

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 August Term, 2012

4 (Argued: September 19, 2012

Decided: July 30, 2014)

5 Docket No. 11-3225-cv

6 -----X

7 MELISSA STAMPF,

8 *Plaintiff-Appellee,*

9 v.

10 THE LONG ISLAND RAILROAD COMPANY, METROPOLITAN TRANSPORTATION
11 AUTHORITY and JAMES SOKIRA,

12 *Defendants,*

13 ANGELA TRIGG,

14 *Defendant-Appellant,*

15 ----- X

16 Before: KATZMANN, *Chief Judge*, LEVAL, and LIVINGSTON, *Circuit Judges*.

17 Defendant Angela Trigg appeals from the judgment of the United States District Court
18 for the Eastern District of New York (Gold, *M.J.*) awarding Plaintiff Melissa Stampf \$480,000 in
19 compensatory and punitive damages on her claim of malicious prosecution and denying Trigg's
20 motions for judgment as a matter of law, a new trial, and remittitur. The Court of Appeals
21 (Leval, *J.*) concludes that the district court did not err in denying Trigg's motions for judgment
22 as a matter of law and for a new trial on liability. The Court also concludes that the jury's award
23 of damages is excessive. The district court's denial of Trigg's motion seeking a new trial on
24 damages is REVERSED unless Stampf accepts a remittitur reducing her award.

1 PHILIP J. DINHOFER, Philip J. Dinhofer, LLC.,
2 Rockville Centre, New York, for *Plaintiff-Appellee*.

3 BRIAN KENNETH SALTZ, for Catherine A. Rinaldi,
4 Vice President/General Counsel & Secretary, The
5 Long Island Rail Road Company, Jamaica, New
6 York, for *Defendant-Appellant*.

7 LEVAL, *Circuit Judge*:

8 Defendant Angela Trigg appeals from the judgment of the United States District Court
9 for the Eastern District of New York (Gold, *M.J.*) awarding Plaintiff Melissa Stampf damages on
10 her claim of malicious prosecution. Trigg contends that the district court erred in denying her
11 motions (1) for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a) and 50(b), (2) for a
12 new trial on all issues pursuant to Fed. R. Civ. P. 59, and (3) for a new trial on damages unless
13 Stampf accepts a remittitur reducing the amount of the judgment.

14 Stampf brought this suit in federal court against her coworker Trigg, their employer The
15 Long Island Rail Road (“LIRR”) and other defendants asserting violations of the Federal
16 Employers Liability Act (“FELA”) and 42 U.S.C. § 1983; state law claims of false arrest,
17 malicious prosecution, negligent and intentional infliction of emotional distress; and violations
18 of state and city human rights laws. With the exception of Stampf’s New York state law claim
19 for malicious prosecution against Trigg (the only claim that concerns us on this appeal) and her
20 discrimination claims against the LIRR, the district court granted summary judgment dismissing
21 all of Stampf’s claims. Upon trial, the jury found Trigg liable for malicious prosecution and
22 awarded Stampf damages of \$200,000 for past mental and emotional suffering, \$100,000 for
23 future mental and emotional suffering, \$30,000 as compensation for out-of-pocket losses, and
24 \$150,000 as punitive damages, totaling \$480,000.

1 Shortly after the arrest, Trigg filed a second report with the MTA police stating that
2 Stampf “reache[d] in the window and grab[bed] my left breast and [j]iggle[d]” and then, after a
3 brief argument about the incident, Stampf “reache[d] in the window again across my chest”
4 JA at 1240-41. Describing the night of Stampf’s arrest, Trigg’s second statement to the police
5 said that, “on August 2 . . . when [Stampf] showed up [at work,] I flagged down the MTA police
6 and made them aware of the case and asked them [to] arrest [Stampf] for the incident that
7 happened on July 9, 2006.”¹ JA at 1242. Trigg’s statement added, “I have decided to press
8 charges against Melissa Stampf.” JA at 1242.

9 Stampf was held in a locked cell for approximately four hours. She was then issued a
10 desk appearance ticket (“DAT”), which listed Forcible Touching as the offense charged, and
11 released. Stampf hired an attorney to handle the potential criminal charges. She testified that she
12 paid the attorney a \$25,000 fee, which was financed by her father taking out a second mortgage,
13 on which she makes the payments.

14 No criminal complaint was ever filed against Stampf. On December 27, 2006, the New
15 York County District Attorney’s Office issued a declination of prosecution, explaining,
16 “Following a review of the evidence and interviews with several witnesses, including the
17 complaining witness, the People conclude that the case [cannot] be proven beyond a reasonable
18 doubt.” JA at 1061.

19 Meanwhile, in response to Trigg’s complaint to her supervisor, the LIRR conducted an
20 investigation in July and August 2006 and found that Stampf had violated its Anti-Harassment
21 Policy. Stampf provided a statement of facts to the LIRR in advance of its investigation and was

¹At trial, Trigg testified that she did not ask for Stampf to be arrested. JA at 574.

1 given the opportunity to testify in her defense. Following the advice of her attorney, she declined
2 to testify because she might face criminal charges in which her statement could be used against
3 her. Stampf was assessed a twenty-day suspension without pay. On September 12, 2008, an
4 arbitration panel convened pursuant to the Railway Labor Act and affirmed the employer's
5 determination that Stampf violated the Anti-Harassment Policy, but reduced the suspension to
6 ten days and awarded Stampf compensation for lost time.

7 DISCUSSION

8 On appeal, Trigg contends the malicious prosecution judgment against her was flawed in
9 numerous respects. First, she asserts that she cannot be liable for malicious prosecution as a
10 matter of law because (1) she did not initiate a criminal proceeding against Stampf; (2) even if
11 the issuance of a DAT constitutes the initiation of a criminal proceeding, the proceeding did not
12 terminate in Stampf's favor; and (3) Stampf was collaterally estopped from claiming malicious
13 prosecution by the LIRR's arbitration decision. Second, Trigg argues that she is entitled to a new
14 trial because the district court improperly (1) admitted evidence of her prior sexual behavior in
15 violation of Federal Rule of Evidence Rule 412; (2) denied her request to admit evidence of an
16 arbitration award; and (3) refused to admit the testimony of the assistant district attorney as to
17 whether a declination of prosecution indicates that a defendant is innocent. Third, she contends
18 she was entitled to an order of remittitur because of the excessiveness of the jury's award.

19 **I. The District Court Did Not Err in Denying Trigg's Motions for Judgment as a Matter** 20 **of Law**

21 We review the denial of motions for judgment as a matter of law de novo. *Highland*
22 *Capital Mgmt. LP v. Schneider*, 607 F.3d 322, 326 (2d Cir. 2010). Under Rule 50, a court may

1 grant judgment as a matter of law against a party if “a reasonable jury would not have a legally
2 sufficient evidentiary basis to find for [that] party on that issue.” Fed. R. Civ. P. 50(a); *Highland*
3 *Capital Mgmt. LP*, 607 F.3d at 326. A court may set aside a jury’s verdict “only where there is
4 such a complete absence of evidence supporting the verdict that the jury’s findings could only
5 have been the result of sheer surmise and conjecture, or there is such an overwhelming amount
6 of evidence in favor of the movant that reasonable and fair minded [persons] could not arrive at a
7 verdict against him.” *Bucalo v. Shelter Island Union Free Sch. Dist.*, 691 F.3d 119, 127-28 (2d
8 Cir. 2012) (internal quotation marks and citation omitted). In reviewing a Rule 50 motion, we
9 “give deference to all credibility determinations and reasonable inferences of the jury, and may
10 not weigh the credibility of witnesses or otherwise consider the weight of the evidence.” *Id.*
11 (internal quotation marks and citation omitted).

