

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

SEVENTH JUDICIAL CIRCUIT

Prakash & Urmila Solanki, )

Plaintiffs, )

ORDER DENYING WAL-MART'S  
POST TRIAL MOTIONS

vs. )

Wal-Mart Store #2806, & Spartanburg  
County Sheriff's Office. )

C.A. No.: 2010-CP-42-5929

Defendants. )

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SC Court of Appeals

THIS MATTER INITIALLY CAME BEFORE THE COURT for a hearing on post-trial motions on April 20, 2012 in Greenwood. The Court requested that counsel for Plaintiffs submit a proposed order, which the Court received on July 12, 2012. Due to subsequent objections made by Defendant Wal-Mart and a request from Wal-Mart's counsel that the Court prepare its own order, I have modified Plaintiffs' proposed order. The Court finds as follows:

**PROCEDURAL HISTORY**

Plaintiffs filed suit on November 18, 2010 alleging causes of action for (1) negligence, (2) gross negligence and recklessness, (3) false imprisonment, (4) intentional infliction of emotional distress, (5) defamation/defamation per se, (6) assault, (7) battery, (8) malicious prosecution, and (9) loss of consortium. This case was tried in Spartanburg from March 5, 2012 until March 9, 2012. The Court directed a verdict for Wal-Mart on all of Plaintiffs' causes of action against Wal-Mart with the sole exception of the negligence claim. The jury returned a defense verdict on all counts as to Defendant Spartanburg County Sheriff's Office, and the jury returned a verdict in favor of Plaintiff Prakash Solanki as to his negligence cause of action against Wal-Mart. In awarding damages, the jury assessed actual damages of \$50,000 and

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punitive damages in the amount of \$225,000. The jury also found Plaintiff 25% comparatively at fault.

On April 20, 2012, the Court heard argument on Wal-Mart's post-trial Motions for Judgment Notwithstanding the Verdict (JNOV), for a New Trial Absolute, for New Trial *Nisi Remittitur*, for Reversal or Reduction of Punitive Damages, or for New Trial Pursuant to the Thirteenth Juror Doctrine. The majority of oral argument centered on the punitive damage factors which the Court is required to evaluate in determining the constitutionality of the punitive award under Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991).

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**STATEMENT OF THE CASE**

At the outset, the Court wishes to note that this was a peculiar case. Plaintiff went to Wal-Mart #2806 in Boiling Springs, South Carolina on November 27, 2009 to purchase certain items for an upcoming trip to India. Having collected several items, he proceeded to the checkout where he attempted to pay for his items with a credit card but experienced difficulty completing the transaction. Plaintiff testified that he used his own credit card and possessed no card that did not belong to him. When an employee noticed Plaintiff having difficulty, the employee undertook to "hand key" in the transaction. The credit card number which the employee entered, however, did not correspond to Plaintiff's credit card, belonging instead to Ms. Robin Martin. The employee then made a stenciled impression of Plaintiff's credit card, Plaintiff signed his name, and Plaintiff left the store. Clearly, the credit card number belonging to Plaintiff did not match Ms. Martin's number on the receipt. This entire transaction was recorded on video which the jury had a full and fair opportunity to view.

Subsequently, upon reviewing her credit card charges online, Martin reported the charges as fraudulent. Deputy Gina Cashion of the Spartanburg County Sheriff's Office

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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 Plaintiff's credit card, along with his signature, on one side and the transaction that was charged to Robin Martin's credit card. On the other side of the receipt was Robin Martin's credit card number on a receipt for the purchase price of Plaintiff's items. Deputy Cashion testified that the Sheriff's Office had attempted to contact Plaintiff by leaving a note at his South Carolina home and leaving a message on his home phone. However, Plaintiff was in Georgia at that time. Warrants were subsequently obtained for Plaintiff, and he was arrested in Georgia some months later when he was pulled over for a traffic violation. Plaintiff is an older gentleman, and with the exception of a relatively minor offense many years ago, has never been in trouble with the law.

After his arrest, Plaintiff spent six days in a Georgia jail waiting for the Spartanburg County Sheriff's Office to collect him. He was granted a personal recognizance bond when brought before the Spartanburg magistrate. Plaintiff retained counsel for the criminal charges, and ultimately, the Solicitor *not proseed* all charges against Plaintiff.

At trial, Deputy Cashion testified that Plaintiff had an obligation to prove his innocence and should have contacted the Sheriff's Office regarding its request for his cooperation.<sup>1</sup> According to Deputy Cashion, the probable cause for arrest was predicated on the Wal-Mart receipt and videos provided to her by Wal-Mart.

