Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **17th day of March, 2023** are as follows:

BY Weimer, C.J.:

2022-C-01072 SHARON TISDALE VS. DAVID HEDRICK AS SHERIFF OF CONCORDIA PARISH AND MATTHEW MORGAN (Parish of Concordia)

AFFIRMED AS AMENDED. SEE OPINION.

Hughes, J., dissents in part and assigns reasons.
Griffin, J., concurs in part, dissents in part, and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-C-01072

SHARON TISDALE

VS.

DAVID HEDRICK AS SHERIFF OF CONCORDIA PARISH AND MATTHEW MORGAN

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Concordia

WEIMER, CHIEF JUSTICE

Matthew Morgan, an inmate assigned to the Concordia Parish Correctional Facility and under the supervision of the Sheriff of Concordia Parish, escaped from his trustee work assignment at the Concordia Parish courthouse. Morgan walked to a nearby Wal-Mart parking lot where he attempted to carjack and kidnap Sharon Tisdale. Ms. Tisdale was diagnosed with post-traumatic stress disorder as a result of the incident, and filed suit against Morgan and the Sheriff. Following a trial, the district court found both defendants liable, apportioning 90 percent of the fault to the Sheriff and 10 percent to Morgan. The district court awarded Ms. Tisdale $250,000 in general damages.

Certiorari was granted in the case to examine whether the district court's apportionment of fault was manifestly erroneous and whether the district court abused its discretion in awarding $250,000 in general damages. For the following reasons, this court finds fault must be reallocated, decreasing the Sheriff's fault to 50 percent

and increasing Morgan's fault to 50 percent. However, this court finds no abuse of discretion in the award for general damages.

FACTS AND PROCEDURAL HISTORY

On February 20, 2019, Ms. Tisdale purchased groceries at a Wal-Mart store in Vidalia, Louisiana. As she returned to her vehicle in the parking lot, she was approached by Morgan, who offered to help load the groceries into her vehicle. Although she initially declined his offer, Ms. Tisdale eventually relented because Morgan continued to insist on helping her. After the groceries were loaded in the rear compartment of her vehicle, Ms. Tisdale went to sit in the driver's seat. Morgan jerked the driver's side door open and squatted down beside Ms. Tisdale displaying a blade, described by Ms. Tisdale as a box cutter.[1] Morgan told Ms. Tisdale "I need a ride, and I need it right now." Ms. Tisdale testified that she was "scared to death" and thought he was going to kill her. Ms. Tisdale offered him money to leave, but Morgan replied "I'm going to need money later, but right now I need a ride, and I need it right now." According to Ms. Tisdale, Morgan was very belligerent and was cursing at her. He repeatedly demanded she move over into the passenger seat. Ms. Tisdale refused, explaining she could not maneuver over the large middle console.

Ms. Tisdale testified she "immediately understood that he didn't want my money and he didn't want my car. He wanted me to go with him." When Ms. Tisdale would not move over the console to the passenger seat, Morgan grabbed her arm and pulled her out of the vehicle. Morgan then walked Ms. Tisdale to the other side of the vehicle towards the passenger door, and placed her in the passenger seat. As Morgan was walking back around the vehicle towards the driver's side door, Ms.

[1] Although the exact type of blade was not established at trial, it is not disputed that a blade was recovered on Morgan's person after he was apprehended.

Tisdale jumped out of the vehicle and ran away screaming for help. Morgan ran from the vehicle and was subsequently apprehended inside a nearby bank. He was charged with simple escape, attempted second degree kidnapping, and attempted carjacking. The encounter between Morgan and Ms. Tisdale lasted less than two minutes.

Morgan was a Louisiana Department of Public Safety & Corrections inmate assigned to the Concordia Parish Correctional Facility ("CPCF") in Vidalia, Louisiana, where he was serving a sentence for the crime of convicted felon in possession of a firearm. At some point after arriving at the CPCF, Morgan was approved for a trustee position by Warden Lance Moore. As a trustee, Morgan was transferred to the Concordia Parish jail, which is located in the Concordia Parish courthouse, just outside of Vidalia and within walking distance of the Wal-Mart. On February 20, 2019, Morgan was assigned to work with other trustees on the courthouse grounds. The group of trustees was under the supervision of Concordia Parish Deputy Sheriff Morris Wilson. While the trustees were performing their duties, Deputy Wilson left the courthouse grounds to pick up work-related supplies. Because there was a function being conducted at the courthouse at which other deputies were present, Deputy Wilson did not think it was necessary to advise anyone he was leaving or specifically assign someone to take over his supervision duties. While Deputy Wilson was gone, Morgan, dressed in civilian clothes, simply walked away from the courthouse grounds to the Wal-Mart where he approached Ms. Tisdale.

