No. 23-CV-128

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA,
APPELLANT,

V.

STEPHANIE TAYLOR, *et al*.,
APPELLEES.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

CARL J. SCHIFFERLE
Deputy Solicitor General

*BRYAN J. LEITCH
Assistant Attorney General
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6524 (office)
(202) 741-0649 (fax)
bryan.leitch@dc.gov

*Counsel expected to argue

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

Cases

---

* Authorities upon which we chiefly rely are marked with asterisks.

Statutes and Regulations

Other

INTRODUCTION

Evidentiary rules should apply evenhandedly to all litigants—whether they are sympathetic or unsympathetic, whether they have a strong case or a weak one, and whether they are blameless or blameworthy. This is a cornerstone of our legal system and a necessary ingredient of any fair trial, especially those decided by lay juries. The District of Columbia deserves the same correct and fair application of the basic rules of evidence that all civil defendants receive.

Yet the Superior Court's evidentiary rulings in this case were neither correct nor fair, and they substantially prejudiced the District's ability to defend itself at trial. This case arose when an unoccupied D.C. Department of Public Works ("DPW") van rolled into Stephanie Taylor while she stood on a sidewalk. Ms. Taylor and her husband sued the District for negligence and loss of consortium, and the District admitted liability before trial. But at trial, the Superior Court applied two different sets of evidentiary rules to the parties—an unduly permissive set for the Taylors and an unduly stringent set for the District. In ruling on the Taylors' proffered evidence, for example, the court took a near-limitless view of "relevance" while eschewing any concerns about "unfair prejudice" to the District. Under this approach, the court gave the Taylors free rein to goad the jury with inflammatory evidence and argument about the District's already-admitted liability as well as wholly irrelevant details about the District's training methods.

The trial court, however, subjected the District to an entirely different set of rules. In particular, the court required the District's evidence to be more than simply "relevant," and it expanded the category of "unfairly prejudicial" or "misleading" evidence to include even accurate, fair, and persuasive evidence. Applying these heightened admissibility standards, the court barred the District from presenting evidence that Ms. Taylor had incurred relatively minor medical bills and lost wages in the five years after the accident. In doing so, the court not only deprived the jury of plainly relevant evidence casting doubt on Ms. Taylor's testimony about her injuries, but it also left the jury with no objective monetary benchmark for evaluating her damages or scrutinizing the specific dollar amounts she suggested it award.

The Superior Court then compounded these evidentiary errors by adopting a verdict form rife with confusing and overlapping categories of damages. The form asked the jury to separately award damages for, among other things, the "extent and duration" of "physical injuries" as well as the nearly identical categories of the "effects of physical injuries" and "physical pain." Because lay jurors cannot reasonably differentiate among those redundant categories, the form almost certainly resulted in duplicative recovery. Individually and collectively, these errors led to an extraordinarily high verdict totaling over $1 million—and they warrant reversal.

STATEMENT OF THE ISSUES

1. Whether, in this damages-only trial, the Superior Court erred in allowing the jury to hear irrelevant and unfairly prejudicial evidence of the District's liability, including evidence about the District's training methods.

2. Whether the Superior Court erred in excluding probative, fair, and undeniably accurate evidence of Ms. Taylor's relatively modest medical bills and lost wages, which cast doubt on her assertions of chronic pain and suffering, and undermined her claim to millions of dollars in noneconomic damages.

3. Whether the Superior Court erred in adopting a verdict form that required jurors to separately award damages in overlapping and confusing categories, including physical injuries, the effect of physical injuries, and physical pain.

4. Whether the cumulative effect of the Superior Court's multiple errors likely impacted the jury's $1 million-plus verdict, thus warranting reversal.

STATEMENT OF THE CASE

Stephanie Taylor and her husband Kawan Taylor sued the District on April 11, 2019. Joint Appendix ("JA") 2. They filed an amended complaint in June 2019, JA 4, and amended their complaint again in November 2020, JA 11-12. The District admitted liability before trial. JA 57, 94-97. Over the District's objections, the Superior Court admitted evidence of fault, JA 127-30, and it excluded Ms. Taylor's medical bills and lost wages, JA 140-44. The Superior Court also

overruled the District's objections to the verdict form. JA 74, 436-40. The jury awarded the Taylors $1,006,500 in damages on September 21, 2022. JA 521-22. The Superior Court denied the District's motion for a new trial on January 18, 2023. JA 572. The District timely filed a notice of appeal on February 17. JA 22.

STATEMENT OF FACTS

1. Factual Background.

On the evening of December 14, 2017, District parking enforcement officer Frank Copeland stopped his DPW van to issue a parking ticket near the intersection of 13th and F Streets, NW. JA 197-205. In getting out of the van, Officer Copeland failed to put the vehicle's transmission in park, to turn off its engine, or to engage its emergency brake. JA 197-98. As a result, the unoccupied van rolled forward nearly a block down 13th Street and struck Ms. Taylor while she stood on the sidewalk outside of the Warner Theater. JA 197-98, 221.

Ms. Taylor was taken by ambulance to George Washington University Hospital. JA 365. X-rays from that night showed that her soft tissues were normal, her vertebral alignment was normal, and her intervertebral disc spaces were maintained. JA 307-08. A CAT scan also revealed no violation of Ms. Taylor's spinal canal with bone. JA 309. Doctors determined that three compression fractures to Ms. Taylor's vertebrae did not require surgery, and she was discharged from the hospital the next day. JA 232, 297, 309, 365.

Ms. Taylor's condition improved in the months after the accident. She wore a back brace for three months and started physical therapy in March 2018. JA 342, 344-46, 365-66. Ms. Taylor also met periodically in 2018 with an orthopedist, Dr. Warren Yu, to review x-rays and monitor her progress. JA 240, 311. Other than revealing preexisting degenerative disc disease, JA 316-18, Ms. Taylor's x-rays and physical examinations in 2018 showed routine healing. In her first visit three weeks after the accident in January 2018, for example, Ms. Taylor's x-rays showed "[n]o evidence of fracture or malalignment." JA 314-15. Her x-rays from February 2018 likewise showed "stable position and healing." JA 319-20. Moreover, six months after the accident in June 2018, Ms. Taylor displayed normal alignment, normal curvature of her lower spine, and "full range of motion" with "no significant tenderness." JA 321-22. And in December 2018, one year after the accident, Ms. Taylor continued to show "routine healing." JA 325.

Ms. Taylor's medical progress was reflected in her lifestyle and activities. She was able to join her family on vacation in Costa Rica in June 2018, in addition to other family trips. JA 346-47, 375. She was back to some activity in the gym by December 2018. JA 325. She was promoted at work in early 2020. JA 373-74. And she was jogging on a treadmill occasionally by August 2020. JA 367.

During much of this time, Ms. Taylor received no medical treatment. She did not see Dr. Yu or any other doctor for nearly three years, between December 2018

and August of 2021. JA 325, 368-69. She also discontinued physical therapy for more than two years, between August 2019 and October 2021, and upon resuming treatment, met all of her goals after eight appointments. JA 366-72.

2. Procedural Background.

A. The Taylors sue and the District concedes fault.

In their suit against the District, Ms. Taylor alleged that her injuries were caused by Officer Copeland negligently failing to park the DPW van, and Mr. Taylor alleged loss of consortium. JA 32-33. The Taylors initially sought $550,000 in damages: $500,000 for Ms. Taylor, and $50,000 for Mr. Taylor. JA 25. They later amended their complaint to seek $2,000,000 for Ms. Taylor and $200,000 for Mr. Taylor. JA 25, 28. These damages included "physical pain and mental anguish" as well as "medical expenses" and "loss of wages." JA 32.

During discovery, the Taylors deposed DPW's Safety and Occupational Health Officer and Risk Manager, Mark Cancelosi, who served as the District's designee under Super. Ct. Civ. R. 30(b)(6). In the course of that deposition, the Taylors' counsel questioned Cancelosi about the cause of the December 2017 accident. JA 57. Cancelosi responded that he "wouldn't say" the accident was caused "a hundred percent" by "operator error" because he also believed that "[l]ack of training" may have contributed. JA 57.

After the close of discovery, the District formally notified the Taylors' counsel, during pretrial discussions, that it admitted liability and disputed only the amount of damages. JA 60, 63, 94-99.

B. The Superior Court allows evidence of fault and associated argument at trial, despite the District's admission of liability.

