

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2025 CA 1327

NATASHA HOLIFIELD

VERSUS

ACE AMERICAN INSURANCE COMPANY,
WERNER ENTERPRISES, INC.,¹
AND CHRISTIAN FOREMAN

Judgment Rendered: SEP 16 2026

On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 689488

Honorable Johnell M. Matthews, *Pro Tempore*

Marta-Ann Schnabel
Kevin O'Bryon
William H. Africk
McKenna Rae Giovingo
New Orleans, Louisiana

Counsel for Defendants/Appellants
Werner Enterprises, Inc. and ACE
American Insurance Company

Steven A. DeBosier
Jeffrey N. Rabb
Tyler A. Frederick
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellee
Natasha Holifield

BEFORE: LANIER, WOLFE, AND HESTER, JJ.

Hester, J. concurs with reasons.

¹ According to the record, Werner Enterprises, Inc. was incorrectly named in the petition as Werner Enterprises, Inc. of Nebraska.

LANIER, J.

In this action seeking damages for personal injuries, defendants, Werner Enterprises, Inc. ("Werner") and ACE American Insurance Company ("ACE"), challenge the trial court's June 12, 2025 judgment rendered in accordance with a jury verdict that awarded damages in the amount of \$5,037,601.00 in favor of plaintiff, Natasha Holifield, and against defendants, finding Werner's employee, Christian Foreman, 35 percent at fault for his actions in the crash that caused Ms. Holifield's injuries, and Werner 65 percent at fault for the negligent hiring, training, supervision, and retention of Mr. Foreman.² Ms. Holifield answered the appeal, seeking an increase in the general damage awards. For the reasons that follow, we affirm the trial court's judgment and deem abandoned the answer to the appeal.

FACTS AND PROCEDURAL HISTORY

The facts leading up to this case are not in dispute. On April 5, 2019, Ms. Holifield and Mr. Foreman were involved in a traffic accident on I-59, in St. Tammany Parish, Louisiana. At the time, Mr. Foreman was operating a 2019 Kenworth T680 18-wheel tractor-trailer and was in the course and scope of his employment with Werner.

As a result of the violent collision, Ms. Holifield sustained serious injuries to her back, neck, and wrist. An MRI revealed a disc herniation at L3-4 and L4-5. Ms. Holifield attempted physical therapy and underwent two epidural steroid injections to no avail. Nine months later, she underwent a spinal fusion at L3-4 and L4-5. However, because she was still suffering chronic low back pain, it was recommended that she try a spinal cord stimulator. Ms. Holifield had a permanent

² According to the record, Mr. Foreman passed away in August 2021. However, his estate was never substituted as a party plaintiff, and, on the motion of Werner and ACE, Ms. Holifield's claims against Mr. Foreman's estate were dismissed, with prejudice. We note, however, that Mr. Foreman's name remained on the jury verdict form with the notation that Werner was legally responsible for him.

spinal cord stimulator implanted in early 2023. Moreover, medical testimony at trial revealed that Ms. Holifield had a new disc herniation at L2-3 that would likely necessitate a second lumbar fusion surgery. Ms. Holifield was also diagnosed with facet joint injury at C3-4, C4-5, and C5-6, for which she received a diagnostic nerve block and a radiofrequency ablation (nerve burn) at those levels—a procedure that she will likely require on a yearly basis for the rest of her life.

As a result of her injuries, Ms. Holifield filed suit against Werner, ACE, and Mr. Foreman. Ms. Holifield alleged both vicarious liability and direct negligence claims against Werner and named ACE as Werner's insurer. Following a lengthy trial, the jury returned a \$5,037,601.00 verdict in Ms. Holifield's favor as follows:

JURY VERDICT FORM

Christian Foreman, the defendant driver, was at fault for his actions in the crash that occurred on April 5, 2019, and Natasha Holifield is free of fault.

- (1) Do you find that Werner Enterprises, Inc. was at fault in the hiring, supervision, training, and retention of Christian Foreman?

Yes ☒ No ☐ 12 /12 (9/12 required)

Whether you answered "Yes" or "No" to Question 1, proceed to Question 2.

- (2) What is the degree of fault for each person below, expressed in percentages? (Please note that the percentages must total 100%):

Christian Foreman (for whom Werner Enterprises is legally responsible) 35 %

12 /12 (9/12 required)

Werner Enterprises, Inc.

65 %

12 /12 (9/12 required)

MUST TOTAL:

100 %

- (3) Was the April 5, 2019, crash a cause, even if not the sole cause, of any of Natasha Holifield's damages?

Yes ☒ No ☐ 12 /12 (9/12 required)

- (4) Please state what sum of money would reasonably and fairly compensate Natasha Holifield for the following:

Past Medical Expenses \$ 403,000 12 /12 (9/12 required)

Future Medical Expenses \$ 2,100,000 12 /12 (9/12 required)

Past Pain and Suffering \$ 500,000 9 /12 (9/12 required)

Future Pain and Suffering \$ 500,000 9 /12 (9/12 required)

Disfigurement and Disability \$ 500,000 9 /12 (9/12 required)

Mental Anguish, Past & Future \$ 500,000 9 /12 (9/12 required)

Loss of Enjoyment of Life, Past & Future \$ 500,000 9 /12 (9/12 required)

Past Lost Wages \$ 13,601 12 /12 (9/12 required)

Loss of Future Wages \$ 21,000 12 /12 (9/12 required)

The trial court signed a judgment in accordance with the jury's verdict on June 12, 2025.

From this judgment, defendants appealed, arguing that the trial court erred in (1) instructing the jury on "deterrence" thereby encouraging the jury to award damages beyond compensatory damages; (2) allowing prejudicial, inflammatory, and misleading testimony, evidence, and argument intended to arouse the prejudices of the jury; and (3) making several erroneous evidentiary rulings, including the admission of expert testimony and counselor records and the exclusion of a surveillance video. Ms. Holifield answered the appeal, arguing that the evidence presented at trial supports a substantially higher general damage award.

