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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Civil Action No. 2017-CP-21-01375
Court of Appeals Case No. 2022-000303
Appellate Case No. 2026-000717

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.

RESPONDENTS WAL-MART STORES, INC. AND WAL-MART STORES EAST, L.P.'S RETURN TO THE PETITION FOR CERTIORARI

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INTRODUCTION

This Court should deny Petitioner April Jones' Petition for Certiorari. None of the factors from Rule 242(b), SCACR justify the issuance of the writ. There is no novel question of law, no dissenting opinion below, no constitutional issues, no conflict with the United States Supreme Court, and, contrary to Ms. Jones' assertion, there is no conflict with this Court's precedents.

The facts underlying the sole legal issue presented in the Petition are remarkable. Two years into this litigation, Ms. Jones' trial counsel, accompanied by two confederates, entered Walmart without giving notice or seeking leave to conduct an inspection, obtained gloves and a hammer from within the store, intentionally damaged a wooden pallet, and then took photographs and videos of the "damaged" pallet in the store. Ms. Jones' trial counsel also took other photographs and videos of pallets inside and outside the store. Remarkably, her counsel then sought to use these photographs—taken nearly four years *after* Ms. Jones' was allegedly injured due to a damaged pallet at a Walmart—as "evidence" of the conditions leading to her injury. Walmart submitted a motion *in limine* to prevent the admission of these photographs into evidence. The trial court granted Walmart's motion as to the staged footage of the damaged pallet and reserved decision as to the other photographs and videos. When Ms. Jones' counsel used the contested photographs during opening statements, Walmart objected, and the trial court sustained the objection. But the trial court failed to give the jury a curative instruction as to this improper, prejudicial evidence, and the Court of Appeals rightly recognized that the trial court's omission of a curative instruction was so prejudicial that it warranted a new trial.

Based on that unusual background, Ms. Jones now seeks this Court's review on a question that is both unpreserved and wrong. Her self-identified "first and strongest" argument (and the only issue squarely presented in in her Question Presented) is that the Court of Appeals' opinion erred because the record doesn't indicate exactly how *many* impermissible photos her trial counsel

displayed during opening statements or exactly *which* impermissible photos were shown before Walmart's counsel objected. That's not an argument Ms. Jones presented to the Court of Appeals in her briefing below, and she can't raise it now. Even if it were properly before the Court, her argument is wrong. There's no requirement that defense counsel's objection must include the individual identification number of the objectionable photo or that counsel must identify the exact number shown. That's even more true here, where it's undisputed that the objectionable photos were taken during an improper inspection, the trial court had previously excluded any of the photos showing destructive testing, and the trial court had specifically instructed Ms. Jones' counsel that the other photos could come in, if at all, only accompanied by a limiting instruction.

In addition, certiorari is not warranted here because even *if* the Court of Appeals erred in its analysis of the one issue it ruled on, this Court should nevertheless affirm its judgment based on multiple additional sustaining grounds. Notable among them is the fact that Ms. Jones presented no evidence on which a jury could find Walmart created the alleged hazard, had actual or constructive knowledge of it, failed to keep the premises in good condition, or violated any internal policy. Another is Ms. Jones' abrupt (and false) assertion at trial regarding a supposed settlement offer—an utterance that even her own lawyers admitted warranted a new trial. In sum, even if this Court disagrees with the Court of Appeals' opinion, certiorari would not change the ultimate conclusion, since the Court should affirm the Court of Appeals' ruling in all events.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Is there any reason this Court should review the Court of Appeals' opinion that correctly reversed and remanded for a new trial because Ms. Jones' counsel, during opening statements, displayed photographs that were undisputedly taken during an improper and unauthorized site inspection, some of which the trial court had previously excluded, and after which the trial court refused to give a curative instruction?
2. Would this Court's review of the Court of Appeals' opinion be a moot exercise because even *if* the Court of Appeals erred on the one issue it considered, additional sustaining grounds would require this Court to affirm the Court of Appeals' conclusion anyway?

COUNTER STATEMENT OF THE FACTS

Ms. Jones was a 53-year-old resident of Florence County, South Carolina. *See* Am. Compl. ¶ 2 (R. 44); Trial Tr. 140:3–6 (R. 2787). Both before and after the incident giving rise to this appeal, she suffered from non-insulin-dependent diabetes, peripheral vascular disease, pulmonary hypertension, and end-stage renal disease. *See* Trial Tr. 107:10–11 (R. 2754); 110:1–3 (R. 2757); 110:16–20 (R. 2757); 111:6–10 (R. 2758); 112:11–21 (R. 2759).¹

On June 26, 2015, Ms. Jones visited Walmart Store #630 in Florence, South Carolina. *See* Am. Compl. ¶ 1 (R. 44). At the time of this visit, she already had ulcers on the base of her right second toe and in the area from the middle to end of her right foot beyond the arch. *See* Trial Tr. 115:12–24 (R. 2762).

She alleges that while walking out of the produce section of the store, she heard a scraping sound under her sandal. *See* Am. Compl. ¶ 12 (R. 46). At 11:32:34 a.m., she bent down to look at her flip-flop sandal and noticed something metal in her right sandal. *See* Trial Tr. 394:1–16 (R. 3042). She had not seen any metal or debris on the floor, had no recollection of stepping on anything in the store, and had no information about where the metal came from, how it became lodged in her sandal, or how long it had been in her sandal. *See id.* at 501:17–25 (R. 3149); *id.* at 539:19 to 540:8 (R. 3187 to 3188). Ms. Jones did not feel any pain in her foot and did not immediately remove anything from her sandal. *See id.* at 395:11 (R. 3043); 494:13–20 (R. 3142). Instead, she continued walking and talking with customers for at least one minute and thirty seconds before bending down again and removing what turned out to be a nail from her sandal at

¹ It seems that Ms. Jones passed away nearly two-and-a-half years ago. Walmart learned of this only when it found an obituary online for one April M. Jones, a resident of Florence, South Carolina, born on January 4, 1969, who died on December 25, 2024. *See* April M. Jones Obituary, <https://www.tributearchive.com/obituaries/34212994/april-m.-jones>. Both the Record on Appeal in this case and publicly available probate documents confirm that this decedent is the Petitioner. *See* R. 44, 1663, 1834, 2082, and 2676.