## LAW AND ANALYSIS

### I. STANDARD OF REVIEW

In deciding a motion for JNOV, the evidence and all reasonable inferences must be

<sup>1</sup> The Court is aware that Deputy Cashion's interpretation of the presumption of innocence may not be legally accurate. However, for the purposes of this civil action, her testimony was relevant the issue of whether Defendant Spartanburg County Sheriff's Office acted reasonably in arresting Plaintiff.

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viewed in the light most favorable to the nonmoving party. Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). The Court may grant a motion for JNOV only if no reasonable jury could have reached the challenged verdict. Id. at 300, 536 S.E.2d at 419 (citing Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)). The Court will not overturn the jury verdict if any evidence exists that sustains the factual findings implicit in its decision. Id. (citing Smalls v. S.C. Dept't of Educ., 339 S.C. 208, 528 S.E.2d 688 (Ct.App.2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct.App.1999)).

A motion for a new trial *nisi remittitur* requires the court to consider the excessiveness of the verdict in light of the evidence presented. Proctor v. Dept. of Health & Envtl. Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (citing Vinson v. Hartley, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996)). However, a court must have compelling reasons to justify invading the jury's province by granting a new trial *nisi remittitur*. Id. (citing Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993)). The judge can only grant a new trial *nisi remittitur* when he finds the amount of the verdict to be excessive. Id. (citing Chapman v. Upstate RV & Marine, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005)). If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute. Id. The jury's determination of damages, however, is entitled to substantial deference. Id. at 321, 628 S.E.2d at 519 (citing Harrison v. Bevilacqua, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003)).

Under the thirteenth juror doctrine, a trial judge may "grant a new trial absolute when he finds the evidence does not justify the verdict." Vinson, 324 S.C. at 402, 477 S.E.2d at 722 (citing Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984)). In choosing whether or not to invoke the doctrine, the trial judge is "charged with the duty of seeing that justice is done," and

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he may do so if the verdict is "unsupported by the evidence" or if the "verdict is inconsistent and reflects the jury's confusion." *Id.* at 403-04, 477 S.E.2d at 722 (citations omitted). The trial judge exercises his discretion based on his view of the facts, the evidence, the witnesses, the trial circumstances, and the verdict. *Id.* at 404, 477 S.E.2d at 723 (citing *Fallon v. Rucks*, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950)).

**II. THE JURY'S VERDICT REGARDING WAL-MART'S NEGLIGENCE AND GROSS NEGLIGENCE/RECKLESSNESS IS INFERENTIALLY BASED UPON COMPETENT EVIDENCE.**

In the light most favorable to Wal-Mart, this Court is not satisfied that JNOV or a new trial are warranted in this case. Wal-Mart argues that it owed no duty to Plaintiff because whatever duty it would have owed to him "[i]n the context of a premises liability claim, as is claimed by Plaintiff herein, '[t]he owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of said duty.'" (Def. Memo. at 8) (citations omitted). Plaintiff did not bring suit against Wal-Mart in a premises liability action for any injuries he sustained as a result of defects on the Boiling Springs Wal-Mart property, and the jury reached no finding on that basis.

The fact that Wal-Mart is a business does not circumscribe Plaintiff's negligence claim to a traditional "premises liability" negligence analysis. Rather, Wal-Mart seeks JNOV on the grounds that Plaintiff did not establish the necessary elements for traditional negligence. (Def. Memo at 9). In a cause of action for negligence, South Carolina has long held that the plaintiff must establish three factors: "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty." *Vinson*, 324 S.C. at 399, 477 S.E.2d at 720. The law of South Carolina

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imposes upon actors the duty of reasonable care under the circumstances. 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) (quoting 38 Am. Jur. Negligence § 14).

