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Dec 11 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit
Hon. Michael G. Nettles, Circuit Court Judge

Appellate Case No: 2022-000303

April Jones,Respondent,

v.

Tim Ringer, individually and as employee/agent of Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630; Wal-Mart Stores, Inc; and Wal-Mart Stores East, L.P.Defendants,

of which

Wal-Mart Stores, Inc; and Wal-Mart Stores East, L.P. areAppellants.

RESPONDENT'S PETITION FOR
REHEARING

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INTRODUCTION

Pursuant to Rule 221, SCACR, Respondent April Jones files this Petition for Rehearing to request the Court reconsider its November 26, 2025 published opinion wherein it reversed the trial court's denial of Appellant's motion for a new trial and held the trial court's failure to give a curative instruction following the display of photographs during Jones's opening statement constituted reversible error. Respectfully, the Court's opinion misstates critical facts and reversed a substantial verdict rendered after a weeklong trial for reasons that are not supported in the record.

This Court based its reversal on its conclusion that the jury was shown "all" of the photographs at issue in the motion *in limine*. This is incorrect. There were a total of nineteen photos that were the subject of the motion *in limine*. As a result of that hearing, the trial judge stated he intended to exclude only those photographs which showed destructive testing. (R. p. 2606, line 22 – p. 2607, line 6). However, he specifically did not exclude all the photos, stating that preliminarily, "if there's clearly no destructive testing that's been performed, I'm gonna allow, allow those to be referred to", albeit with a limiting instruction. (*Id.*).

Further, to base reversal on photos being improperly shown to the jury, it was incumbent on Walmart and this Court in its opinion, to specify which photos were in fact objected to. Walmart completely failed to carry its burden in this regard, and respectfully, this Court misconstrued the facts in its conclusion that plaintiff's counsel showed "all" the photos to the jury. The record clearly demonstrates otherwise. Not only were all nineteen not displayed, but Walmart failed to delineate which photos were at issue.

This Court also overlooked that to warrant reversal, Walmart was required to show it was prejudiced by the display of the photos, but it did not do so. Jones's first and strongest argument

in support of this petition is that Walmart lost its opportunity to argue this issue by not identifying precisely which photos were involved, but even overlooking this critical failure, Walmart cannot show prejudice because (1) Walmart requested a specific curative instruction that the trial court properly refused because it constituted a comment on the facts, (2) the trial court charged the jury that it should only consider matters which were in evidence and these photos were not in evidence, (3) under our jurisprudence, it must be assumed that the jury followed this instruction, (4) the photos were cumulative to other evidence that came in during the trial, and (5) it stretches credulity to suggest that after a five-day trial with multiple witnesses, the jury's verdict was based on something it was shown briefly during opening statements.

For these reasons, the Court should grant rehearing, withdraw its opinion, and issue a substituted opinion affirming the trial court and upholding the verdict.

ARGUMENT

I. The record on appeal does not support the Court's findings or its decision that the trial court committed reversible error.

Jones requests this Court to consider the relevant portion of the motion *in limine* hearing and the plaintiff's opening statement, which are set out below. Walmart filed a motion *in limine* seeking to exclude a total of nineteen photographs taken at the store by Jones's counsel, seventeen on May 15, 2019 and two on April 11, 2017. (R. pp. 925-29). These nineteen photos were included as exhibits to its motion *in limine*. (R. pp. 1078-95; 1125-26). During the motion hearing, which occurred remotely on Friday the week before trial, Walmart argued *all* the 2019 photographs should be excluded by Rules 401 and 403, SCRE, and Rule 34, SCRCF. (R. p. 2599, line 22 – p. 2600, line 9).

However, the trial court did not grant Walmart's request to exclude all the photos, ruling

only those photos showing circumstantial evidence of destructive testing would be excluded. Specifically, the trial court stated, “[t]he picture of the destructed pallet is gonna be excluded[.]” (R. p. 2604, lines 18-19). Walmart then asked the trial court to apply its ruling “to any and all photographs taken during the May, 2019 improper inspection.” (R. p. 2606, lines 2-3). The court again rejected Walmart’s request that all the photos be excluded, instead ruling:

