THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2012-213247

Wal-Mart Store #2806.....Appellant,

v.

Prakash and Urmila Solanki,.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This case is an appeal by Wal-Mart ("Appellant") from a jury verdict in the Spartanburg County Court of Commons Pleas. Prakash Solanki ("Respondent") filed an action on November 18, 2010 against Wal-Mart and the Spartanburg County Sheriff's Office alleging actions for 1) negligence; 2) gross negligence and recklessness; 3) false imprisonment; 4) intentional infliction of emotional distress; 5) defamation and defamation *per se*; 6) assault; 7) battery; 8) malicious prosecution; and 9) loss of consortium. A jury trial was held in Spartanburg from March 5, 2012 to March 9, 2012. The Court directed a verdict for Wal-Mart except for the negligence/gross negligence claims against Wal-Mart. The jury found that Defendant Spartanburg County was not liable to Plaintiff, and the jury returned a verdict against Wal-Mart in favor of Respondent on the issue of negligence/gross negligence by awarding $50,000 in actual damages and $225,000 in punitive damages to Respondent Prakash Solanki on March 9, 2012. The jury also found Respondent Prakash Solanki twenty five percent (25%) comparatively at fault.

Thereafter, Appellant filed post-trial motions for Judgment Notwithstanding the Verdict, for New Trial Absolute, for New Trial Nisi Remititur, for Reversal or Reduction of Punitive Damages, or for New Trial pursuant to the Thirteenth Juror Doctrine. On September 25, 2012, Appellant's Motions were denied. Appellant thereafter appealed to this Court.

STATEMENT OF THE FACTS

Plaintiff Prakash Solanki went to Wal-Mart Store #2806 in Boiling Springs, South Carolina on November 27, 2009 to purchase items for his upcoming trip to India. He testified that he used his own debit card and possessed no card that did not belong to him (Transcript Vol. I, pp. 53-58). It is undisputed that he provided a Wal-Mart employee with his own debit card, of which an employee made an impression. It is undisputed that a Wal-Mart employee hand keyed a transaction that was charged on the credit card of Robin Martin, who reported the charge as fraudulent. (Transcript Vol. I pp. 53-58). Deputy Gina Cashion of the Spartanburg County Sheriff's Office investigated the transaction and was provided videos of the incident, as well as a Wal-Mart generated receipt of the purchase, by Wal-Mart. The receipt showed an impression of Prakash Solanki's credit card, along with his signature, on one side and the transaction and Robin Martin's credit card number on the other. Deputy Cashion testified that the video and receipt/impression provided by Wal-Mart constituted the bases upon which she arrested Mr. Solanki (Transcript Vol. I, p. 304-05). Deputy Cashion testified that the Sheriff's Office had attempted to contact Mr. Solanki by leaving a note at his South Carolina home and leaving a message on his phone. Plaintiff testified that he was in Georgia at the time. Deputy Cashion testified that Mr. Solanki had an obligation to prove his innocence and should have contacted the Sheriff's Office regarding its request for his cooperation. (Transcript Vol. I p. 311). Prakash Solanki was arrested and spent six days in prison as a result of this transaction, and,

according to Deputy Cashion, his arrest was predicated by the Wal-Mart receipt and videos provided to her by Appellant Wal-Mart (Transcript Vol. I, p. 304-05). The entire credit card transaction was captured on a video that the jury viewed several times.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN SUBMITTING THE ISSUE OF PUNITIVE DAMAGES TO THE JURY.

Although it is partially accurate, as Appellant contends, that punitive damages are awarded to punish wrongdoers and deter like conduct, the rule has long been clear that punitive damages serve a broader purpose in South Carolina. In fact, the relatively broad scope of punitive damage awards in South Carolina has a history that dates to within one year of the United States' gaining its independence from Great Britain, as articulated by our Supreme Court:

> The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future. *Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party.* This Court has explained the important role that punitive damages play in the American system of justice generally, and in South Carolina in particular since at least 1784.
>
> > Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; *and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others.... Punitive damages have now come, however, to be generally, though not universally, regarded, not only as*

> *punishment for wrong, but as vindication of private right.* This is the basis upon which they are now placed in this state.

