THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Hon. Michael G. Nettles, Circuit Court Judge

Appellate Case No: 2022-000303

Opinion No. 6125 (Ct. App. filed Nov. 26, 2025)

April Jones, ...Petitioner,

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. are .....Respondents.

PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

Kaye G. Hearn (SC Bar No. 2891)
Brian Critzer (SC Bar No. 103159)
Wyche, P.A.
807 Gervais St., Suite 301
Columbia, SC, 29201
(803)-254-6542
khearn@wyche.com
bcritzer@wyche.com

George M. Hearn (SC Bar No. 02889)
HEARN & HEARN, P.A.
1411 First Avenue
Conway, SC 29526
843-248-3172
ghearn@sccoast.net

Lane D. Jefferies (SC Bar No. 101764)
Roy T. Willey, IV (SC Bar No. 101010)
Eric M. Poulin (SC Bar No. 100209)
Poulin, Willey, Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
lane@poulinwilley.com
roy@poulinwilley.com
eric@poulinwilley.com

Attorneys for Petitioner April Jones

INDEX

TABLE OF AUTHORITIES

Cases

Rules

CERTIFICATE OF COUNSEL

Counsel for Petitioner April Jones certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on February 20, 2026.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in setting aside a jury verdict following a five-day trial based on the brief display during opening statements of an unkown number of photographs that Respondent has never identified in the record?

STATEMENT OF THE CASE

I. Factual and Procedural Background

Petitioner, April Jones, filed this negligence action on May 22, 2017, against 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., because of injuries that ultimately resulted in the amputation of her right leg after she stepped on a rusty nail in a Wal-Mart in West Florence, South Carolina on June 26, 2015. Walmart removed this action to federal court, but the court granted Jones's motion to remand back to state court. Thereafter, Jones filed an amended complaint adding Wal-Mart Stores East, L.P. Respondents filed an Answer, generally denying the allegations of Jones's Complaint.

The case proceeded to trial in the Florence County Court of Common Pleas before the Honorable Michael G. Nettles and a jury from November 8, 2021 to November 12, 2021. The jury returned a verdict in favor of Jones for ten million dollars in actual damages.

Thereafter, Respondents filed a motion for a judgment notwithstanding the verdict (JNOV) and for a new trial. By Order dated February 15, 2022, Judge Nettles denied the motions. Respondents timely filed an appeal from the verdict and denial of post-trial motions, raising six issues on appeal. The parties filed their final briefs in November of 2022, and the

Court of Appeals requested this Court certify the appeal in 2024. This Court denied certification on August 20, 2024, and ordered, "Due to the delay in this appeal, the Court of Appeals is instructed to schedule this matter on the next available roster." Over eight months later, on May 7, 2025, the Court of Appeals held oral argument.

II. The Court of Appeals Opinion

In a published decision, the Court of Appeals addressed a single issue—whether a new trial was warranted based on the trial court's failure to give a curative instruction during opening statements following the display of an unknown number of purportedly inadmissible photographs. Despite the fact that Walmart never identified precisely what photos may have been briefly shown to the jury nor how it had been prejudiced thereby, the Court of Appeals held the trial court's failure to give a curative instruction constituted reversible error. Jones filed a petition for rehearing, highlighting critical facts that the Court of Appeals misstated and arguing the court reversed a substantial verdict rendered after a weeklong trial for reasons unsupported in the record.

The Court of Appeals based its reversal on its incorrect conclusion that the jury was shown "all" of the photographs at issue in the motion *in limine*. There were a total of nineteen photos that were the subject of a prior motion *in limine*. At the hearing on that motion, the trial judge stated he intended to exclude only those photographs which showed destructive testing. (R. p. 2606, line 22 – p. 2607, line 6). Importantly, the trial court 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, in order to reverse a verdict rendered following a weeklong trial before a

seasoned trial judge, it was incumbent on Walmart, both at trial and in its brief, as well as the Court of Appeals in its opinion, to identify *which* photos were the subject of its objection. Walmart completely failed to specify the ostensibly objectionable photos, and the Court of Appeals misstated the facts in concluding that plaintiff's counsel showed "all" the photos to the jury. The record clearly demonstrates otherwise. Not only were all nineteen not displayed, but critical to prevailing on this issue, Walmart utterly failed to delineate which photos were briefly shown to the jury. The entire scenario whereby the photos were shown and Walmart objected comprised less than one page in the transcript of record. (R. p. 2790, line 21 – p. 2710, line 15). It is inconceivable that such a brief display of unspecified photos should serve as the basis for reversing a weeklong trial.