11:34:10 a.m. *See id.* at 495:5 to 498:18 (R. 3143 to 3146). She placed the nail on a shelf and walked down the aisle to get bleach. *See id.* at 401:17 to 402:16 (R. 3049 to 3050); *id.* at 403:10–15 (R. 3051). At 11:35:53 a.m., she retrieved the nail from the shelf and took it to customer service. *See id.* at 403:24 to 404:15 (R. 3051 to 3052).

The nail was later identified as a 7/8th inch roofing nail used to put shingles on a house. *See id.* at 720:15–20 (R. 3368). Multiple witnesses testified that this type of nail is not used in pallets on the Walmart sales floor or in pallets generally. *See id.* at 217:22 to 218:8 (R. 2864 to 2865); *id.* at 306:25 to 307:2 (R. 2953 to 2954).

Ms. Jones testified that she had not seen a nail or any other debris on the floor of the Walmart store before the incident, and she did not know if the nail came from Walmart or elsewhere. *See id.* at 501:17–25 (R. 3149); *id.* at 539:19 to 540:8 (R. 3187 to 3188). Store manager Tim Ringer testified that when she found the nail in her sandal, Ms. Jones was about sixty-four feet away from the only wooden pallet in the entire area. *See id.* at 224:22 to 225:17 (R. 2871 to 2872). Ms. Jones admitted after watching the surveillance video that there were no pallets in her area. *See id.* at 488:23 to 489:2 (R. 3136 to 3137).

Testimony at trial established that, consistent with store policy, Walmart associates performed required safety sweeps every 1.5 to 2 hours throughout the store during the morning of June 26, 2015. *See id.* at 160:6–12 (R. 2807); 589:3–8 (R. 3237). Kevin Lane, the acting manager that day, specifically recalled inspecting the store that morning and walking the entire store to visually verify that the safety sweeps occurred. *See id.* at 589:9–16 (R. 3237). Security video footage of that day shows Walmart associates traversing the area, including one cleaning with a dust mop that morning. *Id.* at 188:2–7 (R. 2835). Neither Mr. Lane nor any of the Walmart associates who performed the periodic safety sweeps throughout the morning saw a nail in the produce section of the store. *Id.* at 596:8–10 (R. 3244).

Following the incident, Ms. Jones did not immediately seek medical attention. *See id.* at 89:9–13 (R. 2736). She eventually sought care several days later from Dr. Keith Player, a surgeon in Florence, South Carolina. Dr. Player identified a wound at the bottom of her foot at the base of her second toe—the same location where she had a preexisting ulcer at the time of the incident—and performed a debridement to fix the infection. *See id.* at 90:14 to 91:8 (R. 2737 to 2738). A few weeks later, Ms. Jones returned with a worsening foot infection, and Dr. Player decided to remove the second toe. *See id.* at 92:1–4 (R. 2739); *id.* at 93:11–14 (R. 2740). The wound did not heal properly, and she developed a worsening infection that led to removal of her big and third toes, and, eventually, the removal of her leg above the knee. *See id.* at 97:19–22 (R. 2744); *id.* at 100:22–24 (R. 2747). Dr. Player later testified that Ms. Jones’ pre-existing diseases caused or contributed to all the amputations, and that all her underlying conditions increased her risk of limb loss. *See id.* at 115:3–8 (R. 2762); *id.* at 122:16 to 123:6 (R. 2769 to 2770).

On May 22, 2017, Ms. Jones filed this lawsuit. On May 15, 2019, nearly *four* years after the incident, her counsel entered Walmart without giving notice to Walmart’s counsel or seeking leave to conduct an inspection, obtained gloves and a hammer from within the store, located and intentionally damaged one or more wooden pallets, took photographs and videos to use as “evidence” of the “damaged” pallet in the store, and spoke directly to a named, represented, party Defendant, Tim Ringer. *See* Defs.’ Mot. in Lim. to Exclude Photographic Evid. and for Sanctions (R. 924–30). Her counsel also took photographs and video of pallets located on the opposite side of the store from where she noticed the nail in her sandal and took photographs of pallets located outside the store in the trash collection area. *Id.* at 5 (R. 928); Email exchange between counsel (R. 1077).

COUNTER STATEMENT OF THE CASE

I. Pleadings, initial proceedings, and dispositive motions.

Ms. Jones filed the Summons and Complaint initiating this proceeding on May 22, 2017, in the Florence County Court of Common Pleas. *See* Compl. (R. 29). She alleged that Walmart's negligence allowed her to step on a nail while perusing the aisles of her local Walmart, which allegedly caused her an injury that, after a series of unsuccessful medical procedures, caused the amputation of her leg. *See id.* ¶¶ 10–13, 16 (R. 30–31).

Defendants removed the action to the United States District Court. *See* Notice of Removal (R. 36). Ms. Jones filed a Motion to Remand, and the District Court remanded the matter to the state trial court. *See* Remand Order (R. 1). Ms. Jones filed an Amended Complaint on January 16, 2018, adding the sole proper corporate defendant: Wal-Mart Stores East, L.P. *See* Am. Compl. (R. 44). Defendants collectively answered the Amended Complaint. *See* Answer to Am. Compl. (R. 50).

On April 24, 2019, Defendants filed a Motion for Continuance. The Court denied the Motion but ordered that the case be called for trial during the May 28, 2019 term of court. Order (May 13, 2019) (R. 11). A few weeks later, Defendants filed a Motion for Summary Judgment. *See* Defs.' Mot. for Summ. J. (R. 65). On May 23, 2019, the parties had a telephone conference with the court, during which the Judge stated that if Walmart did not consent to a Rule 40(j) dismissal with leave to refile, the case would proceed to trial on May 28. Walmart did not consent. Ms. Jones filed a Notice of Appeal about 30 minutes after the telephone call, appealing from the Order denying Walmart's Motion for Continuance. *See* Notice of Appeal (May 23, 2019) (R. 94).