Ms. Tisdale filed suit against Sheriff David Hedrick, individually and in his capacity as the Sheriff of Concordia Parish, and Morgan. Ms. Tisdale asserted she sustained physical pain and suffering, mental anguish and emotional distress, loss of enjoyment of life, medical related expenses, and post-traumatic stress disorder ("PTSD") as a result of Morgan's attack. Ms. Tisdale alleged the proximate cause of

her injuries was the intentional tort committed by Morgan and the gross negligence of the Sheriff in allowing that tort to occur. Specifically, Ms. Tisdale alleged the Sheriff was grossly negligent in: failing to properly supervise Morgan; failing to provide adequate security to prevent Morgan from leaving the work detail; failing to investigate Morgan's background which would have indicated he was not a proper candidate to be a trustee; allowing Morgan to be a trustee; and allowing Morgan to wear street clothes while an inmate and trustee.

Following a bench trial, the district court found both defendants liable, apportioning 90 percent of the fault to the Sheriff and 10 percent to Morgan. In addition to special damages, the district court awarded Ms. Tisdale $250,000 in general damages. The district court furnished extensive reasons for judgment analyzing the liability of both defendants, as well as providing a detailed account of the damages suffered by Ms. Tisdale.

The district court found the Sheriff was negligent in allowing Morgan to acquire trustee status, and that negligence was made more egregious because the Sheriff failed to follow the clear language of the Policies and Procedures Manual, which addresses the procedures to be used in the selection, assignment, control, and supervision of trustee inmates. The court reasoned the selection and approval of Morgan as a trustee did not follow proper procedures, and the policy set forth in the Manual prohibited the selection of Morgan as a trustee because he had a prior sex offense conviction.

The district court also found the gross negligence of the Sheriff's employees, specifically Deputy Wilson, allowed Morgan to escape. The court pointed out that, despite a clear policy to the contrary, Morgan was not wearing a prison uniform or stenciled clothing that identified him as a trustee inmate. This made him

indistinguishable from anyone else on the courthouse grounds and allowed him to easily walk away. Morgan also had access to a blade by checking it out from the personnel supplying the trustee team with tools.[2] Moreover, the district court noted Deputy Wilson voluntarily left the courthouse area for the purpose of obtaining supplies at a local retail store. In doing so, he failed to inform anyone of his intentions and thereby left Morgan in civilian clothes and unsupervised.

The district court found Morgan committed an intentional tort and was also at fault in causing Ms. Tisdale's damages. The district court found no fault on the part of Ms. Tisdale.

Regarding general damages, it was established at trial that Ms. Tisdale suffers from PTSD as a result of the incident. The district court recounted the medical testimony and found that "all of the healthcare providers' testimony points to one basic fact–Mrs. Tisdale will never completely recover from the effect of the injury she sustained." Despite Ms. Tisdale's efforts to cope with her PTSD, the court reasoned that there will always be triggers and recurring effects and there is no medication that could prevent these attacks.

The court of appeal affirmed, finding the district court was not clearly wrong or manifestly erroneous in allocating 90 percent of the fault to the Sheriff. **Tisdale v. Hedrick**, 22-1 (La.App. 3 Cir. 6/8/22), 344 So.3d 184. After recounting the evidence and summarizing the district court's findings, the court of appeal reasoned:

> In this case, Sheriff Hedrick and his employees were guilty of gross negligence that directly led to a life-altering attack on the Plaintiff. The failure of Sheriff Hedrick to perform his duty of overseeing the inmate was the proximate cause of Plaintiff's injuries. The Sheriff was by far in the best position to prevent the harm that occurred to Plaintiff.

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[2] Although there is no dispute Morgan had a blade when he was apprehended, it was not definitively established at trial where or how he obtained the blade. However, evidence in the record established that Morgan had access to a tool shop where he could check out a blade.