Because the District conceded liability, it sought to exclude evidence of fault in a motion in limine. JA 38. The District objected in particular to the admission of testimony from Cancelosi "about how or why the accident occurred," as well as evidence about the District's training methods, including "the District's Standard Operating Procedures for Parking Officers." JA 41-42 & n.1. Citing Federal Rules of Evidence 401 and 403, the District argued that such evidence was irrelevant and unfairly prejudicial given that the only disputed issue for trial was the amount of damages—not whether Officer Copeland had acted negligently or been adequately trained. JA 41-42. The District proposed the following stipulation:

> On the evening of December 14, 2017, an unoccupied District of Columbia Department of Public Works van rolled onto the sidewalk in front of the Warner Theater, where it struck a pedestrian, Stephanie Taylor. The parties agree the accident was caused by the negligence of a District employee in failing to properly secure his van upon exit but dispute the damages claimed by Mrs. Taylor and whether Mr. Taylor is entitled to any recovery at all.

JA 41.

The Taylors opposed the District's motion and stipulation. They acknowledged that "jurors do not need to decide *why* the incident occurred," that

evidence "to establish liability" would "not be necessary," and that Cancelosi in his February 2020 deposition had identified the "causes of the incident" as "(1) Officer's Copeland's negligence and (2) Defendant's failure to properly train him." JA 48-50. Yet the Taylors asserted that jurors could not "fairly consider" Ms. Taylor's damages without fault-related evidence showing "*how* the incident occurred," and that in any event, the District had failed to "choose the path of responsibility" by not admitting fault and settling this case immediately after the accident. JA 48-49. They further contended that the District's stipulation "distorts the facts" because it did not describe the DPW van as having "careened downhill for a full city block before jumping the curb and slamming into Ms. Taylor." JA 49.

The Superior Court denied the District's motion in an oral ruling at the pretrial hearing. The court recognized that the District had admitted liability but held that evidence of fault was "relevant inasmuch as it goes directly to the heart of what happened with respect to the vehicle and how it struck these folks." JA 99-100. The court thus encouraged the District to adopt whatever stipulations the Taylors proposed. JA 99-102. The District responded that, while it was "happy to continue talking to the plaintiffs," the Taylors' "stipulations tend to get loaded up with a lot of characterizations" and "words like careen" and "uncontrolled." JA 99. In the trial court's view, however, the District had only two options: either accept the

Taylors' stipulations or they would be allowed to present evidence of fault at trial, including through Cancelosi's testimony. JA 99-102.

The District renewed its objection to the admission of fault-related evidence on the morning of trial. JA 127-30. Before jury selection, the District reminded the court that it had moved "to exclude evidence of the events that led to and caused the accident because we are conceding fault in the case." JA 127. The District explained that because the parties could not agree on specific stipulations, it wished to "register a standing objection to the evidence described in the motion in limine" as well as any other "evidence of how the accident came to happen." JA 127-29. The court accepted the District's standing objection, as did the Taylors, whose counsel stated: "[W]e're fine having a standing objection. We're not going to say that [the District] waived anything or anything to that effect." JA 129-30.

From the start of trial, the Taylors highlighted the District's negligence while downplaying its admission of fault. Their counsel began his opening statement by emphasizing that this accident occurred after "a D.C. parking enforcement officer" exited "his work van" without taking "the key out of the ignition" or putting "the emergency brake on," at which point the van "takes off rolling downhill," "jumps the curb, goes onto the public sidewalk, and slams into" Ms. Taylor. JA 159. Counsel also described the District's admission of fault as "an empty gesture; or worse, a tactic." JA 180. As their counsel argued, it had "been almost five years

since this incident happened," and yet "only now, on the eve of trial, has there been admission of fault in this case. And that's because the D.C. Government knew it had to face you." JA 158. Counsel thus suggested that the District's "acceptance of responsibility" was not "sincere" and that the District had purportedly not accepted "the duty to fully make things right." JA 176.

The Taylors continued this strategy during their case-in-chief. Despite acknowledging that the facts about liability "are now stipulated to or admitted," the Taylors called Cancelosi to testify about the District's liability. JA 195-96. They elicited testimony from him that the DPW van struck Ms. Taylor because a now-former employee of the District "negligently" failed "to safely park the van." JA 195-98. They also elicited testimony from Cancelosi agreeing that this accident was "caused by a combination of the D.C. Parking Enforcement officer's failure to safely park the van and D.C.'s failure to properly train him." JA 198.

The District cross-examined Cancelosi about these matters. To rebut his testimony about the District's training methods, it offered into evidence the DPW manual of standard operating procedures for parking officers. JA 206-08. As Cancelosi testified, every DPW parking officer receives this manual, JA 206, every DPW parking officer must follow this manual, JA 208, and the manual requires officers to secure their vehicles at all times: "'Don't leave the vehicle unattended

without first stopping the engine, locking the ignition, removing the key, effectively setting the brake, and locking the doors.'" JA 210.

The Taylors pursued these issues further with Cancelosi on redirect. They elicited testimony from him confirming that Officer Copeland had completed DPW training. JA 212. They also elicited testimony from him that the District had recommended "enhanced training" for DPW employees to prevent future incidents, JA 212, and that "lack of training" was "a contributing factor" and "one of the two things that contributed to causing this incident," JA 215-16.

In closing, the Taylors' counsel again emphasized evidence of fault, while calling the accident "horrific" and telling the jury that it "could have wiped out five people." JA 476. Counsel urged the jury to find that the District "didn't train this guy right" and that, as a result, the DPW van rolled "a block down a hill, crosse[d] the center line, crosse[d] the street, [and] whack[ed] [Ms. Taylor] in the back." JA 476-77. Counsel also argued that the District's admission of fault was not a "sincere acceptance of responsibility," but was instead an effort "to minimize the damages by saying, 'We admit it's our fault. Come on, go easy on us.'" JA 474-76. Counsel told the jury that the District "finally" admitted liability only "[b]ecause they saw the cavalry coming over the hill. You all are the cavalry." JA 470. According to the Taylors' counsel, the District "should have accepted responsibility a heck of a long time ago," not "on the eve of trial." JA 474-76.

C. The Superior Court bars the District from presenting evidence of Ms. Taylor's medical bills and lost wages.

While the trial court allowed evidence of fault, it excluded Ms. Taylor's medical bills and lost wages. JA143-44, 186-89. From the outset of this suit, the Taylors had claimed damages for "medical expenses" and "loss of wages," JA 32, and they continued to do so through August 2022, seeking to present evidence of "Medical Bills" and "Wage Loss," JA 69. The Taylors also requested stipulations about "all past medical bills claimed by Ms. Taylor ($51,792.67)" and "all past lost wages claimed by Ms. Taylor ($10,949.70)," JA 62, and their proposed verdict form sought damages for "Past Medical Expenses" and "Past Lost Earnings," JA 81.

But on the first day of trial in September 2022, the Taylors disclaimed damages for medical expenses and lost wages. JA 140-44. They argued, for the first time, that Ms. Taylor's medical bills and lost wages were "not relevant" and that "no rational relationship" existed between those figures and "the damage in this case." JA 142-43. The Superior Court was surprised by this last-minute switch: "I'm a little . . . taken aback that we're talking about that this morning." JA 142. The District was also surprised, having relied on the Taylors' representations that they intended to present evidence of medical bills and lost wages. JA 140-41. The District argued that such evidence was relevant because Ms. Taylor's medical bills were incommensurate with the $2 million in damages she requested. JA 142, 143.

The Superior Court ruled against the District. Because Ms. Taylor was no longer seeking medical bills, the court saw no "rational relationship" between that evidence and her pain and suffering. JA 141, 143. The court thus limited the District to cross-examining Ms. Taylor only about the frequency and dates of her medical care, "as long as there is no reference to the money." JA 142-46.

During opening statements, plaintiffs' counsel urged the jury to award Ms. Taylor "full compensation for all the consequences that this incident has had on her life in the past and in the future." JA 180. This required, counsel argued, the jury to determine "the fair trade value" of Ms. Taylor's injuries. JA 175. While "some things in the world" are "pretty easy" to value because they have a "price tag," counsel argued that "other things" require appraisers: "If we talked about art, is a Picasso . . . worth $1 million, $2 million, or $10 million? What about a house? Is a house worth $750,000, is it worth $1 million, is it worth $1.5 million?" JA 175. Counsel suggested that the jurors must serve as "the appraisers" in determining the "value of the harms and losses that [Ms. Taylor] has sustained," JA 174-76, which included the "injuries that were diagnosed," the "treatment that they provided to help her with those injuries," and "[her] recovery," JA 166-69.

After opening statements, the District renewed its objection. JA 186. The District explained that the Taylors' "opening argument demonstrated part of the unfair bind that the District has been put in" because their counsel told "the jury that

part of what they're going to ask the jury to do is to compensate Ms. Taylor for future medical care, doctor visits, injections, and so forth," and yet the District was "not even being allowed to talk about the actual medical expenses that she has incurred." JA 186. The court declined to reconsider its ruling but recognized that the District's objection was preserved. JA 189 ("You've already preserved it for appeal because you keep raising it and you talked about it, okay.").