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.<sup>2</sup>

Therefore, the proper question is whether there was any competent evidence that Wal-Mart acted unreasonably in processing the transaction. Because the evidence was conflicting, the answer to this question necessarily turns upon an evaluation of the witness's credibility. The jury could have reasonably found that Wal-Mart was liable to Plaintiff because Plaintiff provided Wal-Mart with his own credit card in an honest attempt to pay for the transaction. The jury

<sup>2</sup> To the extent Wal-Mart argues the Court erroneously charged the jury regarding the existence of a duty, it is confusing the existence of a duty with the breach of that duty. The Court's charge clearly delineated that Wal-Mart, as a matter of law, has a duty to act reasonably in conducting its business. The jury was not "left to speculate as to the duty owed and [...] whether Wal-Mart breached [any] unidentified duty." (Def. memo at 8, fn.1)

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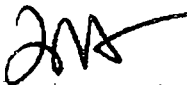
could have believed that Wal-Mart's employee mishandled the transaction, or, at the very least, that Wal-Mart's employee was clearly in a position to verify that the card Plaintiff provided matched the numbers keyed in on the transaction. The jury could have reasonably believed Wal-Mart and its employee's actions amounted to a breach of its duty to act reasonably in processing the transaction.

Furthermore, the jury could have found that upon creating and providing the receipt that would later be used to arrest Plaintiff, it was unreasonable under the circumstances for Wal-Mart to simply turn over the "evidence" for use in a criminal investigation and prosecution and then be willfully ignorant of what would happen as a result. The jury could have found that Wal-Mart breached its duty to act reasonably when it created and disseminated the evidence that would lead to the arrest of Plaintiff, who the jury may well have concluded was innocent of any criminal conduct.<sup>3</sup> The jury's verdict indicates that it determined Wal-Mart breached this duty.

Turning to the question of whether Wal-Mart's breach of this duty proximately caused Plaintiff's damages, under South Carolina law, "[p]roof of proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence. Legal cause is proved by establishing foreseeability. The touchstone of proximate cause in South Carolina is foreseeability. Foreseeability is determined by looking to the natural and probable consequences of the act complained of." Vinson, 324 S.C. at 400, 477 S.E.2d at 721. (citations omitted). Furthermore, "[a] negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have

<sup>3</sup> The fact that the jury found Plaintiff to be 25% at fault indicates that the jury did consider Plaintiff's relative culpability in the transaction. Put another way, the jury must have concluded that Plaintiff bears some responsibility for having been arrested in that he either failed to contact the Sheriff's Office in a timely manner and explain the situation, or he should have also been more attentive and noticed the irregularity on the credit card receipt.

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occurred.” Crolley v. Hutchins, 300 S.C. 355, 357, 387 S.E. 2d 716, 717 (Ct. App. 1989) (emphasis added). That the Sheriff’s Office was absolved of any independent liability is immaterial to the question of whether the Wal-Mart’s actions set in motion a foreseeable series of events leading to Plaintiff’s damages. Under South Carolina law, “it is not necessary that the actor [Wal-Mart] should have contemplated the particular chain of events that occurred, but only that the injury at the hand of the intervening party [the Sheriff’s Office] was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act.” Shepard v. S.C. Dept. of Corr., 299 S.C. 370, 375, 385 S.E. 2d 35, 38 (Ct. App. 1989) (emphasis added).

Certainly neither party contests that Plaintiff was arrested as a result of the transaction engaged in while he was a customer of Wal-Mart. The jury heard testimony from Plaintiff that he did not have Martin’s card in his possession when the transaction that led to his arrest took place. According to that testimony, a Wal-Mart employee made an impression of Plaintiff’s credit card. On the other side of paper containing this impression was a transaction charged to Martin’s credit card. A Wal-Mart employee hand keyed Martin’s credit card number to process the transaction. Furthermore, Deputy Cashion testified that Wal-Mart provided all the evidence upon which the Sheriff’s Office relied in seeking warrants against Plaintiff for financial transaction card fraud.

Accordingly, although the Sheriff’s Office may have made the arrest, the jury inferentially found that Wal-Mart breached its duty to Plaintiff when it provided the evidence of this transaction to the Sheriff’s Office, which was investigating a case of financial transaction card fraud. The jury could have felt that Wal-Mart should have anticipated and foresaw that the

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material they provided were negligently created and collected, and could result in the arrest of their customer.

Finally, to the extent Wal-Mart argues that Plaintiff's negligence claim rests upon the doctrine of *res ipsa loquitur*, the Court finds Wal-Mart's argument misplaced. South Carolina does not recognize this doctrine, and Plaintiff's case did not require application of this doctrine to prevail. South Carolina Courts have long recognized the existence of circumstantial evidence, and "the issue of proximate cause may be resolved by direct or circumstantial evidence." Mahaffey v. Ahl, 264 S.C. 241, 241, 214 S.E.2d 119 (1975). In fact, South Carolina law contains numerous examples of criminal defendants being found guilty beyond a reasonable doubt for specific intent crimes based solely on circumstantial evidence. See, e.g., State v. Gripton, 327 S.C. 79, 489 S.E. 2d 462 (1997).