Tisdale, 22-1 at 15, 344 So.3d at 192. The court of appeal also affirmed the award of general damages, noting:

> Even were we to find this award on the high side, we can only disturb the trier of fact's determination if it abused its discretion. Since the attack, Plaintiff has undergone over three years of professional treatment from four healthcare providers, including three that are experts in treating patients with emotional trauma. There was no prior history of Plaintiff receiving any psychological treatment. All the healthcare providers were consistent that Plaintiff suffered from PTSD, which more likely than not would affect her for the remainder of her life. No medical evidence was presented to counter these findings. Therefore, considering the life-altering injuries the trial court attributed to the accident, and the uncontradicted testimony of all the healthcare providers that Plaintiff will never fully recover from the effect of the injuries she sustained on February 20, 2019, we do not find the trial court abused its discretion in awarding $250,000.00 in general damages.

Id., 22-1 at 16, 344 So.3d at 192 (internal citations omitted).

Upon the Sheriff's application, certiorari was granted to review the correctness of the rulings below. **Tisdale v. Hedrick**, 22-01072, p. 1 (La. 11/1/22), 348 So.3d 1282, 1283.

DISCUSSION

The Sheriff asserts two assignments of error: the district court erred in apportioning 90 percent of the fault to the Sheriff, while assigning only 10 percent fault to Morgan, the intentional tortfeasor; and the district court's award of $250,000 in general damages is excessive.[3]

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[3] The Sheriff does not contest the district court's finding that he was negligent, and the record clearly supports that finding. Custodians of prisoners have a duty to manage the activities of their prisons in a manner such that the public is not exposed to an unreasonable risk of harm. Although the state is not the insurer of the safety of its citizens, and this duty does not encompass all harm inflicted by an escapee, the operative intent of this duty is to protect the public from being harmed by escaping prisoners while in the process of their escape. To recover for injuries caused by an escaped prisoner, an injured plaintiff must prove negligence on the part of the custodian in managing the facility, that this negligence facilitated the escape, that the escapee's actions caused the harm complained of; and, that the risk of harm encountered by the plaintiff falls within the scope of duty owed by the custodian. See **Marceaux v. Gibbs**, 96-2939, p. 6 (La. 9/9/97), 699 So.2d 1065, 1069; **Wilson v. Department of Public Safety & Corrections**, 576 So.2d 490, 493 (La. 1991).

Allocation of fault

Louisiana C.C. art. 2323 provides that "[i]n any action for damages where a person suffers injury ..., the degree or percentage of fault of all persons causing or contributing to the injury ... shall be determined .... The [foregoing] provisions ... shall apply to any claim for recovery of damages ... asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability." Thus, Article 2323 requires that the fault of every person responsible for a plaintiff's injuries be compared regardless of the legal theory of liability asserted against each person. **Dumas v. State ex rel. Dep't of Culture, Recreation & Tourism**, 02-0563, p. 11 (La. 10/15/02), 828 So.2d 530, 537. Consequently, the fault of the intentional tortfeasor, Morgan, is properly quantified along with the fault of the negligent party, the Sheriff.

Allocation of fault is a factual determination subject to the manifest error rule. **Duncan v. Kansas City Southern Railway Co.**, 00-0066, p. 10-11 (La. 10/30/00), 773 So.2d 670, 680. "The allocation of fault is not an exact science or the search for one precise ratio, instead it is the search for an acceptable range; an allocation by the factfinder within that range cannot be clearly wrong." **Malta v. Herbert S. Hiller Corp**., 21-00209, p. 11 (La. 12/10/21), 333 So.3d 384, 401. As with other factual determinations, the trier of fact is vested with much discretion in its allocation of fault. ***Id***. Therefore, an appellate court should only disturb the trier of fact's allocation of fault when it is clearly wrong or manifestly erroneous. **Duncan**, 00-0066 at 11, 773 So.2d at 680. Only after making a determination that the trier of fact's apportionment of fault is clearly wrong can an appellate court disturb the allocation, and then only to the extent of lowering it or raising it to the highest or

lowest point respectively which is reasonably within the trial court's discretion. **Clement v. Frey**, 95-1119, 95-1163, pp. 7-8 (La. 01/16/96), 666 So.2d 607, 611.

In determining the percentages of fault, the trier of fact must consider the nature of each party's conduct and the extent of the causal relationship between that conduct and the damages claimed. **Watson v. State Farm Fire & Cas. Ins. Co.**, 469 So.2d 967, 974 (La. 1985). Consideration of several factors ("**Watson** factors") aids in the determination of a proper degree of fault: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger; (2) how great a risk was created by the conduct; (3) the significance of what was sought by the conduct; (4) the capacities of the actor, whether superior or inferior; and (5) any extenuating circumstances which might require the actor to proceed in haste, without proper thought. **Watson**, 469 So.2d at 974. These same factors guide an appellate court's determination as to the highest or lowest percentage of fault that could reasonably be assessed. **Duncan**, 00-0066 at 11, 773 So.2d at 681.