The same issue arose during closing arguments. Stating that "I cannot tell you that Ms. Taylor's injuries are worth $750,000, $1 million, $2 million," the Taylors' counsel argued: "If on December 14, 2017, at 12:00 noon, someone had said to her, 'I'll give you $2 million and you can have chronic pain for the rest of your life.' Do you think she would have taken that?" JA 472-73. Counsel emphasized that the jury must "put in a figure for the extent and duration of physical injuries, the effects the physical injuries are going to have on her physical and emotional wellbeing," as well as "[f]uture physical pain and emotional distress." JA 473.

In response, the District highlighted the absence of "actual evidence" to support Ms. Taylor's damages claim, "such as the medical records." JA 490. The District noted that there was "no claim for medical expenses here. Just like they didn't show you the medical records, they told you nothing about Ms. Taylor's medical expenses. And there's no claim for lost wages, either." JA 490. The District thus encouraged the jurors to ask themselves: "If things really have been this

bad for this long, why haven't you heard anything from the Plaintiffs about a claim for medical expenses or lost wages?" JA 490.

On rebuttal, the Taylors' counsel attempted to explain the absence of this evidence. JA 496-97. According to counsel, the Taylors did not offer such evidence because "medical expenses go to doctors and therapists and hospitals." JA 496. Counsel also explained that Ms. Taylor was "not here asking that you reimburse her for her lost wages," which were, in any event, "not a significant item." JA 496-97.

D. The Superior Court adopts the Taylors' proposed verdict form in relevant part over the District's objection.

Before trial, the parties proposed verdict forms. The District's proposal asked the jury to decide whether Ms. Taylor was entitled to damages and, if so, to assign a value to four categories of damages: "Past medical expenses," "Past lost earnings," "Past pain and suffering," and "Future pain and suffering." JA 84. The Taylors' proposed form, by contrast, presumed that Ms. Taylor was entitled to damages and it directed the jury to assign a monetary value to eight categories:

Extent & Duration of Physical Injuries: $_____

Effects of Physical Injuries on Physical and Emotional Wellbeing: $_____

Past & Future Physical Pain & Emotional Distress: $_____

Disfigurement, Deformity, and Associated Humiliation or Embarrassment $_____

Past Inconvenience: $_____

Future Inconvenience: $_____

Past Medical Expenses: $_____

Past Lost Earnings: $_____

JA 81.

The District objected to the Taylors' proposed verdict form. In the parties' joint pretrial statement, the District argued that the Taylors' form "lists unrecognized and/or redundant categories of damages." JA 74. The trial court did not address this objection during the pretrial conference. *See* JA 113.

The District objected again to the Taylors' proposed verdict form on the last day of trial. It reiterated that the categories in the Taylors' form were "overlapping and confusing. For example, Category 1 includes physical injuries; Category 2 includes effects of physical injuries." JA 436-37. Likewise, Category 2 covers "emotional wellbeing" and Category 3 covers "emotional distress." JA 438. The District explained that this form would "be confusing to the jury because they're being asked redundant questions," and it urged the court to adopt the District's proposed form, which provided one category for "compensation through the present" and "a second category for compensation in the future." JA 437-49.

The trial court rejected the District's contentions, explaining only: "I'm going to overrule your objection. This is the verdict form we're going to use." JA 439.

That verdict form was a modified version of the Taylors' proposal that deleted "Past Medical Expenses," "Past Lost Earnings," and "Disfigurement, Deformity, and Associated Humiliation or Embarrassment," and that bifurcated "Past" and "Future" "Physical Pain & Emotional Distress." JA 525.

E. The jury awards the Taylors more than $1 million in damages, and the Superior Court denies the District's motion for a new trial.

The jury returned a verdict awarding Ms. Taylor a total of $1 million for her negligence claim and Mr. Taylor $6,500 for loss of consortium. JA 521-22. In particular, the jury awarded Ms. Taylor $400,000 for the "extent and duration" of her "physical injuries"; $200,000 for the "effects" of her "physical injuries" on her "physical and emotional wellbeing"; $200,000 for her "past physical pain and emotional distress"; $200,000 for her "future physical pain and emotional distress"; and no damages for "[p]ast inconvenience" or "[f]uture inconvenience." JA 521.

The District moved for a new trial. It contended that the trial court erred in allowing "irrelevant and prejudicial evidence" and "associated argument" about "the District's fault for the accident, even though fault was not an issue at trial." JA 527-28. This included, the District noted, "testimony about the van operator's blatant error in not securing the van"; "an assertion that that error occurred because of deficient training by the District"; and the "suggestion that the District had not fully accepted its responsibility." JA 527. The District also contended that the court erred in excluding evidence about Ms. Taylor's "modest medical expenses and lost

wages during the five years between accident and trial," which "was especially probative here" given that Ms. Taylor demanded "'full compensation for *all* the consequences that this incident has had on her life in the past and in the future.'" JA 527-28 (quoting JA 180). The District explained that, as a result of the court's error, the jury was unaware that the $1 million verdict "was ***19.3*** times her actual medical expenses and ***15.9*** times her medical expenses plus lost wages." JA 528.

The court denied the District's motion, adhering to its initial "denial of the [District's] Motion in Limine." JA 572-75. It acknowledged that the District "admitted fault" and that "the trial was just as to damages." JA 575. Yet the court concluded that "testimony as to fault was necessary to lay out a predicate for said damages" and that "the facts behind the incident including the severity of the impact, speed of the vehicle, and the circumstances as to how the vehicle hit Taylor was both relevant and of consequence in determining the action." JA 575. The court further held that "[u]nderstanding the basic facts behind how a negligence action came to be does not unfairly prejudice the defending party." JA 575.

The court also rejected the District's argument that "evidence of Taylor's past medical expenses and lost wages" was "relevant to counter [her] testimony about her injuries and past, present, and future medical care." JA 575. The court noted that the District was able to cross-examine Ms. Taylor about her past medical care and concluded that, because "the damages sought did not include Taylor's past

medical expenses or lost wages," such evidence lacked "probative value." JA 575. In the court's view, this evidence did "not directly equate to the extent and duration of any physical injuries, the effects that said injuries had on an individual's overall physical and mental well-being, physical pain and emotional distress suffered, and/or any inconvenience experienced." JA 575. The court stated for much the same reason that "the exact dollar amount of Taylor's past medical expenses and lost wages . . . would be misleading to the jury." JA 575.

STANDARD OF REVIEW

Evidentiary rulings and verdict forms are reviewed for abuse of discretion. *Landise v. Mauro*, 725 A.2d 445, 454 (D.C. 1998) (evidentiary rulings); *District of Columbia v. Banks*, 646 A.2d 972, 982 (D.C. 1994) (verdict forms). In reviewing for abuse of discretion, this Court asks whether the trial court "failed to consider a relevant factor or relied upon an improper factor, and whether the reasons given reasonably support the conclusion." *Richardson v. United States*, 98 A.3d 178, 186 (D.C. 2014) (internal quotation marks, brackets omitted). Legal errors are, by definition, an abuse of discretion. *In re Ko.W.*, 774 A.2d 296, 303 (D.C. 2001).

SUMMARY OF ARGUMENT

The Superior Court committed three independent errors, which individually—and certainly collectively—require reversal and remand for a new trial.

1. The trial court erred in admitting evidence of fault, which included not only inflammatory details about Officer Copeland's negligence, but also irrelevant and distracting testimony about the District's allegedly deficient training methods and improper argument about the timing of the District's concession of liability. Given the District's pretrial admission, such fault-related evidence had no bearing on any material fact in this case, and instead served only to incense the jury and trigger its punitive instincts. The admission of this evidence alone constituted reversible error because the record provides no fair assurance that the error did not affect the jury's $1 million-plus damages award—particularly considering the extent to which the Taylors' counsel repeatedly emphasized the improper fault-related evidence in their opening statement and closing arguments.

2. The trial court likewise reversibly erred in excluding Ms. Taylor's medical bills and lost wages. Relevance requires only a reasonable probability of a link between the proffered evidence and a material fact, and probative evidence is not inadmissible just because it undermines the opposing party's case. This is why it is well accepted that medical expenses and lost wages are admissible in cases involving noneconomic damages. Such evidence speaks to the scope of a plaintiff's injuries and the extent of her pain and suffering. That is particularly so here, given that Ms. Taylor's medical bills and lost wages were only a small fraction of the specific amounts that the Taylors suggested the jury should award. The exclusion of that

evidence thus left the jury with only subjective assertions of pain and suffering and deprived it of any objective monetary frame of reference for measuring Ms. Taylor's damages, strongly indicating that this error affected the jury's verdict.