12 “To establish a malicious prosecution claim under New York law, a plaintiff must prove
13 (1) the initiation or continuation of a criminal proceeding against plaintiff; (2) termination of the
14 proceeding in plaintiff’s favor; (3) lack of probable cause for commencing the proceeding; and
15 (4) actual malice as a motivation for defendant’s actions.” *Manganiello v. City of New York*, 612
16 F.3d 149, 161 (2d Cir. 2010) (internal quotations marks and citations omitted); *see Broughton v.*
17 *State*, 37 N.Y.2d 451, 457 (1975). Trigg contends that Stampf failed to prove the first two
18 elements.

1 **a. Trigg Initiated a Criminal Proceeding Against Stampf**

2 **i. The Issuance of a DAT Initiates a Criminal Proceeding for the**
3 **Purposes of a Malicious Prosecution Claim**

4 Trigg first argues Stampf failed to satisfy the essential elements of malicious prosecution
5 because the issuance of a DAT does not initiate a criminal proceeding, as required for such a
6 claim. While recognizing that the answer is not clearly established in New York law, we
7 disagree.

8 In *Rosario v. Amalgamated Ladies' Garment Cutters' Union, Local 10*, 605 F.2d 1228,
9 1249-50 (2d Cir. 1979), in the absence of controlling New York precedent, this court concluded
10 that a New York court “would rule that the issuance of [a Desk] Appearance Ticket commences
11 a prosecution for purposes of determining whether an action for malicious prosecution lies.”

12 *Rosario*, 605 F.2d at 1250. The *Rosario* court reasoned:

13 [When a DAT is issued,] the accused bears the inconvenience and expense of
14 appearing in court and, perhaps more important, is subject to the anxiety induced
15 by a pending criminal charge. Moreover, if others learn that charges have been
16 lodged against the accused, his character is no less traduced because the
17 accusation is contained in an Appearance Ticket rather than in a summons.

18 *Id.*

19 Trigg urges us to reject our holding in *Rosario* in light of the subsequent New York Civil
20 Court decision in *McClellan v. New York City Transit Authority*, 444 N.Y.S.2d 985 (Civ. Ct.,
21 Kings Co. 1981). *McClellan* ruled “that the issuance of a D.A.T. [by the police], without a
22 concomitant filing of an accusatory instrument, or other judicial intervention, is not the
23 commencement of a criminal action and cannot support a cause of action for malicious

1 prosecution.” *Id.* at 986. The court noted its “respectful[] disagree[ment] with the United States
2 Court of Appeals for the Second Circuit.” *Id.* at 987 (citing *Rosario*, 605 F.2d 1228).

3 However, the Appellate Division, Fourth Department has explicitly declined to follow
4 *McClellan* and instead adopted *Rosario*’s reasoning, holding that a DAT was sufficient to
5 support a claim of malicious prosecution. *See Snead v. Aegis Sec., Inc.*, 482 N.Y.S.2d 159, 160-
6 61 (4th Dep’t 1984). Likewise, in reversing the dismissal of a malicious prosecution claim, the
7 Third Department, citing *Snead*, treated the issuance of a DAT as constituting initiation of a
8 criminal proceeding. *Allen v. Town of Colonie*, 583 N.Y.S.2d 24, 26 (3d Dep’t 1992).

9 Trigg also relies on the Second Department’s ruling in *Stile v. City of New York*, 569
10 N.Y.S.2d 129 (2d Dep’t 1991), which dismissed a malicious prosecution claim on the ground
11 that “[s]uch a claim may arise only after an arraignment or indictment or some other evaluation
12 by a neutral body that the charges [were] warranted.” 569 N.Y.S.2d 129, 131 (2d Dep’t 1991)
13 (second alteration in original) (internal quotation marks and citations omitted). However, *Stile* is
14 not on point because the plaintiff in that case was not issued a DAT or any other command to
15 appear in court.

16 We recognize that several courts of first instance, following the language of *Stile*, have
17 ruled that a DAT does not initiate a criminal proceeding. *See Puckowitz v. City of New York*, No.
18 09 Civ. 6035(PGG), 2010 WL 3632692, at *5 (S.D.N.Y. Sept. 17, 2010); *Garrett v. Port Auth. of*
19 *New York & New Jersey*, No. 04 Civ. 7368(DC), 2006 WL 2266298, at *7 (S.D.N.Y. Aug. 8,
20 2006) (quoting *Katzev v. Newman*, No. 96 Civ. 9138(BSJ), 2000 WL 23229, at *4 (S.D.N.Y.
21 Jan. 12, 2000)); *Levenson v. Nussbaum*, No. 17045/09, 2011 N.Y. Misc. LEXIS 1834, at *8-9
22 (Sup. Ct. Nassau Cnty. Apr. 8, 2011). Nonetheless, in view of the fact that the Second

1 Department has never held that a DAT does not initiate a criminal proceeding for the purposes of
2 a malicious prosecution claim, and that the Third and Fourth Departments in *Snead* and *Allen*
3 held, in accordance with *Rosario*, that it does, we adhere to the position we took in *Rosario* that,
4 under New York law, the issuance of a DAT sufficiently initiates a criminal prosecution to
5 sustain a claim of malicious prosecution.

6 **ii. Trigg Played a Role in Initiating the Criminal Proceeding**

7 Next, Trigg contends that Stampf presented no evidence that Trigg played a role in the
8 issuance of the DAT. *See Krzyzak v. Schaefer*, 860 N.Y.S.2d 252, 253 (3d Dep’t 2008)
9 (affirming the dismissal of the plaintiff’s malicious prosecution claim because “the record does
10 not reveal any evidence of defendant’s active involvement in the prosecution of plaintiff
11 following the signing of the complaint”). The DAT lists Stampf’s offense as “forcible touching”
12 which, under New York Penal Law § 130.52, occurs when a person “forcibly touches the sexual
13 or other intimate parts of another person *for the purpose of degrading or abusing such person;*
14 *or for the purpose of gratifying the actor’s sexual desire.*” N.Y. Penal Law § 130.52 (emphasis
15 added). Trigg points out that neither of the written statements that she provided to the MTA
16 police state that Stampf grabbed Trigg’s breast for the purposes listed in the penal law. JA at
17 1221-22, 1240-42. These statements, according to Trigg, should not have resulted in the police
18 issuing a DAT for forcible touching.