DISCUSSION

Evidentiary Issues (Assignment of Error No. 3)

Defendants raise several evidentiary issues that they assert cumulatively interdicted the fact-finding process and warrant reversal by this court. Specifically, defendants challenge: (1) the trial court's ruling allowing Jack Van Steenburg to testify as an expert, in spite of his untimely filed report, and some of the trial court's rulings during Mr. Van Steenburg's testimony; (2) the trial court's qualification of James Pittman as an expert in accident reconstruction; (3) the trial court's ruling allowing the introduction of Ms. Holifield's records regarding her diagnosis of post-traumatic stress disorder ("PTSD"); (4) the trial court's exclusion of a surveillance video of Ms. Holifield; and (5) several rulings by the trial court regarding defendants' motion to quash the 1442 video deposition and motion for protective order.

If a trial court commits an evidentiary error that interdicts its fact-finding process, this court must conduct a *de novo* review. Thus, any alleged evidentiary errors must be addressed first on appeal, inasmuch as a finding of error may affect the applicable standard of review. **Cregg v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College**, 2023-0127 (La. App.

1 Cir. 3/1/24), 385 So.3d 280, 287, writ denied, 2024-00409 (La. 6/5/24), 385 So.3d 1158.

Generally, the trial court is granted broad discretion in its evidentiary rulings and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Turner v. Ostrowe**, 2001-1935 (La. App. 1 Cir. 9/27/02), 828 So.2d 1212, 1216, writ denied, 2002-2940 (La. 2/7/03), 836 So.2d 107. In addressing the abuse-of-discretion standard, this court has previously noted:

The abuse-of-discretion standard is highly deferential to the trial judge's determination under consideration. An abuse of discretion generally results from a conclusion reached capriciously or in an arbitrary manner, which means the absence of a rational basis for the action taken. Thus, a trial court's discretionary action will not be disturbed on review if reasonable people could differ as to the propriety of the trial court's action.

Landry v. City of Mandeville, 2021-1362 (La. App. 1 Cir. 4/27/22), 342 So.3d 337, 346-347, writ denied, 2022-00828 (La. 9/27/22), 347 So.3d 155 (citations omitted).

Furthermore, La. Code Evid. art. 103(A) provides, in pertinent part, that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." The proper inquiry for determining whether a party was prejudiced by a trial court's alleged erroneous ruling on the admission or exclusion of evidence is whether the alleged error, when compared to the entire record, had a substantial effect on the outcome of the case. If the effect on the outcome of the case is not substantial, reversal is not warranted. The party alleging prejudice by an evidentiary ruling of the trial court bears the burden of so proving. See **Emery v. Owens-Corporation**, 2000-2144 (La. App. 1 Cir. 11/9/01), 813 So.2d 441, 449, writ denied, 2002-0635 (La. 5/10/02), 815 So.2d 842; see also **Wingfield v. State ex rel. Dept. of Transp. and Development**, 2001-2668 (La. App. 1 Cir. 11/8/02), 835 So.2d 785, 799, writs denied, 2003-0313, 2003-0339, 2003-0349 (La. 5/30/03), 845 So.2d 1059, 1060, cert. denied, 540 U.S. 950,

124 S.Ct. 419, 157 L.Ed.2d 282 (2003) (appellate court can step into the shoes of the fact finder and conduct a *de novo* review of all admissible evidence only if excluded evidence prejudices or taints a jury's verdict, *i.e.*, the excluded evidence could have permissibly changed the final verdict).

In this case, regardless of whether any of the trial court's rulings excluding or admitting evidence were erroneous, we cannot say that defendants established that any of the alleged errors were prejudicial to them or otherwise had a substantial effect on or could have changed the jury's verdict.³ The trial court has vast discretion in making evidentiary rulings, and we can only overturn those that lack a rational basis for the action taken. See Landry, 342 So.3d at 346-347. Having carefully considered the testimony of both Mr. Van Steenburg and Mr. Pittman, and having reviewed the other evidentiary rulings by the trial court that were challenged by defendants herein, we find no abuse of discretion by the trial court in any of these rulings. Accordingly, we find no merit to any of the arguments raised by defendants' third assignment of error, and a *de novo* review of this matter is not warranted.

Jury Instructions (Assignment of Error No. 1)

Defendants assert that the trial court committed reversible error in instructing the jury that "deterrence of undesirable conduct is a major goal of Louisiana tort law." Defendants note that in addition to the erroneous jury instruction, the trial court allowed Ms. Holifield's counsel to make inflammatory statements about motives, conduct, and deterrence during both opening and closing arguments.

Ms. Holifield argues that the jury instruction in question accurately informed the jury that policy considerations in tort law include "deterrence of undesirable conduct," noting that rather than being erroneous, the instruction reflects settled

³ We note that regarding expert witness testimony, the jury was instructed to "consider each expert opinion received into evidence ... and give it such weight as [they] think it deserves."

Louisiana jurisprudence. Ms. Holifield further asserts that assuming, for argument purposes, that the instruction was erroneous, defendants have not demonstrated any prejudice that would warrant reversal. Noting that defendants do not challenge the damage awards as being unsupported by the evidence, Ms. Holifield maintains that defendants "cannot establish that [this jury] instruction caused any impropriety."

Over the objection of defendants' counsel, the following was read to the jury before their deliberations:

Deterrence of undesirable conduct is a major policy goal of Louisiana tort law. The general duty and the specific risk inquiries ... both involve policy decisions on issues such as deterrence of undesirable conduct, avoiding the deterrence of desirable conduct, ... compensation of victims, satisfaction of the community sense of justice, proper allocation of resources, including judicial resources, predictability and deference to the legislative wheel.