3. The trial court committed yet another reversible error in burdening the jury with a confusing and redundant verdict form that almost certainly resulted in duplicative recovery. Under this Court's precedents, verdict forms must be clear, simple, and understandable to lay juries. Yet the verdict form here directed the jury to award damages for, among other things, the "Extent & Duration of Physical Injuries" as well as the nearly identical categories of the "Effects of Physical Injuries on Physical . . . Wellbeing" and "Past" and "Future Physical Pain." It also directed the jury to award damages for the overlapping categories of the "Effects of Physical Injuries" on "Emotional Wellbeing" and "Past" and "Future" "Emotional Distress." In doing so, the verdict form presented jurors duplicative categories of damages, and almost certainly contributed to the inflated $1 million verdict.

4. Regardless of the prejudicial effect of the trial court's errors in isolation, the cumulative effect of those errors was prejudicial and warrants reversal. For the reasons explained, the court's errors distorted the jury's view of the case and undoubtedly influenced its verdict, especially in light of the weaknesses of the Taylors' damages case and the outlier nature of the jury's steep $1 million verdict.

ARGUMENT

I. The Superior Court Erred In Allowing The Jury To Hear Inadmissible Evidence Of Fault In A Trial Limited To Damages.

A. The Taylors' fault-related evidence was inadmissible.

Evidence is relevant when it tends to make a material fact more or less probable than it would be without such evidence. *In re L.C.*, 92 A.3d 290, 297 n.21 (D.C. 2014) (citing Fed. R. Evid. 401). Relevant evidence is inadmissible, however, when "its probative value is substantially outweighed by the danger of unfair prejudice." *Johnson v. United States*, 683 A.2d 1087, 1090 (D.C. 1996) (en banc) (citing Fed. R. Evid. 403). Here, the Taylors' fault-related evidence had *no* probative value in this damages-only trial, and alternatively, any minimal value it might conceivably have had was substantially outweighed by its unfair prejudice. The trial court erred as a matter of law in concluding otherwise.

1. The fault-related evidence had no probative value in this damages-only litigation.

Given the District's pretrial admission of liability, the Taylors' fault-related evidence lacked probative value. Probative value refers to the ability of evidence to make the existence of a material fact more or less probable than it would be otherwise. *See District of Columbia v. Cooper*, 483 A.2d 317, 322-24 (D.C. 1984). A "material" fact is one that plaintiffs "must establish . . . as a condition to prevailing on the merits." *L.C.*, 92 A.3d at 297 (internal quotation marks omitted).

When "liability is admitted," the "rule is well-established" that "evidence going only to liability . . . is not admissible." *Jones v. Carvell*, 641 P.2d 105, 112 (Utah 1982) (collecting cases). After all, the "purpose of a damages-only trial is to determine the amount of damages, not the defendants' liability." *Guzman v. City of Chicago*, 689 F.3d 740, 745 (7th Cir. 2012). This Court has recognized a limited exception to this rule for "evidence relating to the force of the impact" in personal-injury cases, but only when such evidence "bears on the extent of plaintiff's injuries." *Hayes v. Sutton*, 190 A.2d 655, 656 (D.C. 1963) (allowing "narrowly circumscribed questioning" about "circumstances surrounding the accident," including defendant's intoxication). Otherwise, evidence of fault is inadmissible in cases where liability is conceded and the trial is limited to damages. *See Curry v. Giant Food Co.*, 522 A.2d 1283, 1289-90 (D.C. 1987); *Eubank v. Spencer*, 128 S.E.2d 299, 302 (Va. 1962) (holding that evidence of driver's intoxication "was not relevant to the amount of damages the plaintiff was entitled to recover").

This Court's decision in *Curry* exemplifies the rule. There, Curry sued Giant Food and several employees for allegedly detaining and beating him for suspected shoplifting. 522 A.2d at 1285-86. Although Giant Food took responsibility for its employees' actions, Curry proffered evidence at trial that Giant was "negligent" in its "training and supervision" of them. *Id.* at 1289. The trial court excluded the evidence, and this Court affirmed, finding it "difficult to perceive" how such

evidence "would have had any relevance whatsoever." *Id.* Because "Giant Food never disclaimed responsibility for the acts of its employees," evidence that the employees "were negligently trained or supervised" was wholly "irrelevant." *Id.* Such evidence may have probative value, this Court explained, where employers try "to escape responsibility for the acts of their servants." *Id.* at 1289-90. "But where the liability of the principal for the conduct of its agents is not disputed," fault-related evidence about allegedly negligent training should be excluded. *Id.*

So too here. The Superior Court in this case identified no material fact that was made more or less probable by evidence of fault. Nor could it. As the Taylors themselves acknowledged, the District's liability was "stipulated to or admitted," JA 195-96, and the jury did "not need to decide *why* the incident occurred," JA 49. Yet the court allowed the jury to hear extensive evidence and argument on precisely that point—namely, "why the vehicle actually moved" and "[e]verything leading up to that." JA 98-99. This included testimony that Officer Copeland "negligently caused" the accident when he failed "to safely park the van." JA 196-98. It also included repeated (and inaccurate) assertions in both opening statement and closing argument that the District did not admit fault until "the eve of trial" and that it "has refused to accept responsibility." JA 158, 180; *see* JA 470, 474-75. And it included the particularly irrelevant testimony that "D.C.'s failure to properly train" Officer Copeland "contributed to causing this incident," JA 198, 216, and that the District

had recommended "enhanced training" for other DPW employees to prevent future incidents, JA 212; *see* JA 215-16 (same).

Such evidence and argument had no relevance to the extent or severity of Ms. Taylor's injuries, much less to the monetary value of her pain and suffering. And nothing in the Superior Court's sparse pretrial rulings suggests otherwise. From the start, the court confused liability and damages by concluding that evidence of fault was "relevant inasmuch as it goes directly to the heart of what happened with respect to the vehicle and how it struck these folks." JA 99-100. The court also imposed a false dichotomy on the proceedings by concluding that, unless the District accepted whatever editorialized stipulations the Taylors demanded, the Taylors were free to present evidence of fault, including Cancelosi's testimony. JA 98-101. In doing so, the court failed to recognize that the District had offered a middle path: stipulating that "the accident was caused by the negligence of a District employee in failing to properly secure his van upon exit." JA 41. That stipulation, unlike the Taylors', had the virtue of not being "loaded up with a lot of characterizations" or provocative "words like careen" and "uncontrolled." JA 99.

The court then compounded these initial errors by presuming on the first day of trial that the Taylors could not prove damages without fault-related evidence: "How do they prove up the damages without showing, you know, exactly the cause of the damages?" JA 130. This ruling was wrong. The "cause of the damages" here

was undisputed, and thus the jury needed no evidence on that issue. As the District explained below, the Taylors "could show that the vehicle struck her" without discussing "the reason that the vehicle was rolled up [onto] the sidewalk in the first place." JA 130. There was accordingly no sound basis to allow evidence about Officer Copeland's negligence—let alone the District's training methods or the timing of the District's concession of liability. *See Curry*, 522 A.2d at 1289-90.

The trial court's flawed post-trial decision reinforces these points. Rather than rectify its erroneous pretrial rulings, the court instead speculated that fault-related evidence might have had some bearing on a few general "facts behind the incident," including the "severity of the impact" and the "speed of the vehicle." JA 575. But the Taylors' evidence of fault had nothing to do with those facts. Most notably, the District's training methods had no bearing on the van's impact or its speed. And the same is true of Officer Copeland's negligent acts immediately preceding the accident. At most, this evidence went to *why* the incident occurred, which—again—even the Taylors admit is not relevant. *See* JA 49.

Equally mistaken was the trial court's conclusion that the evidence of fault here merely illustrated "the circumstances as to how the vehicle hit Taylor." JA 575. To be sure, evidence about the circumstances of an accident may be relevant to damages if it "bears on the extent of plaintiff's injuries." *Hayes*, 190 A.2d at 656. But here, the negligent operation of the DPW van does not bear on the scope of

Ms. Taylor's injuries, let alone tell the jury anything new about "how the vehicle hit Taylor." JA 575. The District's training methods and the timing of its admission of liability provide even *less* information about Ms. Taylor's injuries. This case thus falls squarely within the settled rule that evidence of liability is irrelevant in trials limited to compensatory damages. *See Curry*, 522 A.2d at 1289-90.