19 In order to initiate a criminal proceeding for the purposes of a malicious prosecution
20 claim, Trigg need not have explicitly named each element of a particular crime, as Trigg’s
21 argument implies. Instead, “it must be shown that [the] defendant played an active role in the
22 prosecution, such as giving advice and encouragement or importuning the authorities to act.”

1 *Rohman v. New York City Transit Auth.*, 215 F.3d 208, 217 (2d Cir. 2000) (quoting *DeFilippo v.*
2 *Cnty. of Nassau*, 583 N.Y.S.2d 283, 284 (2d Dep’t 1992) (internal quotation marks omitted).
3 This was amply shown. *See TADCO Constr. Corp. v. Dormitory Auth. of New York*, 700 F.
4 Supp. 2d 253, 270 (E.D.N.Y. 2010) (“Giving information to the police that is known to be false
5 qualifies as the commencement of a prosecution.”) (internal quotation marks and citation
6 omitted); *Brown v. Sears Roebuck & Co.*, 746 N.Y.S.2d 141, 146 (1st Dep’t 2002) (“[I]t is true
7 that a defendant may be said to have initiated a criminal proceeding by providing false evidence
8 to the police or withholding evidence that might affect the determination by the police to make
9 an arrest”) (dictum). In any event, even if Trigg did not explicitly say that Stampf acted for
10 the purpose of abusing or degrading her or gratifying sexual desires, her accusation implicitly
11 supports such an inference.

12 **b. The Proceeding Terminated in Stampf’s Favor**

13 Next, Trigg contends that, even if the DAT initiated a proceeding against Stampf, the
14 proceeding was never terminated in Stampf’s favor, as required to support a claim of malicious
15 prosecution.

16 On December 27, 2006, the District Attorney of the County of New York issued a
17 declination of prosecution which stated:

18 The New York County District Attorney’s Office declines to prosecute this action
19 against Melissa Stampf at this time.

20 Following a review of the evidence and interviews with several witnesses,
21 including the complaining witness, the People conclude that the case can not be
22 proven beyond a reasonable doubt. Consequently, the New York District
23 Attorney’s Office declines to prosecute this action at this time.

24 JA at 1061.

1 Trigg contends that the Declination did not terminate the proceeding because, as
2 Assistant District Attorney Kern testified at trial, the Declination did not prohibit the District
3 Attorney from reinstating the prosecution. Trigg cites the New York Court of Appeals' statement
4 that "any final termination of a criminal proceeding in favor of the accused, such that the
5 proceeding cannot be brought again, qualifies as a favorable termination for purposes of a
6 malicious prosecution action." *Smith-Hunter v. Harvey*, 95 N.Y.2d 191, 195 (2000). However,
7 the Court of Appeals also stated in *Smith-Hunter* that "[a] dismissal *without prejudice* qualifies
8 as a final, favorable termination if the dismissal represents 'the formal abandonment of the
9 proceedings by the public prosecutor'" *Id.* at 198 (emphasis added) (quoting Restatement
10 (Second) of Torts § 659(c)). Thus, *Smith-Hunter* does not establish the rule urged by Trigg.
11 Likewise, in *Verboys v. Town of Ramapo*, 785 N.Y.S.2d 496 (2d Dep't 2004), the Second
12 Department held that a jury could find that a criminal proceeding was terminated in the
13 plaintiff's favor where, "*although the initial criminal proceeding against the plaintiff . . . was*
14 *dismissed without prejudice*, the record demonstrates that the prosecution undertook a full
15 investigation and elected not to proceed with the charges because it determined that the
16 allegations against the plaintiff were not supported by the evidence." *Id.* at 497 (emphasis
17 added).

18 Trigg argues that, even if the criminal proceeding was finally terminated, it was not
19 terminated in Stampf's favor because the disposition does not indicate Stampf's innocence. To
20 support this point, Trigg relies on language from *MacFawn v. Kresler*, 88 N.Y.2d 859, 860
21 (1996) stating, "A criminal proceeding terminates favorably to the accused, for purposes of a

1 malicious prosecution claim, when the final disposition of the proceeding involves the merits
2 and indicates the accused’s innocence.”

3 However, in *Smith-Hunter*, the Court of Appeals described this language from *MacFawn*
4 as dicta and “reject[ed] the notion—as contrary to the common law and our longstanding
5 precedents—that . . . [a] plaintiff must demonstrate innocence in order to satisfy the favorable
6 termination prong of the malicious prosecution action.” 95 N.Y.2d at 198-99. The court read
7 *MacFawn* narrowly to “stand only for the proposition that dispositions inconsistent with
8 innocence . . . cannot be viewed as favorable to the accused.” *Id.* at 199; *see also Cantalino v.*
9 *Danner*, 96 N.Y.2d 391, 392 (2001) (holding that a dismissal in the interest of justice was a
10 favorable termination for the purposes of a malicious prosecution action where “the court’s
11 reasons for dismissing the criminal charges were not inconsistent with the innocence of the
12 accused”).

13 If the law were as Trigg argues, it would mean that malicious prosecution claims often
14 could not be brought in the cases where the accusations had the least substance. The cases that
15 most lack substance are most likely to be abandoned by the prosecution without pursuing them
16 to judgment. On Trigg’s view, the most unjustified accusations might thus be the most likely to
17 be shielded from malicious prosecution claims. We believe that, under New York law, a
18 declination as received by Stampf suffices to establish termination in the plaintiff’s favor
19 notwithstanding that the prosecutor is theoretically capable of resurrecting the prosecution.

20 **c. Stampf Was Not Collaterally Estopped from Claiming Malicious Prosecution**

21 Trigg also appeals from the denial of her motion for judgment as a matter of law on the
22 ground that the arbitration award collaterally estopped Stampf from prevailing on her malicious

1 prosecution claim. As the court held below, Trigg waived this argument by failing to raise it in
2 her Rule 50(a) motion. *See* Fed. R. Civ. P. 50 Advisory Committee Note (2006) (“Because the
3 Rule 50(b) motion is only a renewal of the preverdict motion, it can be granted only on grounds
4 advanced in the preverdict motion.”); *Tolbert v. Queens College*, 242 F.3d 58, 70 (2d Cir. 2001)
5 (“The posttrial motion [for judgment as a matter of law] is limited to those grounds that were
6 specifically raised in the prior motion for [judgment as a matter of law]; the movant is not
7 permitted to add new grounds after trial.” (internal quotation marks omitted)).²

8 **II. The District Court Did Not Err in Denying Trigg’s Motion for a New Trial**

9 Trigg contends the district court erred in denying her motion for a new trial on liability.
10 Trigg argues that the court erred in (1) not allowing Trigg to introduce the arbitration decision as
11 evidence in the trial, (2) admitting evidence of her prior sexual behavior, and (3) prohibiting the

² Trigg requests, in the alternative, that we consider her collateral estoppel argument as an appeal from the court’s denial of her motion for summary judgment and motion for reconsideration. In general, “where summary judgment is denied and the movant subsequently loses after a full trial on the merits, the denial of summary judgment may not be appealed” *Schaefer v. State Ins. Fund*, 207 F.3d 139, 142 (2d Cir. 2000) (citation omitted); *see also Ortiz v. Jordan*, 131 S. Ct. 883 (2011). We have recognized an exception to this rule and permitted appeals from the denial of summary judgment after a full trial on the merits “where the district court’s error was purely one of law.” *Schaefer*, 207 F.2d at 142. In *Ortiz*, the Supreme Court did not permit petitioners to appeal an order denying summary judgment after a full trial on the merits without addressing whether an appeal may lie from a denial of summary judgment when the asserted error is purely one of law because the questions raised on appeal did not present “neat abstract issues of law.” 131 S. Ct. at 893. The Court noted that cases “present[ing] purely legal issues capable of resolution with reference only to undisputed facts . . . typically involve contests not about what occurred, or why an action was taken or omitted, but disputes about the substance and clarity of pre-existing law.” *Id.* at 892.