I am gonna allow the pictures...and I will review them again, but preliminarily, ... I will take a look at all 17¹ when it comes in to introduce them. But, preliminar[ily], if there’s clearly no destructive testing that’s been performed, I’m gonna allow...those to be referred to but there’s gonna be a limiting instruction that...this was taken four years after the accident and that it’s offered for the limited purpose of whether or not the pallets are up to ANSI standards.²

(R. 2606, line 22 – p. 2607, line 6) (cleaned up). The trial court then ruled on Walmart’s request for sanctions, stating “excluding the photograph in question that shows...a damaged pallet is sanction to some extent.” (R. p. 2609, lines 13-15). Thus, the record unequivocally shows that during the pretrial hearing, the trial court only ruled that photographs showing destructive testing were inadmissible; indeed, the court only excluded a single photograph. The remaining photos were not excluded.³

During plaintiff’s opening statement, the relevant portion of which begins at the bottom

¹ Walmart requested in its written motion that two photos taken in April 2017 be excluded, (R. pp. 925-29), but Walmart did not raise this issue at the hearing or obtain a ruling on the 2017 photos. The trial court’s statement demonstrates that only the seventeen 2019 photos were at issue before him in the motion *in limine*. Thus, the 2017 photos clearly were not excluded pretrial.

² At trial, Jones’s counsel also argued that even though the photos were taken some years subsequent to the incident, they were relevant on the issue of punitive damages and Walmart had not moved to bifurcate the trial. (R. p. 2713, lines 9-13). Thus, at the time Jones’s counsel showed the photos during opening statements, counsel had a reasonable belief that the photos were admissible because the trial court preliminarily ruled it would permit photos that did not show destructive testing and the photos were relevant to the issue of punitive damages.

³ Accordingly, this Court’s opinion misstates the fact that “[d]uring the pretrial motions, the court properly ruled the photos inadmissible[.]” (Opinion, p. 3).

of page 2709 and continues to page 2710 through line 15, counsel for Walmart objected to the display of photos. The entirety of the opening statement regarding the photos is reproduced below:

Jones's Counsel: But remember what Mr. Ringer said. You can see that wood (inaudible). That's wood. That's a pallet. And you'll hear him testify to that, okay, during the course of this case.

And you'll see some other photographs, because surely, after all of this, Walmart would have made sure that they would not continue to leave unmaintained wooden pallets on the sales floor and endanger people; right? No.

You'll see these photographs, and you'll hear expert testimony that these pallets do not comply with ANSI standards. You'll see missing nails. And those are the same color, the Walmart sales floor on the videos. You'll see all kinds of nails used to repair pallets that are on the sales floor.

You'll see a photograph of a pallet with a nail sticking out on the Walmart sales floor, and you'll see it in larger. You'll notice the "Rollback" sign up there, just in case you have any doubt.

Walmart's Counsel: Your Honor –

Jones's Counsel: And you'll have the opportunity –

Walmart's Counsel: I've got to make an objection.

(R. p. 2709, line 21 – p. 2710, line 15). The trial court instructed the jury to exit the courtroom so that the issue of the photos could be discussed outside its presence, and the parties then engaged in a colloquy with the court. (R. p. 2710, line 16 – p. 2715, line 25). Critically, Walmart never identified a single photograph nor asked the photos to be marked as court exhibits. Nowhere in the record on this issue on which this Court grounded its reversal is there any delineation of the precise photos involved or how many were shown to the jury, an oversight by Walmart that should be dispositive. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005) (“Appellant had the burden of providing a sufficient record.”).

Walmart did not identify to this Court the specific photos shown to the jury because those photos were never identified at trial. It should be patently (and painfully) obvious to this Court that Walmart included many extraneous and duplicative matters in the record, including not only multiple copies of the same deposition but the entire trial testimony TWICE. To be sure, if the specific photos viewed by the jury had been identified at trial, Walmart would have included them in the record. This is a critical and fatal error by Walmart and surely cannot serve as the basis for reversal of this lengthy trial and substantial verdict. Yet despite this glaring omission and with absolutely nothing to support its assertion, Walmart contends the photos were the same ones excluded by the trial court during the motion *in limine* hearing, and regrettably, this Court accepted Walmart's argument, despite the utter lack of support for it in the record. In order to reverse a weeklong trial that culminated in a substantial verdict, there should be no question which photos were actually displayed to the jury. It was Walmart's obligation to delineate those photos, and it did not do so. Moreover, the portion of the opening statement quoted above makes it clear that at most, only a handful of photos were very briefly displayed. Accordingly, Jones respectfully submits that this Court erred in stating that: "During opening arguments, Jones's counsel showed *all* of the photos to the jury without introducing them into evidence." (Opinion, p. 3).