2. The fault-related evidence was unfairly prejudicial.

To the extent evidence of fault had any minimal probative value, it was far outweighed by the danger of unfair prejudice. Evidence is "unfairly prejudicial" when "it has a tendency to influence the outcome of the trial by improper means" or by "appeals to the jury's sympathies," or if the evidence "arouses its sense of horror," "provokes its instinct to punish," or "otherwise causes a jury to base its decision on something other than the established propositions of the case." *Smith v. Exec. Club, Ltd.*, 458 A.2d 32, 40 n.9 (D.C. 1983) (internal quotation marks omitted). This standard is a sliding scale, and when "evidence is of very slight (if any) probative value, it's an abuse of discretion to admit it if there's even a modest likelihood of unfair prejudice." *United States v. Loughry*, 660 F.3d 965, 971 (7th Cir. 2011) (quoting *United States v. Gonzalez-Flores*, 418 F.3d 1093, 1098 (9th Cir. 2005)).

Here, the Superior Court erred in overlooking the unfairly prejudicial nature of the Taylors' fault-related evidence. The court, in fact, never addressed the serious problems with admitting evidence about the District's purportedly deficient training

methods, which had no bearing on Ms. Taylor's damages and which served only to drive home the Taylors' inflammatory message that the jury should punish the District for its negligence. *See* JA 94-101, 127-30. The court's failure to even mention these problems suggests an abuse of discretion by itself. *See United States v. Wallace*, 597 F.3d 794, 806 (6th Cir. 2010) ("The district judge's failure to even so much as acknowledge the [defendant's] argument constitutes an error[.]").

To make matters worse, the court's post-trial order offered no sound basis for ruling against the District. The court acknowledged that the District "admitted fault" and that "the trial was just as to damages." JA 575. Yet it held that "testimony as to fault was necessary to lay out a predicate for said damages," and that "[u]nderstanding the basic facts behind how a negligence action came to be does not unfairly prejudice the defending party." JA 575.

The court, however, cited no authority for those propositions, and it offered no explanation for its barebones conclusions—all of which were wrong. Because the District stipulated to "the basic facts" and the "predicate" for Ms. Taylor's damages, testimony as to fault was wholly *un*necessary to establish those facts. Moreover, while telling the jury "how a negligence action came to be" may not unfairly prejudice defendants who deny the existence of a negligence action, the opposite is true where, as here, the defendant has conceded negligence. And that is particularly so as to evidence about the District's training methods and the timing of

its concession of liability, which had nothing to do with Ms. Taylor's damages and everything to do with angering the jury. Indeed, in both opening and closing, the Taylors' counsel repeatedly emphasized the District's admitted negligence in inflammatory detail while also belittling the District's admission of liability as an insincere and belated attempt to skirt responsibility. JA 158-62, 176-77, 180, 470, 474-77. In all, the fault-related evidence sent a clear and unfairly prejudicial message to the jury: the District acted wrongly and it should be punished regardless of Ms. Taylor's damages. *See Smith*, 458 A.2d at 41-43 (holding that allowing "inflammatory" testimony on "collateral issues" is "highly prejudicial").

B. The erroneous admission of fault-related evidence was prejudicial and warrants reversal.

An error is prejudicial when the Court lacks a "fair assurance" that it did not "substantially sway" the verdict. *R & G Orthopedic Appliances & Prosthetics, Inc. v. Curtin*, 596 A.2d 530, 540 (D.C. 1991). As this Court has explained, the "infusion of 'harmlessness' into error must be the exception, and the harmless error doctrine *must be sparingly employed*." *In re Ty.B.*, 878 A.2d 1255, 1267 (D.C. 2005) (cleaned up) (emphasis in original). The admission of improper evidence is prejudicial, then, "unless the error was so inconsequential as to provide reasonable assurance that it made no appreciable difference to the outcome." *Id.* (reversing where it was not "highly probable" that evidentiary error "did not appreciably affect the result"); *Pyne v. Jamaica Nutrition Holdings Ltd.*, 497 A.2d 118, 133 (D.C.

1985) (remanding for "new trial on compensatory damages" where "inadmissible evidence had a 'substantial impact' on the assessment of damages").

Here, belaboring the District's negligence and impugning its training methods almost certainly affected the verdict, particularly given the weakness of the Taylors' damages claims without fault-related evidence. For instance, much of the medical evidence at trial suggested a relatively quick recovery. Immediately after the accident, Ms. Taylor had normal soft tissues, normal vertebral alignment, normal intervertebral disc spaces, and no violation of her spinal canal with bone. JA 307-09. The three compression fractures to her spine, moreover, did not require surgery and she spent only one night in the hospital. JA 296-97, 365. Additionally, within weeks of the accident, Ms. Taylor showed "stable position and healing" and "[n]o evidence of fracture." JA 314-20. And in the months after the accident, she continued to show "routine healing," with normal alignment, normal curvature of her lower spine, and "full range of motion" with "no significant tenderness." JA 321-22, 325.

Ms. Taylor also resumed her active lifestyle in the months and years after the December 2017 accident. While she wore a back brace for the first three months of 2018, Ms. Taylor was able to join her family on a Costa Rica vacation in June 2018. JA 346-47, 375. She was also able to exercise in the gym by December 2018. JA 325. She was promoted at work in early 2020. JA 373-74. And she was jogging on a treadmill occasionally by August 2020. JA 367.

What is more, Ms. Taylor required little medical care or physical therapy after December 2018. She admittedly did not visit her orthopedist, Dr. Yu, or any other physician for nearly three years. JA 325, 368-69. This period of nontreatment began, Ms. Taylor admitted, in December 2018 and continued until August 2021. JA 325, 368-69. Ms. Taylor also discontinued physical therapy for more than two years, between August 2019 and October 2021, and upon resuming therapy, met all of her goals after only a handful of visits. JA 366-72.

Given these weaknesses, it is not surprising that the Taylors relied so heavily on fault-related evidence at trial. Their counsel in fact devoted the first few minutes of his opening statement to emphasizing Officer Copeland's negligence and mischaracterizing the District's admission of fault as a last-minute tactic sprung "on the eve of trial." JA 158-60; *see* JA 180 ("We're here because the D.C. Government has refused to accept responsibility of what happened that day."). Those contentions were not only misleading and inaccurate,[1] but they also distorted the jury's view of this case from the start by making it seem as though Ms. Taylor's damages depended in some way on the egregiousness of Officer Copeland's conduct, deficiencies in the District's training, or the timing of the District's concession of liability. *See Ridilla*

[1] Indeed, the very deposition testimony that the Taylors invoked at trial shows that Cancelosi acknowledged on behalf of the District in February 2020 that this accident was caused by "operator error" and "[l]ack of training." JA 57, 215-16.

v. Kerns, 155 A.2d 517, 520 (D.C. 1959) ("[T]he danger of prejudice is obviously much greater at the outset of a case when the opening statements are made.").

The Taylors continued to skew the jury's perceptions by calling Cancelosi to testify about the District's already-admitted liability. As noted, the Taylors elicited testimony that Officer Copeland "negligently" failed "to safely park the van," JA 195-98, that the District "fail[ed] to properly train him," JA 198, 215-16, and that the District had recommended "enhanced training" to prevent future accidents, JA 212. That the District was forced to address these matters in cross-examining Cancelosi only underscores the prejudicial impact of the trial court's error. *See Smith*, 458 A.2d at 41-43 (reversing where "highly prejudicial and detailed testimony" likely "distract[ed] the jury from the issue for its determination").

The Taylors also highlighted the same unfairly prejudicial evidence in closing. *See Finkelstein v. District of Columbia*, 593 A.2d 591, 598 (D.C. 1991) (en banc) (noting that closing gives an "indication" of the facts "on which the jury focused"). Their counsel argued that this accident "was horrific" and "could have wiped out five people." JA 476. Counsel also returned to the utterly irrelevant issue of the District's training methods, arguing that "part of the problem here was" that the District "didn't train this guy right." JA 476-77. Counsel then intensified this prejudice by again mischaracterizing the District's admission of fault as an empty gesture intended "to minimize what happened." JA 476. Counsel even told jurors

that they were "the cavalry" and that the District admitted liability only "[b]ecause [it] saw the cavalry coming over the hill"—again urging the jury to focus on issues of fault. JA 470. This record thus leaves little doubt that the improper admission of fault-related evidence swayed the jury's verdict. *See Pyne*, 497 A.2d at 133 (finding prejudice where inadmissible evidence likely "made strong impression upon jury" (citing *Penwell v. District of Columbia*, 31 A.2d 891, 893 (D.C. 1943))).

II. The Superior Court Erred In Barring Probative Evidence Of Ms. Taylor's Medical Bills And Lost Wages.

Even if the trial court had not admitted irrelevant and unfairly prejudicial evidence of fault, the court committed an independent evidentiary error warranting reversal. Specifically, the court deprived the jury of evidence that Ms. Taylor's medical bills and lost wages paled in comparison to high dollar amounts that she suggested the jury award. That probative evidence was neither unfairly prejudicial nor misleading, and its exclusion likely affected the jury's $1 million verdict.