Defendants argue the jury was instructed to award damages "based on an intentional act/punitive standard" rather than negligence. Moreover, during opening arguments, Ms. Holifield's counsel made the following statements to the jury:

What is your verdict in this case going to do? Well, it's two things it's justice for my client for what they've put her through, for falsely accusing her for 5 years and then to put her through all this misery that you're going to hear about, but I told you she's a fighter and she's going to get past that but there's another part of our system because we are doing jury selections [I]n our system we have a system that we can allow for money damages for that but there's another purpose for the money damages. In our court system, we can't punish them, and I want to be as clear as I can about this. We cannot punish them, but what we can do is award money and give my client full justice not half justice because half justice, is no justice all. You can give her full justice, and it will deter Werner from what they're doing. It will deter them from ignoring all these red flags [about Mr. Foreman] and putting the driver on the road. It will deter them from blaming people that they darn well know, didn't do it.

The trial court overruled defendants' objection to these statements, noting that no punitive action was being sought.

Louisiana Code of Civil Procedure article 1792(B) requires a trial court to instruct the jury on the law applicable to the cause submitted to them. "The trial

court is responsible for reducing the possibility of confusing the jury and may exercise the right to decide what law is applicable and what law the trial court deems inappropriate." **Adams v. Rhodia, Inc.**, 2007-2110 (La. 5/21/08), 983 So.2d 798, 804. "[T]he giving of an allegedly erroneous jury instruction will not constitute grounds for reversal unless the instruction is erroneous, and the complaining party has been injured or prejudiced thereby." **Rosell v. ESCO**, 549 So.2d 840, 849 (La. 1989). In fact, Louisiana jurisprudence is well established that a reviewing court must exercise great restraint before it reverses a jury verdict due to an erroneous jury instruction. **Adams**, 983 So.2d at 804. The Louisiana Supreme Court has previously explained the following basis for this rule of law:

Trial courts are given broad discretion in formulating jury instructions and a trial court judgment should not be reversed so long as the charge correctly states the substance of the law. The rule of law requiring an appellate court to exercise great restraint before upsetting a jury verdict is based, in part, on respect for the jury determination rendered by citizens chosen from the community who serve a valuable role in the judicial system. We assume a jury will not disregard its sworn duty and be improperly motivated. We assume a jury will render a decision based on the evidence and the totality of the instructions provided by the judge.

Adams, 983 So.2d at 804. When a reviewing court finds the jury was erroneously instructed and the error probably contributed to the verdict, an appellate court must set aside the verdict. The ultimate inquiry on appeal is whether the jury instructions misled the jury to such an extent that the jurors were prevented from dispensing justice. *Id.*

In **Reynolds v. Bordelon**, 2014-2362 (La. 6/30/15), 172 So.3d 589, 597, the Louisiana Supreme Court established that "the duty requirement can be analyzed in terms of policy," listing the policy factors to consider in determining whether to impose a duty "as deterrence of undesirable conduct, avoiding the deterrence of desirable conduct, compensation of victims, satisfaction of the community's sense of justice, proper allocation of resources (including judicial resources),

predictability, and deference to the legislative will." *Id.* at 596 (quoting Frank L. Maraist & Thomas C. Galligan, Jr., Louisiana Tort Law §5.02 (2004)). This is the exact language found in the jury instruction given in this case. Furthermore, we note that as per the jury verdict form herein, the jurors were asked to consider whether Werner was at fault in the hiring, supervision, training, and retention of Mr. Foreman and to assign a percentage of fault to both Werner and Mr. Foreman for Ms. Holifield's injuries. The jurors were never instructed regarding any intentional acts or punitive damages, nor is there any mention of this on the jury verdict form. In fact, the jury was instructed that in a case such as this one, "[n]o award should be made as a punishment for injuries which may have been inflicted."

Based on our review of the jury instruction and considering the record as a whole, we find that the jury instruction in this case "adequately provide[d] the correct principles of law" and did not mislead the jury "to the extent that it was prevented from dispensing justice." **Nicholas v. Allstate Ins. Co.**, 99-2522 (La. 8/31/00), 765 So.2d 1017, 1023. Assignment of error number one is without merit.

Remarks During Opening and Closing Arguments (Assignment of Error No. 2)

Defendants argue on appeal that the trial court allowed Ms. Holifield's counsel to make outrageous and highly prejudicial statements during both opening and closing arguments and throughout trial. Defendants further assert that the trial was "disorderly and lopsided" and that the trial court refused to make timely decisions that were "fair and balanced based on established law."

Early on in his opening argument, Ms. Holifield's counsel made the following comment, "Werner [T]rucking on average kills 10 to 12 people every year, that's on average one innocent person every year [sic] on our roadways." When given the

opportunity to be heard⁴ on objections regarding opening arguments, defendants' counsel objected to this statement, arguing that the statement was highly prejudicial, inflammatory and misleading. The trial court sustained the objection stating, "it is a bit inflammatory, is highly inflammatory, as a matter of fact, and the Court finds that ... the probative value is outweighed by unfair prejudice." Defendants' counsel replied, "[t]he problem is, Your Honor, we can't un-ring that bell."

After the trial court considered defendants' counsel's remaining objections to statements made during opening arguments, sustaining some and overruling others, the trial court asked if there were any other objections that needed to be addressed. At this time, defendants' counsel replied, "[t]hat's it ... but [I] believe on the totality of the sustained objections defendants are entitled to a mistrial." The trial court denied the mistrial and continued with the proceedings. At no time did defendants' counsel make any requests for the trial court to give any curative instructions or admonitions to the jury regarding any of the sustained objections.

