

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

---

**Appeal from Lancaster County  
Court of Common Pleas**

Brooks P. Goldsmith, Circuit Court Judge

---

Opinion No. 5028 (S.C. Ct. App. Filed Aug. 29, 2012)

---

**RECEIVED**

APR - 7 2015

**S.C. Supreme Court**

Travis A. Roddey, as the Personal  
Representative of the Estate of  
Alice Monique Beckham Hancock,.....Petitioner,

v.

Wal-Mart Stores East, LP, U.S. Security  
Associates, Inc., and Derrick L. Jones,.....Respondents.

---

**BRIEF OF RESPONDENTS**

---

W. Howard Boyd, Jr., Esq. (SC Bar No. 826)  
Stephanie G. Flynn, Esq. (SC Bar No. 16653)  
GALLIVAN, WHITE & BOYD, P.A.  
55 Beattie Place, Suite 1200 (29601)  
Post Office Box 10589  
Greenville, SC 20603  
(864) 271-9580  
(864) 271-7502 (facsimile)

Attorneys for Respondents

**TABLE OF CONTENTS**

Table of Authorities .....ii-iii

Statement of Issues on Appeal.....1

Statement of the Case .....1

Argument.....10

    I.    The trial court properly ruled that there was no evidence to establish a reasonable inference that Wal-Mart was negligent in either asking Jones to speak to or even delay Beckham, or by requesting Jones get Hancock’s license tag number.....11

    II.   The trial court properly ruled there was no evidence from which to draw a reasonable inference to establish that any negligence on the part of Wal-Mart was a proximate cause of the accident.....16

        A.   The evidence does not raise a reasonable inference that “but for” Wal-Mart’s request that Jones talk to Beckham or obtain the license tag number of Hancock’s car after Jones was already pursuing Hancock, Jones would not have continued his pursuit away from the property.....17

        B.   It was not reasonably foreseeable to Wal-Mart that by asking Jones to merely talk to Beckham that he would independently begin a pursuit that would culminate in the accident and death of Hancock or, by asking him to obtain Hancock’s license tag, he would continue the pursuit until Hancock lost control of her vehicle.....18

    III.  Even if this Court should determine that the trial court erred in granting a directed verdict in favor of Wal-Mart, that error should not require a new trial against all Respondents.....26

    IV.  Even collectively considering the conduct of all Respondents the only reasonable inference to be drawn from the evidence is that Hancock’s greater negligence and recklessness in fleeing the scene was the overwhelming cause of the accident.....29

Conclusion .....35

**TABLE OF AUTHORITIES**

**CASES**

Allen v. Pinnacle Healthcare Systems, LLC, 394 S.C. 268, 715 S.E.2d 362 (Ct. App. 2001).....27

Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).....30

Benford v. Berkeley Heating Co., 258 S.C. 357, 188 S.E.2d 841 (1972).....20

Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000).....30, 35

Buffett v. Vargas, 914 P.2d 1004 (N.M. 1996).....29

Creech v. South Carolina Wildlife and Marine Resources Department, 328 S.C. 24, 491 S.E.2d 571 (1997).....28

Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790 (1939).....24

Estate of Haley ex rel. Haley v. Brown, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006).....30

First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994).....29

Greene v. Sibley, Lindsay & Curr Company, 257 N.Y. 190, 177 N.E. 416 (1931).....22

Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980).....17

Humphrey v. Day & Zimmermann International, Inc., 997 F.Supp.2d 388 (D.S.C. 2014).....30-31

I’On, L.L.C. v. Town of Mt. Pleasant, 328 S.C. 406, 526 S.E.2d 716 (2000).....16

Jack v. Booth, 858 N.W.2d 711 (Iowa 2015).....29

Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991).....28

Parks vs. Characters Night Club, 345 S.E. 384, 548 S.E.2d 605 (Ct. App. 2001).....22

Sager v. City of Woodland Park, 543 F.Supp 282 (D.C. Colo 1982).....21

<u>Shepard v. South Carolina Department of Corrections</u> , 299 S.C. 370, 385 S.E.2d 35 (Ct. App. 1989).....	22, 24-25
<u>Singleton v. Sherer</u> , 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).....	30
<u>Snavely v. AMISUM of South Carolina, Inc.</u> , 379 S.C. 386, 665 S.E.2d 222 (Ct. App. 2008).....	30
<u>Steward v. Cox</u> , 362 P.2d 345 (1961).....	20
<u>Traweek v. Larkin</u> , 709 S.W.2d 942 (Tex. Ct. App. 1986).....	21
<u>Thomas v. South Carolina Dept. of Highways and Public Transp.</u> , 320 S.C. 400, 465 S.E.2d 578 (Ct. App. 1995).....	16
<u>Vinson v. Hartley</u> , 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).....	16
<u>Young v. Tide Craft, Inc.</u> , 270 S.C. 453, 242 S.E.2d 671 (1978).....	19-21, 22

**STATUTES AND RULES**

S.C. Code Ann. § 16-13-110.....	2
S.C. Code Ann. § 16-13-120.....	2
Rule 208(b)(1)(B), SCACR.....	27

**OTHER AUTHORITIES**

58 Am. Jur. 2d New Trial § 29 (2012).....	29
---	----

## **QUESTIONS PRESENTED**

- I. Did the trial court properly grant a directed verdict in favor of Wal-Mart where there was no evidence to establish Wal-Mart was negligent or that any Wal-Mart employees violated Wal-Mart's policies and procedures?
- II. Did the trial court properly grant a directed verdict in favor of Wal-Mart on the grounds that it was not reasonably foreseeable, based on any of Wal-Mart's acts or omissions, that Hancock and Beckham would flee in a vehicle or that Jones would independently begin and then continue a vehicular pursuit away from the property?
- III. Did Petitioner waive his argument that a finding of error as to one defendant requires a new trial for other defendants who received a non-erroneous verdict, favorable to them, which was not otherwise challenged?
- IV. Even if not waived, and a finding of error as to one defendant would require a new trial as to all defendants, is an affirmance of the trial court's ruling nevertheless warranted given that Hancock's negligence in fleeing the scene was a greater than 50% cause of the accident as a matter of law and as demonstrated by the jury's apportionment of fault to Hancock in the verdict rendered as to USSA and Jones?

## **STATEMENT OF THE CASE**

This case arises out of a shoplifting incident and subsequent single car accident that occurred on June 20, 2006. Sometime after 9:00 p.m., Alice Monique Beckham Hancock and her sister, Donna Beckham, drove to a Wal-Mart store located on Highway 9 Bypass in Lancaster, SC, and entered together. (App. p.296, line 13-p.297, line 6). After perusing multiple sections of the store, Hancock separated from Beckham and returned to her car, moving it to a new location several aisles over, where it was not surrounded by other vehicles. (App. p.297, line 7-p.298, line 4; p.301, lines 4-11; p.302, line 15-p.303, line 10). In the interim, Beckham selected and concealed in a bag several

pairs of jeans she admittedly intended to shoplift. (App. p.298, lines 13-19; p.299, lines 2-4; p.300, lines 2-19).

A Wal-Mart employee, Hope Rollings, observed Beckham concealing the clothing items, thereby committing a shoplifting offense,<sup>1</sup> and began watching her. (App. p.316, line 22-p.317, line 2). While Wal-Mart could have permissibly inferred under South Carolina law that Beckham intended to shoplift the items at that moment, Wal-Mart elects to wait until after a shoplifter exits the store and passes the last point of sale before approaching and investigating. (App. p.349, lines 2-12; p.372). Wal-Mart recognizes merchandise is not lost until after it is actually taken away from the store. This practice gives Wal-Mart's customers the benefit of the doubt and a final opportunity to pay for the merchandise or abandon their activity. (App. p.349, lines 13-24). It further removes the shoplifter's argument that she still intended to pay. (App. p.372).

