line 5 (Ellison); r. p. 509, line 18 – p. 506, line 6 (Furnas); R. pp. 879-92; r. p. 556, line 23 – p. 557, line 3 (Brickman)).[2]

Tommy Brown succeeded Ellison in early 2018. (R. p. 364, lines 7-12 (Styles); r. p. 665, lines 11-16 (Brown)). When that happened, Brickman gloated to the employees that, "[n]ow I can talk to y'all any way that I want." (R. p. 365, lines 11-14 (Styles)). Styles complained to Brown during his first visit. (R. p. 365, line 15 – p. 366, line 2 (Styles)). Brown told Styles to gather statements from herself and the other employees. (R. p. 366, lines 5-7). After Styles did so, Appellants' associate relations representative from Jacksonville, Allison Furnas, called Styles and they spoke briefly. (R. p. 368, lines 2-6; r. p. 394, lines 16-25; r. p. 467, line 25 – p. 468, line 11 (Styles)). Furnas requested that Styles send her the written statements, which Styles emailed to Furnas on April 20. (R. p. 366, line 11 – p. 367, line 12; r. p. 368, lines 12-21; r. p. 369, lines 2-18 (Styles); r. pp. 818-19).

Nobody ever followed up with Styles or the other employees, and BI-LO simply closed the investigation. (R. p. 395, lines 4-13; r. p. 397, line 19 – p. 398,

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[2] Brickman clearly understood the seriousness of the situation as he told a corporate HR person that Ellison "tore him up," and that "he was so nervous and mad that he really wasn't listening." (R. p. 881).

line 2; r. p. 398, line 25 – 399, line 11 (Styles); r. p. 821.[3] Appellants assured Brickman that nothing would come of the employee complaints. (R. p. 550, line 25 – 552, line 4 (Brickman)). The ruse of an investigation served no apparent purpose other than to tip off and further enrage Brickman, who knew his job was in jeopardy from the prior writeup that Ellison put in his file.

Ellison and Brown made clear to Styles that Brickman knew of her complaints. (R. p. 436, lines 19-24 (Styles)). To defend himself, however, Brickman flatly contradicted the testimony of Appellants' other witnesses about his knowledge regarding the complaints.[4]

C. Appellants sets up Styles with "evidence" of theft that were known donations.

After Styles complained to Ellison and Brown, Styles and others observed Brickman holed up in his office watching store security video for hours at a time.

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[3] Brown testified that he learned of the investigation from Brickman. (R. p. 665, line 21 – p. 666, line 10 ((Brown)).

[4] Even at trial, Brickman continued to deny that he was aware of any complaints from Styles prior to Furnas calling him (in April). (R. p. 523, line 19 – p. 524, line 11 (Brickman)). Contrary to Ellison's testimony and documentation, Brickman flatly denied that Ellison ever conveyed concerns of Styles or other employees. (R. p. 547, line 24 – p. 548, line 2 (Brickman)). Brickman attempted to persuade the jury that the 2017 writeup that made him so "nervous" and "mad" had to do with "chang[ing] something in the lobby" that "wasn't like the way [Ellison] wanted it." (R. p. 545, line 2 – p. 547, line 23 (Brickman)). Brickman ducked and dodged questions about Ellison's later visit to the store and post-visit counseling regarding employee issues, stating that he could not recall the conversation but maybe it had to do with him "look[ing] harsh or critical or mean or something. I don't know." (R. p. 548, lines 7-24 (Brickman)). Incredibly, Brickman also swore that Ellison told him that all the employees liked him. (R. p. 549, lines 6-23 (Brickman)).

(R. p. 369, line 22 – 372, line 20 (Styles); r. p. 820).[5] Styles did not learn until later what Brickman was up to. Brickman had been isolating snippets of videos of Styles taking items, which he reported to the asset protection department. (R. pp. 966-75; r. p. 532, line 18 – 535, line 13 (Brickman)).

Brickman knew he could readily find video of Styles taking items because he had earlier approved donations of store items to AIM (formerly Anderson Interfaith Ministries), and he was aware of Styles's actions in gathering and taking the items. Styles discussed the items being donated with Brickman, and Styles provided Brickman handwritten lists of all donated items, as she had in the past when the store donated items. (R. p. 372, line 21 – p. 376, line 3; r. p. 376, line 19 – 377, line 8; r. p. 379, lines 10-22; r. p. 393, line 16 – p. 394, line 15; r. p. 462, line 17 – p. 463, line 14 (Styles)). Appellants finally dropped the pretense that there were no such donations after AIM's Marla Cobb provided pictures and testified about BI-LO's past and pertinent donations and about Styles delivering donated BI-LO items to AIM. (R. p. 256, line 25 – p. 272, line 13 (Cobb); r. pp. 803-14).

[5] Brickman claimed that he just happened to come across April video of the front end/floral area of the store and of Styles putting items in her car while looking at video of a March "deep clean" of the store and watching video of the cleaning of the men's bathroom. (R. p. 524, line 12 – p. 530, line 20 (Brickman)). Brickman claimed this caused "all kinds of concern" (r. p. 530, line 18 (Brickman)), which he, of course, never discussed with Styles. On cross examination, Brickman could not explain how looking at videos of the bathroom led him to focus on cameras at the front of the store when there are no bathrooms in that area. (R. p. 542, line 24 – p. 543, line 14 (Brickman)). Nor could he explain why he was looking at April 10 video of Styles when the "deep clean" occurred almost a month earlier. (R. p. 544, lines 13-19 (Brickman)).

The first AIM donation, for example, consisted of Easter baskets and contents (candy, grass, eggs, etc.), which Styles selected using a list provided by Cobb that identified ages of the children, as well as any issues like food allergies. (R. p. 377, line 15 – 378, line 18 (Styles); r. pp. 803-07). Styles gathered the items during the day when she had time and stored them in the floral department, which is at the front of the store. (R. p. 380, line 11 – p. 383, line 11 (Styles)). The floral area/front end has the most employees and management present, as well as security cameras, something about which Styles was well aware. (R. p. 383, line 12 – p. 385, line 1; r. p. 385, lines 9-13 (Styles); r. p. 626, lines 1-3 (Duncan)). In the very videos relied upon by Appellants, Styles is gathering the items and moving them around in plain sight and in broad daylight in front of other employees to the point that even Appellants' witness admitted that she did not conceal anything. (R. p. 624, line 5 – p. 625, line 25; r. p. 1651, line 16 – 1652, line 25 [Appx] (Duncan)). In the evening, Styles carried the items out to her car through the front doors directly under the cameras, and even left with the items on one occasion accompanied by the store's bookkeeper. (R. p. 385, line 16 – p. 389, line 5; r. p. 389 lines 13-17 (Styles); r. p. 886; r. p. 626, lines 4-9 (Duncan)). Styles took the Easter items home so that she and her daughters could assemble the baskets for the children based on Cobb's list, and Styles then delivered the assembled baskets to Cobb, which were put to their intended use. (R. p. 379, line 20 – p. 380, line 10;

r. p. 389, line 6 – p. 391, line 11; r. p. 465, lines 1-3 (Styles); r. p. 263, line 1 – p. 264, line 20; r. p. 1646, lines 6-16 [Appx] (Cobb); r. pp. 809-11).[6]

Knowing that he had approved these donations, Brickman nonetheless handed off the video excerpts to district risk loss manager, Ronnie Duncan. (R. p. 601, lines 7-24; r. pp. 966-70).

D. Appellants detain and coerce Styles.

Duncan had the district's human resource business partner, Ken Miller, accompany him to the store on May 23rd. (R. p. 607, lines 22-25 (Duncan)). Miller purportedly was to serve as the corporation's "witness" for the meeting with Styles. (R. p. 576, lines 4-10; r. p. 580, lines 19-21 (Miller)).[7] Duncan and Miller called Styles into the small manager's office, which is visible from the store through a door window. (R. p. 399, line 13 – p. 402, line 3 (Styles)).

Styles was alone in the closed room with Duncan and Miller. (R. p. 402, lines 4-6; r. p. 402, line 25 – r. p. 403, line 4 (Styles)). Contrary to Appellants'

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[6] The second donation Brickman approved consisted of personal care products that Cobb had requested. (R. p. 266, line 1 – p. 268, line 4 (Cobb)). Styles again listed these out for Brickman and delivered them directly to AIM, which AIM also acknowledged. (R. p. 391, line 15 – p. 392, line 21; r. p. 393, lines 8-11; r. p. 464, lines 21-25 (Styles); r. p. 267, line 12 – p. 268, line 4; r. p. 269, line 2 – p. 271, line 11 (Cobb); Pl. Exh. 4). Styles was clear that she did not take any items from either donation for her own use. (R. p. 391, lines 12-14; r. p. 393, lines 12-15 (Styles)).