The court, on its own motion, or on the motion of any party, after hearing, may grant a mistrial. La. Code Civ. P. art. 1631(C). Generally, mistrials are properly granted because of some fundamental failure in the proceeding. **Hunter v. State, ex rel. LSU Medical School**, 2005-0311 (La. App. 1 Cir. 3/29/06), 934 So.2d 760, 763, writ denied, 2006-0937 (La. 11/3/06), 940 So.2d 653. A motion for mistrial in a civil case should be granted under the following circumstances: (1) when, before the trial ends and the judgment is rendered, the trial judge determines that it is impossible to reach a proper judgment because of some error or irregularity; and (2) where no other remedy would provide relief to the moving party. **Barnes v.**

⁴ The trial court did not allow contemporaneous objections during opening arguments. Rather, two days after testimony began and outside the presence of the jury, the trial court heard arguments on the numerous objections to statements that were made during opening arguments. Furthermore, during closing arguments, the trial court overruled one objection by defendants' counsel before advising the parties that there would be no further objections allowed during closing arguments unless the trial court deemed it necessary.

Thames, 578 So.2d 1155, 1161 (La. App. 1 Cir.), writs denied, 577 So.2d 1009 (La. 1991). Motions for mistrial should also be granted upon proof of prejudicial misconduct occurring during a jury trial that cannot be cured by admonition or instruction. **Denton v. Vidrine**, 2006-0141 (La. App. 1 Cir. 12/28/06), 951 So.2d 274, 287, writ denied, 2007-0172 (La. 5/18/07), 957 So.2d 152.

Because a mistrial results in the discharge of one jury and the impaneling of another to try the case anew, it is a drastic remedy. **Hunter**, 934 So.2d at 763. The trial court is vested with broad discretion to grant a motion for mistrial where no other remedy would afford relief or where circumstances indicate that justice may not be done if the trial continues. This court should not disturb the trial court's determination unless there was an abuse of discretion. **Barnes**, 578 So.2d at 1161.

Louisiana Code of Civil Procedure article 1631(A) states, "[t]he court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done." The trial court has great discretion in the manner in which proceedings are conducted before the court, and it is only upon a showing of a gross abuse of discretion that appellate courts have intervened. **Thomas v. Department of Wildlife & Fisheries**, 2018-0869 (La. App. 1 Cir. 10/2/19), 289 So.3d 579, 598, writ denied, 2019-01767 (La. 1/14/20), 291 So.3d 687.

As previously noted, the trial court sustained defendants' counsel's objection to the statement that Werner kills 10 to 12 people every year finding that the statement was prejudicial. Although we agree with this finding by the trial court, we note that included in the general instructions to the jury was a statement by the trial court that argument of counsel was not evidence. Furthermore, following the trial court's denial of their motion for mistrial, defendants did not request that the trial court take any remedial action with the jury. In brief to this court, defendants

have failed to point to any caselaw or statutory authority, nor have we found any, that support the position that the trial court erred by not giving admonitions or curative instructions in this case. Moreover, as argued by Ms. Holifield in brief to this court, defendants cannot actually show that they suffered any prejudice as a result of the statement because defendants do not challenge the quantum at all on appeal. Ms. Holifield notes that if, in fact, the jury was so inflamed by this statement and other arguments made by counsel, the jury's award would have been much closer to what was requested, noting that her counsel asked for \$47 million during opening arguments and \$40 million during closing.

This was a lengthy jury trial that spanned over nine days, including five days of extensive testimony before the jury. In denying defendants' motion for mistrial, the trial court apparently concluded that justice could be served by allowing the trial to continue. From our review of the record and considering the facts and circumstances of this case, we find no abuse of discretion by the trial court in its decision to deny defendants' motion for mistrial and proceed forward with the trial. This assignment of error is meritless.

Ms. Holifield's Answer to the Appeal

Ms. Holifield filed an answer to the appeal in which she argues that the general damage award of \$2.5 million was "inadequate and constitute[s] an abuse of discretion." She asserts that an award of \$5 million in general damages would better "reflect the full scope of what [she] has endured and will continue to endure for the rest of her life." As support for this requested increase in general damages, Ms. Holifield details a brief history of her injuries and the impact her injuries and subsequent medical care have had, and will continue to have, on her daily life. However, Ms. Holifield's brief does not contain any legal arguments or any citations to jurisprudence supporting her claims in this assignment of error. We may consider

as abandoned any assignment of error or issue for review that has not been briefed. **Louisiana Commerce & Trade Ass'n, SIF v. Williams**, 2014-1680 (La. App. 1 Cir. 6/5/15), 174 So.3d 696, 699; see also Uniform Rules—Courts of Appeal, Rule 2-12.4(B)(4); **Hoffman v. Butler**, 2024-1199 (La. App. 1 Cir. 8/5/25), 418 So.3d 1071, 1075 n.2.⁵ Accordingly, we consider the issue raised by Ms. Holifield in her answer to the appeal to be abandoned.

DECREE

For the above and foregoing reasons, we affirm the trial court's June 12, 2025 judgment and deem abandoned the answer to the appeal. We assess all costs associated with this appeal against defendants/appellants, Werner Enterprises, Inc. and ACE American Insurance Company.

AFFIRMED; ANSWER TO APPEAL DEEMED ABANDONED.

⁵ We note that in cases involving a *pro se* litigant, this court has discretion to consider the merits of an appeal despite deficiencies in a brief. See Putman v. Quality Distribution, Inc., 2011-0306 (La. App. 1 Cir. 9/30/11), 77 So.3d 318, 320. However, in the instant case, Ms. Holifield has had consistent representation throughout the proceedings.

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CHH
HESTER, J., concurs.