In brief to this court, the Sheriff argues that the percentage of fault assigned to him is excessive when one considers the intentional act of Morgan. The Sheriff argues that under the **Watson** factors, Morgan not only knew the risks of the conduct in which he engaged, but he blatantly intended to cause the danger and harm that Ms. Tisdale suffered. While pointing out he is not seeking to shirk his responsibility, the Sheriff urges that he "is not nine times more at fault than the inmate escapee that intentionally tried to carjack Ms. Tisdale as found by the district court."

"Fault" under civilian theory includes more than mere negligence and extends the gamut from strict liability to intentional torts. **Veazey v. Elmwood Plantation Associates, Ltd.**, 93-2818, p. 9 (La. 11/30/94), 650 So.2d 712, 718; see also ***Id.***, 93-2818 at 1; 650 So.2d at 729 (Lemmon, J. dissenting) ("The spectrum of degrees of

fault runs from simple negligence to gross negligence to willful and wanton conduct to intentional conduct.") Thus, in considering the **Watson** factors, we inherently recognize that this spectrum of culpability based on varying degrees of intent may require apportioning greater fault to an intentional tortfeasor in comparison to negligent tortfeasors. See e.g., **Landry v. Bellanger**, 02-1443, p. 14 (La. 5/20/03), 851 So.2d 943, 954 (discussing La. C.C. art. 2323(C): "In prohibiting the reduction of a negligent plaintiff's damages, Article 2323(C) reflects a legislative determination that on the continuum of moral culpability, the act of an intentional actor should not benefit from a reduction in the damages inflicted on a less culpable negligent actor.") Being mindful of these considerations, and applying the **Watson** factors to this case, a review of the record supports the conclusion that Morgan bears at least as much fault as the Sheriff with respect to the nature of the conduct and the relationship to the damage. Although the district court found Morgan's actions constituted an intentional tort, the court failed to give sufficient consideration to the wanton and criminal nature of those actions. Morgan acted purposefully and of his own will in obtaining a blade, escaping his trustee work assignment, and threatening Ms. Tisdale with the blade in an attempt to carjack and kidnap her. Morgan's actions had the potential for deadly consequences.

Despite the district court's error in allocating 90 percent of the fault to the Sheriff, a review of the record supports the district court's finding that the Sheriff and his employees committed numerous negligent acts comprising gross negligence which caused Ms. Tisdale's damages. In discussing gross negligence, this court has explained:

> Gross negligence has been defined as the "want of even slight care and diligence" and the "want of that diligence which even careless men are accustomed to exercise." Gross negligence has also been termed the

> "entire absence of care" and the "utter disregard of the dictates of prudence, amounting to complete neglect of the rights of others." Additionally, gross negligence has been described as an "extreme departure from ordinary care or the want of even scant care." "There is often no clear distinction between such [willful, wanton, or reckless] conduct and 'gross' negligence, and the two have tended to merge and take on the same meaning." Gross negligence, therefore, has a well-defined legal meaning distinctly separate, and different, from ordinary negligence.

Ambrose v. New Orleans Police Dept. Ambulance Serv., 93-3099, 93-3110, 93-3112, pp. 5-6 (La. 7/5/94), 639 So.2d 216, 219-20 (internal citations omitted). First, in allowing Morgan to obtain trustee status, the Sheriff's employees completely ignored the applicable Policies and Procedures Manual. Rather than follow the specific procedure outlined in the Manual, the district court found Morgan was appointed as a trustee simply because he had special skills in air conditioner repairs. As explained by the district court:

> It stands to reason that trustee status should not be an automatic appointment simply because an inmate has special skills, and the specific language of the Policy Manual provides for an extensive vetting process for an inmate seeking such status. When properly followed, the first step in the procedure is for the inmate to file a request setting forth his or her qualifications. That request is required to be in writing, and thereafter the request together with pertinent documents identified in the Policy Manual are submitted for review by seven different individuals or departments comprising the operational structure of the Correctional Facility. After that deliberative process is complete, the Warden has the final decision-making authority. However, in this case, the Policy Manual was not properly followed.

The CPCF could not produce Mr. Morgan's written request, any documents that might have been attached to that written request, or any record that a review by the seven individuals or departments ever took place. Based on the evidence in the record, the district court made a factual finding "that someone identified [ ]Morgan as having special skills, and an interview with the Warden resulted in the trustee status being granted–nothing more."