II. Ms. Jones' interlocutory appeal and subsequent dispositive motions.

Briefing and resolution of Walmart's then-pending Motion for Summary Judgment was stayed during Ms. Jones' interlocutory appeal. Walmart moved to dismiss the appeal as an impermissible interlocutory appeal. The Court of Appeals granted the Motion to Dismiss the

Appeal, holding that the appealed order was not, in fact, immediately appealable. *See* Order (R. 16). The Court of Appeals subsequently denied Ms. Jones' Petition for Rehearing, and the Supreme Court denied her Petition for Certiorari and remitted the case on June 24, 2020. *See* Order (Nov. 14, 2019) (R. 17); Order (June 24, 2020) (R. 19).

Following the remand to the trial court, Ms. Jones filed a memorandum in opposition to Defendants' still-pending Motion for Summary Judgment. *See* Pl.'s Mem. in Opp'n to Defs.' Mot. for Summ. J. (August 10, 2020) (R. 96). The court entered a Form 4 Order denying Defendants' Motion for Summary Judgment on August 24, 2020. *See* Order (R. 20).

Fourteen months later, following pandemic-related continuances and delays that were then common throughout the judicial system, Defendants again moved for Summary Judgment, arguing that there was no genuine issue of material fact as to Ms. Jones' cause of action for negligence, and, alternatively, arguing that the court should grant summary judgment as to her claim for punitive damages. *See* Defs.' Mot. for Summ. J. (October 27, 2021) (R. 558). The court orally denied the motion. *See* Pre-Trial Hr'g Tr. at 100:11–12 (R. 2645).

III. Pre-trial motions.

The trial court heard pre-trial motions, including several motions *in limine* on various evidentiary issues. *See* Pre-Trial Hr'g Tr. (R. 2546). Defendants' first motion *in limine* sought the exclusion of photographs of the store and of a staged, purportedly damaged pallet taken by Ms. Jones' counsel almost four years after the incident during an unauthorized incursion into Walmart, where her trial counsel partially destroyed a wooden pallet and then photographed it to use as "evidence." *See* Defs.' Mot. in Lim. to Exclude Photographic Evid. and for Sanctions (R. 924). As evidenced by store surveillance footage, Ms. Jones' trial counsel, accompanied by two confederates, had entered Walmart without giving notice or seeking leave to conduct an inspection, obtained gloves and a hammer from within the store, located and intentionally damaged one or

more wooden pallets, and then took photographs and videos of the “damaged” pallet in the store. *See id.* at 3 (R. 926). Ms. Jones’ trial counsel also took photographs and video of pallets located on the opposite side of the store from the location where she’d noticed the nail in her sandal and took photographs of pallets located outside the store in the trash collection area. *See id.* at 5 (R. 928). Walmart objected to her attempt to use these photos—taken nearly four years *after* her injury—as “evidence” in the case. The court excluded the photographs of the staged, partially destroyed pallet, but reserved its ruling on the other photographs of the store, including those taken in 2019 showing pallets in other areas of the store. *See Pre-Trial Hr’g Tr.* at 59:18 to 62:6 (R. 2604 to 2607). The trial judge specifically noted (i) “that the inspection was improper,” (ii) that before the not-yet-excluded photos could come in at trial he “will review them again,” and (iii) that their use, if at all, would be accompanied by “a limiting instruction that . . . this was taken four years after the accident” and was “offered for [a] limited purpose.” *Id.* at 61:12 to 62: (R. 2606 to 2607).

IV. Trial.

Trial commenced on November 8, 2021. During opening statements, Ms. Jones’ trial counsel showed the photographs of damaged pallets taken during their 2019 improper inspection of Walmart’s store in Florence, South Carolina. *See Trial Tr.* at 62:24 to 63:18 (R. 2709 to 2710). Defense counsel objected, and the court sustained the objection, ruling that none of the disputed photographs could be used in the opening. *Id.* at 63:21 to 67:2 (R. 2710 to 2714).² The trial court did not offer a curative instruction, however, even though the jury had already viewed some of the photographs of damaged pallets with no context as to what they were and when they were taken.

² Ms. Jones argues that “[t]he entire scenario whereby the photos were shown and Walmart objected comprised less than one page in the transcript of the Record. (R. p. 2790 [sic], line 21 – p. 2710, line 15.)” True, Walmart’s counsel objected not long after the pictures began to flash up on the screen. But counsels’ arguments about the impermissibility of these photographs spanned at least five pages.

Id. at 67:3–15 (R. 2714).³

On the third day of trial, during Ms. Jones’ direct examination, she unexpectedly, abruptly, and falsely testified that Walmart had offered to settle with her for \$50,000 just three days after the incident and before any of her amputations or significant medical treatment. *Id.* at 449:22 to 450:3 (R. 3097 to 3098). Defendant moved for mistrial on the basis that this testimony was inadmissible under Rule 408 of the South Carolina Rules of Evidence; Ms. Jones’ counsel agreed and also moved for a mistrial; but the trial court denied the motions and issued a curative instruction to the jury. *Id.* at 456:1 to 458:21 (R. 3104 to 3106). During the trial, the court permitted impassioned and emotional testimony from one of Ms. Jones’ children about her life as an amputee. *See, e.g.*, Trial Tr. at 321:10 to 329:1 (R. 2968 to 2976). Even though at least one juror was openly crying during this testimony, the trial court allowed four more of Ms. Jones’ children to testify cumulatively in the same manner. *See id.* at 336:13 to 345:5 (R. 2983 to 2992); *id.* at 346:11 to 358:13 (R. 2993 to 3005); *id.* at 361:6 to 365:7 (R. 3008 to 3012); *id.* at 367:11 to 373:6

³ Ms. Jones repeatedly criticizes the Court of Appeals for stating that Jones’s counsel showed “all” of the photos to the jury during opening statements. *See* Pet. for Cert. at 2, 3, 8, 9. Her basis for this criticism isn’t anything found in the Record, but is an “inference” she invites the Court to draw based on the fact that she finds it “extremely difficult to believe” that lawyers could show multiple pictures in succession or multiple pictures at a time. *See id.* at 9 and n.4. This “inference” is insufficient to discount the Court of Appeals’ finding on this point. Plus, there is evidence in the record that multiple photos were displayed simultaneously on one of the slides, and that an unknown number of photographs (perhaps all 19) were displayed in the presentation before the jury. *See* Trial Tr. at 63:15–67:20 (R. 2710 to 2714) (both parties and the Court consistently referencing “photos” or “pictures”); *id.* at 65:16–20 (R. 2712) (plaintiff’s counsel referencing a “center photo” on the slide).