Trigg’s appeal does not raise a purely legal claim of error. Whether Stampf was collaterally estopped from bringing her malicious prosecution claim turns, in part, on whether she received a full and fair opportunity to litigate whether Stampf improperly touched Trigg’s breast. *See LaFleur v. Whitman*, 300 F.3d 256, 271 (2d Cir. 2002) (“New York courts apply collateral estoppel . . . if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in the earlier action.” (internal quotation marks omitted)). Although collateral estoppel generally raises questions of law, the appraisal of whether the opportunity to litigate has been sufficiently adequate to support preclusion is a fact-based inquiry. *See Staatsburg Water Co. v. Staatsburg Fire Dist.*, 72 N.Y.2d 147, 153 (1988) (“[T]he analysis [for whether a party had a full and fair opportunity to contest the prior decision] requires consideration of ‘the realities of litigation’”). Therefore, Trigg is precluded from appealing from the denial of her summary judgment motion and motion for reconsideration.

1 assistant district attorney from testifying as to whether the Declination of Prosecution implied
2 Stampf’s innocence.

3 A district court may grant a motion for new trial under Rule 59 if “the jury has reached a
4 seriously erroneous result or [its] verdict is a miscarriage of justice.” *Nimely v. City of New York*,
5 414 F.3d 381, 392 (2d Cir. 2005) (alternation in original) (internal quotation marks and citation
6 omitted). A new trial may be warranted “if substantial errors were made in admitting or
7 excluding evidence.” *Sharkey v. Lasmo (AUL Ltd.)*, 55 F. Supp. 2d 279, 289 (S.D.N.Y. 1999).
8 We review a district court’s denial of a motion for a new trial, as well as a district court’s
9 evidentiary rulings, for abuse of discretion. *Nimely*, 414 F.3d at 392-93.

10 **a. Admissibility of the Arbitration Decision**

11 In rejecting Trigg’s offer of the arbitration decision as evidence at trial, the district court
12 reasoned that Stampf was not afforded a sufficient degree of procedural fairness during the
13 arbitration to justify admitting the decision as evidence. *Stampf v. Long Island R.R. Auth.*, No.
14 Cv-07-3349(SMG), 2010 U.S. Dist. LEXIS 121329, at *5-7 (E.D.N.Y. Nov. 16, 2010); *see*
15 *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 60 n.21 (1974)³ (“We adopt no standards as to
16 the weight to be accorded an arbitral decision, since this must be determined in the court’s
17 discretion with regard to the facts and circumstances of each case. Relevant factors include . . .
18 the degree of procedural fairness in the arbitral forum . . .”). The district court noted that
19 Stampf’s choice not to testify because of her pending criminal proceedings “is a particularly

³ In *Alexander*, the Supreme Court also opined that arbitration was inferior to judicial proceedings for resolving certain statutory claims. *Alexander*, 415 U.S. at 56-58. The Court subsequently undermined that view, noting that the “mistrust of the arbitral process” as expressed in *Alexander* “has been undermined by . . . recent arbitration decisions.” *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 34 n.5 (1991) (quoting *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 231-232 (1987)).

1 important factor in this case because the dispute over the events of July 9, 2006 essentially boils
2 down to a credibility contest between Trigg and Stampf.” *Stampf*, 2010 U.S. Dist. LEXIS
3 121329, at *6.

4 District courts enjoy substantial latitude in making evidentiary rulings of this nature. In
5 our view, the court did not abuse its discretion by excluding the arbitration decision. *See, e.g.,*
6 *United States v. Robinson*, 702 F.3d 22, 36 (2d Cir. 2012) (“We review a district court's
7 evidentiary rulings with deference, mindful of its superior position to assess relevancy and to
8 weigh the probative value of evidence against its potential for unfair prejudice.” (internal
9 quotation marks and citation omitted)).

10 **b. Evidence of Trigg’s Prior Sexual Behavior**

11 Trigg also challenges the district court’s receipt of testimony to the effect that Trigg was
12 a regular participant in a culture of sexually tinted locker room jocularities among LIRR
13 employees, which included cat calling at a co-worker seen wearing shorts, butt slapping, and
14 chest rubbing. For example, a male employee, Matthew Schrader, testified that one day Trigg
15 “brushed up against me and kind of touched my behind. And I didn’t think anything of it because
16 that’s what people would do every day there.” JA at 326. He also testified, “[T]here were
17 numerous other occasions when she would come in and she would cat call me because
18 sometimes I will wear shorts to work. . . . She would make comment about my legs, come and
19 rub my shoulders or my chest or something like that.” *Id.* at 328. In addition, he confirmed that
20 she had hugged him and rubbed her breasts on him. Another employee, Glenis Holland, testified
21 that she had seen Trigg “slap a male conductor on the rear end.” JA at 294.

1 Trigg contends the admission of this evidence violated Federal Rule of Evidence 412(a),
2 which makes inadmissible “in a civil or criminal proceeding involving alleged sexual
3 misconduct: (1) evidence offered to prove that a victim engaged in other sexual behavior; or (2)
4 evidence offered to prove a victim’s sexual predisposition.” Fed. R. Evid. 412(a).

5 The rule, however, is not categorical or absolute. Rule 412(b)(2), under the caption
6 “Exceptions,” provides that “[i]n a civil case, the court may admit evidence [of] a victim’s
7 sexual behavior . . . if its probative value substantially outweighs the danger of harm to any
8 victim and of unfair prejudice to any party.” Fed. R. Evid. 412(b)(2). We assume without
9 deciding that Rule 412 applies to this case, in which the defendant was charged with falsely
10 accusing the plaintiff of sexual misconduct and the defendant responded that she was in fact a
11 victim of the plaintiff’s sexual misconduct. *See* Fed. R. Evid. 412 Advisory Committee Note
12 (1994) (“Rule 412 applies in any civil case in which a person claims to be the victim of sexual
13 misconduct . . .”). We nevertheless conclude that the district court did not abuse its discretion in
14 admitting the evidence. The district court determined that Trigg’s own indulgence in sexually
15 provocative touching in the workplace, which furthermore was commonplace among her
16 workplace colleagues, was highly probative as to whether Trigg’s report to the police was
17 motivated by actual malice or rather (as she claimed) by genuine fear for her own safety. *See*
18 *Manganiello*, 612 F.3d at 163-64 (describing the actual malice element of a malicious
19 prosecution claim). It also determined that the evidence at issue was not particularly prejudicial.
20 We see no abuse of discretion in the district court’s weighing of these factors under Rule
21 412(b)(2).