Moreover, in granting Morgan trustee status, the Sheriff's employees violated the clear language of the Manual which explicitly prohibits an inmate with a "history of sex offense convictions" from qualifying for trustee status at any level. It is undisputed that Morgan has a prior conviction for forcible rape.[4] This fact alone should have prevented Morgan from attaining trustee status. The Sheriff attempted to defend the actions of his employees by claiming their lack of knowledge of the prior rape conviction was due to the limited information available in the CPCF data system (known as the "CAJUN system"). However, the district court correctly rejected that explanation:

> Warden Moore addresses this defect in his trial testimony by suggesting that the Correctional Facility had no immediate access to a system that would have provided those considering [ ] Morgan's trustee application with anything concerning his criminal record other than the conviction for [which] he was currently being held, and that felony conviction was not for a sex offense. According to Warden Moore, the Correctional Facility is serviced only by a DOC system he identified as the "Cajan system" (sic) which lists only the current offense. He did admit, however, that a full criminal history could have been obtained from the parish jail which has access to the National Crime Information Center ("NCIC") system, but it is not standard policy to make such a search when dealing with potential trustees.

The district court further explained why the failure to do a further search in this case was unquestionably negligent:

> The court notes that something more than a "Cajan System" (sic) search is implicitly a standard policy requirement of the Policy Manual. That document used the word "history" to identify the pertinent time period–and it does not modify that word to suggest any time limitation on that history search. Thus, in considering [ ]Morgan for trustee status, the Correctional Facility had an obligation to investigate his entire criminal history and not just the reason he was currently incarcerated. To not do so would also render any attempted investigation incomplete.

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[4] The district court found Morgan had a past felony conviction for forcible rape in 2002. The court explained that although Morgan was initially convicted of aggravated rape, a subsequent plea bargain agreement with the state set aside that conviction in exchange for him entering a guilty plea to the reduced charge of forcible rape. The offense giving rise to that conviction occurred on September 24, 1996.

> Second, the need for an expanded search in the case of [ ] Morgan should have been evident to all responsible for the review process because of the very nature of the felony for which [ ] Morgan was being held–possession of a firearm by a *convicted felon*. Thus, anyone who examined [ ] Morgan's "Cajan System" (sic) record would immediately be placed on notice that he had more than one criminal conviction. Had that history analysis been performed, [ ] Morgan would not have been able to walk away from the parish jail on the morning of February 20, 2019, to attack Mrs. Tisdale–because he would not have been at the parish jail in the first place.

The Sheriff's negligence did not end with granting Morgan trustee status. As outlined by the district court:

> Once [ ] Morgan became housed at the parish jail, the gross negligence of the Sheriff's employees, specifically Deputy Wilson, continued by allowing [ ] Morgan to escape. Despite a clear policy to the contrary, [ ] Morgan was not required to wear prison uniforms or stenciled clothing that identified him as a trustee inmate. Instead, he blended into the Courthouse and its adjacent grounds by wearing civilian clothes. This perk allowed him to be indistinguishable from anyone else who might come to the Courthouse. There was never a satisfactory explanation for how [ ] Morgan rated that perk.
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> Deputy Wilson testified that when [ ] Morgan was assigned to his four-member trustee unit at the parish jail, no one informed him of [ ] Morgan's criminal record. He further testified that [ ] Morgan would have had access to a box cutter, but only after checking it out from the personnel supplying the trustee team with tools. On the morning of February 20, 2019, Deputy Wilson took it upon himself to leave the Courthouse area for the purpose of obtaining supplies at a local retail establishment. In doing so, he failed to inform anyone of his intentions and thereby left [ ] Morgan in civilian clothes and unsupervised.

The combination of the above described negligent acts led the district court to assign the vast majority of the fault to the Sheriff. Having already found that 90 percent allocation to be an abuse of discretion, a determination must be made as to the highest percentage of fault that could have been reasonably assessed by the district court. See **Clement**, 95-1119, 95-1163 at 7-8, 666 So.2d at 611.