In any event, as explained more fully below, any dispute about the exact number of pictures shown is irrelevant because (i) it’s undisputed that the photos were taken during an improper inspection, (ii) the trial court had previously specifically ruled that the photos could come in, if at all, only accompanied by a limiting instruction, (iii) the trial court sustained the objection and excluded the photos from opening, (iv) the trial court refused to offer a curative instruction, and (v) the prejudice to Walmart was apparent when the jury returned a \$10 million verdict despite the absence of *any* evidence of wrongdoing.

(R. 3014 to 3020); *see also id.* at 374:2–11 (R. 3021) (preserving on the record Walmart’s objection pursuant to Rule 403, SCRE, to this cumulative and unduly prejudicial evidence).

At the close of Ms. Jones’ case, Defendants moved for a directed verdict on liability. *Id.* at 552:25 to 554:13 (R. 3200 to 3202). The court denied the motion without explanation. *Id.* at 563:21–23 (R. 3211). At the close of all evidence, Defendants renewed their Motion for Directed Verdict on liability and also moved for a directed verdict on punitive damages, arguing that Ms. Jones had presented no evidence of willful or wanton behavior on behalf of Walmart or Mr. Ringer. *Id.* at 565:14–17 (R. 3213). The court denied the directed verdict as to liability, but granted the directed verdict as to punitive damages, holding there was no evidence of conscious wrongdoing. *Id.* at 572:19–25 (R. 3220).

During closing arguments, and despite the trial court finding as a matter of law that punitive damages were not appropriate, Ms. Jones’ trial counsel asked the jury to penalize Walmart and to “make them hear it in Arkansas.” *See id.* at 572:1–25 (R. 3220); *id.* at 807:22–23 (R. 3455). The jury found for Defendant Tim Ringer but against Walmart and awarded \$10 million dollars in actual damages on submitted actual damages of around \$542,000. Form 4 Verdict Form (R. 23).

V. Post-trial motion.

Walmart filed a Motion for JNOV, or, in the alternative, for a new trial absolute or a new trial *nisi remittitur*. *See* Walmart’s Mem. in Supp. of Mot. for J. Notwithstanding the Verdict and Mot. for a New Trial (November 22, 2021) (R. 1519). Walmart argued it was entitled to judgment notwithstanding the jury’s verdict because Ms. Jones did not introduce evidence that would allow the jury to find for her on necessary elements of her claim, including the requirement that she prove that Walmart created the hazard or had actual or constructive knowledge of it *and* that Walmart failed to act with ordinary and reasonable care to keep the store in reasonably safe condition. *Id.* Walmart explained that either one of those failures of proof, standing alone, was a basis on which

a directed verdict or JNOV must be entered for the store. *Id.* Walmart argued in the alternative that it was entitled to a new trial absolute or *nisi remittitur* in light of multiple prejudicial errors that occurred during the trial, including the improper photos shown during Ms. Jones’ opening statement. *Id.* (R. 1521, 1536–37). Ms. Jones filed a response in opposition. *See* Pl.’s Resp. in Opp’n (R. 1681). Her only response to Walmart’s argument about the improper photos was that Walmart’s counsel (in her view) hadn’t objected *strenuously* enough since, at the conclusion of the five-page discussion in the transcript, counsel had stated “Thank you, your Honor.” *See id.* (R. 1688). The arguments she makes now were not made then. The court denied Walmart’s motion. *See* Form 4 Order (R. 26).

VI. Appeal.

Walmart timely filed its Notice of Appeal on March 16, 2022. Ms. Jones filed a Notice of Cross Appeal on March 18, 2022, but later withdrew her cross-appeal. On November 26, 2025, the Court of Appeals issued a published opinion reversing the trial court’s denial of Walmart’s motion for a new trial and holding that the trial court’s failure to give a curative instruction following the display of the improper photographs during Ms. Jones’ opening statement constituted reversible error. The Court of Appeals declined to address the remaining issues of appeal and remanded the case for a new trial.⁴

⁴ Ms. Jones repeatedly criticizes the lower courts’ alleged delays in this case. It’s true that the wheels of justice often turn slowly. But that’s not necessarily the lower courts’ fault, and it’s not a reason for this Court to give this case special treatment. Ms. Jones waited nearly two years after her injury to file suit; she later delayed her trial a year by filing an impermissible interlocutory appeal; she (like nearly every other litigant) was then delayed another year as the judicial system navigated a global pandemic; and any delays in setting oral argument by the Court of Appeals were attributable in part to her counsel’s schedule conflicts with proposed oral argument dates. Walmart mentions this history not to cast stones—delays happen and schedule conflicts arise, often for good reason—but to provide context for the delays on which Ms. Jones bases her highly irregular suggestion that the Court should grant certiorari and consider, not as additional sustaining grounds but *for merits review in the first instance and reversal*, issues that the Court of Appeals didn’t address. This Court is a court of *review*, not first view. It should decline her invitation.

STANDARD OF REVIEW

This Court reviews Petitions for Certiorari under the standard in Rule 242, SCACR. A Petition “will be granted only where there are special and important reasons” such as the five enumerated in the rule, *e.g.*, a novel question of law, a dissenting opinion at the Court of Appeals, where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court, a substantial constitutional issue, or a conflict with the United States Supreme Court on any question of federal law. *See* Rule 242(b), SCACR. At the certiorari petition stage, the question before this Court is not whether the lower court erred but whether there is a “special and important reason” to grant the petition. *See* Rule 242, SCACR; *see also* Jean H. Toal et al., *Appellate Practice in South Carolina*, 12 (2d ed. 2002) (“The Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court.”).