[7] Duncan had visited stores *hundreds* of times for investigations and, while Miller was the only HR person in his district, Duncan never had Miller accompany him on any investigation until the meeting with Styles. (R. p. 636, lines 14-24 (Duncan)).

narrative, they detained Styles for over an hour.[8] During this time, Duncan and Miller repeatedly rebuffed Styles's requests to leave:

Q: Did you make any statements to Mr. Duncan and Mr. Miller as to whether you wanted to be in the room or didn't want to be in the room?

A: I asked to leave that room several times.

Q: Who did you ask?

A: Mr. Duncan.

Q: Did either Mr. Duncan or Mr. Miller make any statements as to whether you were permitted to leave?

A: I wasn't permitted to leave until I wrote a statement.

Q: Who said that?

A: Mr. Duncan.

(R. p. 406, line 14 – p. 407, line 1; see r. p. 410, lines 1-6; r. p. 446, lines 20-21 ("I had already asked to leave several times and had been told no"); r. p. 456, lines 19-20; r. p. 456, lines 19-20 (Styles)). Duncan and Miller also would not allow Styles to be alone. (R. p. 409, lines 2-3 (Styles)). Styles asked about taking a break, but Duncan and Miller only allowed her to walk outside with Miller in tow.

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[8] Only after the confrontation with Officer Glenn and the payment of the $450 could Styles leave. (R. p. 423, lines 2-12 (Styles)). In all, Appellants detained Styles for somewhere between one hour and one hour and fifteen minutes. The detention began shortly after noon (approximately 12:15) when Styles arrived to work. (R. p. 399, line 13 – p. 400, line 12; r. p. 437, lines 4-14 (Styles); r. p. 951; see r. p. 608, lines 10-12; r. p. 609, lines 4-8 (Duncan)). Styles apparently signed the confession at or around 12:42. (R. p. 444, lines 11-17 (Styles)). Miller escorted Styles on break at approximately 12:56 pm. (R. p. 437, lines 20-22; r. p. 446, lines 10-17; r. p. 887). Miller escorted her back into the store at 1:00. (R p. 449, line 14 – 450, line 9 (Styles); r. p. 952). Styles could not leave until shortly after 1:30 after she paid the $450. (R. p. 454, line 8 – p. 455, line 19; r. p. 458, lines 6-14 (Styles)).

(R. p. 407, line 9 – p. 409, line 14; r. p. 474, line 9 – p. 475, line 13 (Styles); r. pp. 886-87).[9]

Duncan also demanded a written confession as a condition of allowing Styles to leave. (R. p. 406, line 14 – p. 407, line 1 (Styles)). Styles made clear that she did not want to write a statement. (R. p. 409, lines 17-25 (Styles)). Duncan told Styles she either had to write one, or she was not going to be allowed to leave. (R. p. 410, lines 1-6 (Styles)). Styles described the predictable effects that Duncan and Miller's actions had:

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

(R. p. 460, line 19 – p. 461, line 2 (Styles)).

Before calling Styles in to the small office, Appellants never let on to Styles that there was any allegation against her. (R. p. 399, line 24 – p. 400, line 3; r. p. 402, lines 21-24 (Styles)). And, despite their denials, Miller and Duncan were aware of Styles's complaints about Brickman. Both Miller's and Brown's denials to the contrary simply fell apart because of the testimony of Appellants' other witnesses and impeachment from prior sworn testimony. [10] Appellants' bad faith

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[9] Even though she was not required to attempt such a thing, Styles could not have made "a run for it" because her keys and purse were locked in the office. (R. p. 446, line 22 – p. 447, line 2 (Styles)).

[10] Miller denied that either Ellison or Brown had told him of Styles complaints. (R. p. 572, line 23 – p. 575, line 7 (Miller)). Ellison told Miller about both the 2017 complaint and about Styles' second complaint in February 2028 because it was Miller's responsibility to address. (R. p. 595, lines 13-14; r. p. 494, line 24 – p. 495,

also was evident from the fact that, in addition to Duncan's discussion about Brown getting a new manager, supra n. 10, Miller procured approval to terminate Styles even *before* the May 23rd meeting. (R. p. 590, lines 11-20 (Miller)).

From the start, Styles tried to explain the situation with the AIM donations, including that Brickman had approved the donations and that she had provided written lists to Brickman. (R. p. 402, lines 16-20, r. p. 403, lines 5-20 (Styles)).[11] Duncan and Miller were hearing none of it, and Duncan's response to Styles was revealing. Without even speaking to Brickman (who was in the store), leaving the room, or communicating with anyone electronically, Duncan summarily responded that it would be Styles's word against Brickman's, indicating that Duncan knew all

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line 11; r. p. 496, lines 10-15; see also r. p. 597, lines 16-18; r. p. 599, lines 8-17 (Ellison)). Ellison also repeatedly testified that he spoke to Miller after speaking to the other employees. (R. p. 497, lines 3-23; r. p. 597, lines 10-11; r. p. 597, line 19 – p. 598, line 24 (Ellison)). Brown also discussed Styles' complaints with Miller on the same day that she made them (i.e., the very first day he visited the store). (R. p. 666, line 25 – p. 667, line 10 (Brown)). Ellison testified plainly that dealing with these matters was "[Miller's] responsibility," but Miller argued that, as the HR "people person," his job did not involve handing complaints in his own District. (R. p. 576, lines 1-3 (Miller)).

Duncan claimed that he had spoken to Brown prior to meeting with Styles on May 23rd. (R. p. 634, lines 3-5 (Duncan)). Duncan tried, however, to claim under oath that he had no knowledge whether Brown knew about Styles' complaints. (R. p. 634, lines 6-8 (Duncan)). Duncan was impeached with his prior testimony in which he clearly stated that Brown "was aware of it." (R. p. 634, line 9 – p. 635, line 17 (Duncan)). In fact, Brown told Duncan prior to the meeting to let him know if Duncan spoke to Styles so Brown could get another manager. (R. p. 635, lines 18-23 (Duncan)).

[11] Styles told Duncan and Miller that she believed that the confrontation was a result of the complaints about Brickman that she had made to the corporate office. (R. p. 406, lines 2-7 (Styles)).

about the situation and that he was confident that Brickman would simply deny it. (R. p. 403, line 21 – p. 406, line 1 (Styles)).[12]

The jury also was able to consider the shameless abdication of responsibility by Miller. In describing his role that day, Miller testified that he was the "people person," and that he was "just looking out for people." (R. p. 567, lines 16-18; p. 553, line 20 (Miller)). When Miller was asked on cross, however, why the "people person" whose role is to "look out for people" made no inquiry into Styles's side of the story (*see supra* note 12), his feeble response was that it "wasn't my role." (R. p. 579, lines 21-24 (Miller)).

Duncan and Miller's tactics worked. Styles finally relented and provided them with the written statement they demanded of her so she could leave. (R. p. 414, lines 4-22 (Styles); r. p. 824). The extent to which Styles was coerced and pressured is exemplified, in part, by the fact that Duncan required that she make statements that are demonstrably untrue.[13]

E. Appellants' detention of Styles caused severe distress

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[12] Duncan did not even ask whether Styles had copies of the lists or any other proof as to what she was saying. (R. p. 404, lines 4-6 (Styles)). Nor did he interview other witnesses to assess Styles's explanations. (R. p. 626, lines 21–23; r. p. 628, lines 13-23 (Duncan)). Miller claimed that he did not ask Brickman *any* questions about donations because (somehow) it would not be relevant and because it was not his role. (R. p. 582, lines 19-25; see r. p. 583, line 1 – p. 584, line 4 (Miller)).

[13] At Duncan's direction, for example, Styles wrote that "some" of the items she took were donations, when, in fact, she had explained that *all* such items were donated. (R. p. 415, line 20 – p. 416, line 14 (Styles); r. p. 824). Even the responding officer testified that Styles maintained that *all* the items were donated. (R. p. 663, lines 4-9 (Glenn)). Duncan also made Styles write that what she did was wrong. (R. p. 416, lines 15-19; r. p. 442, line 22 – p. 443, line 2 (Styles)).

Styles explained how Appellants' detention and accompanying coercion and threats broke her will. Styles testified that "I would have wrote anything to get out of that room." (R. p. 417, lines 6-7; see r. p. 417, lines 18-21; r. p. 418, lines 19-23 (Styles)). The jury heard Styles explain her need to escape:

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

(R. p. 418, lines 1-18 (Styles)).[14]

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[14] Duncan and Miller also forced Styles to agree, in writing, to pay $450 with the threat that such payment was necessary to keep her out of jail. (R. p. 416, line 20 – p. 417, line 2 (Styles)). This terrified Styles, who has never been arrested, charged with a crime, accused of stealing, or previously fired from a job. (R. p. 430, line 20 – p. 431, line 5 (Styles)).