Here, the jury received charges regarding direct and circumstantial evidence, as well as charges regarding the fact that punitive damage must be assessed only if established by clear and convincing evidence. Of course, in order for a civil defendant to be held liable for the act of damages, the jury must make its factual determination only by a preponderance of the evidence. For the jury to award punitive damages, it must find that a fact has been established by clear and convincing evidence. If circumstantial evidence can sufficiently meet the "beyond a reasonable doubt" standard, apodictically, circumstantial evidence can establish a factual matter by either a preponderance of the evidence or by clear and convincing evidence.

Irrespective of the foregoing circumstantial evidence analysis, the jury had direct evidence which they could have reasonably concluded demonstrated Wal-Mart's negligence. The jury viewed the video of the transaction that led to Plaintiff's arrest. It had direct evidence of the event, and based on this evidence, the jury could have found that Plaintiff presented his own card

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to the Wal-Mart associate who negligently assisted him with his transaction. Every second of Plaintiff's conduct while using, or attempting to use, a credit or debit card in Wal-Mart on the day of the transaction was viewed repeatedly by the jury. Based in part upon this direct evidence, the jury found Wal-Mart liable.<sup>5</sup>

Disturbance of a jury's verdict is not to be lightly invoked simply because a party has unsuccessfully tried its case. South Carolina law upon this point is longstanding, clear, and unequivocal: "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 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).

This verdict is not the result of jury confusion. In fact, that the Court recharged the jury

<sup>5</sup> The Court wishes to note that had the jury returned with a defense verdict, the Court would be using exactly the same reasoning to deny Plaintiff's motion for a new trial. Because disputed issues of fact are decided based upon the collective wisdom of twelve jurors who must unanimously agree on the result, this Court should be very hesitant to vitiate their findings with respect to those facts.

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regarding punitive damages to correct a scrivener's error in the pattern jury instruction when the jury discovered the error. Whatever momentary lack of clarity may have resulted from this scrivener's error was immediately remedied by clarifying the charge.

Again, the jury was presented with the direct evidence of the video of the transaction for which Plaintiff was arrested and with circumstantial evidence pertaining to where the allocation of the blame for his arrest lay. The jury returned a defense verdict as to the Sheriff's Office on both causes of action against it, and a verdict in favor of Plaintiff as to the negligence cause of action against Wal-Mart. It also found Plaintiff 25% comparatively negligent. Since the jury's finding regarding both claims rested on a probable cause determination, the jury's verdict as to the Sheriff's Office appears to be based on a finding that the Sheriff's Office had probable cause to arrest Plaintiff based on the information provided to it by Wal-Mart. Judge Paslay, the magistrate who issued the warrants, testified that he believed probable cause did exist upon the evidence in the possession of the Sheriff's Office at the time of the arrest. Therefore, the jury clearly found that Plaintiff did not meet his burden of overcoming the *prima facie* evidence of probable cause provided by the issuance of the arrest warrant and accordingly found for the Sheriff's Office on Plaintiff's causes of action against it.

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For the reasons stated above, the jury found in favor of Plaintiff against Wal-Mart. Its finding Plaintiff comparatively negligent may well have resulted from the Sheriff Office's often-articulated position that Plaintiff should have responded to the letter left on his door by the Sheriff's Office prior to his arrest. The jury apparently accepted this argument and expected Plaintiff, in effect, to "mitigate his damages" by contacting the Sheriff's Office and proving his innocence, as Deputy Cashion testified he should have, prior to the charges against him being brought. The jury's verdicts as to all the parties, in short, can be reconciled.

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III. THE JURY FOUND THAT PLAINTIFF ESTABLISHED THAT HIS DAMAGES WERE THE RESULT OF WAL-MART'S RECKLESS, WILFULL, OR WANTON CONDUCT AND THAT FINDING WAS NOT THE RESULT OF PASSION, CAPRICE OR PREJUDICE.

The Court is likewise not convinced Wal-Mart is entitled to a reduction of the jury's damages award. As to the award of actual damages, Plaintiff did not allege special damages that were subject to simple arithmetical computation such as the damages for hospital bills in a personal injury case. Instead, the jury was required to assess a numerical value for the entire experience suffered by Plaintiff. Because of the nature of assessing these types of damages, the Court will not overturn or reduce the jury's award of \$50,000 in actual damages.