The Court of Appeals also erred because in order to warrant reversal, Walmart was required to show it was prejudiced by the display of the photos. This, Walmart did not do. To be clear, Jones's first and strongest argument in support of this petition is that Walmart should have been precluded from arguing this issue because it never identified precisely which photos were involved. However, even beyond this threshold hurdle, 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 any actually excluded 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 defies credibility to hold that after a five-day trial with over a dozen witnesses and numerous exhibits, the jury's verdict should be set aside because it was briefly shown something during opening statements—precisely what we do not know because Walmart never identified the ostensibly

objectionable photos.

III. Reasons to Grant Certiorari

This Court should grant certiorari because the Court of Appeals' published opinion is inconsistent with South Carolina jurisprudence and effectively eliminates the requirement that a movant not only identify the objectionable matter but must also establish prejudice to obtain reversal. If left uncorrected, the Court of Appeals' opinion essentially adopts an irrebuttable presumption of prejudice when a trial court declines to give a curative instruction.

Even if the Court should ignore the potential far-reaching effects of the Court of Appeals' opinion, certiorari is still warranted because the Court of Appeals' decision reversed a weeklong jury trial based on the display of an unknown number of photographs that neither Walmart nor the Court of Appeals have identified in the record. Respectfully, the Court of Appeals' decision jettisons a fundamental principle of appellate practice in this regard—that in order to preserve an issue for appeal, an objection must be specific and the challenged evidence must be included in the record on appeal. *See, e.g.*, *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 488 (2005) (noting the "[a]ppellant had the burden of providing a sufficient record"); Rule 210(h), SCACR.

Finally, any analysis of prejudice by the Court of Appeals is utterly lacking, and the opinion relies on cases that are inapposite to the issue before the court—whether the trial court committed reversible error in declining to give a curative instruction after sustaining Walmart's objection but refusing the specific instruction Walmart requested, which was clearly inappropriate as a comment on the facts. A jury verdict should not be set aside in an opinion that ignores fundamental rules of appellate practice and glosses over the key issue of prejudice.

ARGUMENT

I. The Court of Appeals reversed a weeklong trial based on findings that are not supported by the record.

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, SCRCP. (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 17[1] 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

[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.

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 ruled that only those photographs showing destructive testing were inadmissible; indeed, the court specifically 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 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.

---

[2] At trial, Jones's counsel also argued that even though the photos were taken some years subsequent to the incident, they were relevant to 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. Before the case was submitted to the jury, the trial court struck the issue of punitive damages.

[3] Accordingly, the Court of Appeals' opinion misstates the fact that "[d]uring the pretrial motions, the court properly ruled the photos inadmissible[.]" (Opinion, p. 3).

> 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). Significantly, Walmart never identified a single photograph nor asked the photos to be marked as court exhibits. Nowhere in the record on which the Court of Appeals grounded its reversal is there any delineation of the precise photos involved or how many were shown to the jury, a glaring 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."). It was completely improper for the Court of Appeals to reverse this substantial verdict based on the alleged display of photographs which were never identified to the trial court or in Walmart's brief.

Walmart did not identify the specific photos shown to the jury to the Court of Appeals because those photos were never identified at trial. It should be patently obvious that Walmart included many extraneous and duplicative matters in the record. Indeed, Walmart included not only multiple copies of the same depositions 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 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. Regrettably, the Court of Appeals accepted Walmart's argument, despite the utter lack of support for it in the record. Petitioner challenges Walmart in its Return to this Petition to specify which photos were shown to the jury and where in the record these photos were delineated. It cannot be enough to simply say "all photos" without identifying which ones.

In order to reverse a lengthy trial that culminated in a substantial verdict, there should be no question which photos were actually displayed to the jury. It was Walmart's responsibility to pinpoint 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. As the entire episode comprised less than a page in the record, it clearly lasted only a matter of seconds, certainly not minutes. Accordingly, Jones respectfully submits that the Court of Appeals 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 the Court of Appeals 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 did not include the single photo excluded during the motion *in limine*. Jones's counsel specifically made that point on page 2713 of the record. Neither Walmart's counsel nor the trial judge voiced any disagreement, and the trial judge specifically stated 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 the Court of Appeals' 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. It is extremely difficult to believe that 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 at most merely a couple of photos. If all the photos were actually displayed, as the Court of Appeals' opinion appears to suggest, 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 on appeal—which specific photos were shown or even how many photos were displayed. Without this requisite showing, it was erroneous for the Court of Appeals 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 of Appeals' decision appears to hold that even when the record contains no evidence to demonstrate prejudice because the photos were never identified, an appellate court may presume prejudice. This cannot be the law.