Whereas Wal-Mart handled all of its own loss prevention activities, it contracted with U.S. Security Associates ("USSA"), an independent, private security contractor, to provide a uniformed security officer to patrol the Wal-Mart parking lot in a USSA-owned security truck, affixed with a light on top and "U.S. Security" decals on both sides of the vehicle. (App. p.247, lines 13-18; p.221, lines 4-25) (See generally App. pp.412-427, Security Services Master Agreement). Wal-Mart had no involvement in the hiring, firing, training, and/or supervision of USSA personnel, nor any responsibility for the vehicles used by such personnel. (App. p.353, lines 6-13; p.346, line 1-p.347, line 23; p.338, lines 13-14; p.336, lines 5-8; p.321, lines 6-13; See also Security Services Master Agreement Addendum, App. p.425). The presence of a uniformed security officer in the parking lot was intended solely as a deterrent to unlawful activity and as a source of information to

---

<sup>1</sup> See S.C. Code Ann. §§ 16-13-110 and 16-13-120.

Wal-Mart. (App. p.367, Guidelines for Private Security Contractors; p.240, lines 1-10). Security officers were authorized to act as witnesses in a shoplifting situation, record information helpful to any investigation, and assist if requested by Wal-Mart. (App. p.368, Guidelines for Private Security Contractors; p.350, lines 21-23).

After Rollings observed Beckham concealing merchandise in Wal-Mart bags at an unmanned register, she radioed fellow employee Shaun Cox to report what she saw and enlist her assistance. (App. p.318, lines 9-13). That communication would have also been transmitted to the assistant manager and to the USSA security officer, who both carried walkie-talkies. (App. p.318, lines 14-17; p.340, lines 2-13). While Cox proceeded to watch Beckham, Rollings went to ask the door greeters posted at each of the two Wal-Mart exits (general merchandise and grocery) to stop and ask Beckham to show a receipt as she was leaving.<sup>2</sup> After speaking with the door greeters, Rollings noticed the USSA security truck just outside of the grocery doorway and walked outside to speak to the driver on duty, Derrick Jones. (App. p.320, line 1-p.321, line 5; p.321, line 24-p.322, line 2). Rollings wanted to make Jones aware of what she had seen so that he could provide some additional security presence for the door greeters when they stopped Beckham to speak to her. (App. p.321, lines 17-23; p.322, lines 6-22). After Rollings told Jones she had seen a shoplifter putting stuff into bags, Cox radioed that the shoplifter was preparing to leave through the general merchandise exit. (App. p.321, line 24-p.322, line 5; p.320, line 20-p.321, line 2). Rollings promptly walked back inside of the grocery doorway to walk through the store to the other exit, (App. p.320, line 24-p.321, line 1; p.322, line 23-p.323, line 9), while Jones drove his USSA security truck to the general merchandise exit.

---

<sup>2</sup> It was a typical function of the door greeters to not only greet customers, but to also request receipts under certain circumstances. (App. p.319, lines 15-18; p.320, lines 1-14).

(App. p.320, line 22-p.321, line 2; p.322, lines 23-25). Although Cox denied having any further communications over the radio at that time (App. p.335, lines 6-19), Jones claims to have asked over the walkie-talkie what Wal-Mart wanted him to do, and says he was told to “try to kind of like delay – you know, try to delay her. Try to talk to her until we can get out there.” (App. p.184, line 23-p.185, line 4). Jones testified that since he was not really given any “distinctive instructions,” he would just try to slow Beckham down. (App. p.219, lines 6-14).

When the door greeter located near the general merchandise exit requested to see Beckham’s receipt, Beckham falsely claimed her sister had it, placed the bag of merchandise on the floor and left. (App. p.289, lines 5-11). No one followed Beckham outside, and she was allowed to leave per Wal-Mart policy. (App. p.334, line 18-p.335, line 8). After Beckham was gone, Cox walked toward the general merchandise exit and had a conversation with the door greeter to find out what Beckham said. (App. p.335, line 17-p.336, line 1; p.336, line 12-p.337, line 336). During that time, Cox had no idea where Jones was and did not know he had pulled up outside of the general merchandise exit. (App. p.336, lines 2-11). She intended to do nothing further since Beckham had abandoned the Wal-Mart bag. (App. p.335, lines 17-19).

As Beckham exited, she walked directly in front of the USSA security truck and by Jones’s driver’s side window. Both Beckham and Jones have described a brief verbal exchange (Jones claims he asked if he could speak with her, telling her it would only take a minute, (App. p.185, lines 5-13), while Beckham says Jones screamed “Hey, I need to talk to you,” to which she responded “No, you don’t.” (App. p.291, lines 2-5)). Either way, videotaped footage from surveillance cameras clearly shows Beckham begin

running directly toward Hancock's car, even though it was then located several aisles over and much farther from the exit from where it had originally been parked. (App. p.246, lines 2-7; p.248, lines 10-17; p.276, lines 10-15).

Jones backed up and attempted a U-turn to follow Beckham. (App. p.246, lines 7-11). As Beckham was running, Hancock pulled out of her parking space and drove the wrong way down the aisle toward Beckham, who jumped into the back seat on the driver's side as the car was still rolling and yelled, "Let's get the hell out of here." (App. p.248, lines 20-25; p.255, lines 11-15; p.276, lines 16-25). By that time, Jones had turned into the same aisle and was driving toward Hancock, continuing forward until the vehicles were nose to nose. (App. p.218, line 16-p.219 line 1; p.185, lines 15-20). Because Hancock was blocked, she threw her vehicle into reverse and backed down the aisle at a high rate of speed, striking a concrete median in the center of the parking lot before turning her car around and speeding toward the exit. Hancock ran both a stop sign and stop light to turn onto Highway 9 Bypass, dodging other vehicles, with Jones following behind her. (App. p.279, lines 9-23).

After her conversation with the door greeter, Cox testified she walked to the doorway and, when she looked to her left, she saw Jones's truck facing Hancock's car in a parking aisle while Hancock began driving in reverse. (App. p.336, line 12-p.337, line 8). Cox then saw Hancock hit the median in the parking lot and flip her car around to flee. (App. p.337, lines 2-8). As soon as Hancock turned around, so that Jones was then positioned behind her, Cox radioed, "Get her tag number." (App. p.327, line 19; p.337, line 13-p.338, line 3; p.344, lines 11-16). She did not intend for Jones to chase Hancock out of the parking lot to get the tag number, nor did she expect that he would do so. (App.

p.337, line 16-p.338, line 7; p.344, lines 2-8). Rather, she meant for Jones to note the tag number and stop. (App. p.344, lines 9-16). Despite this, as Hancock ran through the stop sign and red light, nearly striking other vehicles, Jones, despite knowing he was not permitted to leave the parking lot or follow Hancock, continued his pursuit off of the property. (App. p.188, lines 5-22; p.342, lines 13-17). Jones testified that, although he was trained not to leave the parking lot (App. p.188, lines 19-22; p.190, lines 15-22; p.209, line 4-p.212, line 11; p.213, lines 17-23; p.214, lines 4-21), and no one had directed or asked that he pursue<sup>3</sup> Beckham and Hancock (App. p.325, lines 5-12; p.329, lines 20-22; p.344, lines 2-16; p.351, lines 10-p.352, line 11; p.226, lines 3-13), he nonetheless made the decision to follow them. Jones admitted he was not thinking clearly, but felt an urgency to obtain Hancock's license tag number and did not want anyone to think he was not up to the task.<sup>4</sup> (App. p.185, line 25-p.186, line 21; p.216, lines 20-24).