1 **c. Testimony of ADA Kern**

2 Trigg protests the District Court’s exclusion of her question addressed to
3 Assistant District Attorney Kern as to whether a declination of prosecution indicates that
4 a defendant is innocent. The District Court sustained Stampf’s objection to the question
5 not on the grounds of relevance, but because it called for expert testimony and Trigg had
6 failed to make pretrial disclosure of an intention to elicit this expert testimony from Kern
7 as required by Federal Rule of Civil Procedure 26(a)(2). We find no fault with the court’s
8 ruling.

9 **III. Trigg’s Motion for Remittitur Should Be Granted**

10 Trigg appeals from the district court’s denial of her motion for remittitur on each
11 of her jury awards: \$200,000 for past emotional distress, \$100,000 for future emotional
12 distress, \$30,000 in economic damages, and \$150,000 in punitive damages. “Remittitur is
13 the process by which a court compels a plaintiff to choose between reduction of an
14 excessive verdict and a new trial.” *Shu-Tao Lin v. McDonnell Douglas Corp.*, 742 F.2d
15 45, 49 (2d Cir. 1984). In considering motions for a new trial and/or remittitur, “[t]he role
16 of the district court is to determine whether the jury’s verdict is within the confines set by
17 state law, and to determine, by reference to federal standards developed under Rule 59,
18 whether a new trial or remittitur should be ordered.” *Gasperini v. Ctr. for Humanities,*
19 *Inc.*, 518 U.S. 415, 435 (1996) (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco*
20 *Disposal, Inc.*, 492 U.S. 257, 279 (1989)).

21 Under New York law, a court “shall determine that an award is excessive or
22 inadequate if it deviates materially from what would be reasonable compensation.” N.Y.

1 C.P.L.R. § 5501(c); *Okraynets v. Metro. Transp. Auth.*, 555 F. Supp. 2d 420, 439
2 (S.D.N.Y. 2008) (“[T]he standard under § 5501(c) is not whether an award deviates *at all*
3 from past awards—it is whether an award deviates *materially* from *reasonable*
4 *compensation.*”). To determine whether a jury award is excessive within the meaning of
5 § 5501(c), New York courts compare it with awards in similar cases. *Gasperini*, 518 U.S.
6 at 425 (citing *Leon v. J & M Peppe Realty Corp.*, 596 N.Y.S.2d 380, 389 (1st Dep’t
7 1993); *Johnston v. Joyce*, 596 N.Y.S.2d 625, 626 (4th Dep’t 1993).

8 Applying the federal standard of review, we review a district court’s denial of
9 remittitur for abuse of discretion. *Cross v. N.Y.C. Transit Auth.*, 417 F.3d 241, 258 (2d
10 Cir. 2005); *see Gasperini*, 518 U.S. at 438. When reviewing a trial court’s decision for
11 abuse of discretion, the degree of deference we give to the trial court depends on the type
12 of case being reviewed. *Payne v. Jones*, 711 F.3d 85, 100 (2d Cir. 2013) (citing Henry J.
13 Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747, 764 (1982) (“Some cases
14 call for application of the abuse of discretion standard in a ‘broad’ sense and others in a
15 ‘narrow’ one.”). In *Dagnello v. Long Island R.R. Co.*, 289 F.2d 797 (2d Cir. 1961), we
16 articulated a discerning standard of review for a trial court’s denial of a motion for a new
17 trial or remittitur:

18 If the question of excessiveness is close or in balance, we must affirm We
19 must give the benefit of every doubt to the judgment of the trial judge; but surely
20 there must be an upper limit, and whether that has been surpassed is not a
21 question of fact with respect to which reasonable men may differ, but a question
22 of law.

23 *Payne*, 711 F.3d at 97-98 (quoting *Dagnello*, 289 F.2d at 806); *see also Grunenthal v. Long*
24 *Island R.R. Co.*, 393 U.S. 156, 159-60 (1968) (Brennan, J.) (applying *Dagnello* without passing

1 on its correctness); *id.* at 165 (Stewart, *J.*, dissenting) (“I believe this standard of judicial review
2 is the correct one and can think of no better way to verbalize it.”). Under this articulation of the
3 standard, “the discretion of the trial court on excessiveness is subject to substantial constraints.”
4 *Payne*, 711 F.3d at 97-98. In applying the *Dagnello* standard, we are required “to make a
5 detailed appraisal of the evidence bearing on damages.” *Grunenthal*, 393 U.S. at 159.

6 **a. Damages for Mental and Emotional Distress**

7 Awards for mental and emotional distress are inherently speculative. There is no
8 objective way to assign any particular dollar value to distress. Nonetheless, as we explained in
9 discussing a claim of excessive punitive damages in *Payne*, “a legal system has an obligation to
10 ensure that such awards for intangibles be fair, reasonable, predictable, and proportionate.” 711
11 F.3d at 93. When a jury undertakes to assess a plaintiff’s mental and emotional distress, it has
12 nothing on which to base its valuation “other than the instincts of the jurors and random, often
13 inaccurate, bits of information derived from press accounts or word of mouth in the community
14 about how such intangibles have been valued in other cases.” *Id.* Excessive awards for
15 psychological and emotional distress not only disproportionately inflict harm on the tortfeasor and
16 his or her dependants, they also impose burdensome costs on society. As we explained in *Payne*:

17 [A]n excessive verdict that is allowed to stand establishes a precedent for
18 excessive awards in later cases. . . . Unchecked awards levied against significant
19 industries can cause serious harm to the national economy. Productive companies
20 can be forced into bankruptcy or out of business. Municipalities can be drained of
21 essential public resources. The threat of excessive damages, furthermore, drives
22 up the cost of insurance premiums, deters both individuals and enterprises from
23 undertaking socially desirable activities and risks, and encourages overspending
24 on ‘socially excessive precautions’ that ‘cost[] more than the reduction of harm

1 produced by [them].’ A. Mitchell Polinsky & Steven Shavell, *Punitive Damages:*
2 *An Economic Analysis*, 111 Harv. L. Rev. 869, 879 (1998). The prices of goods
3 and services will rise, and innovation will be inhibited.

4 *Id.* at 94 (alterations in the original).

5 “While judges have no greater ability than jurors to determine any *correct* amount of
6 [subjective] damages . . . , judges do have far greater familiarity with the experience of the legal
7 system . . . [and] have a better awareness than do juries whether a particular award is consistent
8 with the norms that prevail in that system.” *Id.* at 96. Furthermore, it follows inevitably that if
9 courts regularly approve amounts of awards that they would deem excessive under *de novo*
10 review, in order to give deference to the jury, then the baseline of reasonableness will be
11 constantly forced upward. This is, in part, because the awards on which information is most
12 easily available are those challenged by defendants as excessive and, thus, reported in judicial
13 opinions. Smaller awards are not usually challenged and, therefore, are not usually reflected in
14 judicial opinions. Because courts look to judicial opinions reporting prior awards as part of the
15 basis for assessing the reasonableness of future awards, that baseline will be primarily composed
16 of high awards that have drawn challenges.

