

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nathan Harris	:	
	:	
v.	:	
	:	
City of Philadelphia; Officer Diertra	:	
Cuffie; Officer Melvin Floyd; Officer	:	
Les Simmons; Officer Denia Starkes	:	
and Officer Le Vau Rudisill	:	
	:	No. 1653 C.D. 2024
Appeal of: Melvin Floyd	:	Argued: May 14, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STELLA M. TSAI, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION BY JUDGE TSAI

FILED: October 27, 2026

Appellant Melvin Floyd (Floyd), a Philadelphia Police Officer, appeals from the judgment entered by the Court of Common Pleas of Philadelphia County (trial court) following a jury trial and the trial court's denial of Floyd's post-trial motions. After review, we affirm the verdict in favor of Plaintiff with respect to the compensatory damages, vacate the judgment, and remand for further proceedings.

I. BACKGROUND

On July 6, 2022, Appellee Nathan Harris (Harris or Plaintiff) and Michael McMillian (McMillian) (collectively Plaintiffs) filed with the trial court a Complaint in Civil Action against the City of Philadelphia (City) and Philadelphia Police Officers Diertra Cuffie, Floyd, Les Simmons, Denia Starkes, and Le Vau Rudisill (collectively, Individual Defendants) relating to an incident that occurred on July 10, 2020. Original Record (O.R.) at 16-27 (electronic pagination). Plaintiffs averred, in part, that, on that date, Individual Defendants detained, searched, and arrested

Plaintiffs while conducting an investigation into the sale of illegal narcotics in the area of 5742 Park Avenue in Philadelphia. *Id.* at 18-20. Plaintiffs averred that they did not commit any criminal offenses or engage in conduct which justified the actions of Individual Defendants. *Id.* at 21. Plaintiffs further averred that, during the course of the arrest of Harris, Individual Defendants slammed Harris's head onto the roof of a car and placed handcuffs on his wrists in a tight manner, causing serious and permanent injuries to his wrists, head, neck, and back. *Id.* at 20-21. Plaintiffs raised numerous causes of action, including assault and battery, false arrest, false imprisonment, abuse of process, invasion of privacy, and violations of civil rights under the Pennsylvania Constitution. *Id.* at 21-25. Following the filing of preliminary objections, by order dated January 12, 2023, the trial court dismissed the City and the causes of action for invasion of privacy and violations of civil rights under the Pennsylvania Constitution. *Id.* at 89.

Relevant to this appeal, Floyd testified at trial that on July 10, 2020, he took part in serving a search warrant at 5742 Park Avenue. N.T. Trial, 10/7/24, at 26-29. Floyd explained that he arrested McMillian outside of that property and handed McMillian off to a uniformed police officer. *Id.* at 45-46. Floyd denied handcuffing Harris. *Id.* at 37-38. Floyd testified that later he assisted Officer Sean Peacock search the roof of a nearby building for a stash of drugs. *Id.* at 35-36, 48, 58; *see also* Plaintiff's Ex. G at 02:05-05:33 (video from Peacock's body-worn camera). Floyd further testified that, after searching the roof, he and Peacock walked to the police wagon where Harris and McMillian were being held. N.T. Trial, 10/7/24, at 35-36, 177-178; *see also* Plaintiff's Ex. G at 6:56-7:07. According to Floyd, he and Peacock opened the back door of the wagon and briefly spoke with Harris and

McMillian before Floyd took McMillian out of the wagon. N.T. Trial, 10/7/24, at 36-39, 48, 52-53, 179; *see also* Plaintiff's Ex. G at 7:07-7:55.

Harris's counsel introduced body-worn camera video relating to the subject incident. Of relevance, here, the video depicts that while Peacock was searching the roof for drugs, other officers led Harris towards the police wagon. N.T. Trial, 10/7/24, at 35; Plaintiff's Ex. G at 3:43-3:47, 3:58-4:00. Peacock then walked to the edge of the roof and handed baggies that he had found to Floyd. Plaintiff's Ex. G at 4:00-4:12.

Harris testified that on July 10, 2020, he drove McMillian to the 5700 block of Park Avenue. N.T. Trial, 10/7/24, at 165-166. After McMillian got out of Harris's SUV, Harris parked further down the street and began looking at his cell phone. *Id.* at 167. Harris explained that while he was sitting in his SUV, five police officers surrounded him and ordered him to get out of the vehicle. *Id.* at 169. Harris testified that Floyd grabbed him and then slammed him against the back of the SUV. *Id.* at 169-170. Harris further testified that he protested Floyd twisting his arm as Floyd handcuffed Harris. *Id.* at 171. According to Harris, after Floyd handcuffed Harris, he handed Harris off to a uniformed police officer and then arrested McMillian. *Id.* at 170, 172, 206. Harris identified himself in the video from Peacock's body-worn camera. *Id.* 10/7/24, at 176; *see also* Plaintiff's Ex. G at 3:47.

Harris testified that Peacock later came back to the police wagon where Harris was being held. N.T. Trial, 10/7/24 at 181; *see also* Plaintiff's Ex. G at 40:01. Harris asked Peacock to remove Harris's wristwatch because the handcuffs were atop the watch and both the watch and handcuffs were cutting into his wrist; Peacock removed Harris's watch. N.T. Trial, 10/7/24, at 182-183; *see also* Plaintiff's Ex. G at 40:08-40:25. Harris also testified that, when Peacock adjusted the handcuffs,

Harris's wrists had a dark line on them at this time and they were swollen. N.T. Trial, 10/7/24, at 183-184. Harris testified that an officer drove the police wagon to the 35th Police District, and, by the time he arrived there, his hand was so numb that he could not feel it. *Id.* at 186. He explained that his wrists were so swollen that the handcuffs could not be removed normally, so police officers requested aid from the neighboring fire station, and firefighters cut the handcuffs off of his wrists. *Id.* at 187. Harris testified that he sought medical treatment at Einstein Hospital later that evening. *Id.* at 191-192. Harris maintained that as of the date of the trial, he still had pain in his neck and wrists, and his mobility reduced compared to before the arrest. *Id.* at 193-195.