Rollings reached the general merchandise doorway within a few moments after Cox, where she was also able to observe some of the events. In the few seconds that ensued between the time that Rollings and Cox could see what was occurring until the vehicles sped out of sight (App. p.325, lines 15-17; p.329, line 23-p.330, line 1; p.344, lines 17-19), and having never seen anything like that before (App. p.339, lines 3-10; p.344, lines 20-21), both described feeling "stunned," "shocked," and at a loss as to what

---

<sup>3</sup> While Petitioner has stated that Wal-Mart employees "instructed the security guard to pursue the women" (Petitioner's Brief, p.1), that is a gross mischaracterization of the evidence. At no time was there ever an instruction by any Wal-Mart employee that Jones "pursue" Hancock and Beckham. (App. p.325, lines 5-12; p.329, lines 20-22; p.344, lines 2-5; p.351, line 18-p.352, line 11).

<sup>4</sup> Whereas Jones felt some sense of urgency to get Hancock's license tag number, he agreed he did not interpret the request to mean he had to obtain the license tag number at all costs. (App. p.187, lines 6-24; p.219, lines 4-20; p.245, lines 1-3). Wal-Mart never threatened Jones would suffer any consequences whatsoever if he failed to obtain Hancock's license tag number, nor did Wal-Mart have the ability to fire or even reprimand Jones. (App. p.214, line 22-p.215, line 22; p.226, lines 3-13; p.346, lines 9-10; p.347, lines 6-12, 19-23).

to do. (App. p.324, lines 8-14; p.325, lines 5-9; p.338, lines 4-7; p.339, lines 9-13; p.342, lines 1-12). Neither expected Jones would leave the parking lot, much less actually continue to chase Hancock and Beckham. (App. p.324, lines 8-10; p.325, lines 2-9; p.338, lines 4-7; p.342, lines 7-12). It did not occur to them in that brief moment while within the range of the walkie-talkie to tell Jones to stop before he was out of sight, nor would there have been any guarantee he could have heard them since only one person may transmit over the walkie-talkie at a time. (App. p.325, lines 13-21; p.339, lines 3-10; p.343, lines 4-25). Frankly, it is impossible to tell who could have heard what over the walkie-talkie. Jones has seemingly described giving some sort of blow-by-blow account over the walkie-talkie (App. p.224, lines 2-p.225, line 13), while Cox testified she had the receiver pressed to call the assistant store manager, Chuck Campbell, to the front of the store. (App. p.331, lines 4-21; p.220, lines 11-25).

The testimony of Beckham and Jones about the events occurring after both vehicles left the parking lot differs dramatically. (App. p.277, line 22-p.279, line 8; p.279, line 24-p.280, line 13). Jones contends he lost Hancock's vehicle early in the pursuit, only discovering it after the accident. Beckham claims that, although she was crouched down in the back seat of the car for the next two to three miles, popping up and down to glimpse out of the back window, Jones remained "on [their] bumper," flashing his bright lights on and off. (App. p.293, line 13-p.294, line 25). She further claims Hancock said, "He's still on our ass," and that the high beams were still flashing just a moment before the accident. (App. p.295, lines 5-11; p.305, lines 15-17). As Hancock approached a curve in the roadway, she failed to make the turn and instead proceeded straight, driving off of the roadway and traveling through a grassy area and down an embankment, where

she struck a tree head-on. There is no evidence of contact between the security truck and Hancock's vehicle. (App. p.308, line 23- p.309, line 9). Hancock died at the scene as a result of her injuries.

On May 9, 2007, Petitioner filed a wrongful death and survival action in the Lancaster County Court of Common Pleas against Wal-Mart, USSA, and Jones. Amended complaints were subsequently filed on July 31, 2007, and October 3, 2007. In Petitioner's Second Amended Complaint, he alleged the accident was caused by the negligent acts of the USSA security officer, Jones, when Jones "inexplicably" pursued Hancock out of the Wal-Mart parking lot. Petitioner further alleged USSA and Wal-Mart were vicariously liable for the negligent acts of Jones by virtue of agency and/or respondeat superior liability, and for USSA's negligent hiring, training, supervision and entrustment of a vehicle to Jones. Respondents timely filed responsive pleadings, denied any liability to Petitioner, and asserted a number of affirmative defenses, including that Hancock's negligence exceeded that of the defendants.

The trial of this case commenced on April 6, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Petitioner's case on April 9, 2010, Wal-Mart moved for a directed verdict on the grounds that Petitioner failed to establish (1) that there was any negligence on the part of Wal-Mart, (2) that any negligent acts or omissions by Wal-Mart were a proximate cause of the accident, and (3) even if any negligence by Wal-Mart was a proximate cause of the accident, the only reasonable inference to be drawn from the evidence was that Hancock's own negligence and recklessness was a greater than 50% cause of the accident. (App. p.359, line 18-p.361, line 10; p.362, line 1-p.364, line 1). The trial court granted Wal-Mart's motion for directed verdict, holding there was no

evidence of negligence on the part of Wal-Mart and alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident, given that the series of events culminating in the single-car accident and death of Hancock, specifically including a two-mile high-speed pursuit by Jones off of Wal-Mart property, were not reasonably foreseeable. The court denied directed verdict motions made by USSA and Jones. At the conclusion of the six-day trial on April 13, 2010, the jury returned a verdict, apportioning 65% of the fault for the accident to Hancock and 35% to Jones and USSA. (App. p.124-26). On Petitioner's cause of action for negligent hiring, training, supervision and entrustment, the jury found that, while USSA was negligent in hiring Jones, such negligence was not a proximate cause of the accident. (Id.)

On April 23, 2010, Petitioner timely served a Motion to Alter or Amend the Judgment and for a New Trial. (App. p.150-58). The Court denied the motion by Order dated June 4, 2010 (App. p.127), and on June 14, 2010, Petitioner timely filed and served a Notice of Appeal to the Court of Appeals.

The Court of Appeals affirmed the circuit court ruling in a 1-1-1 decision. (App. p.1-27). Chief Judge John C. Few voted to affirm on the grounds that no reasonable jury could find Hancock was 50% or less at fault as a matter of law. Judge Few's opinion rested on Hancock's actions in knowingly fleeing the scene of a crime in a reckless manner and on the jury's apportionment of negligence to USSA and Jones versus Hancock. He reasoned that, since any acts or omissions by Wal-Mart only explained Jones's presence and motivation in the situation, at best, the jury had already fully considered the complete scope of the alleged negligent conduct by the defendants, finding it only accounted for 35% of the total negligence in the action.

Judge Paul E. Short, Jr., agreeing the trial court's order should be affirmed, believed it should be affirmed on the proximate cause element of Petitioner's action based on the unforeseeability of Jones's conduct. Judge Thomas E. Huff wrote a dissenting opinion and would have reversed and remanded for a new trial, but only as to Wal-Mart. He reasoned that both USSA and Jones had already been scrutinized by a jury, receiving a verdict favorable to them, which was not found to be in error. As Petitioner raised no issue nor cited to any legal authority providing that a reversal and remand as to USSA and Jones was even procedurally possible, Judge Huff found Petitioner waived the argument that the grant of a new trial requires a new trial against all Respondents.

### **ARGUMENT**

Respondents agree this should not be a difficult case. When the integrity of the timeline of events is maintained, putting the events of June 20, 2006 in their proper context, it becomes glaringly apparent that Wal-Mart played no role or at most an infinitesimally small and non-determinative role in the single-car accident that ended Hancock's life two miles from the store. Wal-Mart had no interactions with Hancock and only one brief interaction with Beckham in requesting that Beckham present a receipt. Wal-Mart employees did not follow Beckham out and intended to do nothing further when Beckham abandoned the bag of stolen merchandise on the floor. They only learned after Beckham left the store, started to run, and Hancock's car was in motion, that Jones had engaged Beckham and was pursuing her in the middle of the parking lot.

Jones was not an agent or employee of Wal-Mart. Yet, Petitioner seemingly continues to assert that Wal-Mart breached its internal policies and procedures based on Jones's conduct, which is not supported by the evidence or South Carolina law. Wal-

Mart's conduct has to be examined based on the acts of its own employees, not Jones. Given this appropriate focus, it is evident a directed verdict in favor of Wal-Mart was proper and should be affirmed.