As to the remainder of the damages award, South Carolina's rules about punitive damages are longstanding:

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)). As a matter of law, "[t]he issue of punitive damages must be submitted to the jury if

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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. OHG of Lake City, Inc., 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005).

Accordingly, punitive damages exist not only to deter the wrongdoer and other potential wrongdoers, but also to compensate the plaintiff for the invasion of his rights; in this case, Plaintiff maintained the right violated was the right to liberty itself. In order to determine whether punitive damages are warranted, the conduct engaged in must have been reckless, willful, or wanton, and

[t]he 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 Am., N.A., 395 S.C. 611, 625, 720 S.E.2d 473, 480 (Ct. App. 2013) (emphasis added) (citations omitted). In addition, "[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).

Subsequent to an award of punitive damages, the court is required to

conduct a post-trial review and may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) [ . . . ] "other factors" deemed appropriate.

Gamble, 305 S.C. at 111-112, 406 S.E.2d at 354.

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In the present case, evidence existed from which a reasonable jury could infer that Wal-Mart was not only aware of the dangerous condition but that it also created it. Namely, Wal-Mart knew its employee hand keyed the transaction. Therefore, the Court properly submitted the issue of punitive damages to the jury. Furthermore, the jury did not have to speculate about what happened to Plaintiff. Plaintiff presented testimony that he did not use Martin's card, and the jury viewed a video of the transaction. The jury also heard testimony regarding Plaintiff's arrest and incarceration. As previously mentioned, credibility and evidentiary determinations are best left to the finders of fact.

The jury was clearly not motivated by passion, caprice, or prejudice. It rendered a defense verdict as to the Sheriff's Office and found Plaintiff comparatively negligent, apparently for his failure to ensure he discussed his case with the Sheriff's Office. Although these findings are not determinative in assessing passion, caprice, or prejudice, the Court considers them as good indication that the jury reasonably deliberated the issue of liability for Plaintiff's deprivation of liberty.

With regard to the constitutionality of the punitive award, the Court finds the due process is not offended. First, the punitive to actual ratio (less than 6 to 1 even after deducting Plaintiff's comparative negligence) is well within "10 to 1" constitutional limits of due process suggested by the United States Supreme Court in BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996). Second, the verdict would be well within the range statutorily permitted under South Carolina's newly enacted Tort Reform.<sup>6</sup> Third, the jury conceivably made its punitive determination for legally sufficient reasons: to punish Wal-Mart for disregarding its employee's

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<sup>6</sup> Although not applicable to this case, the General Assembly's determination as to acceptable punitive awards certainly is instructive.

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mistake, to discourage this scenario from occurring to Wal-Mart customers again, and to compensate Plaintiff for his deprivation of liberty.

Significantly, the verdict rendered by the jury was also based on general, rather than special damages, thus vitiating the ratio analysis engaged in by the Supreme Court in BMW and its progeny. As the Court stated in BMW:

Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach. We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concern of reasonableness ... properly enter[s] into the constitutional calculus.

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BMW at 582-83 (citations omitted).

Because the dollar value of actual damages arrived at by the jury was, of necessity, subjective, and not grounded in bills incurred by the Plaintiff, the allocation of the dollar value between the actual and punitive components of the award has less significance than it would in an ordinary scenario with clearly demarcated special damages against which the punitive verdict could be compared for excessiveness. Whether the damages are denominated "actual" or "punitive" has less significance in the present context so long as the award satisfies "reasonableness." The jury determined that a verdict of \$275,000.00 (reduced by 25% for Plaintiff's comparative negligence) is reasonable for the six day term of imprisonment, with its attendant ills, that Plaintiff suffered. Although perhaps in excess of what the Court would have

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awarded had the matter been tried by the bench, the Court cannot find a significant or substantial reason to disagree with the jury's award.<sup>7</sup>

Finally, an analysis of the Gamble factors favors affirmation of the jury's punitive verdict for the following reasons:

(1) *Defendant's degree of culpability*: Wal-Mart, as noted above, was the party responsible for creating and disseminating the "evidence" used in the criminal proceedings. Put another way, all evidence gathered during the prosecution of the criminal case against Plaintiff originated from Wal-Mart. Wal-Mart was the party in the best position to point out the employees hand-keying of the transaction to the Sheriff's Office.

(2) *Duration of the conduct*: The transaction at issue took only a few minutes. However, upon being contacted by law enforcement, Wal-Mart did not offer an explanation as to the peculiar nature of this transaction or the clear discrepancies between the credit cards numbers. Had Wal-Mart acted sooner or at least noticed the discrepancies, Plaintiff may have been cleared of the criminal allegations sooner.