In considering the **Watson** factors, this court finds the conduct of the Sheriff and his employees goes far beyond mere inadvertence, and the multitude of negligent

acts led directly to Morgan's escape. Morgan's intentional actions could not have occurred absent the Sheriff's numerous acts of negligence. These grossly negligent actions cannot be excused. And while we cannot say the Sheriff was more culpable than the intentional tortfeasor on the spectrum of fault, the record supports a finding that the Sheriff was equally at fault. After giving deference to the district court, and given this court's duty to reallocate fault only to the highest/lowest reasonable percentage within the discretion of the district court, the Sheriff's fault is decreased to 50 percent and Morgan's fault is correspondingly increased to 50 percent.[5]

General Damages

General damages are those which are inherently speculative in nature and cannot be fixed with mathematical certainty. **Miller v. LAMMICO**, 07-1352, p. 27 (La. 1/16/08), 973 So.2d 693, 711. A trial judge must be afforded much discretion in the assessment of these damages. La. C.C. art. 1999; La. C.C. art. 2324.1. This court has articulated the role of an appellate court in reviewing general damage awards:

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[5] Jurisprudence supports a finding that an equal allocation of fault between an intentional actor and a negligent actor falls within a reasonable range. See, e.g.: **Goldstein v. Chateau Orleans, Inc**., 20-0401 (La.App. 4 Cir. 11/12/21), 331 So.3d 1027, writ denied, 21-01852 (La. 2/15/22), 332 So.3d 1183 (plaintiff filed suit against a timeshare facility owner after unidentified assailants broke into the unit and beat and robbed him; after jury apportioned all fault to the facility owner, the court of appeal reallocated fault at 50 percent to the facility owner and 50 percent to the unidentified assailants); **Thomas v. Sheridan**, 07-1291 (La.App. 1 Cir. 2/8/08), 2008 WL 426289 (deputy failed to secure hospitalized inmate, and inmate grabbed deputy's gun and engaged in a hostage situation; because trial court did not consider the inmate's fault, the court of appeal reallocated fault assigning 50 percent to the inmate who "acted on his own will in disarming the deputy, holding the entire ICU hostage, and threatening the hostages by firing the deputy's gun."); **Morrison v. Kappa Alpha Psi Fraternity**, 31,805 (La.App. 2 Cir. 5/7/99), 738 So.2d 1105 (a state university student was hospitalized following a hazing incident; court affirmed the district court's allocation of 34 percent to the intentional tortfeasor and 33 percent each to the State and the fraternity as negligent actors); **Wijngaard v. Parents of Guy**, 97-2064 (La.App. 4 Cir. 9/2/98), 720 So.2d 6 (plaintiff sued a bus company and school board for damages after she was battered by a fellow student; appellate court apportioned 60 percent fault to the perpetrator, 30 percent to the bus company and school board and 10 percent to plaintiff); **Muse v. Dunbar**, 97-582 (La.App. 3 Cir. 6/10/98), 716 So.2d 110 (court confirmed an allocation of fault assigning 60 percent to the intentional tortfeasor and 40 percent to the negligent tortfeasors).

> The role of an appellate court in reviewing general damages is not to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact. Because each case is different, the adequacy or inadequacy of the award should be determined by the facts or circumstances particular to the case under consideration. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances so as to constitute an abuse of discretion that the appellate court should resort to prior awards in determining what would be an appropriate award for the present case.

Malta, 21-00209 at 15, 333 So.3d at 407-08 (internal citations omitted). The trier of fact is afforded much discretion in independently assessing the facts and rendering an award because it is in the best position to evaluate witness credibility and see the evidence firsthand. **Miller**, 07-1352 at 28, 973 So.2d at 711.

The record reflects that Ms. Tisdale was extremely frightened of Morgan and feared for her life. Although Ms. Tisdale did not suffer any physical injuries during the encounter, she was diagnosed with PTSD following the incident, for which she was still being treated at the time of trial, and for which future treatment was expected.

According to the record, Ms. Tisdale saw her primary care physician, Dr. Huey Moak, a few days after the incident. Dr. Moak noted she was the victim of a near kidnapping and that Ms. Tisdale "has been a nervous wreck" and not sleeping. He diagnosed her with acute anxiety and prescribed Xanax, an anti-anxiety medication. When he examined her a couple of weeks later, Ms. Tisdale reported she was "doing a little better."