ARGUMENT

I. The Court of Appeals correctly applied this Court’s precedent and held that the trial court erred in refusing to offer a curative instruction after Ms. Jones’ trial counsel showed improper photographs during opening statement and likewise erred in denying Walmart’s motion for a new trial on that basis.

Ms. Jones’ self-identified “first and strongest” argument (indeed, it’s the *only* issue she identifies in her singular statement of the Questions Presented) is that the Court of Appeals’ reversal was erroneous because Walmart “never identified precisely which photos were involved.” Pet. at 3; *see also* Pet. at 1 (identifying the sole issue on which she requests this Court’s review as whether the Court of Appeals erred by setting aside a verdict “based on the brief display during opening statements of an unknown number of photographs that Respondent has never identified on the record”).

Her argument is wrong, and it doesn’t warrant review. Walmart’s counsel wasn’t required to object using specific identification numbers. Indeed, the photos hadn’t yet been assigned exhibit

numbers or even been *proffered* for introduction yet. And regardless of the exact quantity of photos and their exhibit numbers, it's undisputed that photos shown during Plaintiff's opening statement were taken during an improper inspection of the site, that even the photos that *weren't* definitively excluded before trial were still subject to review and a ruling before they could be used at trial, and that, even then, they would come in, if at all, only subject to a limiting instruction. As for prejudice, it is shown by the fact that the jury returned a \$10 million verdict despite the absence of any actual evidence that Walmart created the alleged hazard, had actual or constructive notice of it, failed to take reasonable care, or violated any policy.

Certiorari is not warranted because there is neither an error to correct nor law to be established. Indeed, a grant of certiorari here would suggest the following: that counsel may engage in an improper site inspection, taken without providing notice to the opposing party or counsel, in order to stage photos of a hazard that did not exist, for the purpose of using those photos in an opening statement despite prior instructions to the contrary; and that all this might be overlooked and permitted merely because defense counsel's clear, timely, and specific objection didn't identify the precise quantity and provide identification numbers of the impermissible photos shown to the jury. That's not the law, and it's not the lesson the bar should take from this case.

A. Ms. Jones does not dispute that her counsel engaged in misconduct to obtain the photographs at issue.

In its opinion, the Court of Appeals described in detail Ms. Jones' trial counsel's actions in obtaining the photographs at issue and found that it was "clear the photos served no purpose other than to mislead the jury." *See Jones v. Ringer*, 447 S.C. 235, 239, 925 S.E.2d 404 (Ct. App. 2025).

To support this finding, the Court explained that

The photos were taken four years after Jones' alleged injury and depicted damaged pallets and nails that were not proven to be of the same type, in the same condition, or even present on the day of the injury. Jones presented no evidence to demonstrate that the condition of the pallets in the photos was the same at the time of Jones's

alleged injury. In fact, video of the aisle on the date of injury shows the floor was clean and free of debris from pallets. Furthermore, the photos were not only presented to demonstrate that Wal-Mart's pallets were non-compliant with ANSI standards as originally intended by Jones and approved by the trial court. Rather, Jones also used the photos to assert Wal-Mart's pallets were in that damaged condition at the time of the incident and continued to endanger customers in the years following the accident.

Id. at 238. Ms. Jones doesn't dispute any of this. Despite the Court of Appeals' disapproving description of her trial counsel's behavior and intentions, the Petition doesn't attempt to refute or even clarify the assessed misconduct. Rather, Ms. Jones asks this Court to focus on a few technicalities (which aren't even legal requirements) as a reason to use its discretionary authority to review the Court of Appeals' decision. This Court should decline to do so, as it would only serve to validate or, at the least, minimize the undisputed misconduct of Ms. Jones' trial counsel.

B. Ms. Jones' arguments that Walmart failed to identify the photographs with specificity and/or did not propose a sufficient curative instruction should be disregarded because they were not raised in her appellate briefing and are wrong in any event.

Ms. Jones' primary argument in her petition—that Walmart failed to identify the specific photos objected to—was not raised before the Court of Appeals in her response brief and should be excluded for this reason. *See* Rule 242(d)(1), SCACR (“Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.” (emphasis added)); *see also Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff*, 434 S.C. 392, 412 n.19, 864 S.E.2d 873, 884 n.19 (2021) (holding that the petitioner failed to preserve an argument for review when it raised the argument for the first time in the petition for rehearing); *Herron v. Century BMW*, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011) (“[A] party may not raise an issue for the first time in a petition for rehearing”). Neither did Ms. Jones argue below that Walmart did not propose an adequate curative instruction to the trial court. This too should now be unreviewable under Rule 242(d)(1).

Even if the Court were to find that these arguments are procedurally proper and preserved to be raised at this stage of the proceeding, they should nonetheless be disregarded as inconsequential. First, Ms. Jones points to no case law or rule of evidence requiring a party to name specific photos or other pieces of evidence in its objections or on appeal. As discussed above, the Petition does not dispute that Ms. Jones' trial counsel engaged in misconduct in obtaining the photographs but instead attempts to argue a technicality—without any legal support—regarding the specifics of Walmart's objection to said photographs being introduced during opening statement. From the transcript, it is evident that the jury was shown certain photographs on slides during Ms. Jones' counsel's opening statement and counsel for Walmart promptly drew the court's attention to the fact that those photographs were the subject of the earlier-argued motion in limine:

9 You'll see a photograph of a pallet with a nail sticking
10 out on the Walmart sales floor, and you'll see it in larger.
11 You'll notice the "Rollback" sign up there, just in case you
12 have any doubt.
13 MR. BLAIN: Your Honor --
14 MR. WILLEY: And you'll have the opportunity --
15 MR. BLAIN: I've got to make an objection.
16 THE COURT: Hold on. I'm going to ask, Mr. Foreman, if
17 you could retire to the jury room. Once again, do not discuss
18 the case.
19 (The jury exited the courtroom at 2:56 p.m.)
20 THE COURT: Yes, ma'am. Yes, sir.
21 MR. BLAIN: Thank you, Your Honor. I would make an
22 objection based on the defendant's motion in limine that we
23 argued and was decided by the Court on Friday of last week.
24 These photos are clearly photos that we discussed and was
25 excluded by Your Honor based on the improper inspection

1 conducted in 2019, and they're being used in opening --
2 opening statements. They're irrelevant. They are
3 prejudicial. They are not probative of any material issue in
4 the case, and they are simply not evidence and they have been
5 excluded as evidence by Your Honor a few days ago.