I respectfully concur. I disagree with the majority's finding that the jury instruction regarding deterrence adequately provided the correct principles of law and did not mislead the jury when considered in light of the jury instructions as a whole and the circumstances of this case, which include the assignment of a *pro tempore* judge on Friday, March 7, 2025, three days prior to the start of a nine-day jury trial.¹ The instruction at issue in this case should not be given to any jury. However, because I am unable to find that the jury was precluded from reaching a verdict based on the law and facts such that *de novo* review is warranted, I concur with the majority's opinion. See Adams v. Rhodia, Inc., 2007-2110 (La. 5/21/08), 983 So.2d 798, 805.

In accordance with La. Civ. P. art. 1792(B), the trial court is required to instruct jurors on the law applicable to the cause submitted to them. A trial judge is under no obligation to give any specific jury instructions that may be submitted by

¹ "Johnell M. Matthews, Esquire" was appointed by the Louisiana Supreme Court by order dated February 28, 2025 to serve as judge *pro tempore* of Division "O" (Section 25) of the 19th Judicial District Court, Parish of East Baton Rouge due to the vacancy existing after Judge Wilson E. Fields was elected to the First Circuit Court of Appeal.

either party; the judge must, however, correctly charge the jury. Importantly, adequate jury instructions are those which fairly and reasonably point out the issues and which provide correct principles of law for the jury to apply to those issues. Correlative to the judge's duty to charge the jury as to the law applicable in a case is a responsibility to require that the jury receives only the correct law. **Adams**, 983 So.2d at 804. When the instruction in this case is considered in the context of the entirety of the jury charge and in conjunction with the entire record, I find that the jury charge failed to correctly state the substance of the law and was inapplicable to the issues presented to the jury.

After closing arguments were heard from both plaintiff and defendants, the jury was provided with instructions from the trial court, which included the following special instruction given over defendants' objection:

Deterrence of undesirable conduct is a major policy goal of Louisiana tort law. The general duty and the specific risk inquiries, inquiries both involve policy decisions on issues such as deterrence of undesirable conduct, avoiding the deterrence of desirable conduct, compensation of ... victims, satisfaction of the community sense of justice, proper allocation of resources, including judicial resources, predictability and deference to the legislative wheel [sic].

In context, the trial court first informed the jury that it was "my duty to tell you the law that applies to this case" and that the jury's duty "to follow the law as I state it to you." The jurors were given general instructions to deliberate without regard to sympathy, prejudice, or passion for or against any party in the suit. The jurors were next informed that a corporation is entitled to the same fair trial as a private individual; the burden of the plaintiff was to prove her case by a preponderance of the evidence; that facts may be proven by direct or circumstantial evidence; witnesses are presumed to speak the truth about facts within their knowledge but that the presumption can be rebutted; the jury weighs the credibility of witnesses; and the evaluation of expert witnesses. The trial court also instructed the jury as follows:

This is a suit seeking damages for injury caused by the act of another and under our Civil Code. Such an act is called an offense or a quasi-offense in the suit is generally known as a tort suit. The basic law in Louisiana in this type of suit is found in article 2315 of our Civil Code, which states every acts, whatever of man that causes damage to another obliges him by whose fault it happens to repair it. The word fault in that article is a keyword. However, I have previously told you that in order to be successful, the plaintiff must establish all these essential elements of her case, and other elements are that the injury which the plaintiff suffered was in fact, caused by the conduct of the defendants, and too there was actual damage to the plaintiff's person or her property.

The trial court then provided special jury instructions, stating, in part, as follows:

Every person is responsible for the damage occasions, not merely by his act but by his negligence, his imprudence and his want of skill. The test for determining the causal relationship between an accident and the subsequent injuries is whether Natasha Holyfield in this case, proved through medical and lay testimony that it is more probable that not that her injuries were caused by the accident.

...

A plaintiff may pursue both a negligent cause of action against an employee for which the employer is vicariously liable, and [a] direct claim against the employer for its own negligence in hiring, supervision, training and retention as well as a negligent entrustment claim.

The trial court continued the special instructions, informing the jury on percentage of fault; awards for past or future medical expenses; the elements to consider in estimating damages (physical injury suffered, physical and mental pain and suffering, loss of enjoyment of life, permanent disability, and past and future loss of earnings); consideration of pre-existing conditions; and the duty of plaintiff to mitigate her damages.

Additional special instructions were given by the trial court as follows:

The law of Louisiana does not permit an award of punitive damages. That is to say, in a case of this kind. No award should be made as a punishment for injuries which may have been inflicted. Punitive damages cannot be allowed, even though a defendant may be grossly negligent and even if you might feel that they should be punished[.] [A]ny award made in such a case must be limited to a reasonable conversation [sic] for the items claimed as damages resulting from the accident. ... [T]he determination of damages is solely your function and

your decision must be based upon competent evidence. The primary objective of general damages is to restore plaintiff Natasha Holyfield as near of fashion as possible to the state she was in at the time the immediately preceding injury. Natasha Holyfield has claimed as a part of her damages that she has suffered loss of enjoyment of life, in addition to the other physical and mental damages that she has asserts. As with all other aspects of damage claims, you have much discretion as to whether any such damages should be awarded and in what amounts. In this connection, you may take into account Natasha Holyfield's interests and way of life and the extent to which she may have suffered damage with respect to it, which is separate ... from her other physical and mental damages, okay. The law recognizes that a plaintiff may suffer mental anguish, mental distress and anguish as a result of an incident as well as physical pain-and-suffering. You are permitted to consider such consequences as a part of the general damages which you may award. And I do believe I've [said] that one before. Loss of social and recreational activities [may] properly be considered as one of the components of an award of general damages. An award for future medical expenses is justified if there's medical testimony that they are indicated and setting out their probable cost. In such a case, The Court should award all future medical expenses which the medical evidence establishes that Natasha Holyfield, more probable than not, will be required to incur. In determining any award that you may make for past or future medical expenses, you should consider the evidence and opinions of expert witnesses to decide the reasonable value or expense of medical, nursing and hospital care and treatment, which was or will be reasonable and necessary for Natasha Holyfield's condition. **Deterrence of undesirable conduct is a major policy goal of Louisiana tort law. The general duty and the specific risk inquiries, inquiries both involve policy decisions on issues such as deterrence of undesirable conduct, avoiding the deterrence of desirable conduct, compensation of witnesses, I'm sorry, compensation of victims, satisfaction of the community sense of justice, proper allocation of resources, including judicial resources, predictability and deference to the legislative wheel [sic].** All right. All right. That is basically the law that I have read to you. I have a few final instructions to give you. This completes my remarks on the applicable law in this case.