**I. The trial court properly ruled that there was no evidence to establish a reasonable inference that Wal-Mart was negligent in either asking Jones to speak to or even delay Beckham, or by requesting Jones get Hancock's license tag number.**

Petitioner premises Wal-Mart's negligence entirely on alleged violations of Wal-Mart's own internal policies and procedures. Specifically, Petitioner first contends Wal-Mart failed to follow its policy that provides only "Authorized Associates" may "investigate and/or detain persons suspected of or who commit shoplifting," and which directs the manner in which suspects are approached. (App.p.374). Petitioner apparently contends Wal-Mart somehow procured Jones, not an "Authorized Associate" or even an employee of Wal-Mart, to perform those functions by telling him they had identified a shoplifter. There is no evidence, however, that Wal-Mart employees, in their own interactions with Beckham, acted inappropriately in any way. Petitioner's expert in guard force management, parking lot security and loss prevention, Jeffrey Gross, testified he had no problems with anything Wal-Mart employees did within the store on the night of the accident. (App. p.255, lines 16-18). Rather, he acknowledged they followed their policies and procedures and engaged in appropriate retail practice in observing Beckham's actions inside of the store, broadcasting over the radio that a shoplifter was approaching the exit, and requesting Beckham produce a receipt for the stolen merchandise. (App. p.255, lines 19-25; p.256, lines 8-14; p.257, lines 18-20; p.351, lines 3-23; p.355, line 8-p.356, line 11).

Secondly, Petitioner claims Wal-Mart failed to follow its policies that caution employees to never pursue a suspect who is in a moving vehicle, never pursue a suspect off of Wal-Mart's property, never use a vehicle to pursue a suspect, and to terminate the pursuit if the suspect begins to enter a vehicle, (App. p.375), all of which were acts performed *by Jones* and not by any Wal-Mart employee. While a jury may certainly consider whether the failure of a defendant to follow its own policies constitutes evidence of a deviation from the standard of care, the proper focus in determining whether Wal-Mart was negligent is not on *Jones*'s acts or violations of Wal-Mart's internal policies for Authorized Associates. Rather, Wal-Mart's liability rises and falls on the acts of its own employees in following Wal-Mart's policies and procedures. In doing so, it becomes evident that, to the extent any policies were violated, it was not *Wal-Mart* that did so. (App. p.351, lines 3-9). The record is clear, and Petitioner has conceded, that Jones was not a Wal-Mart employee, and Wal-Mart has no *respondeat superior* liability for Jones.

Petitioner's argument that there is evidence of alleged violations by Wal-Mart of its own policies and procedures hinges entirely on the testimony of Jones. Petitioner would equate Jones's testimony that a Wal-Mart employee contacted him over his walkie-talkie, told him that there was a shoplifter exiting the store, and asked him to "kind of like delay" her with a procurement of Jones to investigate and/or detain Beckham, which no one other than an "Authorized Associate" may do. This argument fails for several reasons.

As an initial matter, there are no prohibitions within Wal-Mart's policies on talking to USSA security officers, keeping them apprised of events occurring within the Wal-Mart store that may spill over into the parking lot, and requesting appropriate

assistance of USSA security officers. In fact, the guidelines issued to USSA security officers authorize them to assist if requested and to convey information as a witness in shoplifting situations. (App. p.368, Guidelines for Private Security Contractors, ¶26).

Secondly, no conduct on the part of Jones can be said to qualify as an investigation or detention of Beckham. An investigation under Wal-Mart's policies would have entailed verifying the suspect was in possession of merchandise, had not paid for the merchandise, and had no reasonable explanation for possession of the merchandise to assess whether to detain the suspect. (App. p.374). Detention, if then warranted, would have required restricting the suspect's ability to leave voluntarily. (App. p.371). It would not include simply stopping or questioning a person. (App. p.371). Petitioner's pursuit expert, Dr. Jeffrey Alpert, (App. p.267, lines 11-17), took no issue with Jones asking Beckham if he could speak with her as she walked past his security vehicle, (App. p.277, lines 12-21), nor did Petitioner's guard force management, parking lot security and loss prevention expert, Gross, criticize that act. (App. p.235, line 16- p.236, line 16). Hence, to accept Petitioner's argument would require the jury to equate a request to Jones that he "kind of like delay" Beckham with an instruction to investigate and/or detain, which is not a reasonable conclusion. Jones even recognized he was not to investigate or detain Beckham, but decided his plan was to slow her down. As Jones attested, Wal-Mart "never really gave me any distinctive instructions on what I'm – was supposed to do when she came out the store. So I just looked at it – I just took the approach of, I can't detain her; I can't arrest her. So I'm just trying to slow her up, just trying to, you know, stall for time until they can come and get her. But that didn't happen that way." (App. p.219, lines 6-14).

Not only did no employee of Wal-Mart procure or instruct Jones to investigate or detain Beckham, or to otherwise perform some function reserved for “Authorized Associates,” but *no* Wal-Mart employee engaged in any pursuit of Beckham or Hancock. They let Beckham walk out the door without following. Then, before any Wal-Mart employee walked to the exit or had any awareness of what was occurring outside, Jones and Beckham had already had a brief verbal exchange, Beckham began to run out into the parking lot toward her sister’s car, jumping into the moving vehicle, and Jones, rather than staying put, had inexplicably turned his security vehicle around to follow her, all without any participation or involvement by Wal-Mart. Jones, who cannot be said to have been spurred on by any request from Wal-Mart to take those actions, initiated the pursuit of Beckham as soon as she began running. As Petitioner’s pursuit expert, Dr. Alpert, testified, the pursuit began at the moment when Beckham began to run and Jones followed. (App. p.269, lines 6-22). Cox, the first Wal-Mart employee to witness any of the events as they unfolded, did not walk outside until after first having a conversation with the door greeter. It was only when Cox exited the store and looked out into the parking lot that she first saw Jones’s and Hancock’s vehicles, already in the midst of an ongoing pursuit, facing each other as Hancock was backing away from Jones.

Petitioner also takes issue with the request made by one Wal-Mart employee (Cox) to Jones that he get Hancock’s license tag number. Wal-Mart’s general manager, Chris Tipton, has affirmed, however, that asking Jones to obtain Hancock’s license tag number when he could have done so in the parking lot was not a violation of policy. (App. p.351, lines 3-17). Petitioner’s experts, Gross and Alpert, also agreed that recording a license tag number would be reasonable and explainable and, while they did

not take issue with the request, it was *Jones's acts* in blocking and pursuing Hancock that were problematic. (App. p.260, lines 14-23; p.277, lines 8-21).

While Cox has testified she radioed one time, "Get her tag number," after Hancock turned around so that Jones was directly behind her and in a position to see it, Jones has implied the request was repeated, incredibly, during some sort of ongoing dialogue over a walkie-talkie, capable of transmitting only one signal at a time. (App. p.327, line 19; p.337, line 9-p.338, line 3; p.344, lines 11-16). In any event, there is no testimony from Jones or anyone else that he was instructed to pursue Hancock off of the property, much less to thereafter engage in "a vehicular pursuit on a public street," continuing two miles away from the property, knowing full well he was never supposed to leave the property in the first place. (App. p.351, line 18-p.352, line 6).

Even if Cox repeated her request that Jones get Hancock's tag, or it might have become obvious at some point that Jones was not going to stop at the edge of the parking lot, Cox in no way intended her request to equate with an instruction for Jones, already engaged in a pursuit, to continue to pursue or follow Hancock out of the parking lot. (App. p.337, line 24-p.338, line 3; p.344, lines 2-8). Rather, she meant for Jones to just read the tag number and stop. (App. p.344, lines 9-16). Jones has tried to imply he felt some urgency to act. He talks fairly prolifically about "how they (Wal-Mart employees) were coming across," "how they were making it sound," and what he was reading between the lines or interpreting them to mean, all of which is grossly speculative on his part, although it certainly provides Jones with a convenient excuse to try to explain his actions. He could not know Cox's intent, fully admits he was never told to leave the parking lot, and was never asked to pursue Hancock or do anything other than obtain

Hancock's license tag number. It was Jones's decision, when no one was aware of what was occurring, to turn around and chase after Beckham when she began running and then, knowing he should not do it, to continue to follow Hancock from the parking lot.