On October 8, 2024, after a two-day trial, the jury found Floyd liable to Harris for assault, battery, and false imprisonment.¹ O.R. at 420-422. The jury awarded \$50,000 in compensatory damages and \$375,000 in punitive damages. *Id.*

Floyd filed timely post-trial motions requesting entry of judgment notwithstanding the verdict (JNOV), in the alternative a new trial based on the weight of the evidence, and lastly remittitur of damages. *Id.* at 426. The trial court entered an order denying Floyd's post-trial motion for JNOV on October 30, 2024. *Id.* at 501. The trial court subsequently entered orders denying the remaining claims from Floyd's post-trial motions on November 26, 2024. *Id.* at 504. The trial court entered judgment that same day. *Id.* at 506-507.

¹ Harris withdrew his complaint with respect to Defendant Le Vau Rudisill during the trial. See N.T. Trial, 10/7/24, at 161. The trial court granted motions for nonsuit with respect to Defendants Les Simmons and Denia Starkes (or Starks, both spellings appear in the trial court record). See N.T. Trial, 10/7/24, at 249, 255. The jury found Defendant Diertra Cuffie not liable on all counts. See N.T. Trial, 10/8/24, at 89-90. Additionally, the trial proceeded without McMillian, who passed away at some point prior to trial. Trial Ct. Op. at 2.

Floyd filed a timely notice of appeal. The trial court, in its Rule 1925(a) opinion, recommended that this Court affirm the trial court’s prior rulings with the exception of the trial court’s ruling as to the post-trial motion for remittitur of the punitive damages. Trial Ct. Op., 7/21/25, at 15-16. As to that motion, the trial court requested that this Court remand the matter to the trial court so that the trial court may remit the punitive damages. *Id.*

II. ISSUES

Floyd raises three issues on appeal: (1) the trial court erred by denying his post-trial motion for JNOV; (2) the trial court erred by denying his post-trial motion for a new trial based on the weight of the evidence; and (3) the trial court erred by denying his post-trial motion for remittitur of the punitive damages.² As stated above, in its Rule 1925(a) opinion, the trial court changed its posture on the issue of remittitur and is now asking this Court to remand for the purpose of remitting the punitive damages award.

III. DISCUSSION

A. JNOV

In his first issue,³ Floyd argues that he “is entitled to judgment as a matter of law because the video from Peacock’s body-worn camera demonstrates that Officer

² In his Rule 1925(b) statement, Floyd included two additional claims regarding the denial of his motion for summary judgment and the denial of his motion for a compulsory nonsuit/directed verdict. However, because Floyd did not include these claims in his brief, they are abandoned on appeal and therefore waived. *See Yannone v. Town of Bloomsburg Code Appeal Bd.*, 218 A.3d 1002, 1009 (Pa. Cmwlth. 2019) (stating that “[w]e decline to become substitute counsel for [an] appellant, and as such, we will deem an issue abandoned where it has been identified on appeal but not properly developed in [an] appellant’s brief” (citation and quotation marks omitted)).

³ This Court has explained:

Floyd did not arrest or assault [Plaintiff], notwithstanding [Plaintiff's] testimony to the contrary at trial.” Floyd’s Brief at 14. Floyd contends that the trial court is not required to credit the account of a witness where there is video evidence in the record which “blatantly contradicts” that witness’s account. *Id.* (citing, *inter alia*, *Sellers v. Twp. of Abington*, 106 A.3d 679, 690 (Pa. 2014)). Specifically, Floyd claims that “the video from . . . Peacock’s body-worn camera blatantly contradicts [Plaintiff’s] account that Officer Floyd was the officer who arrested him, and who slammed him against his vehicle and handcuffed him in the process.” *Id.* at 14. Thus, Floyd concludes that he is entitled to a judgment as a matter of law. *Id.* at 14-15.

Plaintiff responds that Floyd waived this issue because he did not argue in his post-trial motion that the video contradicted Plaintiff’s testimony. Plaintiff’s Brief at 10. Alternatively, Plaintiff contends that Floyd is not entitled to relief on this claim because it is an attack on Plaintiff’s credibility. *Id.* at 12.

We may only reverse [a trial court’s entry or denial of JNOV] upon a showing that the trial court clearly abused its discretion or committed an error of law. In reviewing a motion for JNOV, the evidence must be considered in the light most favorable to the verdict winner, who must be given the benefit of every reasonable inference of fact arising [therefrom], and any conflict in the evidence must be resolved in his or her favor. JNOV should only be entered in a clear case and all doubts should be resolved in favor of the verdict winner. JNOV is properly granted only where the movant is entitled to judgment as a matter of law or evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. A movant is entitled to judgment as a matter of law when the court reviews the record and concludes that even with all factual inferences decided adverse to the movant, the law requires a verdict in its favor. Alternatively, JNOV may be granted on an evidentiary basis when the trial court reviews the record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Carletti v. Dep’t of Transp., 190 A.3d 766, 776 n.4 (Pa. Cmwlth. 2018) (citation and quotation marks omitted). Further, “[q]uestions of credibility and conflicts in the evidence are for the trial court to resolve and the reviewing court should not reweigh the evidence.” *Gehres v. Falls Twp.*, 948 A.2d 249, 251 n.1 (Pa. Cmwlth. 2008) (citation and quotation marks omitted).