Miller and Duncan also falsely documented the day's events. Miller wrote a memo to his supervisor. (R. p. 585, line 1- p. 586, line 7 (Miller); r. p. 878). It not only fails to mention any charitable donations, but Miller brazenly misrepresented that Styles said she had no reason for taking the items. (R. p. 586, line 8 – p. 587, line 16 (Miller); r. p. 657, line 23 – p. 658, line 6 (Duncan); r. p. 878). Duncan also authored a memorandum that same day to Brown. (R. p. 654, line 24 – p. 655, line 15 (Duncan); r. p. 883-84). Duncan completely omitted any mention of donations. (R. p. 883-84; r. p. 656, line 3 – p. 657, line 7 (Duncan)). Duncan also failed to document any discussion, or even mention, of the donations Brickman approved. (R. p. 587, line 17 – p. 589, line 21 (Miller); r. p. 885).

Styles also explained how she was "caught off guard" with these accusations, and the fact that nobody was listening to her side of the story rendered her "physically sick." (R. p. 420, lines 14-25 (Styles)). Styles left in front of customers, who had observed her detention, but she had to stop on the way home because she was "literally just throwing up. I was just sick. I know it was my nerves." (R. p. 423, lines 16-24 (Styles)). The lingering effects that the confinement had on Styles also was profound:

> That day actually in my opinion, it changed my personality for a long time. I was a very trusting person before. Pretty outgoing. I didn't want to – I didn't want to go out for a while on the town. I didn't sleep for a long time. I didn't eat for a long time.
>
> I had a hard time when I became employed again. . . . it took me a long time to become me again.

(R. p. 428, line 16 – p. 429, line 4; r. p. 432, line 25 – p. 433, line 10 (Styles)). Styles' sense of shame and withdrawal affected her relationships with other parents and community members. (R. p. 430, lines 3-21 (Styles)). The ordeal also exacerbated a serious health issue that also affected her home life and her ability to interact with her children:

> I was diagnosed with MRSA after the birth of our first child, Remy. . . . And it lays dormant or becomes active. It's one of those types of illnesses, but stress is an inducer to make you have a flair up. That's pretty painful. . . .
>
> And then, of course, I have to be extra careful at home because of my kids because I don't want them to get it. So I have to basically sanitize the entire house. Like they can' come in the bathroom that I've been in . They can't – there's several things we have to do to protect them.
>
> And after the stress of the whole ordeal, my flair ups had come back pretty bad and I couldn't get them under control for a while.

(R. p. 429, lines 6-22; r. p. 433, line 18 – p. 434, line 12 (Styles)).

Appellants double crossed Styles after securing her “confession.”[15] Brickman called the police. (R. p. 619, lines 11-14 (Duncan)). When Officer Glenn of the Pendleton Police Department responded, he first spoke to Brickman. (R. p. 663, lines 15–18 (Glenn); r. p. 980; r. p. 472, line 10 – p. 473, line 20 (Styles)).[16] Brickman told Officer Glenn up front that “corporate wanted to press charges.” (R. p. 664, lines :3-10 (Glenn)).[17] That was the plan all along and Brickman knew it -- even though he was not in the room when Miller and Duncan interviewed Styles. And only through the coercive detention could Appellants have secured what Brickman was seeking all along.

Appellants’ videos exposed another Brickman lie at trial. On direct, Brickman testified that he did not have a conversation with the police. (R p. 540, lines 3-5 (Brickman)). The videos, however, showed an eight-minute conversation between Glenn, Brickman, and another officer, which Brickman tried to say, “could be anything.” (R. p. 541, lines 3-22; r. p. 544, lines 8-12 (Brickman); r. p. 889). But this was not the first time Brickman lied. Officer Glenn specifically asked Brickman

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[15] Styles did pay $450 of her own personal funds before she left based on her prior written promise to do so. (R. p. 421, line 6 – p. 422, line 23 (Styles); r. p. 825). After getting the statement with false admissions, Duncan reneged and had Brickman call the police. (R. p. 418, line 24 – p. 419, line 1 (Styles); r. p. 619, lines 11-14 (Duncan))

[16] Brickman claimed that Duncan was standing there when the officers arrived, and Brickman just let him handle it. (R. p. 540, lines 9-16 (Brickman)). The pictures and video tell a different tale. (*See, e.g.*, r. p. 980).

[17] Brickman also is the one who signed the police report seeking to have her prosecuted. (R. p. 554, line 23 – p. 555, line 5; r. p. 558, lines 13-23 (Brickman)).

about the donations, and Brickman denied there were any, just as Duncan had said Brickman would before anyone supposedly had spoken to Brickman about the donations. (R. p. 664, lines 14-19 (Glenn)). Appellants had their stories down before the detention and Brickman, Miller, and Duncan simply did not need to confer during or afterwards to know what each would say.

F. Appellants facilitated its wrongdoing by repeatedly violating its own policy

Further evidence of the malintent of Appellants comes from the myriad violations of Appellants' own policy that was necessary to coerce Styles's written confession. (R. p. 644, lines 6-8; r. p. 644, line 14 – p. 534, line 2; r. p. 654, lines 20-23; r. p. 658, lines 7-16 (Duncan)). The voluntariness of such statements is "critical," according to Appellants' own policy. (R. p. 860). The policy stresses that the process of procuring subject statements requires "special care" and "[f]ailure to comply with established . . .policies and procedures can serious damage the credibility of an investigation sometimes to the degree in which the integrity of the case is brought into question." (*Id.*) Towards that end, the policy emphasizes:

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

(*Id.*) The policy includes a consent form, granting permission to interview. (R. p. 876). These also are to be entered into the APIN case management system. (R. p. 833).

There is no consent form here, however, because Duncan never even showed the form to Styles. (R. p. 639, line 21 – p. 640, line 11 (Duncan)).[18] Had he, Styles would have understood her rights, and Duncan wasn't about to let that happen.

Likewise, while deemed to be "critically important," there are no witness statements of the May 23rd Styles interview entered into the APIN system. That is because Appellants remarkably claim that, in violation of their own policy, nobody took notes. On the stand, Miller and Duncan pointed their fingers at each other, and each refuted the other one's account. (R. p. 580, line 22 – p. 581, line 2 (Miller); p. 630, line 6; r. p. 645, lines 6-7 (Duncan)); *see* r. p. 630, lines 6, 16-20; r. p. 644, lines 11-12 (Duncan); r. p. 581, lines 8-13 (Miller)).[19]

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[18] Duncan's attempt to excuse his noncompliance with the policy was a key piece of testimony upon which the jury could judge his credibility. Duncan maintained under oath that he was orally instructed to not follow the policy, but he could not even identify who told him that. (R. p. 640, line 13; r. p. 641, line 19 – p. 642, line 5 (Duncan)).

[19] Miller was the corporation's "witness" for the meeting with Styles. (R. p. 596, lines 4-10; r. p. 580, lines 19-21 (Miller); r. p. 642, lines 10-11 (Duncan)). Appellants' policy repeatedly stresses the "critical" importance of the witness taking notes, and even how he or she is positioned slightly behind the person interviewed. (R. p. 851; *see also id.* 855; r. p. 856 ("It is important that all witnesses take detailed notes during the course of any interview. Those notes and subsequent write-up documenting [sic] what occurred during the interview is [sic] critical in order to document what was said and more importantly what occurred."); see r. p. 645, line 8 – p. 646, line 3 (Duncan)). The Appellants policy requires that all such notes be entered into APIN in their entirety. (R. p. 863; r. p. 646, lines 4-19; r. p. 648, lines 10-17 (Duncan)). Clearly understanding why this is important under Appellant's own policy, Miller told the jury he didn't take "written notes," but he "listened and I observed." (R p. 580, lines 23-25 (Miller)). Duncan stated, however, that Miller knew what he should be doing. (R. p. 644, lines 11-12 (Duncan)). Miller stated that Duncan took notes. (R. p. 581, lines 8-13 (Miller)). Duncan denied Miller's claim. (R. p. 630, line 6 ("I did not take notes"); *see id.* lines 16-20. The jury heard Duncan's testimony that he "scribbles" while people are talking so that people think

Duncan acknowledges that his story and Styles's story about the detention are irreconcilable. (R. p. 639, lines 10-12 (Duncan)). That was by design. Appellants policy allows for Duncan to simply record the interview. (R. p. 876 ("I further give permission to record this interview using audio and video equipment and to use and publish this recording . . . for any purpose they deem necessary.")). That would have eliminated any doubt as to what occurred.[20] Duncan freely acknowledged however, that, by not documenting the meeting (as *required* by the policy) and by not recording it (as permitted by the policy), the jury only had his word against Styles as to what transpired on May 23rd. (R. p. 651, lines 14-19 (Duncan)). These multiple deviations from policy were no mistake.

