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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2012-2013

2110741

Matthew D. Morris

v.

Elizabeth W. Morris

Appeal from Baldwin Circuit Court
(CV-08-901167)

THOMAS, Judge.

Matthew D. Morris appealed to our supreme court from a judgment entered on a jury verdict in favor of Elizabeth W. Morris on her claims of false imprisonment and battery; our supreme court transferred the appeal to this court, pursuant

to Ala. Code 1975, § 12-2-7(6). The judgment entered on the jury's verdict awarded Elizabeth $75,000 in compensatory damages and $125,000 in punitive damages, for a total of $200,000 in damages. Matthew filed a motion for a new trial pursuant to Rule 59, Ala. R. Civ. P., which the trial court denied.

The events giving rise to this action occurred in November 2006. At that time, Matthew and Elizabeth were married but had been separated for approximately two months. On the evening of November 17, 2006, Matthew arrived at Elizabeth's residence. Over the next 24 hours, Elizabeth alleged, and the jury necessarily agreed, Matthew hit Elizabeth, kept her captive against her will, and broke Elizabeth's leg in an altercation that began when Elizabeth prevented Matthew from illegally using her legally prescribed Adderall medication.

On appeal, Matthew makes several arguments for reversal of the judgment. He challenges the trial court's jury charge on punitive damages, its admission of the testimony of certain physicians despite having granted a motion in limine prohibiting their testimony, its exclusion of evidence

relating to Elizabeth's credibility, and its refusal to allow Matthew to testify after he had rested his case. Matthew also argues that the trial court should have granted his motion for a new trial under the "good count-bad count" theory set out in Alfa Mutual Insurance Co. v. Roush, 723 So. 2d 1250, 1257 (Ala. 1998), because, he says, the evidence does not support the trial court's decision to send the false-imprisonment count to the jury.[1] Finally, he argues that the judgment is due to be reversed because he presented sufficient evidence to

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[1]As our supreme court explained in Roush, 723 So. 2d at 1257,

> "[w]hen a jury returns a general verdict upon two or more claims, as it did here, it is not possible for this Court to determine which of the claims the jury found to be meritorious. Therefore, when the trial court submits to the jury a 'good count' -- one that is supported by the evidence -- and a 'bad count' -- one that is not supported by the evidence -- and the jury returns a general verdict, this Court cannot presume that the verdict was returned on the good count. In such a case, a judgment entered upon the verdict must be reversed. See, Aspinwall v. Gowens, 405 So. 2d 134 (Ala. 1981); see, also, St. Clair Federal Sav. Bank v. Rozelle, 653 So. 2d 986 (Ala. 1995)."

raise a presumption that the jury's verdict was a "quotient verdict."[2]

Matthew seeks review of the trial court's denial of his motion for a new trial.

> "'With regard to review of a trial court's ruling on a motion for a new trial, this Court has stated:
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> > "'"'It is well established that a ruling on a motion for a new trial rests within the sound discretion of the trial judge. The exercise of that discretion carries with it a presumption of correctness, which will not be disturbed by this Court unless some legal right is abused and the record plainly and palpably shows the trial judge to be in error.'"'
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> "Cottrell v. National Collegiate Athletic Ass'n, 975 So. 2d 306, 332 (Ala. 2007) (quoting Curtis v. Faulkner Univ., 575 So. 2d 1064, 1066 (Ala. 1991), quoting in turn Kane v. Edward J. Woerner & Sons, Inc., 543 So. 2d 693, 694 (Ala. 1989))."

Ford Motor Co. v. Duckett, 70 So. 3d 1177, 1181 (Ala. 2011).

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[2]A "quotient verdict" is a verdict rendered by a jury based on an agreement that their verdict will "be the result or quotient of a division by [the number of jurors] of the sum total of all the jurors' separate assessment[s]." Southern Ry. Co. v. Williams, 113 Ala. 620, 625, 21 So. 328, 329 (1897).