[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 any 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.

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

The Court of Appeals also erred in faulting the trial court for declining to give a curative instruction when 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). That is the instruction Walmart requested, and, contrary to the Court of Appeals' approach, it should have been the propriety of the trial court's decision to refuse Walmart's requested instruction—not whether the trial court erred in declining to give a general curative instruction—that was reviewed on appeal.

The trial court did not err because Walmart's requested instruction was a clear comment on the facts, and the trial court correctly denied the request as made. Importantly, Walmart never asked for a more neutral instruction nor 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 suggested by the trial court in its pretrial ruling. Walmart's failure to request a proper curative instruction rather than one which came dangerously close to a comment on the facts should not have been held to be an error by the trial court. *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d

721, 728 (2000) (holding the "refusal of the requested instruction is not reversible error" when "[t]he requested jury charge elevates the specific facts of the case" and therefore is an impermissible "instruction on the facts"), *overruled in part on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 330, 680 S.E.2d 5, 10 (2009).

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

Walmart did not demonstrate that the failure to give a curative instruction resulted in prejudice. Admittedly, a curative instruction is a means to cure any error. *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996). However, while the failure to give a curative instruction may result in the error not being cured, that does not render the alleged error automatically reversible. To warrant a new trial, as the Court of Appeals ordered here, the complaining party must still prove that the error resulted in prejudice. *State v. White*, 371 S.C. 439, 446, 639 S.E.2d 160, 164 (Ct. App. 2006) ("[E]ven without a curative instruction, an error not shown to be prejudicial to the appellant does not constitute grounds for reversal.").

The Court of Appeals' opinion lacks any meaningful analysis of any prejudice to Walmart due to the brief display of unspecified photographs during opening statements, and its published decision has the effect of minimizing, if not outright ignoring, the requirement to show prejudice. Below is the entire analysis of prejudice in the Court of Appeals' published decision:

> Furthermore, without a curative instruction, the jury was left to consider the photographs with whatever weight they deemed necessary. *See Kunst v. Loree*, 424 S.C. 24, 46, 817 S.E.2d 295, 306 (Ct. App. 2018) ("The jury maintains discretion, as reviewed by the circuit court, in awarding actual and punitive damages."). This is reversible error. *See Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion."); *id.* ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence*."); Fairchild v. S.C. Dep't of Transp*., 398 S.C. 90, 104, 727 S.E.2d 407, 414 (2012) ("Where a request to charge is timely made and involves a controlling legal principle, a refusal by

> the trial judge to charge the request constitutes reversible error." (quoting *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000))); *id.* ("To warrant reversal, the refusal to give a requested jury charge must be both erroneous and prejudicial.").

With all due respect to the Court of Appeals, string cites with parentheticals cannot supplant the need for analysis. Without any substantive analysis of prejudice, the published opinion could well be read to presume prejudice, which is clearly incorrect.

Even if this Court disagrees that the Court of Appeals' opinion may have that unintended effect, the Court should still grant certiorari because the Court of Appeals' analysis of prejudice is erroneous and does not support setting aside the jury's verdict. Generously construing the Court of Appeals' opinion, it appears to hold that Walmart was prejudiced because: (1) the jury had broad discretion when ascertaining damages and (2) the curative instruction was a "controlling legal principle."

As to the first basis, the Court of Appeals held "without a curative instruction, the jury was left to consider the photographs with whatever weight they deemed necessary." (Opinion, p. 4). This ignores the jury instructions and the context of the trial as a whole. Even if Petitioner's earlier arguments of the photos not being identified or Walmart's failure to offer a viable curative instruction rather than one which was tantamount to a comment on the facts or Walmart's failure to establish prejudice are rejected by this Court, the longstanding principle that a jury is presumed to follow a judge's instruction should not be ignored. Importantly, the experienced trial judge 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] It has long been a bedrock principle of our jurisprudence that jurors are presumed to follow the law as instructed to them. *See, e.g.*, *State v. Reyes*, 432 S.C. 394, 409, 853 S.E.2d 334, 342 (2020); *State v. Pierce*, 289 S.C. 430, 433, 346 S.E.2d 707, 710 (1986), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991).