Witness statements for the May 23rd interview are not all that is missing under Appellants' policy. The APIN system allows Duncan to enter all documents and details regarding the communications surrounding an investigation. (R. p. 628, line 24 – p. 629, line 19; r. p. 630, line 24 – p. 631, line 5; r. p. 629, lines 20-23 (Duncan)). Yet, Duncan neither documented his calls with Brickman, nor did he include certain text messages in the APIN system. (R. p. 629, lines 23-25; r. p.

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he is taking notes, which is "just part of the process." (R. p. 630, lines 1-15 (Duncan)).

Nor was the policy followed as to where the witness should be during the interview. (R. p. 643, line 18 – p. 644, line 5 (Duncan)).

[20] Duncan argued, however, that they are not allowed to do that, but he could not point to where the policy has ever been changed. (R. p. 640, line 19 – p. 641, line 8 (Duncan)).

631, lines 18-24 (Duncan)).[21] Appellants intentionally omitted these required items while seeking to create the impression that this was a routine investigation resulting in an air-tight confession. The jury saw through it, as should this Court.

Finally, recognizing the inherent coercion that can exist in situations where multiple men meet alone with a female in an 8 x 10 room (R. p. 580, lines 8-10 (Miller)), Appellants' policy also states, "In an effort to defend an interviewer's actions, the interview should always have a witness present of the same sex." (R. p. 642, lines 12-20 (Duncan); R. p. 855). Of course, that never happened here either and, again, the violation of policy is no mistake. Allowing a neutral female in the room would have hindered Appellants' ability to involuntarily detain Styles, to coerce and strong-arm her, and then to misrepresent what occurred. Appellants wanted a "we said/she said" matchup, and the jury was able to determine why.

V. ARGUMENT

Although Appellants continue to prolong and complicate matters with straw man arguments and by ignoring evidence they don't like, this case is very simple. The jury was confronted with competing narratives as to Appellants' detention of Styles and what was said and done during it. Both narratives were supported by testimony, as irreconcilable as it was. The jury chose to believe Styles's testimony and evidence, and there is no suggestion that the jury did so improperly. The jury

[21] At first, Duncan defended the decision to not include the actual information in APIN because he claimed he had entered the dates in the APIN. That led to an admission that the dates of his communications that he documented were wrong (and clearly manipulated to occur after Brickman had been cleared by corporate). (R. p. 632, line 7 – p. 633, line 20 (Duncan)). None of this is a mistake.

also arrived at its own numbers for damages, which the case law likewise instructs is within its province. There are no legitimate issues of evidentiary errors by the trial court, and certainly none that can clear the high hurdle of showing prejudice. There simply is nothing here to warrant any serious contemplation as to whether the jury's prerogative should be disturbed.

A. Appellants' JNOV argument as to merits

1. Appellants did not preserve the issue of liability for appellate review.

Appellants did not preserve their arguments regarding the merits of Plaintiff's false imprisonment claim. Grounds for a directed verdict must be specifically stated on the record. Rule 50(a), SCRCP ("A motion for directed verdict shall state the specific grounds therefor."). Perfunctory arguments, for example, that there was no evidence the Appellants did anything wrong simply are not specific enough to put the trial court on notice of more specific grounds argued on appeal. *Connolly v. People's Life Ins. Co. of S.C.*, 299 S.C. 348, 341, 284 S.E.2d 738, 740 (1989).

At the close of the evidence, Appellants did not make an effective motion for directed verdict as to false imprisonment, and they certainly did not discuss the evidence upon which they rely as being grounds for a JNOV. Appellants only moved as to fraud, abuse of process, and malicious prosecution claims not at issue here. (R. p. 668, line 14 – p. 678, line 21]). After the Court stated that "causes of action will be false imprisonment and fraud that will go back to the jury," counsel for Appellants merely stated that "[j]ust solely for keeping things on the record, you had previously denied the three other motions for directed verdict" and that "we'll

renew those, understanding that I don't think your ruling is going to change obviously." (R. p. 678, lines 17-25). The Court remarked that "False imprisonment, there's clearly evidence in the record to support the elements of false imprisonment. . . . ." (R. p. 679, lines 1-3]).

Counsel for Appellants did *not* disagree. In fact, counsel clarified that he was "just referring to the course and scope of physical injury." (R. p. 679, lines 6-8). That is *not* a reference to the false imprisonment claim. Rather, it is a reference to a separate part of the first directed verdict motion as to damages generally. (R. p. 516, line 10 – p. 517, line 2; r. p. 520, lines 14-16). Accordingly, Appellants preserved no error as to the false imprisonment claim.

Even if counsel's argument could somehow be read as incorporating every argument made in the first directed verdict motion, that does not help Appellants for two reasons. First, a review of Appellants' arguments shows that almost all the evidence upon which Appellants rely was introduced after page 486 of the transcript (*i.e.,* the end of the first directed verdict). The trial court never had an opportunity to address how such evidence could warrant a directed verdict.

Second, during the first directed verdict, Appellants only made a cursory argument that the detention was reasonable, that there were no threats, and that the second part of the detention (after the smoke break) raised issues of consent. (R. p. 513, line 13 – p. 515, line 22). On appeal, however, Appellants make different arguments. They argue about the sufficiency of evidence that Styles "was falsely imprisoned" (App. Br. at 11), that the tort of false imprisonment requires actual restraint (*id.* at 12), that Plaintiff's arguments are supported only by her "self-

serving testimony (*id.* at 14), that the existence of probable cause in the mind of Duncan precludes liability (*id.* at 15-16), that Duncan was the person responsible for the decisions at issue (*id.* at 16), that Brickman's purported ulterior motives are a "red herring," (*id.* at 17), and that Styles's "entire theory" is undermined by Brickman being unaware of complaints when he showed Duncan the video (*id.*), and that "unintended consequences" will flow from allowing liability in this case (id. at 19-20). Appellants made no such arguments during a directed verdict motion.[22]

Even under the most liberal constructions of preservation, a prior argument cannot preserve different arguments for a JNOV motion. *In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001); *Smith v. Ridgeway Chems., Inc.*, 302 S.C. 303, 305-06, 395 S.E.2d 742, 743-44 (Ct. App. 1990). Likewise, they cannot be raised for the first time on appeal. *State v. Rosemond*, 348 S.C. 621, 627-28, 650 S.E.2d 636, 640 (Ct. App. 2002).

And even if Appellants could overcome their failure to make a specific directed verdict argument, many of their arguments still are not preserved because they were not specifically presented to the trial judge in the JNOV motion. (See App. Br. at 17 (argument regarding attack on Brickman's character and ulterior motives not raised as the only issue in the JNOV motion was whether motives could be imputed as a "low level manager"); *id.* (whether Brickman was involved

[22] In the first DV Motion, counsel for Appellants argued that "we believe there are issues of consent based on the testimony of the plaintiff." (R. p. 514, line 25 – p. 515, line 1). The existence of an issue is grounds to *deny* directed verdict, and not grounds to grant one. Again, the trial court was not presented with any argument as to why the evidence leads to the conclusion that there was consent as a matter of law, requiring the relief that Appellants now seek from this Court.

in the decision to interview Styles and therefore whether his motivations were relevant); *id.* (whether the "entire theory" of retaliation was undermined by timing of Brickman speaking with Duncan and Brickman's awareness of complaints); *id.* at 17-18 (Duncan's awareness of complaints which is "fatal" to claim); and *id.* at 19-20 (policy argument about unintended consequences of allowing case to stand). The appellate courts are not the proper fora in which a disappointed litigant can try out new arguments. *Tucker v. Doe*, 413 S.C. 389, 409, 776 S.E.2d 121, 132 (Ct. App. 2015).

2. Styles provided ample evidence of false imprisonment

The three elements of false imprisonment are: (1) that the defendant(s) 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 (2006).

a. Restraint

False imprisonment merely requires use of "words sufficient to impart to Plaintiffs that they are not free to go." *Zimbelman v. Savage*, 745 F. Supp. 2d 664, 672 (D.S.C. 2010); *Westbrook v. Hutchison*, 195 S.C. 101, 109, 10 S.E.2d 145, 148 (1940)); *accord Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995) (citing *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230-31, 317 S.E.2d 748, 755 (Ct. App. 1984)). "No threat of imminent use of force" is required." *Zimbelman*, 745 F. Supp. at 683 (citing *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 30 S.E.2d 307 (1944)). Finally, "It is not necessary that the individual be confined within a certain area." *Gathers*, 282 S.C. at 231, 317 S.E.2d at 755.