Because we find it dispositive, we first consider Matthew's argument that the trial court erred when it declined to order a new trial based on evidence that raised the presumption that the jury's verdict was a "quotient verdict." Although there is a strong presumption in favor of a jury's verdict, a quotient verdict is invalid. Warner v. Elliot, 573 So. 2d 275, 277 (Ala. 1990). Matthew is correct in arguing that a presumption of a quotient verdict may arise "where data found in the jury room, and appearing to be the work of the jury, produces a quotient substantially the same as the verdict rendered." Security Mut. Fin. Corp. v. Harris, 288 Ala. 369, 372, 261 So. 2d 43, 45-46 (1972). A jury may "use the quotient process for the purpose of obtaining a figure that represents an average of the amounts the individual jurors feel should be awarded and that serves merely as a suggestion or basis for further discussion, deliberation, or consideration." Warner, 573 So. 2d at 277. However, the fact that a verdict is substantially equal to the quotient reached will result in a presumption that the jury impermissibly relied upon the quotient process in order to return a verdict.

See Harris, 288 Ala. at 373, 261 So. 2d at 46. As our supreme court explained in Harris:

> "In this state, it has become established that where evidence is presented of scraps of paper, lists of figures and other memoranda, indicating that the jury used the quotient process and obtained a quotient which corresponds with the amount of the verdict or approximates it, a presumption arises and a prima facie case is made that the jurors have improperly used the quotient process in connection with an antecedent agreement to be bound by the amount of the quotient and that they have thus rendered an invalid quotient verdict. ...
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> > "'... It is a settled rule in this state that when figures are shown which were used by the jury in its deliberations and from these figures a fair inference may be drawn that the verdict was a quotient verdict, the court will so hold and that the verdict was the result of a previous agreement, unless the contrary is shown.'"

Id. (quoting Fortson v. Hester, 252 Ala. 143, 147, 39 So. 2d 649, 651 (1949)). Notably, variances between the quotient reached and the verdict awarded do not negate the presumption that the verdict is an impermissible quotient verdict. 288 Ala. at 372, 261 So. 2d at 45 ("[P]recise agreement between the quotient found and the verdict returned, is not required. ... [A] quotient verdict is invalid even if the amount of the verdict is not exactly the same as the quotient obtained by the jury, but is reached by rounding off the quotient to an

even number or by making some other slight addition or subtraction.").

The basis for allowing a presumption of a quotient verdict to be created is rooted in the fact that, in Alabama, juror affidavits may not be permitted to impeach a verdict but may be used to uphold a verdict. See, generally, Alabama Power Co. v. Brooks, 479 So. 2d 1169, 1178 (Ala. 1985) ("Neither testimony nor affidavits of jurors are admissible to impeach their verdicts; however, such evidence is admissible to sustain them."). Our supreme court has explained its rationale this way:

> "Courts have much regard for the verdicts of juries, and are indisposed to presumptions tending to overturn them. But, in view of the case with which the winning party may produce explanatory evidence in cases of this kind, and the inability of the losing party to obtain other than circumstantial evidence, we think the rule [permitting the presumption of a quotient verdict] convenient of application and conservative of justice."

George's Rest. v. Dukes, 216 Ala. 239, 241, 113 So. 53, 54 (1927). It has long been the law of this state that the challenger of a verdict on the ground that it is a quotient verdict may not use affidavits of jurors to establish that, in fact, the jury used the quotient process. Birmingham Ry.

Light & Power Co. v. Moore, 148 Ala. 115, 130, 42 So. 1024, 1030 (1906), overruled on other grounds by Birmingham Ry. Light & Power Co. v. Goldstein, 181 Ala. 517, 532, 61 So. 281, 283 (1913). Thus, the challenger is entitled to a presumption that the verdict was arrived at through a quotient process when the evidence -- made up of the notes of the jury of the figures it used to calculate the verdict amount -- provides a basis for a fair inference of the use of such process. Harris, 288 Ala. at 373, 261 So. 2d at 46; Fortson v. Hester, 252 Ala. 143, 147, 39 So. 2d 649, 651 (1949). The presumption may then be rebutted by affidavits from the jurors refuting the inference that a quotient process was used. See City of Dothan v. Hardy, 237 Ala. 603, 608, 188 So. 264, 268 (1939) (affirming the trial court's denial of a motion for new trial when the evidence included affidavits from jurors indicating that the jurors had abandoned the use of the quotient process); Birmingham Ry., Light & Power Co. v. Clemons, 142 Ala. 160, 162, 37 So. 925, 925 (1904) ("It was competent for the plaintiff to prove by the jurors themselves in support of their verdict thus sought to be impugned, that these figures were made and that this process was resorted to without

previous agreement that the result should be the verdict ....").