Clark v. Cantrell, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000) (emphasis added) (citations omitted) (quoting Rogers v. Florence Printing Co., 233 S.C. 567, 573, 106 S.E.2d 258, 261 (1958)). Therefore, punitive damages exist not only to deter the wrongdoer, but they also exist to compensate the plaintiff, particularly a plaintiff who has suffered non-economic damages for invasion of his private rights—in the case at bar, of the Plaintiff's right to liberty itself: "Our courts have long recognized that punitive damages serve to compensate a plaintiff and vindicate his rights arising out of a wrong suffered or injury sustained." Smith v. Widener, 397 S.C. 468, 472, 724 S.E. 2d 188, 191 (Ct. App. 2012).

South Carolina's application of punitive damages awards is so broad that, in some cases, the law not only allows a punitive damage award but *requires* it. In Sample v. Gulf Refining Co., 183 S.C. 399, 191 S.E. 209, 215 (1937), Chief Justice Stabler held:

> There was also no error in charging plaintiff's third request containing the proposition that it would be the duty of the jury to award punitive damages, if it found that respondent's rights had been consciously, willfully, and recklessly violated. While there is authority in other jurisdictions to the effect that the award of punitive damages rests in the discretion of the jury yet under the settled rule prevailing in this state punitive damages are awarded not only as punishment for a wrong, but also as vindication of private right, and when under proper allegations a plaintiff proves a willful, wanton, reckless, or malicious violation of his rights, *it is not only the right but the duty of the jury to award punitive damages.*

(Emphasis added).

A. The Legal Threshold for Whether the Jury Must Be Given a Punitive Damages Charge is Whether Evidence Exists By Which A Reasonable Inference of Recklessness, Willfulness, or Wantonness May Be Drawn, and, When a Party Creates a Dangerous Condition and Takes No Action To Mitigate the Potential Harm from that Dangerous Condition, it is Chargeable with Consciousness of its Wrongdoing so as to Necessitate a Punitive Jury Charge.

In the second tier of cases (after those in which a Plaintiff is entitled as of right to an award of punitive damages) are those cases in which the issue of punitive damages is left to the discretion of the jury. In the case at bar, the trial court did not determine that the Plaintiff was entitled to an award of punitive damages as a matter of right; accordingly, the only issue for the trial judge's determination is whether any reasonable inference of recklessness, willfulness, or wantonness could have been drawn. The rule is that "[t]he issue of punitive damages ***must*** *be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton.*" Mishoe v. QHG of Lake City, Inc., 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005) (emphasis added). If the court determines, as it did in the case at bar, that more than one inference can be drawn regarding the recklessness, willfulness, or wantonness, the court *must* submit the punitive issue to the jury.

Accordingly, the only issue properly before this Court with regard to the issue of the trial court's charging punitive damages is whether it is possible that an inference of

recklessness, willfulness, or wantonness could reasonably have been drawn from the evidence presented in the case:

> The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights. It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor [. . .]" In other words, "at the time of his act or omission to act the tort-feasor [must] be conscious, *or chargeable with consciousness*, of his wrongdoing.

Cody P. v. Bank of America, N.A., 395 S.C. 611, 625, 720 S.E.2d 473, 480 (Ct. App. 2011) (emphasis added) (citations omitted). This standard holds that "[w]hen evidence exists that *suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness*. Mishoe, 366 S.C. at 201, 621 S.E.2d at 366 (emphasis added).

Section I (A)(1) of Appellant's Brief states, "The trial court acknowledged that the evidence supported the submission of simple negligence only to the jury and erred in thereafter ruling that punitive damages would be submitted to the jury." In fact, the trial court never "acknowledged" that "submission of simple negligence only" was warranted. The basis of Appellant's allegation is an offhand remark by the trial judge, which Appellant itself quotes in its brief: "I see that as simple negligence. I don't know why that's failure to use the slightest care especially in light of the fact that it certainly appears to me, that, that efforts were made to verify the identification of Mr. Solanki." (Transcript