(Emphasis added.)

Notably, the jury instruction as to deterrence was given *immediately after* the instructions on general and specific damages and was not provided in the context of the duty-risk analysis. This instruction did not fairly and reasonably point out the issues, did not provide correct principles of law, and was inappropriate in this case.

While the majority correctly notes that the Supreme Court in **Reynolds v. Bordelon**, 2014-2362 (La. 6/30/15), 172 So.3d 589, 597, acknowledged that “the

duty requirement can be analyzed in terms of policy,” no context is given for the Supreme Court’s statement. Moreover, no analysis is provided by the majority as to relevance of the duty requirement to the issues in the case and the law the jury needed to be informed of. I do not find that the **Reynolds** case supports the use of the jury instruction at issue in this case.

Importantly, the question presented in **Reynolds** was whether Louisiana recognizes the tort of negligent spoliation. Focusing its analysis on the duty element, the Supreme Court found that regardless of the source of the duty – be it general or specific – public policy in Louisiana precludes the existence of a duty to preserve evidence, *i.e.*, there is no tort of negligent spoliation. **Reynolds**, 172 So.3d at 592.

The Supreme Court began its analysis with the foundation of any tort in Louisiana, La. Civ. Code art. 2315, which provides that “[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.” Noting that “fault” is a broader term than negligence or intent, the Supreme Court also acknowledged that there is a limit as to actual liability.²

The Supreme Court found that the duty inquiry of the negligence analysis (duty, breach, causation, and damages) was central to the determination of whether Louisiana recognized the tort of negligent spoliation of evidence and then proceeded to approach the duty element from a policy perspective. The court went on to explain that policy considerations can compel a *court* to make a categorical “no duty” rule regarding certain conduct. **Reynolds**, 172 So.3d at 596. In fact, *courts* have the ability and the authority to refuse to recognize a duty to prevent certain conduct. **Id.** at 597 (quoting **Hill v. Lundin & Associates, Inc.**, 260 La. 542, 256 So.2d 620, 623 (1972)). See **Campbell v. Orient-Express Hotels Louisiana, Inc.**, 2024-00840,

² The court quoted Frank L. Maraist & Thomas C. Galligan, Jr., *Louisiana Tort Law* § 1.04 (2004), in which the authors explained that all theories of recovery/categories of tort liability are “fault” in Louisiana but they represent differing levels of blameworthiness or culpability. **Reynolds**, 172 So.3d at 595.

(La. 3/21/25), 403 So.3d 573, 581 (acknowledging that whether a duty is owed is a question of law).

It is in this context that the Supreme Court turned to Maraist and Galligan to illustrate the duty element as it relates to public policy:

The general duty and the specific risk inquiries both involve policy decisions on issues such as deterrence of undesirable conduct, avoiding the deterrence of desirable conduct, compensation of victims, satisfaction of the community's sense of justice, proper allocation of resources (including judicial resources), predictability, and deference to the legislative will.

Reynolds, 172 So.3d at 596 (quoting Frank L. Maraist & Thomas C. Galligan, Jr., *Louisiana Tort Law* § 5.02 (2004)). Using these policy considerations, the Supreme Court then examined whether negligent spoliation of evidence should be recognized or rejected as a tort, *i.e.*, whether there is a duty for a failure to act.³ **Id.** at 596-97. Specific to the consideration of “deterrence of undesirable conduct,” the court found that the act of negligently spoliating evidence is so unintentional an act that any recognition of the tort *by the courts* would not act to deter future conduct, but would, rather, act to penalize a party who was not aware of its potential wrongdoing in the first place. **Id.** at 597.

Accordingly, the **Reynolds** case established the policy considerations of deterrence of undesirable conduct, avoiding the deterrence of desirable conduct, compensation of victims, satisfaction of the community's sense of justice, proper allocation of resources (including judicial resources), predictability, and deference to the legislative will are important for a *court* when considering the legal question

³ Justice Weimer joined the majority's opinion in **Reynolds**, but wrote separately to emphasize the legislative source of public policy which formed the basis of the court's analysis of negligent spoliation. Justice Weimer stressed that in a civil law system, the role of the judiciary is to evaluate statutory authority in determining either to impose or not impose a duty, noting that the legislature authorizes courts to turn to custom for a solution when the legislature has not spoken directly on a matter. If a solution cannot be found in custom, courts are then authorized by the legislature to proceed according to equity. Specifically, Justice Weimer stated that “[i]t is only where the legislature has not spoken and there is no custom, or the legislature has deferred to the judiciary that we are authorized to resort to equity for discerning policy.” **Reynolds**, 172 So.3d at 600-01 (Weimer, J. concurring). See also La. Civ. Code arts. 1, 3, and 4.

of whether a duty exists or whether a duty should exist, not a jury.⁴ It was erroneous to present these policy considerations to the jury as an instruction.