All Styles had to show is that Appellants “operat[ed] on the will of Plaintiff.” *Gathers*, 282 S.C. at 230-31, 317 SE.2d at 755. She certainly provided more than enough evidence in this regard, as the trial court repeatedly noted. (*See* Section IV(D)).[23]

Appellants decry that “the only ‘evidence’ Plaintiff presented to support her claim . . . was her own self-serving testimony.” (App. Br. at 14). This argument concedes the appellate issue. The trial court charged the jury on this point in the same manner as our appellate courts have long approved of the standard charge on witness credibility. (R. p. 761, lines 7-12 (“You may believe the testimony of one witness over the many . . . most certainly you do not determine the matter of credibility by simply counting up the number of witnesses who may have testified on behalf of the parties . . . .”)); *James v. Gaffney Mfg. Co.*, 158 S.C. 386, 389, 155 S.E. 588, 590 (1930) (“[T]he greater weight of the evidence d[oes] not mean, or depend upon the swearing of the greater number of witnesses, for the jury might

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[23] Appellants exercised the actual authority to detain Styles by telling her that she could not leave or move about freely. (*Supra* section IV(D)). Appellants’ loss prevention policies detail Appellants’ power to detain Styles. (*See, e.g.*, R. p. 832 (“Only authorized Asset Protection Team Members may detain a Team Member”); r. p. 844 (“[A]s long as the observations are recorded and/or well documented, the probability is that the loss will be recovered when the Team Member is ultimately detained”). In fact, the manual has an entire section on the detention of team members. (R. p. 847-49). These manuals are directly relevant on the issue of the reasonableness of a detention. *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 31, 410 S.E.2d 21, 23 (Ct. App. 1991) (“[T]he loss prevention manual was relevant on the material issue of the reasonableness of K-Mart's actions.”) Indeed, throughout most of this case, Appellants took the position that it was legally justified in detaining Styles pursuant to the Shopkeeper statute. (R. p. 39. Even after waiving that argument, Appellants have continued to argue that it has the legal justification to detain Styles based on probable cause. (App. Br. at 15-17; *see* R. p. 86; *id.* 85 n. 3; *id.* at 92).

find the truth to lie in the mouth of a single witness in the case."); *Julien v. Starr Ins. Co.*, 159 S.C. 309, 316, 156 S.E. 865, 867 (1931) ("The greater weight of the evidence does not mean the greater number of witnesses."); *State v. Aleksey*, 343 S.C. 20, 26, 538 S.E.2d 248, 251 (2000).

Appellants then misrepresent the law by citing *Beraho v. South Carolina State College*, 302 S.C. 129, 131, 394 S.E.2d 28, 29 (Ct. App. 1990) for the proposition that "[f]orce of some sort must be used." (App. Br. at 15). *Beraho* involved a false imprisonment claim by a professor, who jumped into his car as it was being towed. The issue was whether one could "voluntarily place himself" into a confined space and then claim to be falsely imprisoned. *Id.* at 131, 394 S.E.2d at 29. This Court cited an 1838 case that uses the word "force," but that is actually discussing the willfulness of the person detained. *Id.* (citing *Moses v. Dubois*, 23 S.C.L. (Dud.) 209, 211-212 (1838)). The Supreme Court in *Moses* made clear that its use of the word "force" was not intended to mean physical force: "The force may be exhibited in a variety of ways without actual assault or corporal touch . . . ." *Moses*, 23 S.C.L. at 211.[24] That is consistent with the settled case law that no physical contact, or even threat of imminent force, is necessary.

Appellants also continue to argue that Styles voluntarily returned to the office after taking a break. (App. Br. 14-15). Like the disputed notion that Styles

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[24] In *Moses*, a deputy sheriff sued a steamboat captain for leaving port after the deputy came on board to arrest a passenger. Not only did the captain take the deputy on a two week round trip to Norfolk, Virginia, but he also apparently charged him a passenger rate for the trip. *Id.* at 209.

was free to leave, this was just another disputed assertion the jury chose not to accept. (*See supra* section IV(D)).

b. Probable cause

"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." *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 228, 317 S.E.2d 748, 754 (Ct. App. 1984) (emphasis added). "The issue of probable cause is essentially a question of fact and ordinarily for the determination of the jury." *Id.* The terms "good faith," "belief," and "under the circumstances" dictate that probable cause is an issue solely within the purview of the jury. *See Caldwell v. K-Mart Corp.*, 306 S.C. 27, 31, 410 S.E.2d 21, 23 (Ct. App. 1991); *Mains v. K Mart Corp.*, 297 S.C. 142, 150, 375 S.E.2d 311, 315 (Ct. App. 1988). This is because it often turns on an assessment of motive. *E.g. Zimbelman v. Savage*, 745 F. Supp. 2d 664, 679 (D.S.C. 2010) (determining that motive for the false imprisonment "started as retaliation"); *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 625-26, 654 S.E.2d 541, 552-53 (Ct. App. 2007) ($250,000 punitive damage award affirmed where store manager had customer detained on false pretenses), *vacated on other grounds*, 384 S.C. 511, 682 S.E.2d 824 (2009); *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 372, 377 S.E.2d 127, 130 (Ct. App. 1989) (motive for placing handicapped passenger in particular area was determinative as to the third element of the tort); *Clemmons v. Nicholson*, 180 S.C. 54, 55, 185 S.E. 34, 34 (1936) (stating in context of malicious prosecution claim that, "where a person institutes a prosecution against another without probable cause, it is difficult to

conceive of any other motive but a malicious one for bringing the prosecution. Want of probable cause is evidence of malice for the consideration of the jury."); *Horton v. City of Columbia*, 408 S.C. 27, 36, 757 S.E.2d 537, 541 (Ct. App. 2014) (setting forth, in the context of a lack of probable cause argument, the standard for "[i]nferring bad motives").

Appellants knew before the confinement that Styles had done nothing wrong. Brickman was involved at every step (from making the report to telling the police that corporate wanted to press charges without supposedly even speaking to Duncan or Miller).[25] Miller's claim that he was blissfully unaware of any issues

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[25] Appellants continue to argue that Styles' handling of the donations violated company policy. The jury obviously saw through this argument. Miller strived mightily to avoid acknowledging that, if Brickman had instructed Styles to do what she had done (as she told Miller and Duncan and as she testified at trial) then Brickman violated policy as well. (R. p. 591, line 19 – p. 594, line 20 (Miller)). Miller obviously saw where the questioning was going and had to admit that nobody even looked into Brickman's alleged violations of policy, claiming it was not his job. (R. p. 594, lines 21-23 (Miller)).

Duncan also agreed that any agreement by Brickman to handle the donations as they were would have violated corporate policy. (R. p. 637, lines 4-8 (Duncan)). Yet, Appellants' own asset protection manager in charge of investigating allegations of such violations never looked into the allegation that Brickman was involved. (R. p. 637, lines 9-10 (Duncan)). Miller said he didn't know if anyone else investigated the matter because "I wasn't doing the investigation. (R. p. 594, lines 22-23 (Miller)). Duncan said it was not his job either and he pointed the finger back at Miller. (R. p. 652, line 23 – p. 653, line 2 (Duncan))). Somehow, it's nobody's job to investigate Brickman, but they were all too eager to pursue Styles.

Duncan, who was not sequestered and had a day to think about it, tried to convince the jury that Styles specifically told him on May 23rd that Brickman did *not* approve of the donations. (R. p. 631, line 10 – p. 638, line 18 (Duncan)). Of course, that shocking and material admission is nowhere documented in the APIN system and was never raised before trial. Likewise, Duncan testified that Styles told him she took some of the items for herself, but that purported admission is

was refuted by both district managers (Ellison and Brown). (See supra n. 10). And the jury certainly was free to disbelieve Duncan's similar protestations that he had heard nothing and knew nothing. *See Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("The fact that testimony is not contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.") The effort by Appellants to circumvent their own policies and to ignore Styles's accusations is additional fodder upon which the jury could easily dismiss Appellants' narrative. (*Supra* sections IV(D), (F)).

Finally, Appellants' effort to divorce Duncan and Miller from the motives of Brickman is mis-spent. Although the jury could easily conclude from the circumstances and refuted denials that Miller and Duncan knew everything, Brickman's knowledge is imputed to Appellants, as is the knowledge of Miller and Duncan. *Independence Nat'l Bank v. Buncombe Professional Park, LLC*, 411 S.C. 605, 608-09, 769 S.E.2d 663, 665 (2015); *Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979); *Bankers Trust of S.C. v. Bruce*, 283 S.C. 408, 323 S.E.2d 523 (Ct. App. 1984).