In support of his motion for a new trial, Matthew presented several pieces of paper recovered from the jury room. Upon one piece of paper, written in columns, appear the names of the 11 jurors[3] and various numbers ranging from 25 to 175; at the top of that piece of paper is written $115 ("jury note 1"). On a second piece of paper is written "100 punitives," which is crossed out, followed on separate lines by "5,000 punitive FI," "Comp A," "100," "115K," and "$220" ("jury note 2"). On a third piece of paper appears a column of 11 numbers containing four "150" entries and seven "220" entries ("jury note 3"). On that same piece of paper appears "$220," "$215.00," which was crossed out, "$195," and "$200.00" When the numbers in the column on jury note 3 are added together and divided by 11, the quotient is $194.54. A fourth piece of paper contains a column containing the numbers "$25,000," "$25,000," "$29,000," which is crossed out, "$75,000," which is also crossed out, and "$100,000" ("jury

[3]The record indicates that one of the jurors was excused and that only 11 jurors deliberated.

note 4"); in a second column, jury note 4 contains the words "loss of time," "injury," "restrained of freedom," "assault," "medical bills," "fleed [sic] from scene," and "time loss of work." The amounts appear to be totaled below the aforementioned figures on jury note 4; the original total was "$150,000" with the number "$175,000" written over the original total. Other computations appear on jury note 4, but they appear irrelevant.

Although Matthew focuses on the figures on jury note 1 described above, the figures on jury note 3, and specifically the quotient reached by totaling those numbers, raise the inference that the jury used the quotient process in arriving at its verdict. We agree with Matthew that the figures on jury note 3 are shorthand for $150,000 and $220,000; there is simply no other explanation for the numbers $150 and $220 when the verdict ultimately rendered was $200,000. The quotient of the sums on jury note 3 is $194.54; thus, the quotient is shorthand for $194,540. The jury awarded Elizabeth $200,000.

Alabama law provides that a slight difference between the quotient and the jury's award will not affect the presumption that the verdict was decided by the quotient process. In

Harris, our supreme court held that a $42 difference between the quotient and the verdict awarded was not significant and could be explained as the jury's decision "merely [to] round[] off [the award] to the next hundred." Harris, 288 Ala. at 373, 261 So. 2d at 46. Our supreme court has also indicated that a larger discrepancy may still give rise to the presumption, indicating in Hardy, 237 Ala. at 608, 188 So. at 268, that the presumption of a quotient verdict arose when the quotient was $6,700 and the jury awarded $6,000. However, this court has held that a $225 variance between the quotient -- $3,275 -- and the verdict --$3,500 -- was "much more than a mere rounding off or a slight addition or subtraction to the quotient amount" and determined that the difference negated any conclusion that the verdict was a quotient verdict. Burgreen Contracting Co. v. Goodman, 55 Ala. App. 209, 222, 314 So. 2d 284, 296 (Civ. App. 1975).

The present case is complicated by the fact that the jurors used shorthand numbers to figure their verdict. Clearly, the "rounding up" from $194.54 to $200.00 would not be considered a substantial deviation such that the presumption that the verdict was a quotient verdict would be

overcome. When one considers that the numbers actually stand for $194,540 and $200,000, it is much more difficult to say that the difference between the quotient and the verdict is not substantial in a numerical or monetary sense. However, our supreme court has announced that a presumption that a quotient verdict exists is to be drawn when the figures used by the jury in its computations give rise to "a fair inference" that the jury determined the amount of their verdict by use of a quotient process. Fortson v. Hester, 252 Ala. at 147, 39 So. 2d at 651. Thus, we must determine what "fair inference" arises from the figures on jury note 3. In doing so, we conclude that the focus should not be on the numerical difference between the quotient and the verdict but should instead be centered on whether the evidence gives rise to the fair inference that the jurors decided to be bound by an agreement, made in advance of knowing the results, to abide by the results of the quotient process or if the agreement to abide by the results of the quotient process induced the ultimate verdict. See International Agric. Corp. v. Abercrombie, 184 Ala. 244, 259, 63 So. 549, 554 (1913) ("The evil effects of a quotient verdict cannot be cured by agreeing