See Trial Tr. at 63:9 to 64:5 (R. 2710 to 2711). The Court then agreed with counsel for Walmart and clarified on the record that his ruling on the motion in limine was that all of the photos would be subject to objection before being submitted into evidence or shown to the jury:

11 MR. BLAIN: Yes, Your Honor. These are photos -- at
12 least one of these photos was taken in 2019 during the
13 inspection that we all watched video of on Friday when
14 Mr. Jefferies and his companions were in the store without
15 prior notification, two defendant's counsel, doing an
16 inspection with gloves, with a hammer. You can clear as day
17 take a look at the center photo and see that that pallet has
18 been tampered with on some level, and I think that is at least
19 the circumstantial evidence that Your Honor cited on Friday as
20 the basis to exclude that evidence.

21 And I think, if I recall your ruling correctly, Your
22 Honor, what we decided is that, before these photos would be
23 even considered to be submitted into evidence, we'd be allowed
24 to make that objection. And now these photos are being
25 offered in opening statements.

1 THE COURT: In addition to that, the opening statement is
2 more like a closing argument. I mean, opening statements were
3 not designed to do what you're doing. And you're not giving
4 them the opportunity to object to pictures that are
5 objectionable.
6 MR. WILLEY: No, he has the opportunity. He just
7 objected.
8 THE COURT: Well, you have already shown it to them.

See id. at 65:11-25, 66:1–8. (R. 2712 to 2713). Thus, Walmart’s description of the photos that were the subject of its objection was more than sufficient to preserve the issue for appellate review. *See, e.g., State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551 (2023) (“We are mindful that issue preservation rules should not be applied in a technical manner as if this is some sort of game of ‘gotcha’ elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.”); *Cone v. State*, 443 S.C. 487, 493, 905 S.E.2d 368 (2024) (holding an issue was preserved where it was “apparent from the record the trial court understood and ruled on [the] objection”); *Herron*, 395 S.C. at 470, 719 S.E.2d at 644 (“We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.”).

Similarly, Ms. Jones cites no case law providing that if a party does not propose the specific language the trial court was looking for in an orally proposed curative instruction, the trial court’s refusal to offer a curative instruction *at all* is not prejudicial. This is absurd. To reach this position, Ms. Jones tries to redefine the issue that Walmart appealed and the Court of Appeals decided. She argues that the *real* question raised in Walmart’s appeal was “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.” *See* Petition at 10 (emphasis added). That’s legally wrong—

an appellee doesn't get to decide what issues are on appeal, nor can a cert petitioner rest her arguments on a counterfactual history of the intermediate appeal.

Further, her argument relies on faulty reasoning, namely Ms. Jones' view that the curative instruction Walmart requested was purportedly "a clear comment on the facts." *See* Petition at 10. But a curative instruction—even one like Walmart asked for—isn't a comment on the facts. Ms. Jones acknowledges that "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 plaintiff's counsel.'" Petition at 10 (quoting R. 2714:3–6). That requested instruction isn't a comment on the facts. At most, it's a comment on the purported evidence (the photos); however, no one disputes that the photos *were*, in fact, taken four years after the incident, were staged by Ms. Jones' counsel, and have no direct factual or evidentiary connection to the incident. Advising the jury of these facts isn't a comment on the facts of the case.

The only case cited by Ms. Jones in support of her argument about the curative instruction is *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000), which is plainly inapposite—it didn't even involve a curative instruction. In *Hughey*, the trial judge in a murder trial elected not to use certain specific jury charges requested by the defendant because they constituted direct charges on the facts. *Id.* at 452. The Supreme Court held that because the instructions given by the trial judge were sufficiently broad to enable the jury to understand the law and issues involved and used the proper test, the failure to provide the specific requested jury instructions was not reversible error. *Id.*

Hughey isn't relevant here, and it doesn't save Ms. Jones' case.⁵ Not only are there significant differences between a jury instruction and a curative instruction, but the trial judge in

⁵ Ironically, as Ms. Jones expressly acknowledges later in her Petition, "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." *See* Petition at 14.

this case failed to offer *any* instruction at all after sustaining Walmart’s objection. That was the issue on appeal, and that warranted reversal. Whether the trial judge liked or disliked the specific language of Walmart’s request for an instruction has no bearing on whether the court was required to offer a curative instruction or whether the failure to do so was prejudicial to Walmart. This is not a basis to review the Court of Appeals’ decision.

C. The Court of Appeals correctly found that the refusal to issue a curative instruction when Ms. Jones’ counsel showed improperly obtained photographs during opening statement was prejudicial to Walmart.

Ms. Jones further argues that even if a curative instruction should have been given, the Court of Appeals erred in finding that failure to do so resulted in prejudice to Walmart. The Court of Appeals held that “without a curative instruction, the jury was left to consider the photographs with whatever weight they deemed necessary” and that it was reversible error to refuse a curative instruction. *Ringer*, 447 S.C. at 239, 925 S.E.2d at 406 (citing case law). Indeed, Ms. Jones presented no other evidence to show that Walmart created the alleged hazard, had actual or constructive notice of the alleged hazard, failed to take reasonable care to keep the premises safe, or violated its own policies—only speculation, post hoc photographs, and a sympathetic, injured plaintiff. Despite this, Ms. Jones’ trial counsel repeatedly stated in closing argument that the jury could find Walmart negligent. That the jury found Walmart negligent—despite a lack of evidence—indicates the jury gave weight to the photographs, to Walmart’s great prejudice.