Ms. Tisdale continued treatment with counselor Joe Swoveland, LPC, on March 11, 2019. She presented with anxiety and depression due to the attack at Wal-Mart. Mr. Swoveland noted several anxiety symptoms and that Ms. Tisdale displayed sadness, fatigue, crying, and helplessness. He diagnosed her with PTSD and

instructed her to continue taking Xanax and continue therapy. Ms. Tisdale received therapy from Mr. Swoveland eight times between March 11, 2019, and May 16, 2019. Mr. Swoveland's progress notes indicate Ms. Tisdale continued to have problems over that time period, experiencing events which triggered anxiety and nightmares. However, Ms. Tisdale continued working to get better and had some up and down progress. Mr. Swoveland testified that although Ms. Tisdale had made progress by the end of his treatment, there was no way to predict how much more treatment she would have needed. He testified that once PTSD develops, it is chronic unless treated and typically does not go away on its own.

Ms. Tisdale subsequently began treatment with Dr. Warren Lowe, a clinical and medical psychologist. Dr. Lowe treated Ms. Tisdale eight times between June 17, 2019, and November 16, 2020, and she was still treating with him at the time of trial, March 12, 2021.[6] On her first visit, Ms. Tisdale reported that she had experienced marked anxiety, panic attacks, flashbacks, sleep disturbances, and recurrent nightmares since the accident. She also reported difficulty driving by herself, that she prefers to stay at home and avoids situations involving unfamiliar men. Ms. Tisdale reported frequent intrusive thoughts about the incident initially, with decreased frequency over time. She further reported to Dr. Lowe that she now sleeps with lights on, has difficulty avoiding the memories and feelings, is not able to return to the Wal-Mart site, cannot be in crowds, is very anxious in lines and usually has to leave for fear of someone coming up behind her. Dr. Lowe found her markedly hyper vigilant with an exaggerated startle response. Testing put Ms. Tisdale in the severe range on a PTSD and anxiety scale. Dr. Lowe confirmed a PTSD diagnosis, and recommended

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[6] Dr. Lowe testified by deposition on February 2, 2021, at which time he was still prescribing Ms. Tisdale Xanax and Lexapro. At trial on March 12, 2021, Ms. Tisdale testified she was still receiving treatment by Dr. Lowe.

she begin taking the antidepressant Lexapro daily, and continue Xanax as needed. He noted "Mrs. Tisdale is motivated to overcome her anxiety, because it has so changed and restricted her life. She has supportive friends and family who are helping her through difficult situations." Dr. Lowe's prognosis for her was guarded, noting that Ms. Tisdale will require "regular treatment which includes both counseling and medicines, and her progress may be slow and uneven.

Dr. Lowe continued to document Ms. Tisdale's struggles over the course of treatment, and noted she was very motivated to get back to her normal self. He explained that Ms. Tisdale's continued symptoms were normal and expected symptoms of PTSD. Dr. Lowe found Ms. Tisdale had some overall improvement, but a number of PTSD symptoms persisted, many with decreased frequency. He testified Ms. Tisdale wants a normal life and puts forth efforts to achieve that, but still has symptoms, and particularly triggers by strange men and crowded situations. Dr. Lowe opined she will have these symptoms for some time, maybe for the rest of her life. His opinion was that Ms. Tisdale will more likely than not require psychological treatment, including medication, for an indefinite period of time, at a minimum five to ten years, but perhaps longer. Dr. Lowe estimated Ms. Tisdale needs to be seen at least quarterly depending on her progress, maybe on a six-month basis.

Ms. Tisdale also received counseling from Dr. Patricia Brawley, PhD, LPC, who specializes in crisis and trauma care. Dr. Brawley conducted eight sessions with Ms. Tisdale from September 6, 2019 through November 3, 2020, and testified by deposition on December 16, 2020. She agreed with the PTSD diagnosis. Dr. Brawley worked with Ms. Tisdale to develop strategies that would help her deal with her PTSD symptoms. Dr. Brawley noted several areas where plaintiff has made improvements, such as being able to go to church, the grocery store, and the bank.

However, despite at times feeling back to normal and that she had made progress, sometimes Ms. Tisdale felt like she was back to square one. By May of 2020, Ms. Tisdale reported feeling calmer and in control, with decreased anxiety, except in trigger circumstances, although she still felt a loss of some freedom. Dr. Brawley testified that Ms. Tisdale is not back to normal, but has made a lot of progress. Dr. Brawley testified this is normal for trauma patients–some progress but continued challenges. Dr. Brawley's prognosis was that Ms. Tisdale will never forget the event, she will always have triggers to the event, but she is able to better cope and manage the extreme anxiety and her reaction to panic attacks. Ms. Tisdale is able to have some semblance of a normal life. At the time of trial, Ms. Tisdale testified she was still receiving treatment by Dr. Brawley.