We disagree with Plaintiff's contention that Floyd waived this issue. A review of Floyd's post-trial motion indicates that, although Floyd did not use the word "contradict" in his post-trial motion for JNOV, he cited the timestamps of the video several times to support his claim that Floyd was behind a house at the same time Plaintiff was being escorted away from his vehicle, which was parked on the street; therefore, it was "virtually impossible for Officer Floyd to have detained/arrested Plaintiff." O.R. at 430-431, ¶¶ 16-18 (citing, *inter alia*, Peacock's body-worn camera video at 3:59, 4:07). Therefore, we conclude that Floyd preserved this issue about the video before the trial court, and we address the merits of this claim.

"A jury is entitled to believe all, part or none of the evidence presented. . . . A jury can believe any part of a witness' testimony that [it] choose[s], and [it] may disregard any portion of the testimony that [it] disbelieve[s]." *Martin v. Evans*, 711 A.2d 458, 463 (Pa. 1998); *see also Gehres*, 948 A.2d at 251 n.1 (explaining that "[q]uestions of credibility and conflicts in the evidence are for the trial court to resolve and the reviewing court should not reweigh the evidence" (citation and quotation marks omitted)).

The trial court summarized the evidence in its Rule 1925(a) opinion as follows:

Here, the evidence viewed in the light most favorable to Harris supports the verdict. The evidence showed Harris dropped McMill[i]an off at McMill[i]an's girlfriend's home on the 5700 block of North Park Avenue. Tr. 10/07/2024 at 166-169. Harris then lawfully parked his car up the street, away from the NFU's targeted investigation area, and began to scroll on his phone. *Id.* Three to five minutes later, five police officers surrounded Harris and yelled at him to "get the fuck out of the car" with their guns drawn. *Id.* Harris identified Officer Floyd as the officer who forcefully removed him from his car, slammed him against his [SUV], and shackled him in handcuffs so tightly that his hands went numb. *Id.* at 176. Officers had to call the Fire Department to remove

the handcuffs from Harris. This evidence alone, viewed in the light most favorable to Harris, would support the verdict.

But that was not all. Officer Floyd took the stand and completely denied Harris'[s] account. Officer Floyd testified he "never saw or had interaction" with Harris on July 10, 2020. *Id.* at 29. Body-worn camera footage, however, showed Officer Floyd speaking with Harris in the back of a police van. *Id.* at 35-36. Officer Floyd's denial of an interaction with Harris notwithstanding the camera footage supports an inference that he was not candid with the jury and had engaged in willful misconduct. No reasonable juror would disagree that the evidence supports the verdict when viewed in the light most favorable to the non-moving party.

Trial Ct. Op. at 8-9.

Based on our review of the record, we discern no abuse of discretion or error of law in the trial court's denial of Floyd's motion for JNOV. *See Carletti*, 190 A.3d at 776 n.4. As noted above, "JNOV should only be entered in a clear case, and all doubts should be resolved in favor of the verdict winner." *Id.* Further, it is the providence of the jury to resolve questions of credibility, and the jurors may choose which portions of a witness's testimony they believe. *See Martin*, 711 A.2d at 463; *Gehres*, 948 A.2d at 251 n.1. To the extent that Floyd is arguing that Plaintiff's testimony at trial is not credible, he is not entitled to relief on those grounds because this Court will not reweigh evidence or reassess the credibility of witnesses on appeal. *See Gehres*, 948 A.2d at 251 n.1. Further, as explained above, the body-worn camera footage depicts officers leading Harris towards the police wagon while Floyd is assisting Peacock's search of the roof of a nearby building. *See Plaintiff's Ex. G* at 3:43-3:47, 3:58-4:00. The video does not depict the moment when Harris was handcuffed nor who handcuffed Harris. Therefore, even if this Court could reassess the credibility of witnesses on appeal, contrary to Floyd's arguments, the body-worn camera footage does not "blatantly contradict" Harris's

testimony that Floyd handcuffed him, and handed Harris off to a uniformed police officer. *See* N.T. Trial, 10/7/24, at 170, 172, 206.

Floyd's reliance on *Sellers* is misplaced because that case involved a motion for summary judgment, not JNOV. In *Sellers*, our Supreme Court reviewed this Court's order affirming the trial court's order entering *summary judgment*. *See Sellers*, 106 A.3d at 680. The *Sellers* Court observed that an in-car camera recording "blatantly contradict[ed]" the deposition testimony of one of the plaintiffs, and, therefore, the trial court did not have to credit the plaintiffs' version of the facts when ruling on the motion for summary judgment. *Id.* at 690. The standard applicable to a motion for summary judgment is not the same as the standard applicable to JNOV. *Compare Gehres*, 948 A.2d at 251 n.1 (explaining that, in the context of JNOV, "[q]uestions of credibility and conflicts in the evidence are for the trial court to resolve and the reviewing court should not reweigh the evidence" (citation and quotation marks omitted)), *with Sellers*, 106 A.3d at 690 (explaining that at the summary judgment stage, a jury has not made any factual determinations). Therefore, *Sellers* is not controlling, and, for the foregoing reasons, Floyd is not entitled to relief on this claim.

B. Weight of the Evidence

Next, Floyd argues⁴ that the verdict was against the weight of the evidence. Specifically, Floyd contends that the video from "the body-worn camera blatantly

⁴ This Court has explained:

A new trial based on weight of the evidence issues will not be granted unless the verdict is so contrary to the evidence as to shock one's sense of justice; a mere conflict in testimony will not suffice as grounds for a new trial. Upon review, the test is not whether this Court would have reached the same result on the evidence presented, but rather after due consideration of the evidence found credible by the jury, and viewing the evidence in the light most favorable to the verdict winner,

contradicts [the Plaintiff’s] account that Officer Floyd was the officer who arrested [Plaintiff], and who slammed him against his vehicle and handcuffed him in the process.” Floyd’s Brief at 16. Floyd claims that the video shows that he was standing “many yards” away from Plaintiff when Plaintiff was led away from his vehicle by another police officer. *Id.* Therefore, Floyd maintains that, because the video “conclusively demonstrates” that he could not “have arrested and assaulted [Plaintiff], the jury’s verdict in [Plaintiff’s] favor is ‘so contrary to the evidence as to shock one’s sense of justice.’” *Id.* (quoting *Dep’t of Gen. Servs. v. U.S. Mineral Prods. Co.*, 927 A.2d 717, 723 (Pa. Cmwlth. 2007)).