The evidence and all reasonable inferences to be drawn therefrom establish that Wal-Mart did not ask Jones to perform any function reserved for Authorized Associates in investigating and/or detaining a shoplifter. Wal-Mart certainly did not direct or authorize Jones to pursue Beckham and Hancock, an act that Jones unquestionably began independently without any input from Wal-Mart, nor would a request to obtain a license tag number equate with a sanction of that behavior. Accordingly, the trial court appropriately granted a directed verdict in favor of Wal-Mart, which should be affirmed.

**II. The trial court properly ruled there was no evidence from which to draw a reasonable inference to establish that any negligence on the part of Wal-Mart was a proximate cause of the accident.**

While Petitioner has focused on the foreseeability component for establishing proximate causation, it is Wal-Mart's position that Petitioner has failed to establish not only the foreseeability component, but has also failed to establish causation in fact.<sup>5</sup> A plaintiff has the burden of proving *both* that the injury would not have occurred "but for" the defendant's alleged negligence *and* that the plaintiff's injury was foreseeable. See Vinson v. Hartley, 324 S.C. 389, 400, 477 S.E.2d 715, 721 (Ct. App. 1996). See also Thomas v. South Carolina Dept. of Highways and Public Transp., 320 S.C. 400, 465 S.E.2d 578 (Ct. App. 1995) (plaintiff failed to show the accident would not have occurred had defendant properly seized the license tag and car registration of a driver who struck

---

<sup>5</sup> Respondent may raise, and the appellate court may affirm on appeal, the ruling of the trial court based on any additional reasons appearing in the record on appeal. See I'On, L.L.C. v. Town of Mt. Pleasant, 328 S.C. 406, 526 S.E.2d 716 (2000).

plaintiff, rendering him quadriplegic); Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980) (even assuming defendant was negligent, there was no evidence from which a jury could reasonably infer that “but for” the error in properly communicating or acting upon the results of medical tests performed on the decedent that the decedent could have been properly diagnosed and treated, and her death averted).

**A. The evidence does not raise a reasonable inference that “but for” Wal-Mart’s request that Jones talk to Beckham or obtain the license tag number of Hancock’s car after Jones was already pursuing Hancock, Jones would not have continued his pursuit away from the property.**

Petitioner has essentially faulted Wal-Mart for involving Jones at all in any interaction with Beckham. In light of his possession of a walkie-talkie, however, Jones was already privy to the surveillance and discussions of Beckham while she was still inside of the store. It was in no way a violation of any policy, nor have Petitioner’s experts found any fault, in Jones simply asking to speak with Beckham as she walked directly past his window. While a request to delay someone by speaking to that person in no way correlates with a request to pursue, Jones, on his own initiative, went beyond that request when he immediately tried to follow Beckham as she ran, beginning the pursuit at that moment. Moreover, as Jones was already in the midst of pursuing Hancock, the request that Jones get her license tag number at that point was superfluous. It could not have influenced Jones to have initiated his pursuit, which was already well underway. Given those factors, it cannot be said that “but for” Wal-Mart’s alleged negligent acts, Jones would not have taken it upon himself to chase after Beckham and Hancock.

**B. It was not reasonably foreseeable to Wal-Mart that by asking Jones to merely talk to Beckham that he would independently begin a pursuit that would culminate in the accident and death of Hancock or, by asking him to obtain Hancock's license tag, he would continue the pursuit until Hancock lost control of her vehicle.**

On the foreseeability component, Petitioner first argues that the trial court, in determining it was unforeseeable for Jones to follow the women, overlooked Jones's testimony that he was asked to get Hancock's tag number and that Wal-Mart repeated the request. Petitioner equates those requests with outright instruction and encouragement by Wal-Mart for Jones to follow the women, even when that "required a vehicular pursuit on a public street." Petitioner's argument, however, purposefully ignores the timing and sequence of events. To be clear, the pursuit began the moment Beckham started running and Jones immediately attempted a U-turn to follow. No employee of Wal-Mart observed those events or had any indication or warning they were occurring. By the time anyone first saw Jones's security truck, he was already nose-to-nose with Hancock's vehicle as she was backing at a high rate of speed to get away. Jones admits he was never asked to pursue Hancock, that he made the decision to follow, and that he knew he was not supposed to leave the parking lot. (App. p.188, lines 19-22; p.190, lines 15-22; p.209, line 4-p.212, line 11; p.213, lines 17-23; p.214, lines 4-21). It was only in the context of those events, already well-underway, that a Wal-Mart employee thought to radio Jones to get Hancock's license tag at the moment Jones became positioned directly behind her to see it. It is inconsistent with the evidence to suggest that Wal-Mart instructed Jones to engage in a pursuit that was already underway by the time Wal-Mart realized it.

And assuming, as we must, that Wal-Mart repeated the request to get Hancock's tag number, which is disputed by Wal-Mart,<sup>6</sup> it is not reasonable to infer from those requests that Wal-Mart intended for or could have reasonably foreseen that Jones would engage in a vehicular pursuit on a public street, particularly in the manner described by Beckham. According to Beckham, Jones was on Hancock's bumper, aggressively flashing his lights over the course of the next two miles. To the extent Jones seemed to feel some urgency to get the tag number in the parking lot, he agreed no one directed or instructed him to leave the parking lot or do anything other than obtain Hancock's license tag number. Any implication that Wal-Mart intended for Jones to do anything else is entirely speculative and without support in the testimony.

Petitioner next contends, citing Young v. Tide Craft, Inc., 270 S.C. 453, 242 S.E.2d 671 (1978), that the trial court's decision wrongly implies that legal causation hinges on the foreseeability of someone's conduct versus foreseeability of the plaintiff's injury. Petitioner asserts Jones's actions are not the test, but that the Court need only determine if the plaintiff's injury is of the type that would naturally and probably flow from the defendant's negligence. Indeed, the probable consequences test consists simply of determining whether a wrongdoer's actions were such that they "would probably cause injury to something or someone," such that the only consequence to be taken into consideration is the injury. *However*, where there is a contention of an intervening agency, as here—the actions of Derrick Jones—there are *two* consequences to be tested: (1) the injury complained of, *and* (2) the acts of the intervening agency. See Young, 270

---

<sup>6</sup> Jones's testimony incredibly implies he was having some sort of on-going dialogue and giving a blow-by-blow account of the events over a hand-held walkie-talkie, capable of transmitting only one signal at a time, all the while in the midst of blocking and chasing Hancock and Beckham at a high rate of speed during a very brief few seconds.

S.C. at 463, 242 S.E.2d at 676. If Jones's intervening acts were not foreseeable, Wal-Mart can only be liable if Wal-Mart's actions *alone* "would have caused the loss in the natural course." Benford v. Berkeley Heating Co., 258 S.C. 357, 365, 188 S.E.2d 841 (1972). Given that framework, the trial court properly examined the foreseeability of Jones's acts and found them not reasonably foreseeable. It was not just that Jones followed Hancock through the parking lot, but after leaving he then began tailgating and flashing his high beams until Hancock's vehicle left the roadway. It was in no way foreseeable that Jones would follow Hancock off of the Wal-Mart premises in a high speed pursuit just because he was asked to get a license tag on the premises.