The Court of Appeals expressly recognized this, even if the Petition tries to ignore it. Ms. Jones wrongly asserts that “the entire analysis of prejudice in the Court of Appeals” opinion is a single paragraph on page four of the slip opinion. *See* Pet. at 11. But even if that one paragraph were inadequate (and there are no cases saying it is), Ms. Jones is wrong that the one paragraph is the “entire” analysis. Indeed, most of the preceding page of the slip opinion is taken up with explaining why the photographs were “clearly prejudicial”:

- Because “[t]he photos were taken *four years after* Jones’s alleged injury and depict damaged pallets and nails that were not proven to be of the same type, in the same condition, or even present on the day of injury.” *Jones*, slip op. at 3 (emphasis in original).
- Because “Jones presented no evidence to demonstrate that the condition of the pallets in the photos was the same at the time of Jones’s alleged injury.” *Id.*
- Because “the photos were not only presented” during her opening for the purpose “approved by the trial court” but “Jones also used the photos to assert Wal-Mart’s pallets were in that damaged condition at the time of the incident and continued to endanger customers in the years following the accident.” *Id.*

That is why the Court of Appeals correctly concluded the photos were both “irrelevant” and “clearly prejudicial.” *Id.* The Court of Appeals explained its reasoning. Ms. Jones shouldn’t be permitted to ignore it and pretend like the explanation and analysis don’t exist or are inadequate.

In her final argument that Walmart wasn’t prejudiced by the photos, Ms. Jones invokes the two-issue rule and argues that (i) her case rested on two separate theories, (ii) it’s not clear which theory the jury’s verdict rests on, and (iii) the photos pertained only to her theory that Walmart created the hazard, not her theory that Walmart had time to discover and remove the nail. *See* Pet. at 16. There are at least two problems (for Ms. Jones) with that argument. First, she didn’t make that argument to the Court of Appeals. *Cf.* *Jones’ Resp. Br.* at 23–25. So, she can’t raise that question now. *See* Rule 242(d)(1), SCACR. Second, it doesn’t matter which theory the jury’s verdict supposedly rested on. *Both* theories fail for the same reason, namely that she presented no actual evidence to support either of them. That the jury found Walmart negligent despite a lack of evidence indicates the jury gave weight to the photographs, and to Walmart’s prejudice.

II. Even if the Supreme Court were to grant certiorari, the additional sustaining ground doctrine would compel the Court to affirm the Court of Appeals’ ruling.

Even if this Court granted certiorari, it would still be compelled to affirm the Court of Appeals’ decision. As the prevailing party below, Walmart may assert additional grounds to sustain the ruling below, even if (as here) those grounds were not relied on by the lower court. *See*

Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”); *I'on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (“Under the present rules, a respondent—the ‘winner’ in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”); J. Toal, *et al.*, *Appellate Practice in South Carolina* 62 (2d ed. 2002) (same).

The additional sustaining ground doctrine allows this Court only to *sustain* the Court of Appeals’ decision—the Court cannot use it to resolve issues in Ms. Jones’ favor that were not addressed by the Court of Appeals. *I'on, LLC*, 338 S.C. at 421–22, 526 S.E.2d at 724 (noting that the additional sustaining ground doctrine only works to affirm the ruling below, and an “appellate court may not, of course, *reverse* for any reason appearing in the record”) (emphasis added).

A. There was no evidence at trial to support several mandatory elements of Ms. Jones’ claim.

Several additional sustaining grounds are present in the instant appeal. Perhaps most importantly, there was no evidence at trial to support several mandatory elements of Ms. Jones’ claim. When (as here) a plaintiff brings a premises liability suit alleging negligence by a storeowner, she must prove three things: “(1) the defendants owed her a duty of care; (2) the defendants breached that duty by a negligent act or omission; and (3) she suffered damage as a proximate result of that breach.” *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citation omitted). In addition, when (as here) a plaintiff alleges her injury was caused by a dangerous or defective condition on the property, she must also prove that the property owner either negligently created the hazard or had actual or constructive knowledge of it. *Garvin*, 343 S.C. at 628, 541 S.E.2d at 832 (2001); *see also Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 404, 675 S.E.2d 783, 787 (Ct. App. 2009) (same).

Here, as discussed more fully in Walmart’s brief to the Court of Appeals, Ms. Jones failed to prove at trial that (1) Walmart negligently created the hazard or had actual or constructive knowledge of it and (2) Walmart negligently breached the duty it owed to Ms. Jones. *See* Final Brief of Appellants at 5–18. Thus, the trial court erred in denying Walmart’s motion for Directed Verdict and later JNOV motion.

The record contains no evidence from which a jury could find that Walmart created the alleged hazard, knew about it, or should have known about it. A plaintiff who alleges that her injury was caused by a dangerous or defective condition in a store must point to evidence that can establish that the property owner either negligently created the hazard or had actual or constructive knowledge of it. *Garvin*, 343 S.C. at 628, 541 S.E.2d at 832 (2001); *Pringle*, 382 S.C. at 404, 675 S.E.2d at 787. In the case of a foreign object on the floor of a retail store, the plaintiff must prove either that the object was placed there by the store or its employees, or that the defendant had actual or constructive notice the object was on the floor at the time of the injury. *Wintersteen*, 344 S.C. at 35, 542 S.E.2d at 729–30.

Ms. Jones presented no evidence at trial that Walmart or its agents placed the nail on the floor. Her speculation of where it *might* have come from cannot satisfy the requirement. *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 122–23, 165 S.E.2d 627, 629 (1969). Nor can she point to any evidence that Walmart had actual knowledge of the nail. Not one witness or piece of evidence suggests that Walmart or its personnel were aware of any nail on the floor. In fact, the unrebutted testimony proves that Walmart was *not* aware of any such hazard. *See* Trial Tr. at 596:8–10 (R. 3244). And Ms. Jones’ efforts at trial to establish constructive knowledge fared no better, as the undisputed evidence showed that Walmart took measures to monitor and inspect the store visually inspecting and physically sweeping and cleaning the floors each morning before the “soft reopening” each day at 8:00 a.m. *See id.* at 216:18 to 217:5 (R. 2683 to 2684); *see Calvert v.*

House Beautiful Paint & Decor. Ctr., 313 S.C. 494, 443 S.E.2d 398 (1994); *Wimberly*, 252 S.C. at 122–23, 165 S.E.2d at 629; *Young*, 288 S.C. 508, 511, 343 S.E.2d 636, 638 (Ct. App. 1986).