Plaintiff responds that Floyd waived this issue because he did not argue that the video contradicted Plaintiff’s testimony in his post-trial motion. Plaintiff’s Brief at 16. Alternatively, Plaintiff contends that Floyd is not entitled to relief on this claim because the video does not contradict Plaintiff’s trial testimony. *Id.* at 17.

First, we conclude that Floyd has not waived this issue, because, similar to his claim for JNOV, Floyd preserved his challenge to the weight of the evidence for appeal by raising it in his post-trial motion. *See* O.R. at 434-435. Therefore, we will address the merits of this claim.

Here, the trial court concluded in its Rule 1925(a) opinion:

whether the court could reasonably have reached its conclusion. It is not the role of an appellate court to pass on the credibility of witnesses or to act as the trier of fact, and an appellate court will not substitute its [judgment] for that of the fact-finder.

Further, [a]ppellate review of a weight claim is a review of the [trial court’s] exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence.

Worley v. Cnty. of Delaware, 178 A.3d 213, 237-238 (Pa. Cmwlth. 2017) (citation omitted and some formatting altered).

Here, the verdict did not shock the trial court's sense of justice. Officer Floyd testified he "never saw or had interaction" with Harris on July 10, 2020. Tr. 10/07/2024 at 29. But camera footage showed Officer Floyd speaking with Harris in the back of the police van. *Id.* at 35-36. This conflict between Officer Floyd's testimony and the video footage supports a finding by the trial court that the verdict was not against the weight of the evidence.

Trial Ct. Op. at 10.

Based on our review of the record, we discern no abuse of discretion or error of law in the trial court's denial of Floyd's motion for a new trial based on the weight of the evidence. *See Worley*, 178 A.3d at 237-238. It is not the role of this Court "to pass on the credibility of witnesses" or substitute our judgment for that of the fact-finder. *Id.* at 238 (citation and quotation marks omitted). Rather, we review the trial court's exercise of discretion in granting or denying a request for a new trial. *See Worley*, 178 A.3d at 237-238.

Floyd's argument is that the verdict "shocks the conscience" because the video evidence purportedly contradicts Plaintiff's testimony; Floyd contends that the body-worn camera footage of another officer escorting Harris from the car contradicts Harris's testimony that Floyd is the officer who arrested him. As explained above, the body-worn camera footage, however, does nothing of the sort because the body-worn camera footage does not depict the moment when Harris was arrested and handcuffed. *See Plaintiff's Ex. G* at 3:43-3:47, 3:58-4:00. Therefore, we are not persuaded that the trial court abused its discretion by concluding that the verdict did not shock its conscience. *See Worley*, 178 A.3d at 237-238. For the foregoing reasons, Floyd is not entitled to relief on this claim.

C. Remittitur of Punitive Damages

In his final issue, Floyd argues that the trial court erred in denying his motion for a remittitur of the punitive damages award. Specifically, Floyd claims that under

the three-factor test⁵ set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), the amount of punitive damages is so excessive that it violates his constitutional right to due process. Floyd’s Brief at 16-19. Plaintiff responds that Floyd waived this issue because he did not argue that the punitive damage award was so excessive as to violate Floyd’s right to due process in his post-trial motion. Plaintiff’s Brief at 20-21. Plaintiff contends that Floyd’s request for a remittitur of the punitive damages was based on his claim that the amount of the award shocked the conscience without any discussion of its constitutionality. *Id.* at 20. Floyd responds that, although he sought a reduction of the punitive damages award on the grounds that the award “shocks the conscience” and did not mention “due process” in his post-trial motion, he sufficiently preserved this issue for appeal. Floyd’s Reply Brief at 3-4.

1. Waiver

“[I]t is well-settled that an appellate court will not reverse an order based on a theory that was not presented to [the trial court] and [was] raised for the first time on appeal.” *Whitacker-Reid v. Pottsgrove Sch. Dist., Bd. of Sch. Dirs.*, 160 A.3d 905, 913 n.14 (Pa. Cmwlth. 2017). Further, “the purpose of filing post-trial motions is to allow the trial court the opportunity, while it still has jurisdiction, to correct the errors asserted therein without expending the time and judicial energy in filing an appeal to the appellate courts.” *Arches Condo. Ass’n v. Robinson*, 131 A.3d 122, 130 (Pa. Cmwlth. 2015). Lastly, “the doctrine of waiver applies even where the

⁵ As discussed in greater detail below, the three factors set out in *Gore* are “the degree of reprehensibility of the [tort]; the disparity between the harm or potential harm suffered by [the plaintiff] and his punitive damages award; and the difference between this remedy and the civil penalties authorized or imposed in comparable cases.” *Gore*, 517 U.S. at 575.

issue is of constitutional dimensions.” *In re T.W.*, 261 A.3d 409, 425 n.9 (Pa. 2021) (citation and quotation marks omitted).

Our analysis of Plaintiff’s claim of waiver begins with the common law approach to the assessment of a punitive damages award. In Pennsylvania, “the amount of the punitive [damages] award is initially determined by a jury instructed to consider the gravity of the wrong and the need to deter similar wrongful conduct. The jury’s determination is then reviewed by trial and appellate courts to ensure that it is reasonable.” *The Bert Co. v. Turk*, 298 A.3d 44, 59 (Pa. 2023) (*Bert Co.*) (citation, footnote, and quotation marks omitted); *see also Chin v. New Flyer of Am., Inc.*, 169 A.3d 689, 703 (Pa. Cmwlth. 2017) (explaining that this Court reviews a trial court’s denial of a request for remittitur for an abuse of discretion).