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nowhere documented in APIN as required. (R. p. 648, line 1 – p. 649, line 5; r. p. 651, line 25 – p. 652, line 21 (Duncan)).

In addition to turning a blind eye to accusations against Brickman, Duncan admitted that Appellants were aware that Styles accused Duncan of doing things that, if true, violated corporate policy. Yet, as with Brickman, nobody investigated these allegations. (R. p. 659, lines 3-16 (Duncan)).

c. Duration

Appellants are not even close to accurate in terms of their description regarding the length of the detention in this case. (*See supra* n. 8 & accompanying text). Still, there is no minimum time requirement for the tort of false imprisonment. Far shorter detentions have resulted in liability, and our appellate courts stress that these are all issues of fact for the jury. *E.g.*, *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991) (Fifteen-minute detention with no touching or physical restraint); *Mains v. K Mart Corp.*, 297 S.C. 142, 150, 375 S.E.2d 311, 315 (Ct. App. 1988) (Twenty-minute detention: "Whether Mains was delayed in a reasonable manner and for a reasonable time to permit investigation, under the circumstances of this case, was an issue for the jury; so also was the question of whether there was reasonable cause to believe that Mains committed the crime of shoplifting.")

B. BI-LO's arguments regarding the denial of its New Trial Motion

1. Issue preservation

a. Evidence arguments

All but one of Appellants' arguments about evidentiary rulings are not preserved for review. First, Appellants cite testimony to which there is no contemporaneous objection. (App. Br. at 21-23 (citing r. p. 359, lines 11-12; r. p. 362, line 7, r. p. 366; r. p. 370, lines 8-12, r. p. 490, line 21- p. 493, line 6, r. p. 548, lines 3-24, r. p. 497, lines 19-20,[26] r. p. 395, lines 4-10, r. p. 397, lines 1-2, r. p.

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[26] Counsel for Appellants raised an objection after this portion of the testimony, but he was clear to note that the part read was not objected to and his

395, lines 8-10; r. p. 395, lines 4-7, r p. 395, lines 11-13; r. p. 397, lines 19-22; r. p. 397, line 23 – p. 398, line 2, r. p. 501, lines 11-17, r. p. 501, lines 18-20, r. p. 502, lines 3-5). A party may not assert error in the admission of evidence where it fails to make a contemporaneous objection when that evidence is offered. *Williams v. Moore*, 400 S.C. 90, 106, 733 S.E.2d 224, 232 (Ct. App. 2012) (citing *Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 87 (Ct. App. 2011)). Motions in limine do not preserve the issue for appeal. *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). Nor do self-serving "continuing objections." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm.*, 414 S.C. 33, 59, 777 S.E.2d 176, 190 (2015).

Second, Appellants' argument regarding their failure to respond to Styles's complaint fails for a different preservation reason. (App. Br. 22, last bullet). Without any objection, Styles testified that, after she reached out to the corporate office about her earlier complaint (that nobody responded to), she received no response from anyone, and nobody reached out to her to see if she was still having problems. (R. p. 396, line 2 – p. 397, line 22). She also testified, without objection, that she was not aware of anybody getting back to any of the other employees who complained to see if they had problems. (R. p. 397, line 23 – p. 398, line 2). Counsel for Styles then asked whether anyone assured her that she would not be retaliated against and, before she could answer, the court recessed after Appellant's counsel sought a sidebar. (R. p. 398, lines 3-21). When testimony

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objection was to the next sentence, which never was read. (R. p. 1647, line 9 – p. 1650, line 19 [Appx]).

resumed, counsel for Styles repeated the question, counsel for Appellants simply stated “objection,” and the trial court overruled the objection. (R. p. 398, line 25 – p. 399, line 10).

The Rules of Evidence are clear: “Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one admitting evidence, a timely objection . . . appears of record, **stating the specific ground of objection**, if the specific ground was not apparent from the context.” Rule 103(a)(1), SCRE (emphasis added). As a necessary corollary to the principle that an objection must be raised with specificity, “[a] general objection is ordinarily insufficient to preserve an issue for appeal.” *State v. Varvil*, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) (citations omitted); e.g. *State v. Taylor*, 333 S.C. 159, 174, 508 S.E.2d 870, 877 (1998) (finding “I object at this point” to be insufficient); *see also State v. Bailey*, 253 S.C. 304, 310, 170 S.E.2d 376, 379 (1969) (“’It is well settled that an objection, to be good, must point out the specific ground of the objection, and that if it does not do so, no error is committed in overruling it.’”) (quoting 53 Am. Jur. Trial § 137 (1945) *et al.*). There is nothing in the Record establishing an understanding among the court and the parties as to the basis for the objection. *See State v. Hendricks*, 408 S.C. 525, 531, 759 S.E.2d 434, 437 (Ct. App. 2014). Accordingly, Appellants have preserved no issues for review as to the cited testimony.

Further, the questions to which there was no objection encompass the narrower question to which Appellants objected. It is therefore impossible for Appellants to show that a question about whether anyone told her that she would

not be retaliated against somehow warrants a new trial when Appellants did not flinch when Styles testified that nobody spoke to her about anything.

b. Appellants' jury charge arguments

Tucked in Appellants' arguments about evidence is a claim that the trial court improperly charged the jury and failed to give a "curative charge." (App. Br. at 24-25). This argument is not preserved for several reasons.

First, there is no mention of "curative" or any other kind of request that the jury be told to "disregard evidence" in the Record. Rather than pinpoint the purported request, Appellants broadly cite eight pages of transcript. Within that lengthy excerpt the words "curative" and "disregard" appear nowhere. Further, Appellants' argument here is predicated on an argument about the Furnas investigation. (App. Br. at 23). The Furnas investigation was not even discussed in the eight pages now cited by Appellants. The trial court never could have divined the argument that Appellants now make, and there is nothing even implied upon which the trial court could have understood that it was being asked to tell the jury to disregard evidence.

"[T]he failure to timely request a specific charge . . .will constitute a waiver of any right to complain on appeal of any asserted errors in the charge." Jean Hoefer Toal, Amelia Waring Walker & Margaret E. Baker, *Appellate Practice in South Carolina* 203 (3d ed. 2016) (citations omitted). Rule 51 is clear: "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection." Rule 51, SCRCP. Rule 51 precludes a trial court from granting a new trial where, as here, there was no

contemporaneous request or objection as to the charge. *Winters v. Fiddie*, 394 S.C. 629, 641-42, 716 S.E.2d 316, 323 (Ct. App. 2011); *see, e.g. Small v. Springs Indus., Inc.*, 300 S.C. 481, 488, 388 S.E.2d 808, 813 (1990) ; *State v. Williams*, 319 S.C. 54, 56, 459 S.E.2d 519, 520 (Ct. App. 1995).

In short, Appellants never requested the "curative charge" to disregard evidence that it complains about, the argument it now makes was never even discussed with the trial court, and Appellants never objected to the charge given to the jury. Appellants' scattershot arguments simply present nothing to be reviewed.

2. Appellants' sole preserved argument lacks merit

There was one objection ruled on at trial that is likely preserved as the trial court ruled on Appellants' objections at trial. *Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) ("Post-trial motions are not necessary to preserve issues that have been ruled upon at trial"). Appellants argue regarding the admission of customer complaints "describing a man speaking down to female employees and also describing the store manager as a 'jerk.'" (App. Br. 21, 5th bullet; *id.* at 24 ("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 . . . .").

The first problem with Appellants' argument is that, as with the arguments regarding Chief Burdette's testimony, there with three other claims (fraud, abuse of process, and malicious prosecution) pending before the jury when the evidence was admitted. Relevance was never limited at trial to the sole claim of false

imprisonment.[27] Nor did Appellants ever seek an instruction as to limitation of the evidence. Nor do they show how the evidence should have been excluded as to the other claims. Accordingly, they cannot established reversible error.