Vol. II, pp. 20-2) (Appellant Brief at 15). Apodictically, in a jury trial, it is the jury, and not the judge, that is the fact finder. By Appellant's logic, since the trial judge had determined, in his own mind, that Wal-Mart was negligent, the same course of line of reasoning that leads Wal-Mart to now allege that gross negligence, wilfullness, wantoness, and reckless were not at issue would also lead to the logical conclusion that liability was not at issue, *i.e*, since the judge found simple negligence, he should have directed a verdict as to liability and allowed the jury to decide only damages. If the trial court had so found, of course, this appeal would have been taken on different grounds.[1] In fact, the trial court simply followed the law that required it to submit the issue of punitive damages to the jury if any reasonable inference of reckless, willful, or wanton conduct could be drawn from the evidence. That a trial judge forms a personal opinion about what he thinks the evidence shows does not require (or even allow) him to substitute the opinion he forms for that of the jury, which remains the finder of fact in a jury trial.

In making its *legal* decision (which is within the purview of the judge in a jury trial), after giving its *factual* (and, in a jury trial, irrelevant) opinion about whether it believed Wal-Mart should be liable to Plaintiff, the trial court went on to state the correct rule of law:

> As a general rule, issues of gross negligence are properly for the jury to determine. There's evidence, based upon the weirdness of this transaction, for lack of a better word, in the record, there's evidence from

[1] In FN5, p. 23 of its brief, Appellant states that "Wal-Mart does not agree that there was sufficient evidence of negligence [. . .]."

> which the jury could conclude that, in some way, plaintiff was grossly negligent in the way they or, sorry, that the defendant Wal-Mart, was grossly negligent in the way they handled this transaction. There is evidence from which they could reasonably conclude that. I'll charge gross negligence and punitive.

(Transcript Vol. II, p. 66). In its brief, Appellant makes an argument that the trial court did not clearly demarcate the boundaries between gross negligence and punitive damages (FN 3 of Appellant's Brief at page 11). Appellant thereafter raises the issue that the trial court did not charge gross negligence but did charge punitive damages. Appellant does not dispute that the trial court's punitive jury instruction charged the correct law. Nor does it explain how the trial court's failure to adequately demarcate the difference between the gross negligence and punitive damages standards in the court's statements to counsel while the jury was not present could possibly invalidate the jury's awarding punitive damages based on a punitive jury charge that correctly outlines the law.

In Gathers, which was cited by Plaintiff's counsel as grounds for the Wal-Mart's liability (Hearing Tr. Vol. 2, Part 1 at PP. 25 - 27), the arresting officer, Ackerman, had allegedly witnessed the plaintiff steal items from the Harris Teeter store. Gathers v. Harris Teeter, 282 S.C. 220, 225, 317 S.E.2d 748, 752 (Ct. App. 1984). The only role played by Harris Teeter was that it was the site of the alleged theft, and its employees assisted Officer Ackerman—upon his request. Id. In the case at bar, on the other hand, Wal-Mart created the self-contradictory document that the police used to arrest Plaintiff. Even when

Defendant Harris Teeter, in Gathers, was found liable only for agreeing to cooperate with a police investigation, this Court refused to absolve it of liability:

> Harris Teeter seeks to relieve itself of liability for its employees' actions by claiming that [Police Officer] Ackerman ordered the two employees to help him, that they were under a legal duty to help Ackerman, and that the law imposes no civil liability upon a private person for doing what the law requires him to do [. . .] The only duty imposed upon a private citizen is to communicate such facts and information to a police officer as are necessary to allow the officer the opportunity to apprehend the offender [. . .] Any further actions taken by a private citizen must be justified under the circumstances.

Id. The distinguishing feature in the case at bar is that, prior to acquiring evidence from Wal-Mart, the police had no evidence that would link Plaintiff to the alleged crime. Wal-Mart did not provide the police with evidence to apprehend a person who was a known criminal offender. Instead, Wal-Mart made the Plaintiff appear to be an offender when he was not by creating and producing the evidence that was used to inculpate and arrest him. In addition, a Wal-Mart employee admittedly hand-keyed the fraudulent transaction. As Plaintiff's counsel argued to the trial court:

> We have a request to admit, on the record, that Wal-Mart keyed in this transaction [. . .] and we have Prakash Solanki's card imprinted on the other side. These two [. . .] documents [. . .] on this single exhibit show two [. . .] scenarios [. . ..] Now, Wal-Mart provided this contradictory piece of evidence that it generated [. . ..] It's only Wal-Mart that has created this document that has two separate credit card transactions on a single document [. . .] it's inherently irrational and [. . .] Wal-Mart's position essentially is that it can relieve itself of liability because [. . .] Wal-Mart was required to cooperate with government entities [. . .] but when it provides evidence that is inherently contradictory, it cannot do so without explanation of how that evidence was generated when it knows, by cooperating with the police [. . .] an arrest will result [. . .] only

> Wal-Mart had access to its internal system to explain how this could have happened.