17 **i. Past Mental and Emotional Distress**

18 The district court upheld the \$200,000 award for emotional damages after making an
19 appraisal of the evidence bearing on damages and comparing the jury’s award with awards
20 approved in similar cases. The court concluded that the evidence at trial supported a finding that
21 Stampf suffered “more than mere ‘garden-variety’ emotional distress” because: (1) Stampf was

1 arrested at work and escorted in handcuffs past coworkers, supervisors, and Trigg; (2) her arrest
2 was the subject of gossip at the LIRR, where she worked for approximately fourteen years; (3)
3 she was patted down, told she was being charged with sexual assault, and held in a locked cell
4 for approximately five hours;⁴ (4) she testified that this experience made her feel “ashamed and
5 mortified and . . . like a criminal,” JA at 177; (5) she was issued a DAT charging forcible
6 touching; (6) she borrowed money from her father to hire a defense attorney, causing her father
7 to obtain a second mortgage on his home; (7) she faced a disciplinary hearing by her employer
8 and chose not to testify in her defense because of the pending criminal case against her; (8) the
9 arrest and prosecution and obligation to pay back her father took a toll on her committed
10 romantic relationship, eventually contributing to the end of the relationship; (9) the stress and
11 anxiety of the criminal case contributed to Stampf beginning to drink excessively; and (10)
12 Stampf sought therapy, attended Alcoholics Anonymous meetings, and required prescription
13 medication to help her sleep. *Stampf v. Long Island R.R. Auth.*, No. 07-cv-3349(SMG), 2011 WL
14 3235704, at *10-11 (E.D.N.Y. July 28, 2011). The district court observed that “[i]t was clear
15 from Stampf’s demeanor at trial that she continues to be troubled by the events surrounding her
16 arrest and prosecution.” *Id.* at *11.

17 The court compared Stampf’s award with other awards in excess of \$100,000 for
18 “straight-forward ‘garden-variety’ emotional distress damages” and found that Stampf’s
19 \$200,000 award was “within the vast range of awards in comparable cases.” *Id.* at *12-13 (citing
20 *Patterson v. Balsamico*, 440 F.3d 104, 120 (2d Cir. 2006) (affirming a jury award of \$100,000 in

⁴Police records show that Stampf was, in fact, held in a locked cell for approximately four hours.

1 compensatory damages on a claim of intentional infliction of emotional distress arising from an
2 assault in which plaintiff was sprayed with mace and shaving cream and taunted with racial
3 slurs); *Wallace v. Suffolk Cnty. Police Dep't*, No. 04-cv-2599(RRM)(WDW), 2010 WL
4 3835882, at *8 (E.D.N.Y. Sept. 24, 2010) (upholding a \$200,000 award for emotional distress
5 under the federal “shocks the conscience” standard—rather than New York’s “deviates
6 materially” standard—for “sleeplessness, anger, difficulty with . . . personal and family
7 relationships, stress, tension, and emotional trauma” resulting from First Amendment
8 retaliation); *Strader v. Ashley*, 877 N.Y.S.2d 747, 751 (3d Dep’t 2009) (affirming a \$250,000
9 compensatory damages award for malicious prosecution where the plaintiff lost employment and
10 income and “suffered emotional and physical harm—including feeling anxious and worried
11 about his reputation in the community, feeling sick to his stomach, difficulty sleeping and eating
12 and losing weight—and that he stopped socializing for fear of public scorn”); *Morsette v. “The
13 Final Call,”* 764 N.Y.S.2d 416, 422 (1st Dep’t 2003) (affirming a \$100,000 award for past
14 mental anguish and emotional harm and reducing an award for future mental anguish and
15 emotional harm from \$500,000 to \$300,000 in a libel case where defendant published a picture
16 of the plaintiff in a newspaper that was altered to make her look like an inmate, causing
17 depression, anxiety, and weight gain)).

18 In our view, these cases do not support the approval of the \$200,000 award for past
19 emotional distress. The courts in *Patterson* and *Morsette* upheld awards of \$100,000—half the
20 size of Stampf’s award for past emotional distress damages—and the other two cases the district

1 court relied on are distinguishable. The *Wallace* court upheld a \$200,000 award for emotional
2 stress under the more deferential shocks-the-conscience standard, and the \$250,000
3 compensatory damages award in *Strader* included lost employment and income in addition to
4 emotional distress.

5 As we previously noted in the context of discrimination claims, “New York cases vary
6 widely in the amount of damages awarded for mental anguish.” *Lore v. City of Syracuse*, 670
7 F.3d 127, 177 (2d Cir. 2012) (quoting *Meacham v. Knolls Atomic Power Lab.*, 381 F.3d 56, 78
8 (2d Cir. 2004) (compiling discrimination cases in which New York courts reduce awards for
9 mental anguish to \$30,000 or below as well as cases in which New York courts uphold awards of
10 more than \$100,000)). Based on our survey of damages awards for emotional distress and
11 malicious prosecution, \$100,000 appears to reflect the upper end of the range of awards in
12 comparable cases. *Compare Patterson*, 440 F.3d at 120 and *Morsette*, 764 N.Y.S.2d at 422, with
13 *Rohrs v. Rohrs*, 793 N.Y.S.2d 532, 533-34 (2d Dep’t 2005) (holding that a \$50,000 malicious
14 prosecution compensatory damages award deviated materially from what would be reasonable
15 compensation and ordering a new trial on the issue of damages unless plaintiff stipulated to a
16 reduction in the award to \$25,000), *Lynch v. Cnty. of Nassau*, 717 N.Y.S.2d 248, 249 (2d Dep’t
17 2000) (ordering a new trial on the issue of damages unless the plaintiff consented to reducing
18 damages for loss of reputation and humiliation from \$25,000 to \$10,000, reducing damages for
19 intentional infliction of emotional distress from \$75,000 to \$25,000, and reducing punitive
20 damages from \$100,000 to \$50,000 in connection with an action for false arrest, malicious

1 prosecution, and intentional infliction of emotional distress), and *Parkin v. Cornell Univ., Inc.*,
2 581 N.Y.S.2d 914, 916-17 (3d Dep’t 1992) (finding excessive a \$100,000 compensatory
3 damages award and \$100,000 punitive damages award to each plaintiff in an action for false
4 arrest, malicious prosecution, and abuse of process, and ordering a new trial on the issue of
5 damages unless plaintiffs stipulated to a reduction of compensatory damages to \$10,000 and of
6 punitive damages to \$10,000 per plaintiff).

7 Even though Stampf may have suffered “greater than ‘garden variety’ emotional
8 distress,” as the district court found, we find the award for past emotional distress excessive
9 given that Stampf was held by the police for only a few hours and was never indicted, convicted,
10 or sentenced. However, in deference to the district court’s finding that Stampf suffered greater
11 than garden variety emotional distress, we believe that an award for past emotional distress
12 reflecting the upper end of awards for emotional distress in comparable cases would be
13 appropriate.⁵ Accordingly, we will grant a new trial on the issue of damages for past emotional
14 distress unless Stampf agrees to a remittitur reducing her award for past emotional distress to
15 \$100,000.