Nor was there error in admitting the evidence for purposes of the false imprisonment claim. Appellants also fail to explain how the evidence came in. After lengthy argument about both employee and customer complaints, the trial court had Styles proffer testimony. (R. p. 308, lines 5-8). During the proffer, Styles discussed Plaintiff Exhibit 11. She established that the customer complaints were sent to all salaried managers, establishing Brickman's knowledge of them. (R. p. 324, line 3 – p. 325, line 15). The matters were discussed in chambers and, when the parties returned on the Record, Styles offered Exhibit 11, which the Court indicated it would admit. (R. p. 341, lines 15-25). Appellants objections were: (1) that the complaint was anonymous and there was no way to show who wrote it; and (2) that it was hearsay to prove gender discrimination. (R. p. 349, line 23 – p. 351, line 16). When the jury returned, Styles testified that all managers received

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[27] Many of Appellants' arguments cite portions of the Record involving evidence related to claims not before this Court. For example, Appellants spend significant time arguing about the testimony of Chief Burdette, whose testimony related largely to the claims of abuse of process and malicious prosecution. (*See* r. p. 241, line 7 – p. 242, line 13; r. p. 247, lines 7-19). After arguing at length that Burdette should not be able to re-state the magistrate's reasoning and he should not be able to testify as an "expert," Appellant counsel's first question was about the magistrate's reasoning and defense counsel asked for his opinion as to the magistrate's reasoning. (R. p. 216:10 – 253, line 4 (Motion in limine argument); r. p. 487, line 17 – p. 488, line 7 (questions)). Counsel came back and issued whether a warrant was issued for Styles's arrest. (R. p. 488, lines 11-13). This is precisely the same testimony about which Appellants were complaining. Yet, none of this has anything to do with the sole claim at issue in this appeal.

the complaints, and the Court admitted the complaints after Appellants stated that they “renew[ed]” their objection. (R. p. 410, line 10 – p. 411, line 10).

As to the first basis for Appellants’ “renewed” objection (*i.e*, hearsay), Appellants opened the door to testimony when they questioned Styles about her knowledge as to who wrote one of the complaints. (R. p. 469, line 7 – p. 470, line 17). Styles established that she knew who wrote the one complaint and that the customer spoke to her and other store employees. (R. p. 407, line 24 – p. 471, line 16). Again, however, there was no discussion about gender discrimination.

As to the second basis for Appellants’ “renewed” objection, there was no discussion about gender discrimination, nothing in the document alleges gender discrimination, and gender discrimination was never the “truth of the matter” for which the evidence was offered or admitted.[28]

Accordingly, Appellants have failed to show error or prejudice as to the admission of the customer complaints.

3. Appellants’ mish mash evidentiary arguments misapply the law

Appellants continue to throw around Rule 403 in the context of their argument that evidence Styles introduced was “irrelevant and highly prejudicial.” (App. Br. at 27; see also id. at 24 (arguing with Rule 403 case cite that “”evidence relating to anonymous customer complaints and generalized criticisms . . was not

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[28] On cross examination, Appellants started a discussion about a customer in a back-fired effort to establish that the complaints were either anonymous or authored by Styles. (R. p. 469, line 7 – p. 470, line 17). After Appellants opened the door, Styles established that she knew who wrote the complaint and that the customer spoke to her and other store employees. (R. p. 476, line 24 – p. 471, line 16). Again, however, there was no discussion about gender discrimination.

relevant . . .) Appellants continue to pervert the rules in the hopes that something will somehow resonate. Irrelevant evidence is covered by Rule 402, SCRE ("Evidence which is not relevant is not admissible.") Rule 403 applies to evidence that, "although relevant," the probative value of it "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." Rule 403, SCRE. Something cannot be both irrelevant and covered by Rule 403. Appellants never actually engage in a Rule 403 analysis, instead focusing their arguments on relevance.

Appellants bear a heavy burden of showing abuse of discretion. *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). In rejecting the very relief Appellants seek, this Court stated the standard in the very case upon which Appellants now rely: "Even if we were inclined to disagree with the trial court's call, which we are not, we would be hesitant to overturn it, and then only if we found the ruling outside the wide boundaries discretion sets. *Morin v. Innegrity*, LLC, 424 S.C. 559, 577, 819 S.E.2d 131, 141 (Ct. App. 2018) (citing and quoting *State v. Lyles*, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008) ("If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal."); *see Morin*, 424 S.E.2d at 579, 819 S.E.2d at 142 ("We decline to disturb the considered conclusion of the trial judge, who had superior command over and an impartial view of the field of evidence.")

Outside of one case involving admissibility of expert testimony,[29] it is not clear that our appellate courts have ever reversed a jury trial result in a civil case based on a Rule 403 argument. Because Appellants never discuss the how the relevance of the evidence is substantially outweighed, they cannot clear the high hurdle described in *Morin*. Appellants also again fail to present an argument that can be reviewed, or one to which Styles can substantively respond.

C. Damages

1. JNOV

a. Issue preservation

Appellants' damages arguments as to the denial of their JNOV motion (both actual and punitive) are not preserved because Appellants never moved for a directed verdict on damages. Whether punitive damages are available is a subject to be raised on directed verdict. E.g. *Ralph v. McLaughlin*, 428 S.C. 320, 345, 834 S.E.2d 213, 226 (Ct. App. 2019) (citing cases). The failure to move for a directed verdict as to punitive damages precludes further review at any level. *Freeman v. A. & M. Mobile Home Sales*, 293 S.C. 255, 263, 359 S.E.2d 532, 537 (Ct. App. 1987).

Likewise, a motion for directed verdict also is required as to other forms of damages before relief may be sought via a JNOV motion or appellate review. *See Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006). In *Allegro, Inc. v. Scully*, 409 S.C. 392, 414, 762 S.E.2d 54, 66 (Ct. App. 2014), *rev'd*, 418 S.C. 24, 33, 791 S.E.2d 140, 145 (2016), this Court of cited *Wright* in finding that

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[29] *Wilson v. Rivers*, 357 S.C. 447, 453, 593 S.E.2d 603, 606 (2004).

the failure to move for a directed verdict as to special damages, precluded either a JNOV argument before the trial court or appellate review of the issue. *Id.* On cert, the Supreme Court did not disagree with this principle. Instead, it reversed the determination on the fact-specific basis that the trial court cut off the lawyer during directed verdict argument. *Allegro*, 418 S.C. at 33, 791 S.E.2d at 145. The trial court here never cut off Appellants or precluded any argument. Appellants simply did not make one.

Appellants improperly assert other new arguments here that they never presented to the trial court. (App. Br. at 30 (arguing that this case presents a "Hobson's Choice" for employers)). *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")

b. Actual damage

"In a suit for false imprisonment, the basic injury is the depreciation of the Plaintiff's liberty. Such things as humiliation, indignity, and mental suffering are general damages that naturally and proximately result from false imprisonment." *Zimbelman v. Savage*, 745 F. Supp. 2d 664, 683 (D.S.C. 2010) (citing *Jones by Robinson v. Winn Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995); *Caldwell v. K-Mart*, 306 S.C. 27, 410 S.E.2d 21 (S.C. App. 1991); *Westbrook v. Hutchison*, 195 S.C. 101, 10 S.E.2d 145, 150 (S.C. 1940)).

Styles provided significant testimony in this regard. (*Supra* section IV(E)). The argument that there was *no* evidence in this regard is specious.

c. Punitive damages

Appellants made an improper argument at the JNOV stage regarding *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). *Gamble* was not a post-trial review to determine whether punitive damages were warranted. The point of the *Gamble* review was to determine whether an award is excessive. *Id.* at 112, 406 S.E.2d at 354. That analysis has been supplanted by *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) and S.C. Code Ann. § 15-32-520(F), to which Appellants never cite. *See Jenkins v. Few*, 391 S.C. 209, 222 n.3, 705 S.E.2d 457, 464 n.3 (Ct. App. 2010) ("[T]he post-trial review factors outlined in *Gamble* . . . are still applicable, but only within the context of the test articulated in *Mitchell* . . . .").

The standard for the threshold issue of whether punitive damages may be awarded is set forth in *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). Appellants simply failed to make an effective JNOV argument regarding punitive damages. To the extent Appellants have somehow preserved an argument regarding excessiveness of the punitive damage verdict, Styles addresses that below in Section V(C)(2)(c).

In the context of false imprisonment cases, detentions based on false pretenses mandate submission of the issue of punitive damages to the jury. *See, e.g.*, *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 625-26, 654 S.E.2d 541, 552-53 (Ct. App. 2007) ($250,000 punitive damage award affirmed where store manager falsely stated that customer concealed product after being confronted, which could be construed as "wantonly, willfully, and maliciously fabricated and

distort[ing] the facts”), *vacated on other grounds*, 384 S.C. 511, 682 S.E.2d 824 (2009).

Conduct simply need not be outrageous to warrant punitive damages for false imprisonment. *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991) (fifteen-minute detention with no touching or searching supported $100,000 punitive damage verdict [$192,000 in 2020 dollars]);[30] *Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 492, 162 S.E. 753, 755 (1932) (detention of a woman, suspected of being a man, warranted punitive damages for false imprisonment as it would have been more reasonable to ask for her name). Even nominal damages may support a punitive damage claim for false imprisonment. *Peters v. K-Mart Corp.*, 318 S.C. 164, 167, 456 S.E.2d 425, 427 (Ct. App. 1995) (loss of liberty alone entitles plaintiff to nominal damages to allow punitive damages), *rev’d on other grounds*, 322 S.C. 404, 472 S.E.2d 248 (1996).