Additionally, that portion of the jury instruction stating that “[d]eterrence of undesirable conduct is a major policy goal of Louisiana tort law” lacks support. At best, it is a partial truth, as “deterrence of undesirable conduct” is but one factor a *court* can consider when utilizing public policy to determine whether a duty exists, as explained *supra*. Otherwise, it is a misstatement or misuse of the language used by the Supreme Court in **Bellard v. Am. Cent. Ins. Co.**, 2007-1335 (La. 4/18/08), 980 So.2d 654 and **Simmons v. Cornerstone Investments, LLC**, 2018-0735 (La. 5/8/19), 282 So.3d 199, which are cases pertaining specifically to the application of the collateral source rule.⁵

After being presented with the question of whether an uninsured motorist (“UM”) carrier was entitled to a credit for medical and disability wage benefits paid

⁴ When considering whether a duty should exist, the broad facts of a class of cases are what are relevant, *i.e.*, the court should consider whether this class of people have a duty to exercise reasonable care to protect another class of people from a harm. The rule of law should be clear and it should equally apply to all. It should not depend upon the particular parties or facts. Thomas C. Galligan, Jr., *In Praise of the Louisiana Supreme Court*, 72 Loy. L. Rev. 1, 17-18 (Fall, 2025).

⁵ The collateral source rule is a rule of evidence and damages that is of common law origin, yet embraced and applied by Louisiana courts. Under the collateral source rule, a tortfeasor may not benefit, and an injured plaintiff’s tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor’s procurement or contribution. As a result of the collateral source rule, the tortfeasor is not able to benefit from the victim’s foresight in purchasing insurance and other benefits. **Bozeman v. State**, 2003-1016 (La. 7/2/04), 879 So.2d 692, 697-98. The Supreme Court in **Bozeman** further cited to the origins of the collateral source rule – the 1854 United Supreme Court case of **The Propeller Monticello v. Mollison**, 58 U.S. 152, 15 L.Ed. 68 (1854). In **Bozeman**, the court described the **Monticello** case as follows:

This case arose from a shipwreck involving a steamship, The Propeller Monticello, and a schooner ship named the Northwestern. Both ships carried cargo, and the schooner, which sank, was insured. The schooner’s insurer paid for the loss of the schooner and its cargo prior to the filing of the suit, which was initiated by the schooner’s owner. *As a defense, the steamship’s owner argued that the insurance pay-off released it from liability.* The Supreme Court disagreed, and held instead that the schooner’s “contract with the insurer is in the nature of a wager between third parties, with which the trespasser has no concern. The insurer does not stand in the relation of a joint trespasser, so that satisfaction accepted from him shall be a release of others.” [**Monticello**, 58 U.S.] at 155. Further, the Supreme Court concluded that the tortfeasor “is bound to make satisfaction for the injury he has done.” **Id.**

(Emphasis added.) Accordingly, the collateral source rule operates to prevent a tortfeasor from escaping *liability* because the plaintiff was compensated from an independent source and ensures that the tortfeasor repairs the damages he caused by his fault.

on behalf of or to an injured worker by a workers' compensation carrier, the Supreme Court in **Bellard**, 980 So.2d at 658, determined that the UM carrier was entitled to a credit. As part of its analysis, the Supreme Court considered "the major policy goal of tort deterrence" in connection with the application of the collateral source rule.⁶ **Id.** at 669.

In **Simmons**, the Supreme Court was presented with the question of whether the lower courts erred in prohibiting the plaintiff from presenting the full amount of medical expenses billed and only allowing the amount actually paid by the employer through workers' compensation in a tort case against a third party tortfeasor. The court found that the amount of medical expenses charged above the amount actually incurred was not a collateral source and that the exclusion from consideration by the jury was proper. **Simmons**, 282 So.3d at 200. In its analysis of the relevant cases, the court in **Simmons** quoted the language of **Bellard** regarding the consideration of whether application of the collateral source rule would further "the major policy goal of tort deterrence." Ultimately, the court stated,

Plaintiff places much emphasis on tort deterrence, essentially arguing that it, as a public policy factor, overrides competing concerns regarding double recovery. We acknowledge the important role of tort deterrence within our tort system; however, to stretch the argument to include the award of un-incurred medical expenses, in addition to those actually paid, is to effectively authorize the assessment of punitive damages in the absence of statutory authority. Thus, in this case, we

⁶ This consideration stemmed from the Supreme Court's prior decision in **Bozeman v. State**, 2003-1016 (La. 7/2/04), 879 So.2d 692, 700, in which the Supreme Court stated:

The major policy reason for applying the collateral source rule to damages has been, and continues to be, tort deterrence. The underlying concept is that tort damages can help to deter unreasonably dangerous conduct. Tort deterrence has been an inherent, inseparable, aspect of the collateral source rule since its inception over one hundred years ago.

It is noted that the Supreme Court in **Bozeman** stated that "tort deterrence" was an inherent, inseparable, aspect of the collateral source rule – not Louisiana tort law. In fact, the main policy reasons for the collateral source rule are grounded in the belief that the tortfeasor should not profit from the victim's prudence in obtaining insurance, and that reducing the recovery by the monies paid by a third party would hamper the deterrent effect of the law. **Id.** at 701.

Moreover, the tort damages that help deter certain conduct is used in the broad sense of the word. It is the fact that a tortfeasor should pay any amount of damages at all. However, the precise calculation of damages awarded to a plaintiff are determined based on the facts specific to a particular case and are not awarded simply as a deterrence.

find there is no true deterrent effect to allowing Plaintiff to recover expenses over and above what was actually paid.

Id. at 205.