A. The medical bills and lost wages were relevant and raised no danger of unfair prejudice or misleading the jury.

Medical bills and lost wages are generally pertinent to noneconomic damages. *See George Wash. Univ. v. Lawson*, 745 A.2d 323, 329-31 (D.C. 2000). This is because evidence must simply tend to make a material fact more or less probable to be relevant, but it need not conclusively prove or disprove any such fact. *L.C.*, 92 A.3d at 297-98. Courts have thus held that evidence such as medical bills and lost

wages is admissible even if plaintiffs do not seek those specific damages. *See Parker v. Elco Elevator Corp.*, 462 S.E.2d 98, 99-100 (Va. 1995) (holding that plaintiff's medical bills were relevant to his "pain and suffering"). This rule rests on a persuasive rationale: "Certainly one of the few concrete standards by which a jury may measure pain and suffering is the cost incurred by reason of special damages." *Barnes v. Jones*, 351 S.W.2d 506, 507 (Ky. 1961) (holding that it was prejudicial error to exclude testimony about medical bills). There is accordingly "no reason" jurors "should be kept ignorant of" such evidence in deciding noneconomic damages. *Gladstone v. W. Bend Mut. Ins. Co.*, 166 N.E.3d 362, 370 (Ind. Ct. App. 2021) (quoting *Nestler v. Fields*, 824 S.E.2d 461, 464 (S.C. Ct. App. 2019)).

This Court's decision in *Lawson* illustrates the principle underlying this rule. There, Lawson sued the doctor who negligently amputated part of her right ring finger, which permanently damaged the tendons in her adjoining fingers. 745 A.2d at 329-30. The jury awarded Lawson $2.75 million in damages, but the trial court reduced the award after finding the verdict "beyond all reason." *Id.* This Court affirmed. Adopting the trial court's rationale, this Court held that the damage award was "unjustified" in part because $2.75 million was "more than four times the size of [Lawson's] special damages," which included roughly $11,000 in "medical expenses" and $486,000 in lost future "income." *Id.* at 329-31. *Lawson* thus stands

for the proposition that medical bills and lost wages are relevant—indeed, critical—in assessing the proper amount of noneconomic damages. *See id.*

This principle, moreover, has been confirmed and reconfirmed by numerous decisions from other courts. *See* Judge Elisabeth A. French, *et al.*, *Circuit Civil Trial and Evidence Practice Pointers*, 82 Ala. Law. 31, 34 (Jan. 2021) ("Nationally, there is a great deal of support for the introduction of medical expenses into evidence even though plaintiffs do not claim them as damages."); 11A Blashfield Automobile Law and Practice § 429:10 (Aug. 2023) ("Evidence of the loss of earnings after the accident is relevant to the extent of injury[.]").[2]

---

[2] *See, e.g.*, *Luther v. Lander*, 373 P.3d 495, 502 (Alaska 2016) ("[T]he amount of medical bills is relevant to the severity of a plaintiff's injury."); *Meek v. Mont. Eighth Jud. Dist. Ct.*, 349 P.3d 493, 495 (Mont. 2015) (holding "medical bills" are "relevant evidence of" the "nature and severity of the injuries"); *Warren v. Ballard*, 467 S.E.2d 891, 893 (Ga. 1996) ("[M]edical bills may be admissible on a claim of pain and suffering to show the seriousness of the injury."); *Hannah v. Haskins*, 612 F.2d 373, 375 (8th Cir. 1980) (recognizing "medical bills" are "admissible for the purpose of establishing the extent of injury"); *Morrarty v. Reali*, 219 A.2d 404, 406 (R.I. 1966) (holding "bill of a physician" was "relevant" to "nature and extent of injuries" (citing *Fleischman v. City of Reading*, 130 A.2d 429 (Pa. 1957))); *Williams v. Balmut*, 182 S.W.2d 779, 781 (Ky. 1944) (holding "nurses' bills" were "competent" evidence "of pain and suffering"); *Melaver v. Garis*, 138 S.E.2d 435, 436 (Ga. Ct. App. 1964) (holding "doctor's bills" were "relevant to" "pain allegedly suffered"); *Chapman v. Mazda Motor of Am., Inc.*, 7 F. Supp. 2d 1123, 1125 (D. Mont. 1998) (holding "medical bills" were "relevant to prove the nature and extent of [plaintiff's] injuries"); *Kendig v. Consol. Rail Corp.*, 671 F. Supp. 1068, 1070 (D. Md. 1987) (same); *Brice v. Nat'l R.R. Passenger Corp.*, 664 F. Supp. 220, 224 (D. Md. 1987) (same). *But see Wright v. Hixon*, 400 A.2d 1138 (Md. Ct. Spec. App. 1979); *Carlson v. Bubash*, 639 A.2d 458 (Pa. Super. Ct. 1994).

For example, in *Barkley v. Wallace*, 595 S.E.2d 271 (Va. 2004), the Virginia Supreme Court held that it was error to exclude "evidence of the plaintiff's medical bills" when determining her "pain and suffering" after a car accident. *Id*. at 272. Barkley had sought to present the total amount of her medical bills, even though they had been discharged in bankruptcy, because "jurors oftentimes use the total amount of medical bills to try and determine a fair amount of 'pain and suffering.'" *Id*. The Virginia Supreme Court explained that litigants are generally "entitled to introduce all competent, material, and relevant evidence that tends to prove or disprove any material issue in the case." *Id.* at 273. And "medical bills," the court held, "were directly related to the central issue before the jury": "the extent of Barkley's damages" for "pain, suffering, and inconvenience." *Id.* at 274. The court further held that "the exclusion of this relevant evidence was reversible error" because "the jury could have viewed the evidence of the medical bills as persuasive and objective" evidence about the plaintiff's "subjective descriptions of pain." *Id.*

A similarly persuasive analysis was advanced by the South Carolina Court of Appeals in *Nestler*. There, a tort plaintiff seeking only pain-and-suffering damages argued that "the amount of his medical bills" was "irrelevant" and "bore no relation to the magnitude of his damages," and that "allowing the jury to learn of the amount of his expenses would mislead them into believing his pain and suffering could not be extensive." 824 S.E.2d at 463. The trial court overruled this objection and the

court of appeals affirmed. *Id.* at 463-64. The appellate court held that a tort plaintiff cannot "prevent the introduction of his actual medical bills by the other party," or otherwise keep jurors "ignorant of" such facts in measuring damages. *Id.*

The same logic was adopted by the Indiana Court of Appeals in *Gladstone*. The court there affirmed the admissibility of medical bills even where a plaintiff has "dropped his claim for medical expenses" and seeks "damages for pain and suffering only." 166 N.E.3d at 365. The court reasoned that "[c]ommon sense and experience dictate that a more serious injury generally brings with it greater medical expenses as well as greater pain and suffering." *Id.* at 368. The court thus rejected any "bright-line rule" that medical bills are "never relevant to the question of pain and suffering" or that such evidence's probative value is "substantially outweighed by a danger of unfair prejudice or misleading the jury." *Id.* at 367-70.

The Fifth Circuit applied a similar analysis to lost earnings in *Stacey v. Sea-Drilling Corp.*, 424 F.2d 1272 (1970). In that case, Stacey brought a negligence claim against his employer after being injured during a welding accident. *Id.* at 1272-73. At trial, Stacey argued that his employer could not cross-examine him about lost revenue from his personal upholstery business because he had not sought to recover those losses. *Id.* at 1274. The trial court and the Fifth Circuit rejected that contention. The court of appeals reasoned that "loss of earnings from the upholstery business" was relevant to the "nature and the extent of the plaintiff's

injuries" because, "[i]f the income from the business perchance had increased while Mr. Stacey was away from his welding employment the jury would have been entitled to weight that for whatever light it might reasonably have reflected upon how extensively or painfully or disablingly he had been injured." *Id.*

The same logic applies here. Ms. Taylor's medical bills and lost wages were probative of the extent, duration, and severity of her physical injuries and emotional distress, while raising no serious danger of unfair prejudice or misleading the jury. Ms. Taylor's own evidence showed that, in the nearly five years between the accident and the trial, she incurred roughly $51,792 in medical bills and $10,949 in lost wages. JA 61, 63. Yet at trial, her counsel suggested to the jury that her damages were "worth" far more than "$2 million." JA 472-73. Ms. Taylor's relatively modest medical bills and lost wages thus tended to show that she had not in fact endured the sort of catastrophic pain and suffering that would justify a seven-figure damages award. *See Barkley*, 595 S.E.2d at 272-74; *Gladstone*, 166 N.E.3d at 367-70; *Nestler*, 824 S.E.2d at 463-64; *Stacey*, 424 F.2d at 1274. Nothing else need be shown to establish that this evidence was relevant. *See L.C.*, 92 A.3d at 297-98.