It is clear the photographs were not exhibits that were made a part of the record. 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 inquire whether there was an objection, and then the evidence was admitted. This procedure is in stark contrast to whatever the jury briefly saw during opening statements. Moreover, the exhibits were in the jury room during deliberations, and the photos displayed during opening statements were not. Based on these multiple instructions to the jury—which our law presumes its members followed—any possible prejudice from the display of photos was eliminated.

As to the second basis alluded to by the Court of Appeals in its deficient analysis of prejudice, the two cases cited have nothing to do with a curative instruction. *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

[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 informed the jury that 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.

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").

The Court of Appeals' reliance on cases involving substantive jury charges to support a finding of prejudice in the context of the failure to give a curative instruction is error. While curative instructions are important, the analysis is whether the failure to give one constitutes reversible error. Clearly, declining to charge a jury on an affirmative defense or the applicable burden of proof is completely different and may indeed constitute a basis for reversal. However, a curative instruction is not the type of "controlling legal principle" that warrants reversal, especially when the requested instruction by Walmart was faulty as a comment on the facts. There can be no prejudice when the complaining party fails to formulate a proper curative instruction, and it was error for the Court of Appeals to reverse the trial judge on this basis. *See generally 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 photo or photos may have been displayed during opening—an error Petitioner maintains should have been fatal to its claim for

relief—they were clearly cumulative to the evidence introduced during the trial, and therefore, any possible prejudice was obviated. *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 was nothing inside the store with nails in it. (R. p. 2917, line 24 – p. 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 – p. 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 – p. 2889, line 17; p. 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.[6]

Of equal importance to Petitioner's threshold argument that reversal cannot be based on the display of allegedly improper photos without designating which photos were involved is her final argument that this case was presented to the jury on two theories, a general verdict was returned, and the Court of Appeals' finding of alleged error related to only one of those two theories. Walmart's potential liability was not based solely upon its use of wooden pallets, but also on its failure to remove the rusty nail from the floor, regardless of how it got there in the first place. Thus, 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 sufficient time to find the nail and remove it. The jury was entitled to return a verdict against Walmart on either theory and, based on its general verdict, it is impossible to discern on which basis it found Walmart liable. 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. Accordingly, even if the photographs prejudiced Walmart concerning the source of the nail, 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. Because there is evidence in the record to support the second basis for Walmart's liability, the Court of Appeals' 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

[6] This testimony must be viewed in the light most favorable to Jones. While the Court of Appeals cited this standard, it arguably applied a de novo review of the facts. For example, the Court of Appeals 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). This statement is not in keeping with the stated standard of review.

general verdict is returned, the verdict will be upheld if it is supported by at least one of the theories.").

CONCLUSION

To summarize, it strains credulity to suggest that after a five-day trial with over a dozen witnesses, over twenty exhibits, and extensive video footage of the store showing Jones on the day she was injured,[7] the jury's verdict was based on the brief display of an unknown number of photographs that neither Walmart nor the Court of Appeals specifically identified in the record. The trial judge's decision not to give a curative instruction was not reversible error because Walmart's suggested instruction constituted a comment on the facts, and Walmart failed to show prejudice. Moreover, even assuming arguendo that the display of photos was improper and that the trial court erred in not giving a curative instruction, that would not impact Petitioner's second basis for recovery—that Walmart failed to comply with its own cleaning procedures in failing to discover and remove the rusty nail—and the jury's general verdict should therefore be upheld. For the foregoing reasons, this Court should grant certiorari and reverse the Court of Appeals.

Ordinarily, a remand would be appropriate for the Court of Appeals to address the remaining issues that it did not address in its opinion. Because more than four years have passed since Walmart filed its notice of appeal,[8] Petitioner implores this Court to grant certiorari and to resolve all issues Walmart asserted on appeal. *Miller v. FerrellGas, L.P.*, 392 S.C. 295, 299, 709 S.E.2d 616, 618 (2011) ("Ellis raised additional issues to the court of appeals, which were not reached. We elect to review those additional issues."); *Ardis v. Sessions*, 383 S.C. 528, 533, 682

[7] 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.

[8] Inexplicably, the Court of Appeals waited over two years after final briefing was completed before scheduling oral argument. Moreover, it waited over eight months to set it for oral argument after being directed by this Court to schedule it "on the next available roster."