(Hearing Tr. Vol. 2, Part 1 at PP. 25 - 27). By any standard, when a Wal-Mart employee entered the fraudulent transaction, and Wal-Mart created a document with contradictory evidence while exclusively controlling the instrumentality by which it was created, and because of which Respondent was arrested, the jury could infer, as it did, that Wal-Mart was conscious, or chargeable with consciousness, of the wrong it was perpetuating—a wrong that eventually led to Respondent's spending six days in jail. The appropriate legal standard, after all, requires only that the defendant be conscious or chargeable with consciousness of the existence of a "dangerous condition" that it has created and regarding which it has not taken "action to minimize or avoid the danger" before "sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness." Mishoe, 366 S.C. at 201, 621 S.E.2d at 366.

B. No Standard Exists by which an Appellate Court May Reverse a Trial Court's Damages Award Based on the Appellate Court's Engaging in its Own Weighing of the Evidence.

Appellant alleges that this Court should reverse the trial court on the basis that the trial court erred by submitting the issue of punitive damages to the jury without "*sufficient evidence* from which a jury could conclude by clear and convincing evidence that the alleged misconduct by Wal-Mart was willful, wanton or reckless." (App. Brief at 17). South Carolina appellate court review does not extend so far with respect to the issues presented. Instead,

> The trial judge has considerable discretion regarding the amount of damages, both actual or punitive. Because of this discretion, our review on appeal is limited to the correction of errors of law. Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award.

Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004) (internal citations omitted).

This statement regarding the insufficiency of the evidence, reiterated with variations throughout Appellant's brief, encapsulates the entirety of Appellant's argument that the jury's punitive award should be reversed.[2] Appellant requests that this Court engage in a *de novo* review of the sufficiency of the evidence upon which the trial court made its determination to provide a jury charge for punitive damages and thereafter find, as a matter of fact, that Wal-Mart's conduct did not rise to the level of recklessness, willfulness, or wantonness. Although South Carolina law, following the United States Supreme Court's guidance, does analyze the *constitutionality* of the *amount* of punitive damages awards *de novo* to determine whether it comports with due process (See, e.g. Mitchell v. Fortis, Ins. Inc., 385 S.C. 570, 686 S.E.2d 176 (2009)), no rule of law has ever allowed an appellate court in South Carolina to gainsay the trial court's "any evidence" and "reasonable inference" determinations that punitive damages, *per se,* were justified. At the appellate level, the standard is not whether *sufficient* evidence existed for the trial court's finding regarding the punitive issue—but whether *any evidence* existed: "This Court must

[2] Interestingly, at trial, Wal-Mart did not call any witnesses or present any evidence.

affirm the trial court's punitive damages finding [. . .] if *any evidence reasonably supports* the judge's factual findings." Austin, 358 S.C. at 314, 594 S.E.2d at 875 (emphasis added).

Although an appellate court may reduce the amount of a punitive award if it makes a *de novo* determination that the award violates due process, it cannot substitute its view for the jury's regarding whether the conduct of a defendant was reckless, willful, or wanton so as to abrogate, *per se*, an award of punitive damages:

> In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings.

Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976).

Clearly, because Wal-Mart created the instrumentality that led to Mr. Solanki's wrongful arrest, the trial court was not only allowed, but required, to submit the issue of punitive damages to the jury because "[w]hen evidence exists that *suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness*. Mishoe, 366 S.C. at 201, 621 S.E.2d at 366 (Emphasis added). The jury was admittedly provided with a correct jury charge (Transcript Vol. 2 at 240-242) regarding the standard required before it could award punitive damages. In fact, as concrete evidence that the jury seriously weighed its duties, the jury requested clarification

regarding the scrivener's error stating the requirement as a conjunctive "willful, wanton, *and* reckless" instead of the correct, disjunctive, standard "willful, wanton, *or* reckless." (Transcript Vol. 2 at 258-59. Accordingly, the trial court properly submitted the issue of punitive damages to the jury.