In *Bert Co.*, the Pennsylvania Supreme Court observed that “Pennsylvania continues to follow the common law in the punitive damages arena.” *Bert Co.*, 298 A.3d at 62. When the size of a punitive damages award is considered by our courts, the United States Supreme Court’s jurisprudence overlays the operation of this common law approach “to prevent constitutionally excessive awards.” *Id.* Under this jurisprudence, the United States Supreme Court has “determined that substantive due process principles serve as protections in punitive damages awards, invoking the ‘fair notice’ principle embedded in the Due Process Clause [of the Fourteenth Amendment to the United States Constitution] and proffering concepts of ‘reasonableness’ and ‘adequate guidance from the [trial] court.’” *Bert Co.*, 298 A.3d at 60 (quoting *Pacific Mut. Life Ins. v. Haslip*, 499 U.S. 1, 18 (1991)). “A challenge to the constitutionality of a punitive damages award triggers *de novo* review.” *Id.* at 58.

In *Hollock v. Erie Insurance Exchange*, 842 A.2d 409 (Pa. Super. 2004) (*en banc*),⁶ the Superior Court addressed a challenge to the amount of punitive damages as excessive under both the common law and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Hollock*, 842 A.2d at 419-422. Specifically, the *Hollock* Court explained that, after concluding that the punitive damages were not excessive under the common law standard, the Court “must nevertheless undertake further review of the award to determine whether it comports with the” constitutional right to due process, because “[w]hile a decision to punish a tortfeasor by exacting punitive damages is an exercise of State power, it must nevertheless comply with constitutional due process concerns.” *Id.* at 420; *accord Allstate Ins. Co. v. Dodson*, 376 S.W.3d 414, 431-432 (Ark. 2011) (stating that “[a]n analysis of an award of punitive damages is reviewed in a two-step process: first, whether the award is consistent with state law, and second, whether it violates the Due Process Clause, as analyzed by the United States Supreme Court in [*Gore*]”).⁷

As explained above, there are different standards for reviewing punitive damages for excessiveness, which depend on whether the claim relies on the common law approach or is a constitutional due process claim. *Compare Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800, 803 (Pa. 1989) (discussing the common law approach) *with Bert Co.*, 298 A.3d at 58-60 (discussing the constitutional standards). Further, the constitutional standard for determining if punitive damages

⁶ “In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues.” *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

⁷ “We may consider decisions from other states as persuasive authority.” *Hughes v. Pa. Pub. Util. Comm’n*, 322 A.3d 982, 991 n.7 (Pa. Cmwlth. 2024), *appeal denied*, 340 A.3d 267 (Pa. 2025).

are unconstitutionally excessive *overlays*, rather than replaces, the common law standard. *See Bert Co.*, 298 A.3d at 62. It remains unclear under *Bert Co.*, however, whether a challenge to the excessiveness of the punitive damages award must specify whether the claim is rooted in the common law, the right to due process, or both. Therefore, we decline to find waiver on the grounds that Floyd did not expressly articulate both grounds in his challenge to the amount of punitive damages, and we will address the merits of Floyd’s claim.

2. Merits

As discussed above, Floyd argues⁸ that under the three-factor test set forth by the United States Supreme Court in *Gore*, the \$375,000 punitive damages award is so excessive that it violates his right to due process.⁹ Floyd’s Brief at 16-19. When it comes to punitive damages, the United States Supreme Court has held the right to substantive due process enshrined in the Fourteenth Amendment to the United States Constitution requires “that a person receives fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) (*State Farm*) (citation and quotation marks omitted); *see also Bert Co.*, 298 A.3d at 71 (the same). Additionally, “punitive damages must have a ‘reasonable relationship

⁸ This Court has explained:

We review the trial court’s decision [denying a request for remittitur] for an abuse of discretion. In reviewing a jury award, we cannot substitute our judgment for that of the fact-finder and should give deference to the decisions of the trier of fact who is usually in a superior position to appraise and weigh the evidence.

Chin, 169 A.3d at 703 (citations and quotation marks omitted). However, “[a] challenge to the constitutionality of a punitive damages award triggers *de novo* review.” *Bert Co.*, 298 A.3d at 58.

⁹ We note that Floyd focuses his arguments on appeal on the due process challenge to the punitive damages; therefore, we focus our analysis on that issue.

to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually occurred.'" *Bert Co.*, 298 A.3d at 60 (quoting *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 460 (1993)).

In *Gore*, the United States Supreme Court declined to impose a bright line rule in examining whether a punitive damages award violates a person's due process rights. Instead, the *Gore* court articulated three "guideposts" for determining if an award of punitive damages is grossly excessive:

- (1) the degree of reprehensibility of the defendant's misconduct;¹⁰
- (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and
- (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

See Gore, 517 U.S. at 575. Of these three guideposts, "the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Id.*

Here, regarding the first guidepost as to the issue of reprehensibility, the trial court explained:

Officer Floyd's willful misconduct was reprehensible. He assaulted, battered, and falsely imprisoned Harris—a man who had simply been sitting in a lawfully parked car scrolling the internet. The jury's

¹⁰ In *State Farm*, the United States Supreme Court explained that it had instructed courts to determine the reprehensibility of a defendant's conduct by considering whether: (1) "the harm caused was physical as opposed to economic;" (2) "the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;" (3) "the target of the conduct had financial vulnerability;" (4) "the conduct involved repeated actions or was an isolated incident;" and (5) "the harm was the result of intentional malice, trickery, or deceit, or mere accident." *State Farm*, 538 U.S. at 419. The Court stated that "[t]he existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect." *Id.*

punitive damages award affirms the Commonwealth's interest in punishing unlawful conduct and deterring repetition.