The trial court’s denial of Walmart’s motions for Directed Verdict and JNOV likewise was in error because the record contains no evidence from which a jury could find that Walmart negligently breached the duty it owed her as an invitee. As noted above, a merchant is not required to maintain its store in such condition that no accident could ever befall a customer. *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 377 (Ct. App. 2006). Further, “merchants are not required to continuously inspect their floors,” *id.*, and South Carolina’s courts have repeatedly held that merchants cannot be liable merely because it might be foreseeable that a foreign object may fall to the floor. *See Wintersteen*, 344 S.C. at 36, 542 S.E.2d at 730 (“To date, we have not required storekeepers to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises.”); *Simmons v. Winn-Dixie Greenville*, 318 S.C. 310, 457 S.E.2d 608 (1995); *Bessinger v. Bi-Lo, Inc.*, 329 S.C. 617, 496 S.E.2d 33 (Ct. App. 1998). Rather, a merchant is obliged only to take ordinary care to keep the premises, including the floors, in a reasonable safe condition. *Legette*, 368 S.C. at 579, 629 S.E.2d at 377; *see also Garvin v. Bi-Lo, Inc.*, 343 S.C. at 628–29, 541 S.E.2d at 832–33.

As detailed in Walmart’s brief to the Court of Appeals, Ms. Jones offered no evidence at trial in support of her claim that Walmart did not exercise ordinary care to keep the premises, including the floors, in a reasonably safe condition. Even if this Court were to grant certiorari, it would be compelled to affirm on that basis.

B. The trial and verdict were irrevocably tainted by Ms. Jones’ spontaneous (and false) trial testimony about a supposed settlement offer.

In addition to Ms. Jones’ trial counsel impermissibly staging and obtaining photographs four years after the incident and displaying these photographs during opening statement as

indicative of liability, there was *another* incident during trial that was materially prejudicial to Walmart and not adequately cured by the Court.

On the third day of trial, November 10, 2021, during the direct examination of Ms. Jones, she suddenly testified (falsely) that a claims agent from Walmart supposedly offered her \$50,000 for her alleged injuries. *See* Trial Tr. 448:9 to 450:2 (R. 3096 to 3098). She testified that this purported settlement offer was made three days after the incident, well before any of her amputations or significant medical treatment. *See id.* Walmart's counsel objected to Ms. Jones' testimony because it was inadmissible pursuant to Rule 408 and moved for a mistrial. *See id.* at 450:3 (R. 3098); *id.* at 456:1–11 (R. 3104). Ms. Jones' counsel *agreed* that a mistrial was appropriate based on her improper and unanticipated testimony. *See id.* at 456:21–24 (R. 3104). Yet the trial court denied Walmart's motion for mistrial and instead offered a mere curative instruction. *See id.* at 456:25 to 457:7 (R. 3104 to 3105). Before offering the curative instruction, however, the court requested that Ms. Jones stipulate on the record that no such offer existed (which Ms. Jones refused to do), revealing the court's understanding and tacit acknowledgment that a curative instruction alone would not be enough to remedy the harm caused by Ms. Jones' testimony. *See id.* at 454:7–13 (R. 3102); *id.* at 455:2–3 (R. 3103). In fact, the court expressed disbelief that the settlement conversation even took place, noting that “it kind of puts the defense in a bad spot. First of all, I sincerely doubt Walmart offered \$50,000 for what, at the time, was a puncture to her heel at that time. I do not anticipate that was said.” *See id.* at 451:15–18 (R. 3099).

South Carolina courts have long held that evidence of settlement offers cannot be used as a basis of liability. *See QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (Ct. App. 2004); *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 558, 556 S.E.2d 718, 725 (Ct. App. 2001); *Hunter v. Hyder*, 236 S.C. 378, 387, 114 S.E.2d 493, 497 (1960); *Neal v. Clark*, 199 S.C. 316, 19 S.E.2d 473 (1942). For example, in

Fesmire v. Digh, the Court of Appeals reversed a judgment entered by a special master and granted a mistrial, because the special master, as the factfinder, used settlement evidence as the basis of liability in violation of Rule 408. *See* 385 S.C. 296, 309, 683 S.E.2d 803 (Ct. App. 2009). The court found that the admission of such Rule 408 evidence clearly prejudiced the non-offering party, as it affected the outcome of the case. *Id.*

Here, Ms. Jones' inadmissible testimony was "clearly prejudicial," because any reasonable juror would consider such a large, unsolicited offer of settlement to be an admission of liability by Defendants. Despite the trial court's curative instruction, the jury still heard testimony that Walmart offered to pay Ms. Jones immediately after the incident and, ultimately, the jury could have and likely did assess liability based on this alleged offer. Walmart was not allowed the opportunity to offer evidence to rebut Ms. Jones' assertion without placing the alleged offer back into the jury's minds and possibly waiving their claims of prejudice. *See* Trial Tr. 451:9–16 (R. 3099). Without such rebuttal evidence, the jurors may well have believed that the alleged \$50,000 offer did in fact exist and that Walmart had tried (unsuccessfully, in their minds) to use legal wrangling to keep the jury from considering it. Because Walmart did not get the chance to present contrary evidence, the jury heard only that Walmart offered to settle with Ms. Jones for a large amount very soon after her injury, insinuating an admission of liability by Walmart. And, as noted, there is no evidence of Walmart ever making any settlement offers to Plaintiff, let alone an offer of \$50,000 within three days of the alleged incident. That is the exact type of testimony Rule 408 is designed to exclude, and the trial court erred in denying Walmart's motion for a new trial.

CONCLUSION

This Court should deny the Petition for Certiorari. The Court of Appeals' opinion is consistent with existing law and the Petition does not meet any of the conditions upon which certiorari is to be granted by this Court.

Respectfully submitted,

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