2. New Trial Nisi Remittur

a. Issue preservation

Appellants did not preserve their new trial arguments regarding damages. At the JNOV stage, Appellants cited several cases and provided nothing in terms of actual arguments regarding the excessiveness of either actual damages or punitive damages. Appellants simply repeated that there was no evidence that they caused “any damage whatsoever.” (R. p. 93). Rather than argue about the size of the verdict, Appellants only argued that evidence was mishandled, that this

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[30] https://www.dollartimes.com/inflation/inflation.php?amount=100000&year=1991

became a “me-too” case, and that the jury was influenced by testimony from the chief of police, which are not issues related to the size of the verdict. (R. pp. 93-94). Indeed, the phrase “punitive damages” is mentioned only in passing, one time, in the final paragraph of the section. (R. p. 94). Again, Appellants offered no analysis as to the size of the verdict. Appellants simply did not preserve any new trial argument regarding actual or punitive damages.

b. The jury’s verdict of $100,000 in actual damages was not excessive

Once again, Appellants try to substitute ramblings about their view of the case, rather than focusing on the case law standards for whether an actual damage award is excessive. Appellants again make boilerplate recitations followed by their subjective opinion of the merits of the case. This is not a basis by which Styles can respond fully, or one by which this Court should disturb the jury’s considered decision.

“The amount of damages suffered in a personal injury action is a question for the fact-finder.” *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 148, 719 S.E.2d 703, 708 (Ct. App. 2011) (citations omitted). “[T]he jury's determination of damages is entitled to substantial deference.” *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). "Compelling reasons . . . must be given to justify invading the jury's province in this manner." *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995), quoted in *RRR, Inc. v. Toggas*, 378 S.C. 174, 183, 662 S.E.2d 438, 442-43 (Ct. App. 2008).

Appellants provide no basis to question the jury’s verdict, and certainly nothing that is even arguably “compelling.” Viewed objectively, the middling verdict

here is unremarkable. In fact, compared to other false imprisonment cases in which actual damages were challenged, Plaintiff's $100,000 recovery is far less than what has been upheld in less egregious circumstances:

- *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 32, 410 S.E.2d 21, 24 (Ct. App. 1991) (actual damages of $144,043.72 in 2020 dollars[31] for fifteen-minute detention was not excessive); and
- *Wright v. Gilbert*, 227 S.C. 334, 338, 88 S.E.2d 72, 75 (1955) (actual damage verdict of $230,987.87 in 2020 dollars was not excessive).

See also Kennedy v. Richland Cty. Sch. Dist. Two, 428 S.C. 98, 119, 833 S.E.2d 414, 425-26 (Ct. App. 2019) ($100,000 in actual damages for internal email defamation upheld).

Appellants cite nothing for the proposition that $100,000 is objectively excessive, much less "unduly liberal." Instead, they just argue about evidence in the case. (App. Br. at 33). The closest Appellants come to an argument about the size of the verdict is their misguided argument that Styles's stress was caused by her termination of employment and fear of arrest, and their repeated false narrative of this being only a twenty-minute detention. (App. Br. at 32). Appellants made essentially the same argument to the jury, which clearly found otherwise. (R. p. 748, lines 15-19). And that was the jury's call to make. Appellants cite nothing in the Record to support the argument regarding the purported source of "Plaintiff's stress," which is contrary to Styles's testimony. (*See supra* Section IV(E)).

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[31] https://www.dollartimes.com/inflation/inflation.php?amount=100000&year=1991

c. Punitive damages

The trial court performed a *Gamble*/*Fortis*/Section 15-32-520 review in the Order denying post-trial Motions. (Form 4 Order at 3). Appellants never mention the Order or discusses how the review is erroneous. Accordingly, they have abandoned this issue.

1. Statutory factors

The General Assembly did not set forth finite factors, but determined that the Court should look at "all relevant evidence." Section 15-32-520(E), incorporated by id. -520(F). This includ[es] but [is] not limited to" the following relevant factors here:

a. The defendant's degree of culpability

This case did not involve the rogue actions of a single bad actor. Every live defense witness, other than Ellison, was thoroughly impeached and did little more than contradict Appellants' other witnesses. Appellants violated their own policy in every material respect, and they did so to prevent evidence of their shakedown.

Duncan and Miller not only failed to give the required assurances in Appellants' policies, they instructed Plaintiff she could not leave contrary to terms of the policy. (*Supra* sections IV(D), (F)). Duncan did not provide Plaintiff with the consent form, which was drafted to advise individuals that, among other things, participation was voluntary. (*Supra* section IV (F)). Duncan and Miller refused to record the interview and Duncan lied about why. (*Id.*) Duncan and Miller either willfully violated the repeated requirements to take detailed notes, or they lied about taking notes as Miller (who was required to take them) claimed that Duncan

took notes and Duncan claimed that Miller was the witness who was to take notes. (*Id.* & n. 19). Miller and Duncan's denials as to any knowledge that Brickman had a motive to go after Plaintiff were absurd. Both district managers testified that Miller knew about Plaintiff's complaints. Moreover, when Plaintiff raised the retaliation issue, Duncan reflexively responded that it was "her word against [Brickman's]," which could easily lead a jury to believe that he knew full well what was going on. (*Supra* section IV(D)). Duncan never excused himself or questioned Brickman before saying what Brickman's "word" was. He didn't need to.

b. The severity of the harm caused by the defendant

Appellants knew Plaintiff all too well, and correctly predicted what would happen to her when whipsawed. Plaintiff became unable to make decisions, and she suffered extreme distress that manifested not only in emotional pain, but in physiological ways also, including vomiting, loss of sleep, loss of appetite, withdrawal, and stress related MRSA outbreaks. Plaintiff also testified that the duration of the harm was lasting and severe. (*Supra* section IV(E)).

c. Extent to which the plaintiff's own conduct contributed to the harm

There is no evidence that Plaintiff's conduct contributed to her harm. She repeatedly requested to leave, and Appellants repeatedly refused to allow her to avoid the harm. (*Supra* section IV(D)).

d. **Duration of the conduct, the defendants' awareness, and any concealment by the defendants**

The confinement here began at 12:16 pm and lasted until 1:29 pm. (*See supra* n. 8 & accompanying text). To put Plaintiff's $10,000 recovery of punitive damages into perspective, this Court affirmed a $250,000 punitive damage award for false imprisonment on less egregious facts. *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 625-26, 654 S.E.2d 541, 552-53 (Ct. App. 2007), *vacated on other grounds*, 384 S.C. 511, 682 S.E.2d 824 (2009). Likewise, in *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991), a mere fifteen-minute detention with no touching or searching supported a $100,000 punitive damage verdict, which in today's dollars would be $192,000. (*See supra* note 31). Plaintiff's recovery is 1/25th of what was affirmed in *Lynch*, and 1/10th of what was affirmed in *Caldwell*.

e. **Existence of similar past conduct**

Appellants' conduct as to the false imprisonment was a mere continuation of its effort to cover up and discourage the complaints Plaintiffs and others made about Brickman.

f. **the defendant's ability to pay**

There can be no question about Appellants' ability to pay. (R. pp. 890-932).

2. ***Fortis* factors**

Appellants should be precluded from arguing for any review under *Fortis* because they make no motion addressing the *Fortis* factors, or even cite to them. Even a cursory review of those factors, however, show that the mere $10,000

award of punitive damages cannot be assailed by this corporation under these facts.

a. Reprehensibility

See supra section V(C)(1)(a).

b. Ratio

A 1/10:1 ratio of punitive damages to actual damages is so unusual, there does not appear to be any precedent for a *Fortis*/*Gore* review below the single digit ratio range. "In reviewing more recent punitive damages awards, South Carolina courts have most often upheld verdicts on the low end of the single-digit spectrum, but have frequently deviated from this norm in cases involving particularly egregious conduct." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 593, 686 S.E.2d 176, 188 (2009). Plaintiff's 1/10:1 award does not even approach the single digit spectrum.

c. Comparative rulings

The jury's award compares very unfavorably to the six figure punitive damage awards upheld in *Caldwell* and *Wright*. (*See supra* section V(C)(2)(b)). There is no authority by which a $10,000 award can be challenged on any Constitutional basis by these two large corporations.

VI. CONCLUSION

This was a simple case where the jury had to choose whom to believe and what remedy was appropriate. It made that choice, and there is no basis for invading the jury's province. There is no reversible error. This Court should affirm the trial court's denial of Appellants' JNOV Motion and deny all other relief Appellants seek.

Respectfully submitted this 9th day of March 2021.

s/ Brian P. Murphy
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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.

Certificate of Compliance

The Undersigned certifies that the Brief of Respondent complies with Rule 211(b), SCACR.

Respectfully submitted this 9th day of March 2021.

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