II. THE COURT DID NOT FIND THAT WAL-MART OWED A HEIGHTENED DUTY OF CARE, AND NO PRECEDENT EXISTS FOR AN APPELLATE COURT SUBSTITUTING ITS FINDINGS OF FACT FOR THOSE OF THE JURY.

As articulated by the South Carolina Supreme Court,

> The rule of reasonable care under the circumstances could not limit the conduct of Robinson Crusoe as he was first situated; but as soon as he saw the tracks in the sand, the rule began to have vitality. He then had notice that there might be other persons on the island; *and this knowledge of their presence made it his duty as a reasonable man to use reasonable care to the end that no act of his should injure them* Rogers v. Scyphers, 251 S.C. 128, 134-35, 161 S.E.2d 81, 84 (1968).

Rogers v. Scyphers, 251 S.C. 128, 134-35, 161 S.E.2d 81, 84 (1968) (quoting 38 Am. Jur. at page 655, Negligence, Sec. 14). The only duty owed to Respondent was the duty of reasonable care under the circumstances.

A. The Trial Court Did Not Hold Wal-Mart To A Heightened Duty of Care.

Nothing in the record of this case indicates that the trial court made any decision as a consequence of a "heightened" duty of care. Wal-Mart's argument to that effect rests solely upon a single occurrence in which Plaintiff's counsel (not the court) stated that Wal-

Mart owes a "heightened" duty of care when Wal-Mart "created the situation." (Transcript Vol. II, pp. 19). Clearly, this statement articulates an erroneous proposition of law, but Wal-Mart points to no evidence that the trial court made any decision based upon an alleged "heightened" duty. Apart from evidence somewhere in the record that indicates the judge applied the erroneous standard, there is no ground for reversal. In its order denying Wal-Mart's post trial motions, the trial court found that the action was one of negligence, and Wal-Mart owed only "the duty of reasonable care under the circumstances." It summarized particularly the duty that it had determined:

> In the instant case, Wal-Mart and its employees are charged with the duty of a reasonable merchant in processing financial card transactions. Clearly, Wal-Mart owes an obligation to its customers to properly process credit card transactions. To assert otherwise would allow Wal-Mart to receive the benefit of correctly processed transactions without any of the corresponding responsibility for any ill effects of negligently processed transactions. Just as a store owner in a premises liability case owes the customer a duty to make the store reasonably safe, Wal-Mart owed Plaintiff a duty to reasonably process this transaction. Whether Wal-Mart lived up to this duty is a question solely within the province of the jury, and this Court will defer to the jury's determination in that regard.

Order Denying Wal-Mart's Post Trial Motions at 6. Accordingly, since the trial court never determined that a heightened duty was owed, a reversal based upon such an allegation is not warranted.

B. The Trial Court Was Correct in Denying Wal-Mart's Post-Trial Motions for Judgment Notwithstanding the Verdict and for Reversal or Reduction of the Punitive Damages Award.

With regard to Wal-Mart's assertion that the trial court erred in failing to grant its

post-trial motions:

> In reviewing the denial of a motion for directed verdict or JNOV, the appellate court applies the same standard as the circuit court. When ruling on directed verdict or JNOV motions, the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. If the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied.
>
> On appeal from the denial of a motion for directed verdict or JNOV, the appellate court may only reverse if there is no evidence to support the circuit court's ruling. Neither the circuit court nor the appellate court has the authority to decide credibility issues or resolve conflicts in testimony.

Mishoe, 366 S.C. at 200, 621 S.E.2d at 355 (citations omitted). In its Order denying Wal-Mart's motions, the trial court found, "[w]hether Wal-Mart lived up to this duty [to reasonably process credit transactions] is a question solely within the province of the jury, and this Court will defer to the jury's determination in that regard." Order Denying Wal-Mart's Post Trial Motions at 6. The trial court's deference to the jury's verdict has a sacrosanct status under South Carolina law: "It is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." Rhodes v. Winn-Dixie Greenville, Inc., 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967). In addition:

> A trial court may amend a verdict in matters of form, but not of substance. A change of substance is a change affecting the jury's underlying decision, but a change in form is one which merely corrects a technical error made by the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs. After the amendment, the verdict must be not what the judge thinks it ought to have been, but what the jury intended it to be.