The discussion of this issue between the trial court and the attorneys outside the jury's presence also highlights the error of this Court in concluding that "all" seventeen photos were displayed by plaintiff's counsel during his opening statement. A review of that colloquy demonstrates that any photos displayed during opening were not those excluded during the motion *in limine*. Jones's counsel specifically raised that point on page 2713 of the record, Walmart's counsel did not voice any disagreement, and the trial judge did not disagree, stating in

his ruling: “I’m going to sustain the objection with regard to showing of any pictures of any pallets during the opening, and we’ll address the admissibility of each one of them on the merits when it comes up.” (R. p. 2713, line 24 – p. 2714, line 2).⁴

There is absolutely nothing in the less than a page of the record during the opening statement when these photos were mentioned that supports this Court’s conclusion that all the photos were displayed to the jury, nor is there anything in the colloquy between the attorneys and the trial judge that supports this. Again, Jones would ask this Court to review the less than one page in the record where the photos came up. There is no way Jones’s counsel could have displayed so many photos in such a short time span. Indeed, it appears that Walmart immediately objected, giving rise to the inference that the jury saw only a couple of photos. If all the photos were actually displayed, as this Court’s opinion appears to conclude, a cogent argument could be made that Walmart did not object at the earliest opportunity.

Regardless, the overarching and arguably dispositive point is that Walmart never identified—either on the record at trial or before this Court—which specific photos were shown or even how many photos were displayed. Without this requisite showing, it was erroneous for this Court to base its reversal on the conclusion that Plaintiff’s counsel showed “all” excluded photos to the jury during his opening. Additionally, it is impossible to conduct an analysis of prejudice without the record containing this information. Respectfully, the Court’s decision appears to hold that even when the record contains no evidence to demonstrate prejudice because

⁴ While Petitioner has no burden to explain which photos were actually shown to the jury, she does note that it seems rather obvious that had Petitioner’s counsel shown the photo excluded pretrial, the trial court would have admonished counsel for doing so. Instead, in response to Jones’s argument that only one photo had been excluded pretrial, the trial court responded, “Well, that was the reason why I excluded that particular photograph.” (R. p. 2711, lines 19-20). The most logical inference is that the photo shown was not the one excluded pretrial.

the alleged prejudicial photos were never identified, an appellate court may presume prejudice. This cannot be the law.

II. The trial court did not err in declining to give Walmart's requested curative instruction.

Respectfully, this Court overlooked the fact that the curative instruction Walmart requested was materially different than the limiting instruction suggested by the trial court during its pretrial ruling. During the *in limine* hearing, the trial court advised that it would inform the jury that the photos were “taken four years after the accident and that it’s offered for the limited purpose of whether or not the pallets are up to ANSI standards.” (R. p. 2607, lines 2-6).

At trial, Walmart’s counsel objected to the display of photographs during opening, the trial court sustained that objection, and Walmart asked for a curative instruction “to explain to the jury that these are photos from 2019 that have simply no connection to Ms. Jones’s incident in 2015 beyond pure speculation from the plaintiff’s counsel.” (R. p. 2714, lines 3-6). This request was tantamount to a comment on the facts, and the trial court correctly denied the request as made. Importantly, Walmart never asked for a more neutral instruction or requested that the jury be told to disregard the photographs. Walmart also did not request the court to give a version of the limiting instruction mentioned by the trial court in its pretrial ruling. *See S.C. Dep’t of Highways & Pub. Transp. v. Galbreath*, 315 S.C. 82, 83, 431 S.E.2d 625, 627 (Ct. App. 1993) (“The Supreme Court has indicated that even where a motion *in limine* is granted, it is not the final ruling on the admissibility of the evidence.”). Walmart’s failure to request a proper curative instruction rather than one which skirted dangerously close to a comment on the facts should not have been viewed by this Court as an error by the trial court.