Trial Ct. Op. at 12.

Next, regarding the second guidepost, that is, the disparity between the punitive damages and the compensatory damages, the trial court stated:

Here, the jury awarded \$375,000 in punitive damages and \$50,000 for actual harm. This yields a ratio of 7.5 to 1. This ratio comports with due process even though the number falls close to the presumptively unfair range. It is appropriate for courts to consider the "magnitude of the potential harm that the defendant's conduct would have caused . . . if the wrongful plan had succeeded." *Bert Co.*, 298 A.3d at 76. Potential harm considers the "possible harm to other victims that might have resulted if similar future behavior were not deterred." *Id.* It is also understood as "harm that is likely to occur from the defendant's conduct." *Id.*

Here, Officer Floyd slammed Harris'[s] head against his car, which could have concussed Harris or any future victim of abusive police conduct. Floyd then twisted Harris'[s] arm behind his back, which could have broken his shoulder or arm, or the shoulder or arm of any future, innocent by-stander. Finally, Officer Floyd could have permanently damaged the nerves in Harris'[s] hands and wrists (or the nerves of any future citizen near the scene of a crime) by cuffing him so tightly the Fire Department had to intervene. In addition to these physical harms, Floyd undermined the judicial system. Simply put, he lied to the jury. He testified he had never interacted with Harris in complete contradiction to video footage that show [sic] he had. False testimony by the police could lead to erroneous verdicts. The perils of this potential harm are too obvious and too numerous to list.

Trial Ct. Op. at 13-14 (some citations omitted).

Lastly, regarding the third guidepost, which requires a comparison of comparable civil and criminal penalties, the trial court stated:

The trial court here could not find a civil penalty scheme for comparable conduct. The best analogues for the torts charged here are instead: (1) aggravated assault with intent to cause serious bodily injury, a felony in the first degree, 18 Pa. C.S.[] § 2702(a)(1), (b); (2) kidnapping, a felony in the first degree, 18 Pa. C.S.[] § 2901; (3) false imprisonment, a misdemeanor in the second degree, 18 Pa.

C.S.[] § 2903; and (4) perjury, a felony in the third degree, 18 Pa. C.S.[] § 4902. The maximum statutory fine for a felony in the first degree is \$25,000; for a felony in the third degree, \$15,000; and for a misdemeanor in the second degree, \$5,000. 18 Pa. C.S.[] § 1101(1), (3), and (5).

Convictions for kidnapping and false imprisonment would merge, leaving a maximum statutory fine at \$25,000 for the combined offenses of kidnapping and false imprisonment. Neither the aggravated assault with intent to commit serious bodily injury nor the perjury would merge, leaving an additional \$25,000 and \$15,000, respectively. The total statutory maximum criminal fine for comparable conduct is \$65,000.

The difference between the punitive damages award in this case and the statutory maximum criminal fine for comparable conduct is not nearly as large as the delta in *State Farm*, 538 U.S. at 428 (striking down \$145 million punitive damages award that dwarfed most relevant civil fine of \$10,000) and *Gore*, 517 U.S. at 584 (reversing punitive damages award that exceeded most relevant state civil fraud penalty by ratio of 1000:1). But the difference here (\$375,000 punitive award versus a maximum statutory fine of \$65,000) is large enough to raise “a suspicious judicial eyebrow.” *Id.* at 583.

The difference, upon reflection, concerns the trial court. The trial court respectfully requests that the Commonwealth Court remand for remittitur of punitive damages to a number approximately mid-way between the punitive damages award and the statutory maximum criminal fine.

Trial Ct. Op. at 14-15 (some citations omitted).

Regarding the first factor, the degree of reprehensibility of the defendant’s misconduct, Floyd asserts that his actions “do not rise to the level of reprehensibility necessary to support the punitive damages award here, given the minimal physical harm and the lack of repeat misconduct.” Floyd’s Brief at 16-17. More specifically, Floyd claims that although Plaintiff went to the emergency room after he was released from police custody, Plaintiff’s injuries were minor and were not permanent. *Id.* at 21. Also, Floyd argues that there is no evidence that he acted

indifferently to the health or safety of others nor is there evidence that Floyd had engaged in repeated misconduct. *Id.* at 23-25.

As for the second factor, the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, Floyd contends that the amount of the punitive damages award is excessive because the ratio between the punitive damages and the compensatory damages awarded in this case is 7.5 to 1, which exceeds the 4 to 1 ratio that the United States Supreme Court identified as “close to the line” of an unconstitutionally excessive punitive damages award. *Id.* at 26-31 (citing, *inter alia*, *Pacific Mut.*, 499 U.S. at 23). Floyd claims that factors, such as egregious behavior of a sexual nature or an injury that is difficult to detect, have supported punitive damages of similar or higher ratio to the compensatory damages in other cases, but those factors do not exist here. *Id.* at 28-31.

Regarding the third *Gore* factor, the difference between the punitive damages awarded and civil and/or criminal penalties authorized for comparable cases, Floyd argues that the punitive damages awarded here greatly exceeded the applicable criminal fines for comparable misconduct, as the conduct he was found liable for is comparable to the criminal offenses of simple assault and false imprisonment, which are both second-degree misdemeanors, with a maximum possible criminal fine of \$5,000 for each offense. *Id.* at 31-34; *see also* 18 Pa. C.S. §§ 2701(a), 2903(a), 1101(5). Further, Floyd asserts that the punitive damages awarded here are “far out of step with the punitive damages awarded in comparable civil cases.” Floyd’s Brief at 35.¹¹ Therefore, Floyd concludes that the third factor does not support the amount of punitive damages award.