Moreover, Jones admittedly had full knowledge and was trained to know he was not supposed to leave the parking lot, was not a police officer, and could not detain anyone. Jones nonetheless continued his pursuit, even after observing Hancock nearly get into two accidents with other vehicles,<sup>7</sup> before Hancock finally lost control of her vehicle. Where an actor engages in negligent conduct with full realization of the danger, such conduct may properly be considered highly extraordinary and, thus, not reasonably foreseeable. See Young, 270 S.C. at 465, 242 S.E.2d at 677 (1978) (*quoting* Steward v. Cox, 362 P.2d 345 (1961)). Hence, in Young, the Supreme Court reversed a jury verdict in favor of the estate of a decedent killed in a boat accident. Under the circumstances of that case, the defendant boat manufacturer allowed dealers to complete installation of the steering mechanism of its boats prior to sale. After the decedent encountered problems with the steering mechanism, he returned the boat to a dealer where a mechanic, fully aware of the danger in doing so, admittedly used unaccepted and inadvisable practices in

---

<sup>7</sup> According to Jones, Hancock nearly had a "real bad accident" as they were leaving the parking lot and then, some distance down Highway 9 Bypass, Hancock nearly slammed into the back of a second vehicle before swerving to the left to avoid it. (App. p.187, lines 6-20; p.192, lines 17-23).

performing the repairs. Adding together the remoteness of the possibility that a mechanic would select the method of repair used, and given the mechanic's knowledge of the danger in doing so, the court held it could not be seriously contended that the mechanic's actions were a probable consequence of any wrongdoing on the part of the boat manufacturer. As a result, the court determined as a matter of law that the mechanic's negligence constituted the sole proximate cause of the decedent's death. See also Sager v. City of Woodland Park, 543 F.Supp. 282 (D.C. Colo. 1982) (if the officer willfully or intentionally shot the decedent, which was undetermined, it would be an unforeseeable superseding, intervening act breaking the causal chain); Traweek v. Larkin, 709 S.W.2d 942 (Tex. Ct. App. 1986) (after defendant told her husband she heard a noise and thought someone was trying to break into the house, defendant's husband loaded a shotgun, went outside, and shot at a speeding pickup truck to "mark" it, striking the 13 year-old plaintiff; the court disagreed the evidence compelled the conclusion that defendant's act in alerting her husband to the noise—and absence of evidence that she either asked or tried to dissuade her husband from going outside with the gun—amounted to negligence; even if negligent, defendant could not have reasonably foreseen her husband would unlawfully fire a weapon to "mark" a fleeing pickup). Jones's acts are comparable with the acts of the intervening parties in the above-referenced cases. He had knowledge of the danger in his pursuit, yet refused to relent, rendering his conduct extraordinary and, therefore, not reasonably foreseeable. Jones went against all of his USSA training in pursuing Hancock and leaving the property to continue the pursuit, despite witnessing Hancock's reckless driving and multiple near accidents. Under Beckham's version of the

events, his conduct did not stop there, but included tailgating and flashing his lights until Hancock left the roadway, rendering Jones's acts an intervening cause of this accident.

Without Jones's unforeseeable response to the situation, it is impossible to imagine how Wal-Mart's acts could have "caused the loss in the natural course." Petitioner asserts Wal-Mart is liable as long as a reasonable person could foresee that "this sort" of violation of Wal-Mart's policies might result in injury or death, which is an exceptionally broad view. The mere fact that it might be foreseeable that a violation of policy designed to provide for safety and avoid injury might result in harm is simply not enough to establish liability. To accept that premise would impose limitless liability and essentially make Wal-Mart an insurer of the safety of those the policies were designed to protect. Wal-Mart's conduct cannot be examined in a vacuum, but must be viewed in the light of the attendant circumstances in determining whether a consequence is one that is natural and probable. See Young, 270 S.C. at 463, 161 S.E.2d at 676. Moreover, "liability cannot rest on mere possibilities." See id., 270 S.C. at 463, 242 S.E.2d at 675-76. The result arising from Wal-Mart's own negligence must be *reasonably* foreseeable to establish liability, which is not to be determined from hindsight, but rather from Wal-Mart's perspective at the time of the alleged breach. See Parks vs. Characters Night Club, 345 S.E. 484, 548 S.E.2d 605 (Ct. App. 2001). "It is not enough that the danger can be perceived by 'looking back at the mishap with the wisdom borne of the event.'" Shepard v. South Carolina Department of Corrections, 299 S.C. 370, 375-76, 385 S.E.2d 35, 38 (Ct. App. 1989) (*quoting* Greene v. Sibley, Lindsay & Curr Company, 257 N.Y. 190, 177 N.E. 416, 417 (1931)).

It warrants mentioning again that it is not *Jones's* violations of Wal-Mart's internal policies that are probative of Wal-Mart's negligence.<sup>8</sup> The focus has to be on the acts of Wal-Mart's employees and whether *their* acts would have caused a loss in the ordinary course. Here, there is no evidence from which a jury could draw a reasonable inference that Wal-Mart's acts would have caused Hancock's accident and resulting death in the ordinary course. First, there is no evidence Wal-Mart employees failed to act appropriately in their own interactions with Beckham.<sup>9</sup> Petitioner's own expert, Gross, offered no criticism of the employees' acts within the store, (App. p.255, lines 16-21), acknowledging they followed Wal-Mart's policies and procedures and engaged in appropriate retail practice in surveilling Beckham, broadcasting over radio that she was approaching the exit, and requesting Beckham produce a receipt. (App. p.256, lines 8-14; p.257, lines 18-20; p.351, lines 3-23; p.355, line 8-p.356, line 11). Furthermore, Wal-Mart policy does not prohibit keeping USSA officers apprised of events occurring inside of the Wal-Mart store and requesting appropriate assistance. In fact, the guidelines issued to USSA security officers authorize them to assist if requested and to convey information as a witness in shoplifting situations. (App. p.368, Guidelines for Private Security Contractors, ¶26). Finally, Wal-Mart at no time engaged in a pursuit of Beckham or Hancock and did not even become aware of any such occurrence until *after* Jones had reached Hancock's car in the middle of the parking lot and the pursuit was fully underway. Any interactions Wal-Mart had with Beckham had been completed per

---

<sup>8</sup> Petitioner continues to intertwine Jones's acts with Wal-Mart, despite that he was an independent contractor and not an agent or employee of Wal-Mart.

<sup>9</sup> Petitioner claims Wal-Mart would say there is nothing risky in shadowing Beckham while she was inside of Wal-Mart or asking to see her receipt. To the contrary, there is probably some level of risk involved in any loss prevention activity, particularly when confronting a shoplifter who does not want to be caught. The point is not whether Wal-Mart is engaging in an activity that carries risk, but whether it acts reasonably.

procedure and without incident, making the fact that Hancock<sup>10</sup> fled from the scene until she was involved in a high-speed accident completely unforeseeable.

Just as there was no foreseeable harm in surveilling, requesting a receipt from, or speaking with Beckham, there was no foreseeable harm arising from requesting Jones obtain the license tag number at a point when he was directly behind Hancock and should have easily been able to do so. Even Petitioner's experts conceded there was no harm in getting Hancock's license tag number in the parking lot. Gross agreed that recording a license tag number would be explainable and reasonable, (App. p.260, lines 14-23), while Alpert likewise did not take issue with Cox requesting Jones get the tag number. (App. p.277, lines 8-11). It was Jones's actions and methods that Petitioner's experts criticized.