III. The lack of a curative instruction did not prejudice Walmart.

Respectfully, Walmart did not demonstrate that the failure to give a curative instruction resulted in prejudice. First, it is important to note that the trial court instructed the jury: “You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record, and any stipulations of counsel.” (R p. 3457, lines 12-15).⁵ Jurors are presumed to follow the law as instructed to them. *State v. Reyes*, 432 S.C. 394, 409, 853 S.E.2d 334, 342 (2020). It is clear the photographs were not exhibits that were made a part of the record.⁶ Therefore, the Court erred in concluding that “without a curative instruction, the jury was left to consider the photographs with whatever weight they deemed necessary.” (Opinion, p. 4). To the contrary, the failure to give a curative instruction was not prejudicial. *Kalchthaler v. Workman*, 316 S.C. 499, 502, 450 S.E.2d 621, 622-23 (Ct. App. 1994) (“[W]e are satisfied any failure by the trial judge to give curative instructions to the jury and to admonish opposing counsel after opposing counsel made the offending comments [during closing argument] did not so affect the jury as to amount to prejudicial error and require a new trial.”).

Further, even though Walmart did not establish which photos the jury may have been

⁵ The trial court also gave a preliminary charge at the beginning of trial and explained that opening statements are an opportunity for the lawyers to explain the case “in summary fashion.” (R. p. 2687, lines 19-21). The court then said the plaintiff would have “to put up their evidence . . . The presentation of evidence takes a number of different forms. What the witness says is evidence for you to consider. Pay very close attention. Documents that are introduced into evidence, documentary evidence, that’s evidence for you to consider in your deliberations.” (R. p. 2688 lines 8, 22 – p. 2689, line 1). Thus, at the outset, the jury was carefully and thoroughly apprized as to what constitutes evidence in a case.

⁶ Twenty-one exhibits were entered into evidence during trial. Each time an exhibit was entered, the jury heard counsel ask for the exhibit to be entered, the court ask whether there was an objection, and then the evidence was admitted. This procedure is in stark contrast to what the jury briefly saw during opening statements. Moreover, the exhibits would have been in the jury room during deliberations, and the photos displayed during opening were not.

shown, they were clearly cumulative to the evidence introduced during the trial, and therefore, no prejudice exists. *Dawkins v. Sell*, 434 S.C. 572, 589, 865 S.E.2d 1, 10 (Ct. App. 2021) (finding no prejudice where any error in admitting a party's answer was cumulative to other evidence). Unquestionably, evidence was adduced that the wooden display pallets used by Walmart contain nails. (R. p. 2829, lines 23-25). Tim Ringer, store manager of the Florence Walmart, testified that the display pallets in the store contain "wood, nails, [and] staples." *Id.* Walmart's assistant manager, Ayesha Cooke-Simmons, testified that other than one of the wooden pallets, there is nothing inside the store with nails in it. (R. p. 2917, line 24 – 2918, line 16). The store's roof does not have shingles, and the cash registers and conveyor belts are made of metal. *Id.* Additionally, there was testimony that the wooden pallets are occasionally damaged in transit to the store. (R. p. 2963, line 23 – 2964, line 16). Store Manager Ringer also testified that although vendor display pallets are inspected for stability and/or appearance, they are not inspected for nails. (R. p. 2889, lines 15-17). Ringer conceded that Walmart did not inspect the pallets coming into the store and that he "had no way of knowing" whether the nail came out of one of the wooden display pallets. (R. p. 2888, line 10 – 2889, line 17, 2890, line 25). Ringer also confirmed that on the day of the incident, there was at least one wooden pallet in the grocery action aisle in contradiction to Walmart's denial in its interrogatory responses. (R. p. 2830, lines 1-22).

Kevin Lane, an assistant manager at the store who was the acting store manager on the day of the incident, testified that sometimes, the pallets are broken when they are received off the truck. (R. p. 3247, lines 6-15). He also stated that he had witnessed pallets on the floor that were not intact, and when that happens, there is "wood everywhere." *Id.* Thus, there was testimony in the record demonstrating wooden pallets were used at Walmart and that these