¹¹ Further, Floyd filed an application for leave to submit notice of recent opinion, which this Court granted on May 11, 2026. Specifically, Floyd asks that this Court consider the recent

Plaintiff responds that the trial court abused its discretion by reconsidering its denial of Floyd’s post-trial motion for remittitur in the trial court’s Rule 1925(a) opinion. Plaintiff’s Brief at 21-23. Similar to Plaintiff’s waiver argument discussed above, Plaintiff contends that the trial court erred by *sua sponte* concluding that the excessiveness of the punitive damages award violated Floyd’s due process rights because Floyd had not articulated that as a basis for remittitur in his post-trial motion. *Id.*

Alternatively, Plaintiff argues that the ratio between the amounts of the punitive damages and the compensatory damages awards is not so excessive as to violate Floyd’s due process rights. *Id.* at 24-42. Particularly, Plaintiff contends that the trial court erred in its analysis of the third guidepost of the test to assess the constitutionality of punitive damages when it gave too much weight to the difference between the punitive damages and civil penalties authorized or imposed in comparable cases. *Id.* at 31-36. Plaintiff notes that the United States Supreme Court cautioned that a criminal penalty “has less utility” in the analysis of the third guidepost. *Id.* at 33 (citation omitted). Plaintiff claims that the trial court “mistakenly held that the third guidepost should hold sway over the other two” when this guidepost comparing punitive damages awards to civil or criminal penalties has been held to be the least instructive. *Id.* at 34.

Having rejected Plaintiff’s position that the trial court erred by considering the constitutionality of the punitive damages in its Rule 1925(a) opinion, *see supra* Section III.C.1 of this Opinion, we agree with the trial court that the judgment should

decision of the United States Court of Appeals for the Third Circuit in *Wexler v. Hawkins*, 173 F.4th 478 (3d Cir. 2026). We note that although “this Court, in its application of federal substantive law, is not bound by the decisions of federal district courts [or] federal circuit courts, . . . we may cite such decisions when they have persuasive value.” *Deshner v. Se. Pa. Transp. Auth.*, 212 A.3d 1179, 1186 n.7 (Pa. Cmwlth. 2019).

be vacated and this matter remanded to the trial court for the trial court to remit the punitive damages, albeit on different grounds than the trial court presented in its Rule 1925(a) opinion, as discussed below. *See Bert Co.*, 298 A.3d at 58; *Chin*, 169 A.3d at 703; *cf. Hollock*, 842 A.2d at 419-422 (addressing both the common law and constitutional standards for reviewing the amount of punitive damages).

Regarding the first factor, reprehensibility, we discern no abuse of discretion or error of law in the trial court's finding that the conduct at issue was reprehensible because the Plaintiff suffered physical harm and Floyd's tortious conduct demonstrated an indifference to or a reckless disregard of Plaintiff's health and/or safety. *See State Farm*, 538 U.S. at 419. Specifically, Plaintiff testified that Floyd slammed Plaintiff against a vehicle and applied the handcuffs so tightly that Plaintiff's hands went numb and his wrists swelled up. *See N.T. Trial*, 10/7/24, at 176, 186-187. Further, Plaintiff testified that later Peacock adjusted Plaintiff's handcuffs because they were atop Plaintiff's wristwatch and both the watch and handcuffs were cutting into his wrist. *See id.* at 182-183. Plaintiff further explained that even though his handcuffs had been loosened, his wrists were so swollen that the handcuffs had to be cut off of his wrists after Plaintiff arrived at the 35th Police District. *See id.* at 187. Plaintiff testified that, at the time of trial, he still had pain in his neck and wrists and could not run or swim anymore. *See id.* at 194-195. Therefore, Floyd's conduct implicates two of the five factors from *State Farm*: (1) inflicting physical harm and (2) tortious conduct that evinced an indifference to or a reckless disregard of the health or safety of others. *See State Farm*, 538 U.S. at 419.

Turning to the second guidepost, the disparity between Plaintiff's actual harm or potential (including future) harm and the punitive damages awarded, we note that the ratio of the amounts of punitive damages to compensatory damages here is 7.5

to 1. Recently, the Third Circuit held that a ratio between the punitive damages and the compensatory damages of 62.5 to 1 was “much too extreme.” *Wexler*, 173 F.4th at 488. The *Wexler* Court explained “[s]erious as the jury may have found [the defendant’s] conduct to have been during the single incident in this case, the record contains no special justification for such a dramatic departure from the” single-digit ratio between the punitive and compensatory damages “rule of thumb.” *Id.* By comparison, in *Bert Co.*, the Pennsylvania Supreme Court affirmed a ratio of punitive damages to compensatory damages of 6 to 1. *See Bert Co.*, 298 A.3d at 73, 78-83.

The ratio of 7.5 to 1 in the instant case is high enough to raise a question of constitutional impropriety. *See State Farm*, 538 U.S. at 425; *see also Bert Co.*, 298 A.3d at 82. We must consider whether there is a reasonable relationship between the punitive damages award and the totality of the circumstances, which includes both Plaintiff’s actual harm and the harm likely to result from Floyd’s conduct. *See Gore*, 517 U.S. at 581; *see also Bert Co.*, 298 A.3d at 81. As discussed above, Floyd’s conduct physically harmed Plaintiff, particularly his wrists. However, there was no evidence presented to establish that Floyd’s conduct placed Plaintiff at risk of injury greater than the harm that he sustained. Notably, Plaintiff did not present any medical expert testimony at trial regarding the possible effects of excessively tight handcuffs.