At most, Wal-Mart's acts or omissions are merely a remote cause, explaining how Jones came to be involved, not actionable as a proximate cause of the accident. "A prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause of the injury, even though such injury would not have happened but for such condition or occasion." Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790, 791 (1939) (citation omitted). See also Shepard v. South Carolina Department of Corrections, 299 S.C. 370, 385 S.E.2d 35 (Ct. App. 1989). The rationale behind the holdings in Driggers and Shepard is easy to apply here. In Shepard, the corrections department detailed Middleton, a prisoner in its custody, to work on a Highway Department road crew, supervised by unarmed Highway Department employees. During the afternoon, two crew supervisors, operating a van along a frontage

---

<sup>10</sup> Wal-Mart had not even known Beckham had an accomplice.

road, stopped immediately behind a rest area on I-26, where a chain link fence separated the frontage road from the rest area. The supervisors and prisoners crawled under the fence into the rest area for a break, a violation of Highway Department policy prohibiting prisoner work crews from entering rest areas along interstate highways. While at the rest area, a supervisor allowed Middleton to return to the van alone, also a violation of the policy to maintain visual contact of prisoners at all times. Middleton returned from the van unseen, raped a woman in the restroom, and fled. Over the next couple of days, Middleton went on a crime spree, which included rape and murder of two women, assault, and attempted robbery. The estate of one of the murder victims brought suit against the Department of Corrections and Highway Department for negligence in allowing the prisoner to escape. At the conclusion of plaintiff's case, the trial judge, sitting without a jury, granted a motion to dismiss in favor of the defendants on the grounds that plaintiff had shown no right to relief on the facts and law.

For purposes of the appeal, the Court of Appeals assumed the defendants breached a duty owed to plaintiff since the negligent acts and omissions of various officers and servants of the defendants created the conditions and opportunity for the prisoner to escape and inflict injury. The appeal turned on proximate causation. On that issue, the Court of Appeals affirmed, holding the evidence reasonably supported the finding<sup>11</sup> that the negligence of the defendants did nothing more than furnish the condition or give rise to the occasion by which the prisoner was able to escape and murder the victim. In themselves, the acts and omissions were not what directly brought about the injury. Moreover, the evidence reasonably supported a finding that the

---

<sup>11</sup> While the Court of Appeals reviewed the findings of fact made by the trial judge under a standard of review that permitted the judgment to be affirmed where the evidence reasonably supported the judge's findings, the factual circumstances of the case are nonetheless compelling.

prisoner's independent acts directly caused the harm and the defendants neither intended his acts, nor could have foreseen them as a probable result of their own negligence. The prisoner had not previously shown a propensity to escape or commit rape and murder.

Just as the acts of the crew supervisors in Shepard put a prisoner in a position to escape, Wal-Mart's notice to Jones that a shoplifter had been identified, at most, put Jones in a position to speak with Beckham. In itself, that act was not what directly brought about the injury, nor was the request to get Hancock's tag number. Rather, it was Beckham's act of running, inciting Jones's independent act of chasing her, followed by his decision to ignore his training and not only follow her from the property, but aggressively continue his pursuit, that were the final contributory circumstances completing the sequence of events. Wal-Mart neither intended Jones's actions, nor did Wal-Mart have any awareness that Jones had a propensity to respond in that fashion.

Because it was not reasonably foreseeable to Wal-Mart, in asking Jones to delay Beckham by talking to her, that he would independently begin a pursuit that would culminate in the accident and death of Hancock or, by asking him to do nothing more than obtain her license tag number when he was in a position to do so, that he would continue a two mile pursuit, while tailgating Hancock until she lost control of her vehicle, no acts by Wal-Mart served as a proximate cause of the accident.

**III. Even if this Court should determine that the trial court erred in granting a directed verdict in favor of Wal-Mart, that error should not require a new trial against all Respondents.**

Petitioner failed to preserve for appellate review the argument that the trial court's error in granting Wal-Mart a directed verdict requires a new trial as to all Respondents. Petitioner's statement of the issue on appeal, as framed before the Court of Appeals, was

solely whether the trial judge erred in directing a verdict in favor of Wal-Mart. No errors were raised as to any other aspect of the trial that continued against USSA and Jones, or as to the verdict rendered by the unanimous jury as to those defendants, completely exonerating them of liability for negligent hiring, training, supervision and entrustment,<sup>12</sup> and finding that Jones and USSA were only 35% negligent in causing the accident, as compared with the overwhelming negligence of Hancock. The issue on appeal, having been isolated to Wal-Mart, suggested no relief other than a reversal of that decision alone. Petitioner should not now be allowed to transform his allegation of error as to the grant of a directed verdict in favor of Wal-Mart to one of error as to the jury verdict reached for USSA and Jones. See Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”). See also Allen v. Pinnacle Healthcare Systems, LLC, 394 S.C. 268, 715 S.E.2d 362 (Ct. App. 2001) (assertions regarding errors in awarding damages and attorney’s fees to plaintiff were not included in the sole statement of the issue on appeal and were therefore not preserved for review).

Petitioner may contend the argument presented to the trial and appellate court fairly encompassed his position that a new trial should be granted as to all Respondents. However, there is an important distinction between what Petitioner presented to the trial and appellate court regarding the application of the comparative negligence framework at trial, and the argument that the court may procedurally grant, as a remedy for the finding

---

<sup>12</sup> This appeal does not, nor should it, encompass a request for a new trial as to the alleged negligent hiring, training, supervision and entrustment of a vehicle to Jones. Jones was strictly an employee of USSA, an independent contractor, and not an employee or agent of Wal-Mart. Because that issue was not applicable to Wal-Mart, and a jury completely exonerated USSA, as Jones’s employer, of liability on the negligent hiring claim, as it was not a proximate cause of the accident, the verdict rendered by the jury as to that issue should stand, regardless of this Court’s ruling pertaining to the negligence claims.

of error as to one defendant, a new trial that would include other defendants who received a non-erroneous verdict, favorable to them, which was not otherwise challenged. In the cases heretofore cited by Petitioner,<sup>13</sup> the court generally described the comparative negligence model adopted in this jurisdiction and the mechanics of its application at the time of verdict, noting that, if there is more than one defendant, the plaintiff's negligence is to be compared with the combined negligence of all defendants. The cases neither guarantee nor require that every potentially culpable defendant will appear on the verdict form, and juries are often faced with assessing fault between parties where there is an empty chair, whether due to factors within or beyond a plaintiff's control.

What the two cases cited by Petitioner *do not* address is whether the doctrine of comparative negligence requires retrial for all defendants, even when error is found only as to one. Petitioner relied on conclusory pronouncements that the comparative negligence scheme in South Carolina would so provide,<sup>14</sup> without citation of any authority supporting that point. In fact, until now no case law or persuasive authority had been offered to support Petitioner's contention that the Court could remand and require a new trial against defendants who have already received a verdict rendered by a jury, favorable to them, and which was not of itself alleged to be in error. A review of those cases reveals that courts in other jurisdictions have analyzed when it might or might not be appropriate to require a new trial as to all defendants and/or all issues when there has been an error at trial with regard to the liability of one. They have not held that a retrial as to all defendants is universally necessary, as Petitioner has summarily announced. In fact,

---

<sup>13</sup> Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991) and Creech v. South Carolina Wildlife and Marine Resources Department, 328 S.C. 24, 491 S.E.2d 571 (1997).

<sup>14</sup> As stated by Petitioner, without citation of authority, "the wrongful dismissal of one defendant will require a new trial as to all defendants." (Petitioner's Brief, p.11)

the general rule is that the granting of a new trial as to one defendant does not require the plaintiff be granted a new trial with regard to claims against another defendant. See Jack v. Booth, 858 N.W.2d 711 (Iowa 2015) (citing 58 Am. Jur. 2d New Trial § 29, at 102 (2012)). Rather, there are many factors that affect that decision, including, but not limited to, whether the other defendants against whom no error is alleged were completely exonerated, whether the issues are distinct and separable such that a party may be excluded from the retrial, and prejudice inflicted on a plaintiff or a defendant from exclusion. See, e.g., Buffett v. Vargas, 914 P.2d 1004, 1010 (N.M. 1996). Petitioner has addressed none of those issues except in a conclusory fashion.