In awarding Ms. Tisdale $250,000 in general damages, the district court noted the emotional damage she suffered has been traumatic with long-lingering effects. The district court detailed how the PTSD affected Ms. Tisdale's personal life:

> While all of the caregivers agree that she is a totally honest patient, is goal oriented, and has done everything within her power to cope with the recurring effects of the PTSD, they also agree that her efforts will more probably than not be insufficient to affect a complete recovery. No matter how hard she may try, the "triggers" will always be there, and when she encounters the wrong one, it will have a devastating effect on her ability to cope.

The court further explained:

> In most personal injury cases, we are faced with a physical injury that has emotional side effects. The results of injury are visible to all, and always present. In Mrs. Tisdale's case, her injury is invisible to everyone else, and while it is always underlying, she never knows when a smell, sound, event, or even her imagination will trigger her uncontrollable response. While she has good and bad days, she cannot go to sleep without first wondering if she will have recurring nightmares; and she never wakes up knowing what type of day it will be. When she stops at a store, eats in a restaurant, pumps gas into her vehicle, goes to church, or even welcomes someone into her home, she cannot predict the reaction–and this is a fact she must live with for the

> rest of her life. While others will try their best to give support to Mrs. Tisdale's situation, they will always fail to understand her reactions to some of the most basic of human interactions. Thus, Mrs. Tisdale must face every minute practically on her own.
>
> There is no medication to prevent Mrs. Tisdale's PTSD attacks, and her learned coping skills will come to the surface, not in preparation of an attack, but only after her vulnerabilities have been exposed. This fact gives meaning to the testimony of Dr. Lowe that she must struggle to characterize her PTSD events as challenges and not absolute failures.

In reviewing the district court's award, this court cannot disturb the amount of the award unless the record clearly reveals that the district court abused its discretion. **Miller**, 07-1352 at 28, 973 So.2d at 711. This court's review of the record supports the district court's findings that Ms. Tisdale suffered PTSD as a result of the incident, had not fully recovered at the time of trial, and may never fully recover. Based on the particular facts of this case, and considering the particular substantial effects of PTSD on Ms. Tisdale, and considering the vast discretion afforded to the district court in awarding damages, this court finds no abuse of discretion in the district court's award of $250,000.

CONCLUSION

For the above reasons, the district court's allocation of fault is found to be manifestly erroneous, and fault is reallocated only to the extent of lowering or raising it to the highest or lowest point respectively which was reasonably within the district court's discretion, thereby assigning 50 percent of the fault to the Sheriff and 50 percent of the fault to Morgan. Additionally, the district court did not abuse its discretion in awarding Ms. Tisdale $250,000 in general damages. In all other respects, the district court's judgment is affirmed.

DECREE

AFFIRMED AS AMENDED.

SUPREME COURT OF LOUISIANA

No. 2022-C-01072

SHARON TISDALE

VS.

DAVID HEDRICK AS SHERIFF OF CONCORDIA PARISH AND MATTHEW MORGAN

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Concordia

Hughes, J., dissenting in part.

Respectfully, I would affirm the lower courts in all respects.

SUPREME COURT OF LOUISIANA

No. 2022-C-01072

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On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Concordia

GRIFFIN J., concurs in part, dissents in part, and assigns reasons.

I concur in the majority's decision to affirm the award of general damages. However, I respectfully dissent as to its reallocation of fault.

Applying the *Watson* factors to this case, I would find no abuse of discretion in the trial court's allocation of fault. *Watson v. State Farm Fire & Cas. Ins. Co*., 469 So. 2d 967, 974 (La. 1985). While Morgan's conduct was intentional, the Sheriff and his staff were in the best position to prevent the assault on the plaintiff. The Sheriff allowed Morgan to wear civilian clothing. The Sheriff gave Morgan access to weapons. The Sheriff's staff left Morgan unaccompanied. It does not matter that there were other officers nearby – they were not told when Morgan was left unattended. By not doing a background check, the Sheriff's Office ignored its own policies and procedures to allow Morgan to be a trustee for expediency. The Sheriff's Office further failed to follow its own procedures by allowing a sex offender to be a trustee. Assigning the Sheriff 90% fault in this case is not an abuse of discretion.

I further express concern that the majority has ignored both policy aspects of civil damages. Damages not only make a plaintiff whole but serve a deterrent function. Placing the Sheriff at equal fault with Morgan – someone who likely

cannot and never will pay – will neither make the plaintiff whole nor deter future gross negligence or criminal activity.