⁵ Although the average victim of malicious prosecution may not have experienced such a high degree of stress and anxiety from Trigg’s malicious prosecution, “a defendant must take a plaintiff as [s]he finds him” and, therefore, is responsible for the harm she inflicts on a person even if that harm is exacerbated by the person’s unknown infirmities. *Bartolone v. Jeckovich*, 481 N.Y.S.2d 545, 546-47 (4th Dep’t 1984) (reversing the trial court’s grant of remittitur on a jury award of \$500,000 for a plaintiff who sustained minor physical injuries and an “acute psychotic breakdown” resulting from a car accident) (citing *McCahill v. New York Transp. Co.*, 201 N.Y. 221 (1911)); cf. *Steinhauser v. Hertz Corp.*, 421 F.2d 1169, 1172 (2d Cir. 1970) (Friendly, J.) (reversing a verdict in defendant’s favor on the ground that the plaintiff’s theory of the case—that a defendant is liable for the emergence of schizophrenia resulting from the emotional trauma suffered by a passenger in a minor car accident caused by the defendant—is legally valid); *Williams v. Bright*, 658 N.Y.S.2d 910, 912 n.2 (1st Dep’t 1997) (recognizing that the “eggshell skull doctrine” is “traditionally [applied] to a plaintiff’s preexisting physical condition, mental illness or psychological disability” (internal citations omitted)).

1 **ii. Future Mental and Emotional Distress**

2 The district court upheld the jury award of \$100,000 for future mental and emotional
3 distress because the malicious prosecution “had long-lasting effects, including the break-up of a
4 committed relationship and problems with alcohol,” and Stampf “continues to work for the
5 Railroad and thus no doubt still interacts with co-workers who saw or heard about her arrest.”
6 *Stampf*, 2011 WL 3235704, at *13. In finding the \$100,000 reasonable, the district court cited
7 *Boodram v. Brooklyn Developmental Ctr.*, 773 N.Y.S.2d 817 (Civ. Ct. 2003), in which the New
8 York City Civil Court upheld jury awards for \$86,000 for mental suffering and emotional and
9 psychological injuries through trial and \$86,000 for future mental suffering and emotional and
10 psychological injury. *Id.* at 834-35. In that case, the court determined that the award for future
11 mental and emotional distress was reasonable where the plaintiff was diagnosed with “post-
12 traumatic stress disorder with secondary depression” that was “both permanent and disabling.”
13 *Id.* at 822, 835.

14 The district court upheld the jury’s award for future emotional distress on highly
15 speculative grounds. First, unlike the plaintiff in *Boodram*, Stampf has not been diagnosed with a
16 permanent mental or emotional disorder, nor is there any medical evidence in the record showing
17 whether the distress caused by the malicious prosecution would affect Stampf’s alcohol abuse
18 problems in the long-term.⁶ Second, based on the evidence presented in this case, the jury could
19 only speculate as to what emotional distress Stampf might suffer in the future from her broken

⁶ Stampf testified that she attended meetings for her alcoholism prior to the July 9, 2006 incident, and she testified at trial that she currently drinks “[v]ery little.” JA at 235.

1 relationship. We therefore cannot sustain her award of future emotional damages on that ground.
2 *See In re Estate of Rothko*, 372 N.E.2d 291, 298 (N.Y. 1977) (noting damages must be “not
3 merely speculative, possible or imaginary”).

4 Nonetheless, a reasonable juror could find that returning to work every day with
5 coworkers who were aware that Stampf was arrested for grabbing another coworker’s breast
6 would cause some emotional distress. We find that an award of \$20,000 appropriately reflects
7 Stampf’s damages from future emotional and mental distress.

8 **b. Punitive Damages**

9 In reviewing an award for punitive damages in *Payne*, we explained that “[n]o objective
10 standard exists that justifies the award of one amount, as opposed to another, to punish a
11 tortfeasor appropriately for his misconduct.” 711 F.3d at 93. Punitive damages “are given to the
12 plaintiff over and above the full compensation for the injuries, for the purpose of punishing the
13 defendant, of teaching the defendant not to do it again, and of deterring others from following
14 the defendant’s example.” Prosser and Keeton on the Law of Torts § 2, at 9 (5th ed. 1984). They
15 “are by nature speculative, arbitrary approximations.” *Payne*, 711 F.3d at 93. Despite this
16 arbitrariness, courts “bear the responsibility to ensure that judgments as to punitive damages
17 conform, insofar as reasonably practicable, to [the prevailing norms of the legal system] and are
18 not excessive.” *Payne*, 711 F.3d at 96. We review a district court’s determination as to whether a
19 jury’s punitive damages award “deviates materially from what would be reasonable,” *Lynch*, 717
20 N.Y.S.2d at 249 (2d Dep’t 2000), under an abuse of discretion standard, but given that “courts of

1 appeals are no less institutionally competent to review punitive awards for excessiveness than
2 are trial courts . . . , the degree of discretion enjoyed by trial courts in these matters is relatively
3 narrow.” *Payne*, 711 F.3d at 100.

4 The Supreme Court outlined three “guideposts” to facilitate its review of state court
5 punitive damage awards: (1) the degree of reprehensibility of the defendant’s conduct, (2) the
6 ratio of punitive damages to the actual harm inflicted, and (3) “the difference between this
7 remedy and the civil penalties authorized or imposed in comparable cases.” *BMW of N. Am., Inc.*
8 *v. Gore*, 517 U.S. 559, 575 (1996). When a federal appellate court reviews a federal district
9 court’s ruling as to whether a jury’s punitive damages award is excessive, it has “considerably
10 more supervisory authority” than when the Supreme Court reviews a decision of the highest
11 court of a state on the same question, yet the Court’s guideposts set forth in *Gore* provide a
12 useful framework for reviewing federal district court punitive damages awards. *Payne*, 711 F.3d
13 at 97. Thus, we consider whether Stampf’s award for punitive damages is excessive in light of
14 judges’ greater familiarity than juries’ with norms for punitive damages, federal appellate courts’
15 considerable supervisory authority when reviewing district courts’ rulings as to the
16 excessiveness of a jury’s punitive damages award, and the three guideposts set forth by the
17 Supreme Court in *Gore*.

18 **i. Degree of Reprehensibility**

19 The Supreme Court described “the degree of reprehensibility of the defendant’s conduct”
20 as “[p]erhaps the most important indicium of the reasonableness of a punitive damages award.”

1 *Gore*, 517 U.S. at 575. In assessing reprehensibility, we consider both the defendant's conduct
2 and its natural consequences. *See id.* at 575-76. Conduct that involves deceit or malice is more
3 reprehensible than conduct involving mere negligence, *Patterson*, 440 F.3d at 121; *Lee v.*
4 *Edwards*, 101 F.3d 805, 809 (2d Cir. 1996). Likewise, conduct that could cause serious physical
5 or emotional injury is more reprehensible than conduct that risks only minor injuries or
6 economic damages. *See Gore*, 517 U.S. at 576.