The trial court concluded otherwise only by applying an incorrect and unduly stringent test for relevance. In particular, the court required a showing of *direct equivalence* between the proffered evidence (Ms. Taylor's medical bills and lost wages) and the central claim at issue (Ms. Taylor's noneconomic damages). JA 575;

see JA 141-46. The court ruled that Ms. Taylor's medical bills and lost wages were not "relevant" because such evidence "*does not directly equate to* the extent and duration of any physical injuries, the effects that said injuries had on [her] overall physical and mental well-being, physical pain and emotional distress suffered, and/or any inconvenience." JA 575 (emphasis added).

But the court cited no authority for this "directly equate to" test, and none exists. Relevance requires only a reasonable possibility of a link between the evidence and a material fact. *L.C.*, 92 A.3d at 297-98. And here, as explained, Ms. Taylor's medical bills and lost wages were clearly linked to the plausibility of her asserted damages because that evidence cast considerable doubt on her subjective claims of chronic pain and suffering. Such evidence is relevant even if it does not conclusively disprove Ms. Taylor's claims. *See id.*

Similarly flawed was the court's surmise that Ms. Taylor's medical bills and lost wages might somehow be "misleading to the jury." JA 575. Probative evidence is not misleading simply because it bolsters one party's theory and undercuts the other's. *See Henderson v. George Wash. Univ.*, 449 F.3d 127, 141 (D.C. Cir. 2006) (finding no unfair prejudice from "possibility that the evidence will work to the advantage of the party who seeks its admission"); Black's Law Dictionary (11th ed. 2019) (defining "mislead" as causing one "to believe something that is not so"). The evidence here would cause the jury to believe only the undeniably true fact that

Ms. Taylor incurred less than $63,000 in medical bills and lost wages, which in turn would allow the jury to infer—reasonably and fairly—that her pain and suffering were not "worth" the "$1 million" or "$2 million" that her counsel suggested. JA 472. Nothing about that evidence, or the inferences that could be drawn from it, was misleading, and the trial court erred in concluding otherwise.

Besides, any attenuated possibility of misleading the jury was dwarfed by the evidence's probative value: Ms. Taylor's medical bills and lost wages would have provided the only objective monetary benchmark for the jury to consider in measuring damages. Because this evidence was improperly excluded, the jury was forced to rely on subjective assertions of pain and the specific dollar awards that the Taylors' counsel suggested in opening and closing. The exclusion of medical bills and lost wages was thus an abuse of discretion. *See Nat'l R.R. Passenger Corp. v. McDavitt*, 804 A.2d 275, 291-92 (D.C. 2002) (holding that evidence "should not have been excluded" under Rule 403 even with "some risk" of misuse).[3]

---

[3] The District preserved this argument below. *See supra*, pp. 12-15. In responding to the Taylors' last-minute abandonment of their clam for medical bills and lost wages on the morning of trial, counsel for the District incorrectly suggested that the District did not "care about the lost wages." JA 141. The District's post-trial motion dispelled that misimpression, however, and neither the Taylors nor the trial court suggested that the lost-wages issue had been waived. To the contrary, the court decided the issue on the merits and it is thus properly before this Court. *See McClintic v. McClintic*, 39 A.3d 1274, 1277 n.1 (D.C. 2012) (holding that arguments are "properly reviewed on appeal" where the "trial court 'passed upon'" them).

B. Excluding the medical bills and lost wages was prejudicial error warranting reversal.

The trial court's error was also significantly prejudicial. *See Landise*, 725 A.2d at 454 (recognizing that excluding "highly relevant and probative" evidence is "correspondingly highly prejudicial"). By prohibiting any mention of the amount of Ms. Taylor's medical bills and lost wages, the court deprived the jury of probative and fair evidence that would have not only cast doubt on Ms. Taylor's claims of chronic pain and suffering, but also would have bolstered the District's theory that her injuries were not catastrophic and had long since healed. *See In re Jam.J.*, 825 A.2d 902, 920 (D.C. 2003) (finding prejudice where excluded evidence could have helped to refute plaintiff's case). Likewise, in barring the District from questioning Ms. Taylor about her medical bills and lost wages, the court erroneously limited the District's ability to cross-examine her about matters relevant to the proper amount of her damages. *See Cooper*, 483 A.2d at 323-24 (finding prejudice where full cross-examination "would have proven significantly damaging").

The prejudicial impact was accentuated by the weakness of the Taylors' case, *supra*, Part I.B, and the fact that they exploited this evidentiary vacuum at trial. In opening statements, for example, Taylors' counsel referred to specific (and inflated) monetary values, implicitly comparing Ms. Taylor's damages to a "$10 million" work of art or a "$1.5 million" house. JA 175. Counsel continued that strategy in closing by inviting the jury to speculate that Ms. Taylor's damages were "worth" at

least "$2 million," not "a couple hundred thousand dollars." JA 472-73, 495-96. Due to the trial court's error, however, the jury could not have known that $2 million was nearly 32 times greater than the total amount of Ms. Taylor's medical bills and lost wages ($62,742.37), or that a $1 million verdict was more than 15 times greater. By leaving the jury with no monetary frame of reference and no verifiable dollar figures, the court's error skewed the jury's deliberations and in turn artificially inflated its verdict. That is prejudicial error by any measure.

Nor was this prejudice mitigated simply because the District could question Ms. Taylor about the multi-year gaps in her medical care or the speed of her recovery. Alternative evidence matters "only when introduction of the preferred evidence would result in prejudice," *Henderson*, 449 F.3d at 137, and "the alternative has 'substantially the same or greater probative value,'" *United States v. Miller*, 61 F.4th 426, 431 (4th Cir. 2023) (quoting *Old Chief v. United States*, 519 U.S. 172, 182-83 (1997)). After all, "the mere fact that two pieces of evidence might go to the same point" does not "mean that only one of them" should "come in." *In re Richardson*, 273 A.3d 342, 351 (D.C. 2022) (quoting *Old Chief*, 519 U.S. at 183).

That rule applies here with particular force since the amount of Ms. Taylor's medical bills and lost wages were neither unfairly prejudicial nor misleading, *see supra*, pp. 33-40, and since no other evidence carried even comparable probative weight. To be sure, Ms. Taylor's claims of chronic pain and suffering were undercut

by the fact that she required no medical care for several years, JA 325-26, 365-70, that she displayed "[n]o evidence of fracture or malalignment" three weeks after the accident, JA 314-15, and that she had "full range of motion" and "no significant tenderness" by June 2018, JA 321-22. But even so, none of that evidence provided the jury the sort of objective monetary benchmark that medical bills and lost wages would have, and it is therefore little wonder that the $1 million damages award was an order of magnitude greater than Ms. Taylor's medical bills and lost wages. *See Henderson*, 449 F.3d at 137-38 (holding that the admission of less-probative alternative evidence did not "cure" trial court's prejudicial evidentiary error).

It also bears noting that the $1 million award in this case was an order of magnitude greater than verdicts in cases where the jury *did* hear evidence of medical bills and lost wages. Consider just a few examples:

- In *Fraley v. District of Columbia*, the jury awarded $200,000 in total compensatory damages to a quadriplegic plaintiff who claimed $28,111.76 in medical bills and lost wages, despite suffering chronic myofascial pain syndrome, among other injuries, after a D.C. school bus struck the car in which she was riding. No. 2010-CA-005637-V, 2012 WL 3596574, 2012 WL 2869533, 2012 WL 2869251, 2010 WL 8752336 (D.C. Super. Ct. May. 17, 2012).

- In *Freeman v. WMATA*, the jury awarded $10,008.99 for pain, suffering, and inconvenience, and $10,008.99 in medical expenses and lost wages, to a plaintiff whose head, neck, and back were injured when a Metro bus collided with his car. No. 2012-CA-007246-V, 2014 WL 1284974 (D.C. Super. Ct. Jan. 15, 2014).

- In *Williams v. Elite Hauling Group. Inc.*, the jury awarded $65,659 in noneconomic damages, and $34,341 in medical bills and lost wages, to a plaintiff whose spine was injured when a dump truck hit his car. No. 2017-CV-000678, 2018 WL 7199453 (D.C. Super. Ct. Oct. 24, 2018).

- In *Karagounis v. Lazrus*, the jury awarded $67,500 for pain and suffering, and $19,372 in medical expenses and lost wages, to a plaintiff who suffered a compression fracture with a partial vertebral chip in a car accident. No. 95-4463, 1996 WL 936405 (D.C. Super. Ct. Nov. 1, 1996).

- In *Whiting v. Duran*, the jury awarded $15,000 in noneconomic damages, and $8,885 in medical expenses and lost wages, to a plaintiff who suffered permanent back injury and lower-back pain due to a car accident. No. 2012-CA-004196V, 2013 WL 8365998, 2013 WL 7898828 (D.C. Super. Ct. Nov. 20, 2013).