As for the third guidepost, we note that it is well-established that this factor carries the least amount of weight in the analysis of the constitutionality of punitive damages. *See Gore*, 517 U.S. at 575 (stating that “[t]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct”). Nevertheless, we will consider comparable civil and

criminal penalties. There is no applicable civil fine for the conduct at issue here. The comparable, maximum criminal fines for aggravated assault with intent to cause serious bodily injury and kidnapping add up to \$50,000. 18 Pa. C.S. §§ 1101(2); 2702(a)(1), (b); 2901(a)(1), (b)(1).¹² This is equal to the amount of compensatory damages that the jury awarded; and therefore, the punitive damages award here is also 7.5 times larger than the maximum criminal fines that could be imposed for similar conduct.

Here, the jury awarded \$50,000 in compensatory damages and \$375,000 in punitive damages. We conclude that the first guidepost supports an award of punitive damages because Floyd's conduct was reprehensible and intentional, which physically harmed Plaintiff. With respect to the second guidepost, as stated above, Plaintiff did not present any evidence that Floyd's conduct placed Plaintiff at risk of further injury. Further, the compensatory damages awarded here are substantial. Therefore, we conclude that the second guidepost does not support an award of punitive damages that exceeds a ratio of 4 to 1 between the punitive damages and the compensatory damages. *See State Farm*, 538 U.S. at 425; *Pacific Mut.*, 499 U.S. at 23. Likewise, the third guidepost does not support an award of punitive damages that is 7.5 times the maximum criminal fines that could be imposed for comparable conduct, particularly where the standard of proof is higher for a criminal trial compared to a civil trial. *See State Farm*, 538 U.S. at 428; *see also Commonwealth v. Maldonado*, 838 A.2d 710, 715 (Pa. 2003) (discussing the differences between the beyond a reasonable doubt standard applicable to criminal trial and the preponderance-of-the-evidence standard applicable to civil trials). For these

¹² For the reasons stated below, we disagree with the trial court's decision to also include that maximum fine that can be imposed upon a conviction of perjury in our consideration of the third factor.

reasons, we agree with the trial court that the amount of punitive damages here is unconstitutionally excessive, and that a remand to the trial court to grant Floyd's motion for remittitur of the punitive damages is appropriate.

However, we disagree with the trial court's consideration of Floyd's purported perjury during trial in its analysis of the appropriateness of the amount of punitive damages. Specifically, the trial court concluded that, because the video contradicted Floyd's testimony at trial, Floyd committed perjury. *See* Trial Ct. Op. at 14-15. The trial court's conclusion that Floyd's testimony constituted perjury was erroneous because Floyd was not charged, tried, or convicted of perjury. *See Fraternal Ord. of Police Lodge No. 5 by McNesby v. City of Philadelphia*, 267 A.3d 531, 544 n.17 (Pa. Cmwlth. 2021) (*FOP*) (noting that "[o]ne of the most fundamental tenets and principles of our justice system is that people are presumed innocent until proven guilty"). The trial court also erred by concluding that the harm likely to result from this purported perjury supported awarding punitive damages.

Punitive damages must be based on the conduct giving rise to the cause(s) of action. *See, e.g., Kirkbride*, 555 A.2d at 803 (stating "once a cause of action was proven, the jury was permitted to award punitive damages as an element of damages incident to the cause of action"); Restatement (Second) of Torts § 908, cmt. c (A.L.I. 1979) (explaining that "[i]t is essential . . . that facts be established that, apart from punitive damages, are sufficient to maintain a cause of action"). Therefore, the trial court could consider whether Floyd testified falsely at trial as evidence of Floyd's **intent** to commit assault, battery, and false imprisonment with respect to the first guidepost. *See generally Commonwealth v. Carbone*, 574 A.2d 584, 589 (Pa. 1990) ("The fabrication of false and contradictory statements by an accused are evidence from which a jury may infer that they were made with an intent to mislead the police

or other authorities, or to establish an alibi or innocence, and hence are indicative of guilt” (citation and quotation marks omitted)). However, it was inappropriate for the trial court to consider Floyd’s purported perjury as a basis for awarding punitive damages under the second and third guideposts, because that analysis is based on Floyd’s subsequent conduct at trial, instead of the conduct which gave rise to Plaintiff’s causes of action. *See Kirkbride*, 555 A.2d at 803. Further, analysis of the second guidepost includes “the possible harm to other victims that might have resulted if similar future behavior were not deterred.” *Bert Co.*, 298 A.3d at 76 (citation omitted). Therefore, the possible harm others might suffer in the future from similar physical conduct is relevant to punitive damages but, for the reasons explained above, the trial court erred by considering the repercussions of Floyd’s purported perjury during the trial itself in this analysis of the second guidepost. We emphasize that there is nothing in the record before this Court to indicate that Floyd has been charged, tried, and convicted of, or pled guilty to, a charge of perjury or false swearing¹³ in connection with the trial in this matter, and, therefore, Floyd remains innocent of any offenses related to in his trial testimony. *See FOP*, 267 A.3d at 544 n.17.

IV. CONCLUSION

Accordingly, we vacate the judgment in favor of Plaintiff, affirm the verdict in favor of Plaintiff with respect to the compensatory damages, and remand to the trial court to remit the punitive damages.

STELLA M. TSAI, Judge

¹³ 18 Pa. C.S. § 4903(a).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nathan Harris	:	
	:	
v.	:	
	:	
City of Philadelphia; Officer Diertra	:	
Cuffie; Officer Melvin Floyd; Officer	:	
Les Simmons; Officer Denia Starkes	:	
and Officer Le Vau Rudisill	:	
	:	
Appeal of: Melvin Floyd	:	No. 1653 C.D. 2024

ORDER

AND NOW, this 27th day of October, 2026, the judgment of the Court of Common Pleas of Philadelphia County (trial court) is VACATED, the verdict in favor of Plaintiff with respect to the compensatory damages is AFFIRMED, and the matter is REMANDED to the trial court to remit the punitive damages portion of the verdict.

Jurisdiction relinquished.

STELLA M. TSAI, Judge