7 It can be difficult for juries and judges to calibrate the reprehensibility of a defendant's
8 conduct to a reasonable punitive damages award in a vacuum. *Cf. Ismail v. Cohen*, 899 F.2d 183,
9 186 (2d Cir. 1990). Courts have found it useful to compare punitive damages awards with
10 previous court rulings on the issue of excessiveness to assist with this determination. *See Payne*,
11 711 F.3d at 104-05; *Lee*, 101 F.3d at 812.

12 In the instant case, with actual malice, Trigg made false statements to the police accusing
13 Stampf of grabbing her breast, which resulted in Stampf's arrest at work in front of a number of
14 coworkers. Due to Trigg's malicious conduct, Stampf spent an evening in prison, experienced
15 public embarrassment at her place of work, and experienced significant stress that contributed to
16 her alcohol abuse problems and the end of a long-term, committed relationship.

17 Trigg's conduct is comparably reprehensible to the defendants' in *Strader*, 877 N.Y.S.2d
18 747 and *Lynch*, 717 N.Y.S.2d 248. In *Strader*, a plaintiff brought an action against defendants
19 who made false statements to the police accusing plaintiff of theft resulting in a jury trial for
20 petit larceny. The plaintiff testified that, as a result of the malicious prosecution, he lost

1 carpentry work and income from his position as a substitute teacher and suffered emotional and
2 physical harm “including feeling anxious and worried about his reputation in the community,
3 feeling sick to his stomach, difficulty sleeping and eating and losing weight.” *Strader*, 877
4 N.Y.S.2d at 751. The Third Department upheld a jury award of \$250,000 in compensatory
5 damages and \$117,500 in punitive damages. *Id.* at 751-52.

6 In *Lynch*, a parking enforcement officer falsely accused the plaintiff of hitting her with
7 her car as she drove away after a dispute over a parking ticket. *See* Brief for Defendant-
8 Appellants, *Lynch v. Cnty. of Nassau*, 717 N.Y.S.2d 248 (2d Dep’t 2000) (No. 1999-10362),
9 1999 WL 33922170, at *3. The plaintiff was arrested, held in a cell for two or three hours,
10 charged with assault in the third degree, and required to make six or seven pretrial court
11 appearances before the charges were dropped. *Id.* at *3-4. The plaintiff brought an action for
12 false arrest, malicious prosecution, and intentional infliction of emotional distress and was
13 awarded \$150,000 in compensatory damages and \$100,000 for punitive damages. *Lynch*, 717
14 N.Y.S.2d at 249. The court found that “the plaintiff suffered humiliation and a deprivation of
15 liberty as a result of being arrested, . . . [and] the subsequent criminal proceedings. However,
16 there was little objective evidence that she suffered significant damage to her reputation as a
17 result of the defendants’ actions.” *Id.* at 249. Accordingly, the court reduced the compensatory
18 damages to \$85,000 and the punitive damages to \$50,000. *Id.*

1 Based on these comparisons, we find, while giving deference to the district court’s
2 conclusion, that the punitive damages imposed on Trigg were excessive in relation to the
3 reprehensibility of her conduct.

4 **ii. Ratio of Punitive Damages to the Actual Harm Inflicted**

5 The Supreme Court explained in *Gore* that it could not “draw a mathematical bright line”
6 between constitutionally acceptable and unacceptable ratios for punitive damages, *Gore*, 517
7 U.S. at 582. In *State Farm Mutual Automobile Insurance Co. v. Campbell*, the Court said that,
8 “in practice, few awards exceeding a single-digit ratio between punitive and compensatory
9 damages, to a significant degree, will satisfy due process,” but clarified in the same opinion that
10 greater ratios “may comport with due process where a particularly egregious act has resulted in
11 only a small amount of economic damages. 538 U.S. 408, 425 (2003) (internal quotation marks
12 and citation omitted); *see Lee*, 101 F.3d at 811 (noting that a punitive damages award over 500
13 times greater than a compensatory damages award could be reasonable where the compensatory
14 damages are nominal). In any event, the ratio of the jury’s award of punitive damages to the
15 compensatory award (as reduced) is 1:1, which does not “raise a suspicious judicial eyebrow.”
16 *Gore*, 517 U.S. at 582 (citation omitted).

17 **iii. Difference between this remedy and the civil penalties authorized**
18 **or imposed in comparable cases**

19 In *Gore*, the Supreme Court stated that “[c]omparing the punitive damages award and the
20 civil or criminal penalties that could be imposed for comparable misconduct provides a third

1 indicium of excessiveness.” *Gore*, 517 U.S. at 583. The Court established this as a third indicium
2 of excessiveness in order to “accord substantial deference to legislative judgments concerning
3 appropriate sanctions for the conduct at issue.” *Id.* (internal quotation marks and citation
4 omitted).

5 The offense of “falsely reporting an incident in the third degree” under New York law
6 provides a useful comparison in this case. The New York Penal Law classifies falsely reporting
7 an incident in the third degree as a class A misdemeanor. N.Y. Penal Law § 240.50. “A person is
8 guilty of falsely reporting an incident in the third degree when, knowing the information
9 reported, conveyed or circulated to be false or baseless, he or she: . . . (3) [g]ratuitously reports
10 to a law enforcement officer or agency (a) the alleged occurrence of an offense or incident which
11 did not in fact occur” *Id.* A person convicted of a class A misdemeanor may be sentenced to
12 a term of imprisonment “not [to] exceed one year,” N.Y. Penal Law § 70.15(1), and he or she
13 may be fined by an amount “not exceeding one thousand dollars,” N.Y. Penal Law § 80.05, but
14 neither a prison sentence nor a fine is required under New York law. “The fact that New York
15 classes [Trigg’s] conduct as warranting criminal prosecution tends to confirm the
16 appropriateness of the imposition of a punitive award.” *Payne*, 711 F.3d at 103. Meanwhile, “the
17 fact that the offense is . . . only a misdemeanor[] and that courts are at liberty . . . to impose no
18 imprisonment or fine whatsoever . . . tend to suggest that New York regards this conduct as
19 occupying the lower echelons of criminality.” *Id.* at 104. The maximum limits set by the New

1 York legislature on the criminal penalties for Trigg’s conduct further confirm the excessiveness
2 of the punitive award of \$150,000.

3 **iv. Totality of the Factors**

4 Considering all the factors specified in *Gore*, we find that the punitive damages award is
5 excessive and conclude that a punitive damages award of \$100,000 is the maximum sustainable
6 punitive award.

7 **CONCLUSION⁷**

8 The judgment of the district court is vacated in part and affirmed in part. We remand with
9 instructions to grant a new trial on the issue of damages unless Stampf agrees to a remittitur
10 reducing her award for past emotional distress to \$100,000, her award for future emotional
11 distress to \$20,000, and her award for punitive damages to \$100,000, which (added to her
12 economic damages of \$30,000) would make an aggregate damages award of \$250,000.

⁷ We have considered Trigg’s other arguments and find them meritless.