S.E.2d 249, 251 (2009) (same principle).

Respectfully submitted,

s/Kaye G. Hearn

Kaye G. Hearn (S.C. Bar No. 2891)
Brian Critzer (SC Bar No. 103159)
Wyche, P.A.
807 Gervais St., Suite 301
Columbia, SC, 29201
(803)-254-6542
khearn@wyche.com
bcritzer@wyche.com

George M. Hearn (SC Bar No. 02889)
HEARN & HEARN, P.A.
1411 First Avenue
Conway, SC 29526
843-248-3172
ghearn@sccoast.net

Lane D. Jefferies (SC Bar No. 101764)
Roy T. Willey, IV (SC Bar No. 101010)
Eric M. Poulin (SC Bar No. 100209)
Poulin, Willey, Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
lane@poulinwilley.com
roy@poulinwilley.com
eric@poulinwilley.com

Attorneys for Petitioner April Jones

March 20, 2026

RECEIVED
Mar 20 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Hon. Michael G. Nettles, Circuit Court Judge

Appellate Case No: 2022-000303
Opinion No. 6125 (Ct. App. filed Nov. 26, 2025)

April Jones, ...Petitioner,

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. are .....Respondents.

PROOF OF SERVICE

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

Miles E. Coleman
miles.coleman@nelsonmullins.com
Abigail L. Wood
abigail.wood@nelsonmullins.com

Robert C. Blain
rblain@collinsandlacy.com

Nashiba D. Boyd
nboyd@lbrblaw.com

Respectfully submitted,

s/Kaye G. Hearn

Kaye G. Hearn (S.C. Bar No. 2891)
Brian Critzer (SC Bar No. 103159)
Wyche, P.A.
807 Gervais St., Suite 301
Columbia, SC, 29201
(803)-254-6542
khearn@wyche.com
bcritzer@wyche.com

George M. Hearn (SC Bar No. 02889)
HEARN & HEARN, P.A.
1411 First Avenue
Conway, SC 29526
843-248-3172
ghearn@sccoast.net

Lane D. Jefferies (SC Bar No. 101764)
Roy T. Willey, IV (SC Bar No. 101010)
Eric M. Poulin (SC Bar No. 100209)
Poulin, Willey, Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
lane@poulinwilley.com
roy@poulinwilley.com
eric@poulinwilley.com

Attorneys for Respondent April Jones

March 20, 2026

From: Cricket Rawls
To: Miles Coleman; abigail.wood@nelsonmullins.com; nboyd@lbrblaw.com; rblain@collinsandlacy.com
Cc: Kaye Hearn; Brian Critzer; George Hearn; Lane Jefferies; Roy Willey; Eric Poulin; Cricket Rawls
Subject: Jones v. Ringer - 2022-000303
Date: Friday, March 20, 2026 3:58:25 PM
Attachments: 2026.03.20 - Petition for Writ of Certiorari.pdf
image001.png

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

Best regards,
Cricket Rawls

Cricket Rawls | Wyche
Litigation Paralegal
807 Gervais Street, Suite 301 | Columbia, SC 29201
Mailing Address: Post Office Box 12247 | Columbia, SC 29211
Phone: (803) 771-2436 | Fax: (803) 254-6544
crawls@wyche.com | www.wyche.com
A Lex Mundi Member Firm

RECEIVED
Mar 20 2026
SC Court of Appeals

W Y C H E
Attorneys at Law

March 20, 2026

Via Email

The Honorable Patricia A. Howard
Clerk of the S.C. Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201
Supctfilings@sccourts.org

Re: April Jones v. Tim Ringer
Appellate Case No: 2022-000303

Dear Ms. Howard:

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

The filing fee for this petition will be hand delivered to your office.

Sincerely,

s/Kaye G. Hearn

Kaye G. Hearn
khearn@wyche.com

Enclosures

cc: Court of Appeals - ctappfilings@sccourts.org
Miles E. Coleman – miles.coleman@nelsonmullins.com
Abigail L. Wood - abigail.wood@nelsonmullins.com
Nashiba D. Boyd – nboyd@lbrblaw.com
Robert C. Blain – rblain@collinsandlacy.com
R. Brian Critzer – bcritzer@wyche.com
George M. Hearn – ghearn@sccoast.net
Lane D. Jeffries – lane@poulinwilley.com
Roy T. Willey, IV – roy@poulinwilley.com
Eric M. Poulin – eric@poulinwilley.com