The comments and consideration of the policy of tort deterrence in the **Bellard** and **Simmons** cases, which involved the *application* of the collateral source rule, have no applicability or relevance to a jury's determination of fault or the amount of damages to award to a plaintiff.⁷ In this case, the role of the jury was to determine whether defendants were liable under theories of general negligence, vicarious liability, and negligent supervision and to determine what amount of damages would compensate plaintiff for the injuries caused by defendants' actions. See **Chauvin v. Exxon Mobil Corp.**, 2014-0808 (La. 12/9/14), 158 So.3d 761, 768. Importantly, the amount of compensable damages awarded to a plaintiff does not involve the consideration of a defendant's motives and conduct in committing the particular tort, as that is the basis for awarding punitive damages. **Id.**

In evaluating punitive damage awards, the emphasis is not on the damages sustained by the plaintiff, but rather on the conduct of the defendant. The purpose of punitive damages, which are awarded to the plaintiff over and above the full compensation for his injuries, is to punish the defendant, to teach the defendant not to do it again, and to deter others from following the defendant's example. Punitive damages are not designed to make an injured party whole. Rather, they are meant to punish the tortfeasor and deter specific conduct to protect the public interest. **Chauvin**, 158 So.3d at 768.

In instructing the jury that “[d]eterrence of undesirable conduct is a major policy goal of Louisiana tort law” followed by the policy considerations involved in

⁷ Plaintiff argued that “Louisiana scholars have likewise recognized this principle: ‘recovery of damages serves the deterrence goal of tort law[,]’” quoting Maraist & Galligan, Louisiana Tort Law § 7.02[5] (2004). However, this language was extracted from the subsection addressing the justifications of the collateral source rule and is not applicable to the issues presented in this case.

the general duty and the specific risk inquiries, including “deterrence of undesirable conduct,” the trial court erroneously instructed the jury. Defendants’ conduct was not relevant to the amount of damages plaintiff was entitled. Moreover, it was not within the province of the jury to make policy considerations or determine whether or not to impose a duty, as these policy considerations are neither applicable to a jury’s determination of fault nor the amount of compensation sufficient to repair the damage caused by a tortfeasor.⁸ Rather, they are considerations for a *court* or the legislature to use in determining whether society is best served by recognizing a duty. See Reynolds, 172 So.3d at 597.

The jury here was supposed to be tasked with determining whether defendants were, in fact, negligent in the hiring, supervision, training and retention of Mr. Foreman. Then, if finding such negligence on the part of defendants, the jury was to determine the amount to award to plaintiff for compensatory damages, which does not involve the consideration of deterrence. I find that it is improper to invite a jury to contemplate the policy consideration of tort deterrence in any context, especially in determining the award of damages in a case in which punitive damages are not allowed.

When considering that this erroneous instruction was given immediately after the instruction on awarding damages and in light of plaintiff’s counsel’s repetitive statements about deterrence in both opening and closing arguments, which were woven into statements about awarding plaintiff full justice, the chances that the jury was misled substantially increased. See Adams, 983 So.2d at 805. To wit:

⁸ Moreover, plaintiff’s reliance on language quoted from W. Page Keeton, et al., *Prosser and Keeton on The Law of Torts* (5th ed. 1984) § 4, pp. 20-26, is misplaced. In context, Section 4 discusses factors affecting tort liability, which the authors state that prevention and punishment is but one of many factors to consider in determining whether to impose liability. *Id.* at pp. 20, 25. Further, the authors also state that “[w]hile the idea of prevention is seldom controlling, it very often has weight as a reason for holding the defendant responsible.” *Id.* at p. 26. The factor is a consideration as to whether tort liability exists for a certain act. It is a policy determination. See Reynolds, 172 So.3d 589.

[W]e can allow money damages for that but there's another purpose for the money damages. ... We cannot punish them, but what we can do is award money and give my client full justice not half justice because half justice, is no justice all. You can give her full justice, and it will deter Werner from what they're doing. It will deter them from ignoring all these red flags and putting the driver on the road. It will deter them from blaming people that they darn well know, didn't do it.

...

Full justice not half justice, half justice gives them a pass and so ladies and gentlemen once you've heard all the evidence, not now, but on[c]e you've heard all the evidence, I'm going to suggest to you that you allow a verdict to give her full justice and to deter Werner for their behavior, \$47 Million ...

...

You can deter their behavior. You can deter them from putting drivers like this on the road. How do you deter them, by awarding full justice to my client, because if you award half justice, that's no justice at all, but you can deter them from doing this to the next person. You can award full justice to my client...

Plaintiff's counsel repeatedly requested that the jury award plaintiff money – full justice – so that defendants would be deterred from their actions and not so that plaintiff could be made whole. This is a distinction that makes a difference, but it was a distinction that plaintiff's counsel ignored in opening and closing arguments, which was compounded by the erroneous jury instruction.

The deterrence instruction at issue in this case should never be presented to any jury. However, an appellate court must exercise great restraint before it reverses a jury verdict because of erroneous jury instructions. The rule of law requiring an appellate court to exercise great restraint before upsetting a jury verdict is based, in part, on respect for the jury determination rendered by citizens chosen from the community who serve a valuable role in the judicial system. We assume a jury will not disregard its sworn duty and be improperly motivated. We assume a jury will render a decision based on the evidence and the totality of the instructions provided by the judge. **Adams**, 983 So.2d at 804.

The determinative question is whether the jury instructions misled the jury to the extent that it was prevented from dispensing justice. Determining whether an erroneous jury instruction has been given requires a comparison of the degree of error with the jury instructions as a whole and the circumstances of the case. The mere discovery of an error in the judge's instructions does not of itself justify the appellate court conducting the equivalent of a trial *de novo*, without first measuring the gravity or degree of error and considering the instructions as a whole and the circumstances of the case. **Adams**, 983 So.2d at 804-05.

Ultimately, I am unable to conclude that the clearly erroneous jury instruction misled this jury in this case to such an extent that it was prevented from dispensing justice. See **Adams**, 983 So.2d at 804. Accordingly, I concur with the majority's opinion.