pallets can become damaged.⁷

In finding prejudice, the Court relied on two cases that are inapposite, primarily because they concern jury charges rather than curative instructions. For example, *Fairchild* involved a jury charge on the intervening negligence of a third party. *Fairchild v. S.C. DOT*, 398 S.C. 90, 102, 727 S.E.2d 407, 413 (2012) (finding reversible error for declining to give an intervening negligence of a third party charge when there was “an abundance of testimony” supporting inference that some of plaintiff’s injuries were caused by a third party). Additionally, *Ross* involved the trial court’s decision to charge comparative negligence without including an instruction that the defendant had the burden of proving the negligence of the plaintiff. *Ross v. Paddy*, 340 S.C. 428, 436, 532 S.E.2d 612, 616 (Ct. App. 2000) (reversing where “the trial court did not instruct the jury that the defendant had the burden of proving the negligence of the plaintiff. The charge does not explicitly state this, and taken as a whole, does not convey this message to the jury”). Respectfully, failing to give a curative instruction is not the type of “controlling legal principle” that warrants reversal, especially when the requested instruction by Walmart was more akin to a comment on the facts rather than a proper curative instruction.

Moreover, Jones submits this Court overlooked the fact that Walmart’s potential liability was not based only upon its use of wooden pallets, and that therefore, the display of the photos and the failure to give a curative instruction could not form the basis for reversal. This case was presented to the jury on two independent theories: (1) that Walmart created the danger by permitting wooden pallets containing nails in the store, or, alternatively, (2) that Walmart had

⁷ This testimony must be viewed in the light most favorable to Jones. While the Court cited this standard, it arguably applied a de novo review of the facts. For example, the Court stated, “In fact, video of the aisle on the date of injury shows the floor was clean and free of debris from pallets.” (Opinion, p. 3). Respectfully, this statement is not in keeping with the stated standard of review.

sufficient time to find the nail and remove it. Under the second ground, whether Walmart created the danger by using pallets is not dispositive if the jury concluded that Walmart had sufficient time to remove the nail. Thus, even if the photographs prejudiced Walmart concerning the source of the nail, which Walmart did not establish, the photographs displayed during opening have absolutely no bearing on whether Walmart complied with its own stated cleaning procedures or had sufficient time to discover and remove the nail. It is impossible to discern from the jury's general verdict on which ground it was based. Because there is evidence in the record to support the second basis, the Court's conclusion that Walmart suffered prejudice is not supported by the record. *See Goodwin v. Kennedy*, 347 S.C. 30, 47, 552 S.E.2d 319, 328 (Ct. App. 2001) ("Where a case is submitted to the jury on two or more theories and a general verdict is returned, the verdict will be upheld if it is supported by at least one of the theories.").

Finally, it strains logic to suggest that after a five-day trial with multiple witnesses, over twenty exhibits, and extensive video footage of the store showing Jones on the day she was injured,⁸ the jury's verdict was based on the brief display of an unknown number of photographs that neither Walmart nor this Court can specifically identify in the record. Accordingly, Jones respectfully requests this Court grant rehearing, withdraw its current opinion, and issue a substituted opinion affirming the trial court's decision to uphold the verdict.

CONCLUSION

For the foregoing reasons, this Court should grant rehearing and issue a substituted opinion upholding the jury's verdict.

⁸ Jones still contends that it was proper for the jury to consider in its deliberations the missing video footage that Walmart did not provide despite sending a preservation letter.

Respectfully submitted,

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Wal-Mart Stores, Inc; and Wal-Mart Stores East, L.P. areAppellants.

PROOF OF SERVICE

I, the undersigned attorney for Respondent April Jones, do hereby certify that I have served all counsel of record in this action with a true and correct copy of Respondent's Petition for Rehearing via electronic mail, pursuant to Supreme Court Order 2024-04-24-01 and a copy of that electronic mail is attached.

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Date: Thursday, December 11, 2025 3:40:22 PM
Attachments: [image001.png](#)
[image002.png](#)
[2025.12.11 - Respondent's Petition for Rehearing.pdf](#)

Attached is a copy of the Respondent's Petition for Rehearing in the above matter. The Petition will be filed with the Court this afternoon.

Best regards,
Cricket Rawls



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SC Court of Appeals

December 11, 2025

Via Email

The Honorable Jenny Abbott Kitchings
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Re: April Jones v. Tim Ringer
Appellate Case No: 2022-000303

Dear Ms. Kitchings:

Enclosed for filing with your office are Respondent's Petition for Rehearing and Proof of Service. All counsel of record are being served with same via electronic mail.

The filing fee for this petition will be delivered to the Court on December 11, 2025.

Sincerely,

s/Kaye G. Hearn

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Enclosures

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