thereafter to a slightly different verdict, if it appears that the agreement made in advance entered into or induced the result."); see also Benjamin v. Helena Light & Ry. Co., 79 Mont. 144, 255 P. 20, 24 (1927) (noting the lack of a "well-defined rule about what discrepancy is slight nor how much the discrepancy may be and the verdict still be invalid" and concluding that "[m]uch seems to rest on the basic facts that mathematical calculation was resorted to and led up to the fixing of the amount of the verdict, even though not the same as the quotient"). Otherwise, we run the risk of allowing a decision by the jury to increase or decrease the quotient by more than a minimal sum to "cure the evil effects of a quotient verdict," which such decisions have long been held unable to cure. Ledbetter v. State, 17 Ala. App. 417, 418, 85 So. 581, 582 (1920); see also Abercrombie, 184 Ala. at 259, 63 So. at 554; and Stone v. State, 24 Ala. App. 400, 400, 135 So. 646, 647 (1931).

The numbers on jury note 3 lead to the fair inference that the jury used the quotient process to come up with the number "$195," which is merely $.46 more than the $194.54 arrived at by the quotient process. On the same note, written

in close proximity to "$195," is "$200.00." A fair inference can be drawn that the jury concluded that it should round $195 to $200, an even number. The jury then concluded that it should divide the $200 damage award into "75" in compensatory damages and "125.00" in punitive damages, as reflected on jury note 2. We cannot agree that the fact that the $5,000 difference between the actual award of $200,000 and the quotient of $195,000 negates the inference that the jury used the quotient process to reach its verdict based on its use of the shorthand numbers $195 and $200. Matthew produced sufficient evidence from which a fair inference that a quotient process was used by the jury arises; thus, we conclude that he was, and is, entitled to the presumption that the jury's verdict was an impermissible quotient verdict.

As noted above, Elizabeth was permitted to offer affidavits from one or more jurors to rebut the presumption that the verdict was a quotient verdict. See Warner, 573 So. 2d at 277 (affirming the trial court's exclusion of juror affidavits that tended to impeach the verdict while noting that the testimony of the jury foreman, which rebutted the presumption of a quotient verdict, was properly admitted).

However, Elizabeth did not present any evidence to rebut the presumption arising from jury note 3. See Harris, 288 Ala. at 373, 261 So. 2d at 46 ("The appellee produced no testimony or affidavits to prove that the jurors did not agree in advance to abide by the result of their computations, or that the quotient was only a basis for further deliberations, or any other facts to show the verdict was an expression of the fair judgment of the several jurors."). Without such evidence, the trial court had no basis for rejecting the presumption that the verdict was an impermissible quotient verdict.

In conclusion, the evidence presented by Matthew in support of his motion for a new trial resulted in a presumption that the jury's verdict was the result of the use of the quotient process. Elizabeth presented no evidence to rebut that presumption. Thus, we must conclude the trial court erred by denying Matthew's motion for a new trial. The judgment entered on the jury's verdict in favor of Elizabeth is reversed, and the trial court is ordered to enter an order granting Matthew's motion for a new trial.[4]

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[4]Because of the dispositive nature of this issue, we pretermit consideration of Matthew's other arguments in support of the reversal of the judgment entered on the jury's

Elizabeth's motion to strike Matthew's brief is granted insofar as it pertains to Appendix A to that brief, which purports to contain statements from jurors impeaching the verdict in this case, which statements, as Matthew concedes, are not admissible evidence to impeach the verdict in this case.

REVERSED AND REMANDED.

Thompson, P.J., and Pittman, Bryan, and Moore, JJ., concur.

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verdict. See Favorite Mkt. Store v. Waldrop, 924 So. 2d 719, 723 (Ala. Civ. App. 2005) (stating that this court would pretermit discussion of certain issues in light of dispositive nature of another issue).