(3) *Defendant's awareness or concealment*: Again, Wal-Mart created the documents that led to Plaintiff's arrest. It had exclusive possession and knowledge of the totality of the information that led to the arrest. Wal-Mart was also in a unique position to facilitate the transaction, to ensure that Plaintiff's credit card was properly debited for the transaction, and to point out the discrepancy to the authorities.

<sup>7</sup> By way of background or dicta, in pretrial discussions with counsel which were not part of the record, the Court suggested a figure of \$10,000 per day for each day Plaintiff was jailed as being a satisfactory resolution of the case prior to trial. The Court's recollection was that none of the parties considered this sum acceptable, and Plaintiff in particular felt a sum in the \$300,000 range was more appropriate. Clearly and in hindsight, counsel for Plaintiff was better able to approximate the value of his case and the sentiment of the people of Spartanburg than was this judge.

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(4) *The existence of similar past conduct:* How frequently Wal-Mart has engaged in the same or similar conduct was not presented at trial, and based upon the very unusual way this transaction took place, the Court doubts that similar transactions occur with any frequency.

(5) *Likelihood the award will deter the defendant or others from like conduct:* In all likelihood, Wal-Mart stores engage in millions of transactions daily. Certainly a punitive damages award would encourage Wal-Mart to match the purchaser's identification and/or credit card with the credit card number being used in "hand-keyed" transactions. Such is not an onerous burden, and the Court is of the opinion that any merchant would be well-advised to verify transactions so as to prevent fraudulent purchases in general as well as the type of harm occasioned by Plaintiff in this case. To these ends, a punitive damage award would certainly encourage greater oversight and verification by Wal-Mart and other similarly situated merchants.

(6) *Whether the award is reasonably related to the harm likely to result from such conduct:* As stated in paragraph (5), when verifying a customer's identity and car and matching same to the credit card used is so easily and inexpensively accomplished, the Court must conclude that the award is reasonably related to the harm suffered by Plaintiff and others who may be improperly accused of a crime due to the negligence of this defendant or others.

(7) *Defendant's ability to pay:* Any moderately successful national business would be able to pay the jury's award without an undue burden. Wal-Mart's ability to pay is axiomatic.

(8) *Other factors:*

The jury witnessed a video of the transaction that led to Plaintiff's arrest. He then spent six days in jail as a result of the botched transaction. Although Wal-Mart and the Court may speculate about the precise mechanism by which the jury made its punitive determination, such vague speculations do not give rise to any legally cognizable reason for voiding or altering the

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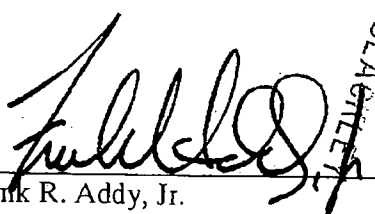
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jury's unanimous decision. The jurors witnessed, with their own eyes, the transaction that led to Plaintiff's arrest, and they rendered a punitive verdict that is within the limits of due process.

Finally and significantly, the Court finds that the trial jury was not a rogue or runaway jury in any sense of the words. Throughout this week-long trial, the jury was very attentive to the witnesses, counsel, and the Court. The jury's level of attentiveness to the Court's instructions regarding punitive damages is reflected by the typographical error they noticed when reviewing the Court's instructions on punitive damages, an error which went unnoticed by all counsel and the Court until brought to our attention by the jury. Certainly, Wal-Mart disagrees with the jury's findings of fact and awards made, and Plaintiff certainly disagrees with the jury's exoneration of the Sheriff's Office. However, being respectful of the role of juries in our justice system, this Court cannot find, upon a review of the evidence and consideration of the law, that the jury's verdict is improper or excessive under our State's jurisprudence.

**CONCLUSION**

**IT IS THEREFORE ORDERED** that Defendant Wal-Mart's motions for Judgment Notwithstanding the Verdict, for a New Trial Absolute, for New Trial Nisi Remittitur, for Reversal or Reduction of Punitive Damages, or for New Trial Pursuant to the Thirteenth Juror Doctrine are respectfully **DENIED**.

**IT IS SO ORDERED.**

  
Frank R. Addy, Jr.  
Circuit Court Judge  
Eighth Judicial Circuit

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September 25, 2012  
Greenwood, South Carolina