> While a trial judge may have the right in certain instances in a civil case to make, or order made, a correction in the verdict of a jury, after discharge of the jury, for the purpose of giving effect to what the jury unmistakably found, that power is limited strictly to cases where the jury has expressed their finding in an informal manner but the Judge cannot, under the power of amending the verdict, invade the province of the jury or substitute his verdict for theirs.
>
> The law rather forbids this court assuming to take upon itself the powers, duties, rights, and privileges of a jury. Obviously, the absolute power to change or modify the findings of a jury upon an issue of fact properly submitted to them would, when exercised, amount to the substitution of the trial judge's findings for the verdict of the jury and to the abrogation in such cases of the right of trial by jury.

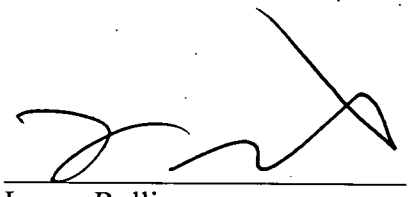
Camden v. Hilton, 360 S.C. 164, 172-73, 600 S.E.2d 88, 92 (Ct. App. 2004) (citations omitted). Defendant Wal-Mart cannot allege that the charges submitted to the jury were in any manner deficient. No required jury charge relating to the negligence cause of action or the damages in this case was omitted, and every charge articulated the correct legal standard applicable for each element of negligence, comparative negligence, damages, and punitive damages.

The jury was presented with the direct evidence of the video of the transaction for which Mr. Solanki was arrested and with circumstantial evidence pertaining to where the allocation of blame for his arrest lay. Clearly, since the jury found a verdict for Defendant Spartanburg County, it allocated the blame for Plaintiff's arrest to Wal-Mart, which created the evidence that led to the arrest. Viewing the evidence in the light most favorable to Respondent, no evidence warrants a finding that the trial Court erred by not granting Wal-Mart's motions, and this Court is constrained to accept the trial court's findings since no

evidence exists that they were governed by any error of law.

CONCLUSION

Under South Carolina law, "An appellate court cannot reduce a verdict and will only strike down a verdict *in toto* in those rare cases where the amount is so shockingly excessive as to indicate it was the result of passion, partiality, prejudice, or corruption." Gathers at 232, 756. In the instant case, Appellant makes no allegation of passion, partiality, prejudice, or corruption. Such an allegation, in a case in which the jury found the Plaintiff 25% comparatively at fault, found one defendant not liable, and requested clarification of the punitive damages standard before making its award, could not be credibly made. For this reason, and for the other reasons articulated above, the judgment of the trial court should be affirmed.



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RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondents' propose the following be included in the Record on Appeal:

1. Excerpts from Transcript of Record (Trial), Volume I, March 6-7, 2012:

   Page(s): 5-410

2. Excerpts from Transcript of Record (Trial), Volume II, March 8-9, 2012:

   Page(s): 7-267

3. Exhibits from Trial March 6-9, 2012:

   Plaintiffs' Exhibits 1-4

Plaintiffs' Exhibits 1-4

Court's Exhibit 6

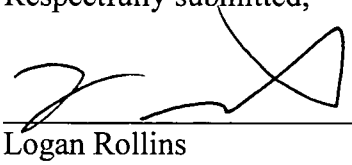
4. Motions for Judgment Notwithstanding the Verdict, for the New Trial Absolute, for New Trial Nisi Remittitur, for Reversal or Reduction of Punitive Damages or far New Trial Pursuant to Thirteenth Juror Doctrine by Wal-Mart Stores East, LP (Filed March 22, 2012)

5. Order Denying Wal-Mart's Post-Trial Motions (Filed October 2, 2012)

Counsel for Respondent certify that this Designation of Matter contains no matter that is irrelevant to this appeal.

May 28, 2013

Respectfully submitted,



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PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal on Appellant, Wal-Mart Store #2806, by depositing a copy of the same in the United States Mail, postage prepaid, on July 17, 2012, to it's attorney of record and the following parties:

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[SIGNATURE PAGE FOLLOWS]

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