These cases simply underscore the extent to which the verdict in this case was prejudicially inflated by the erroneous exclusion of Ms. Taylor's medical bills and lost wages. That error by itself warrants reversal and remand for a new trial.

III. The Superior Court Erred In Adopting A Confusing And Redundant Verdict Form, Which Further Inflated The Award.

Yet another reversible error occurred when the Superior Court accepted the Taylors' verdict form with its confusing and overlapping categories of damages. "It is elementary that damages for the same injury may be recovered only once[.]" *Franklin Inv. Co. v. Smith*, 383 A.2d 355, 358 (D.C. 1978). As such, this Court has recognized that "it is best to avoid even the slightest possibility of" a "misapprehension" in the verdict form. *Banks*, 646 A.2d at 981. Failure to heed this admonition constitutes reversible error. *See* 9B Charles Alan Wright, et al., *Federal Practice and Procedure* § 2508 n.12 (3d ed. April 2023) ("Ambiguous, biased, misleading, or confusing special verdict questions may warrant reversal.").

Under these principles, the redundant verdict form in this case virtually guaranteed duplicative damages, thus requiring reversal. As noted, the Superior Court accepted the Taylors' proposed verdict form in relevant part, requiring a dollar amount for each of six categories, which the jury completed as follows:

Extent & Duration of Physical Injuries:	$ 400,000.00
Effects of Physical Injuries on Physical and Emotional Wellbeing:	$ 200,000.00
Past Physical Pain & Emotional Distress:	$ 200,000.00
Future Physical Pain & Emotional Distress:	$ 200,000.00
Past Inconvenience:	$ 0
Future Inconvenience:	$ 0

JA 525; *see* JA 516, 521.

As the District objected below, these categories are "redundant," "confusing," and "overlapping." JA 436-49; *see* JA 74. The "Extent & Duration of Physical Injuries," for example, is virtually indistinguishable from the "*Effects* of Physical Injuries on Physical . . . Wellbeing," and "Physical *Pain*" is of course a common "*Effect[]* of Physical Injuries." JA 525 (emphases added). Likewise, the "Effects of Physical Injuries" on "Emotional *Wellbeing*" overlaps with "Past . . . Emotional *Distress*," as emotional distress is one type of effect on emotional wellbeing. JA 525 (emphases added). The verdict form thus presented jurors with confusing and

redundant categories of damages, which no doubt led to duplicative damages and inflated the verdict. *See Banks*, 646 A.2d at 982 (noting that verdict forms "should be such as not to mislead or confuse the jury" (internal quotation marks omitted)).

Nor did the jury instructions ameliorate the verdict form's grave and inevitable risk of duplicative damages. The trial court appeared to believe that the verdict form was sufficient because it roughly tracked the jury instructions. *See* JA 434-39. But the instructions offered no definitional clarity about the verdict form's overlapping categories, *see* JA 510-12, and in any event, the fact that jury instructions list multiple types of potential harm does not mean that the verdict form may list each of those types as a separate category of damages requiring a separate award. *See Powers v. Ill. Cent. Gulf R.R. Co.*, 438 N.E.2d 152, 156 (Ill. 1982) ("[I]nstructing a jury to consider the nature, extent and duration is not the same as instructing it to separately award for the nature, extent and duration of the injury."). Indeed, were the rule otherwise, a plaintiff could improperly "recover for the injury itself, in addition to recovering for all of the elements of damage which themselves are to compensate for the injury." *Id.* at 155-58 (reversing where verdict form "told the jury in effect to enter a separate amount for each element of damage").

The trial court's error in this case is especially apparent, moreover, considering the District offered the court a fair and appropriate verdict form listing two clearly distinguishable categories: "Past pain and suffering" and "Future pain

and suffering." JA 84, 437-48. That proposal was far more in keeping with the verdict forms used in similar cases, which often capture all noneconomic injuries with a single category for "pain, suffering, and inconvenience," *Freeman*, 2014 WL 955266, or simply "[n]on-economic damages," *Williams*, 2018 WL 6136097. The trial court's erroneous adoption of the Taylors' form is thus all the more prejudicial given its rejection of the District's unambiguous alternative.

IV. The Cumulative Prejudice Of The Superior Court's Multiple Erroneous Rulings Warrants Reversal.

The Superior Court's decision should be reversed based on any one of the previously discussed errors: the admission of fault-related evidence, the exclusion of medical bills and lost wages, or the submission of a confusing and redundant verdict form. But even if these errors did not independently warrant reversal, their cumulative effect does. *See Hudson v. District of Columbia*, 558 F.3d 526, 532 (D.C. Cir. 2009) (reversing based on "cumulative effect" of evidentiary errors).

As this Court has held, reversal is appropriate when "the cumulative impact" of multiple errors "substantially influenced the jury's verdict." *Foreman v. United States*, 792 A.2d 1043, 1058 (D.C. 2002). Under this "analytic framework," courts "scrutinize the record as a whole and aggregate the collective effects of multiple errors." *Gomez v. Rivera Rodriguez*, 344 F.3d 103, 118-20 (1st Cir. 2003) (reversing based on "unacceptably high risk" that evidentiary errors "in cumulation tipped the decision scales"). In other words, even several individually harmless errors warrant

reversal when "a significant chance exists that they affected the outcome of the trial." *Thompson v. City of Chicago*, 722 F.3d 963, 980 (7th Cir. 2013) (internal quotation marks omitted); *see Nichols v. Am. Nat. Ins. Co.*, 154 F.3d 875, 890 (8th Cir. 1998) (reversing where it was "not possible to say with certainty that the jury's decision would have been the same absent" evidentiary errors (internal quotation marks omitted)); *Malek v. Fed. Ins. Co.*, 994 F.2d 49, 55 (2d Cir. 1993) (same).

The Seventh Circuit's decision in *Thompson* is instructive. There, Thompson sued the police officers who wrongfully sent him to prison for three years. 722 F.3d at 966-68. The trial court excluded much of Thompson's affirmative evidence (e.g., corroborating testimony), but took a permissive view in admitting adverse evidence against Thompson (e.g., his arrest record). *Id.* at 968-70, 979-80. The jury rejected nearly all of Thompson's claims, and the court denied his motion for a new trial. *Id.* at 970. The Seventh Circuit reversed, holding that the trial court erred in excluding probative evidence supporting Thompson's claims while allowing "the backdoor admission" of unfairly prejudicial evidence against him. *Id.* at 971-80. While none of the errors was "prejudicial standing alone, their cumulative effect had a substantial and injurious effect on the verdict." *Id.* at 967. "Together," the court held, the errors "left Thompson with little evidence" and "permitted the jury to infer" that he "was a chronic lawbreaker" who was "undeserving of substantial damages," which opposing counsel emphasized in closing argument. *Id.* at 977-80.

This case is similar: the trial court's myriad errors below left the jury with a skewed and incomplete picture of the facts. Similar to *Thompson*, the court here adopted an overly permissive view in allowing evidence and argument about an irrelevant issue—the District's fault—but took an unduly restrictive approach when the District tried to counter Ms. Taylor's subjective testimony with objectively verifiable evidence—her medical bills and lost wages. Also similar to *Thompson*, the Taylors' counsel capitalized on these errors by emphasizing the fault-related evidence and by seizing on the lack of medical bills and lost wages to suggest extraordinarily high damages amounts to the jury. *See* JA 158-60, 176-77, 180, 474-77, 496-97. The verdict form further exacerbated this prejudice by requiring the jury to enter specific awards in each of several overlapping categories, all but ensuring a duplicative recovery. The cumulative effect of these errors was thus clearly prejudicial, especially given the weaknesses of the Taylors' case, *supra* pp. 30-33, and the outlier nature of the jury's eventual $1 million verdict, *supra* pp. 43-44.

CONCLUSION

The Court should reverse the judgment below and remand for a new trial.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

CARL J. SCHIFFERLE
Deputy Solicitor General

/s/ Bryan J. Leitch
BRYAN J. LEITCH
Assistant Attorney General
Bar Number 1016484
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6524
(202) 741-0649 (fax)
bryan.leitch@dc.gov

August 2023

REDACTION CERTIFICATE DISCLOSURE FORM

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:
     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayeridentification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); see also 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the

purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Bryan J. Leitch
Signature

22-CV-128
Case Number

Bryan J. Leitch
Name

Aug. 24, 2023
Date

Bryan.leitch@dc.gov
Email Address

CERTIFICATE OF SERVICE

I certify that on August 24, 2023, this brief was served through this Court's electronic filing system to:

Patrick M. Regan

Christopher Regan

/s/ Bryan J. Leitch
BRYAN J. LEITCH