Because Petitioner failed to cite law that would allow the trial or appellate court to grant a new trial against a defendant who has not received a favorable ruling found to be in error, Petitioner has abandoned that argument, as appropriately recognized by Judge Huff. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

**IV. Even collectively considering the conduct of all Respondents the only reasonable inference to be drawn from the evidence is that Hancock's greater negligence and recklessness in fleeing the scene was the overwhelming cause of the accident.**

Even assuming Petitioner could somehow establish Wal-Mart was negligent and such negligence was a proximate cause of the accident, those conclusions do not automatically render this case appropriate for jury consideration. Removing a case from a jury based on the overwhelming negligence of a party has not been an isolated occurrence in South Carolina, as Petitioner would seem to suggest. South Carolina courts have on many occasions (and not just in the one case cited by Petitioner) granted summary judgment or a directed verdict to a defendant, even where there was evidence of

negligence by both parties, but where the greater negligence of one of those parties was overwhelming, as here. See, e.g., Bass v. Gopal, Inc., 384 S.C. 238, 247, 680 S.E.2d 917, 922 (Ct. App. 2009) *aff'd*, 395 S.C. 129, 716 S.E.2d 910 (2011) (plaintiff was more than fifty percent negligent as a matter of law where “the only reasonable inference that may be drawn from the evidence is that Bass' negligence in stepping outside of his room and confronting the assailant exceeded any possible innkeeper negligence”); Bloom v. Ravoira, 339 S.C. 417, 424, 529 S.E.2d 710, 714 (2000) (any factual issues existing as to defendant’s fault in operating his vehicle could not alter the inescapable conclusion that the plaintiff disregarded known risks in failing to cross the street in a safe, reasonable manner); Singleton v. Sherer, 377 S.C. 185, 207-08, 659 S.E.2d 196, 207-08 (Ct. App. 2008) (any factual issues existing as to defendants’ contributory negligence could not alter the inescapable conclusion that plaintiff’s negligence exceeded fifty percent); Snavely v. AMISUM of South Carolina, Inc., 379 S.C. 386, 395-96, 665 S.E.2d 222, 226-27 (Ct. App. 2008) (any factual discrepancies that might exist as to defendant’s contributory negligence could not alter the inescapable conclusion that plaintiff’s negligence exceeded fifty percent); Estate of Haley ex rel. Haley v. Brown, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006) (negligence of bicycle rider outweighed any possible negligence of defendant); Humphrey v. Day & Zimmermann International, Inc., 997 F.Supp.2d 388, 397-98 (D.S.C. 2014), *aff’d per curiam*, 589 Fed.Appx. 135 (4<sup>th</sup> Cir., 2015) (although defendant’s employee negligently cut the wrong pipe, causing a chemical release onto the property, plaintiff’s overwhelming negligence in removing and replacing the damaged chemical line without taking adequate safety precautions, thereby

resulting in plaintiff's exposure to the chemical, exceeded defendant's fault as a matter of law).

Just as in the cases cited herein above, Wal-Mart's conduct, to the extent it can be said to have contributed at all, is at most *de minimis* and non-determinative in the ultimate outcome. Petitioner makes efforts to bolster Wal-Mart's alleged negligence by claiming Wal-Mart was somehow unique among the parties in having adopted specific guidelines for handling shoplifters, presumably in recognition of the potential risks involved in loss prevention activities, and seems to even suggest Wal-Mart should be held to a higher standard on that basis. There is no question that Wal-Mart's policies and procedures are thorough and Wal-Mart intends for its employees to follow them for a multitude of reasons. However, heightened standard or not, in premising Wal-Mart's liability solely on the alleged negligent acts of its own employees, as we should, there is no basis to establish Wal-Mart had any improper interactions with either Beckham or Hancock. They followed policy and procedure in surveilling Beckham and asking her to present a receipt as she was leaving. The alleged negligent acts of which Petitioner complains really relate to Wal-Mart's interactions *with Jones*, over whom Wal-Mart had no control. As to those, it can hardly be said to have been negligent for a Wal-Mart employee to tell Jones, a security officer who could serve as a witness, that Wal-Mart had identified a shoplifter in the store.

To the extent Petitioner complains Wal-Mart gave Jones no instructions, it was because Wal-Mart did not intend for him to do anything. To the extent Wal-Mart did tell Jones to "delay" Beckham, Petitioner's own experts even found no fault in Jones speaking with Beckham for that purpose. Beckham's immediate response, witnessed *only*

by Jones, was to flee. In turn, Jones also, without any knowledge, input, or direction from Wal-Mart, initiated a pursuit of her. There can be no question but that the chase was not put into motion by Wal-Mart, nor did any Wal-Mart employee engage in a pursuit of Hancock or Beckham. While a Wal-Mart employee requested that Jones get Hancock's license tag number after he was positioned behind her and presumably could have seen the license tag, Jones was already actively engaged in the chase and Hancock was already driving at a high rate of speed, taking evasive maneuvers to avoid colliding with other vehicles. Any proclamation by Jones as to Wal-Mart's intent in requesting the tag number or interpretation by him as to how far he needed to go in order to get the tag number is entirely speculative and unknowable on his part. That evidence is only available through Cox's testimony, who intended Jones to stop. Jones was asked only to read the tag number, and even if the request was repeated, he was asked to do nothing else. Wal-Mart employees, in the few brief seconds before the cars were already off of the property and out of view, watched with a sense of shock and stunned helplessness. Any failure on their part to try to tell Jones to stop in those brief moments is certainly understandable. In any event, there is absolutely no indication Jones would have complied with that request, and if he had, that Hancock would have stopped or slowed until she was far enough away from the Wal-Mart to believe she was no longer in danger of being arrested. To suggest that the above described conduct on the part of Wal-Mart could persuade a jury to attribute an additional 15% of fault to Wal-Mart is simply not reasonable.<sup>15</sup>

---

<sup>15</sup> It is instructive that a jury found, even as to Jones's acts of chasing Hancock, tailgating her, and flashing his lights, his conduct only attributed to 35% of the total negligence in the action versus Hancock's negligence, which a jury found nearly doubled that of Jones. Wal-Mart's request that Jones read Hancock's license tag at a point when he presumably could have done so, and failure to have told Jones to stop in the few brief seconds after Hancock and Jones left the property and were out of site is incredibly *de minimis* as compared with the ongoing pursuit that ensued away from the Wal-Mart property and Hancock's failure to maintain control of her vehicle, events not involving Wal-Mart.

Even if the above was not persuasive in its own right, Judge Few aptly offered yet another rationale to demonstrate how Wal-Mart's alleged acts of negligence, even if included in the jury's analysis, could not have altered the conclusion that Hancock was more than 50% at fault as a matter of law. As an initial matter, to the extent Petitioner was trying to premise Wal-Mart's liability on any *respondeat superior* theory, any recovery as to Wal-Mart on that basis would depend on whether Jones was liable. The finding that Jones was only 35% at fault would have therefore foreclosed liability of Wal-Mart on any such basis.

As to direct actions against Wal-Mart for its own alleged acts of negligence, the conduct on the part of Wal-Mart can only, at best, serve to explain how Jones became involved and perhaps what motivated some of Jones's action. Wal-Mart's conduct did not bear directly on Hancock and Beckham. Rather, Wal-Mart had no interaction with Hancock whatsoever, and its minimal direct interactions with Beckham ended at the Wal-Mart doorway, when the Wal-Mart greeter requested a receipt and Beckham placed the merchandise on the floor. Beckham did not react and try to flee until Jones first spoke to her in the parking lot, before any Wal-Mart employee was aware of what was occurring. Given those facts, a jury could have only possibly concluded that Wal-Mart's conduct affected how much of the remaining 35% of fault was attributable to Jones, but it could have had no impact on the percentage of fault attributable to Hancock, who had no knowledge of involvement by anyone but Jones.

For Hancock's part, although Beckham claims Hancock had no idea that she was going to shoplift from Wal-Mart, Hancock's behavior proves otherwise. Hancock not only left the Wal-Mart while Beckham proceeded to conceal the merchandise she planned

to steal, but Hancock then moved her vehicle from a parking space near the entrance, but surrounded by other vehicles, to a location a few aisles over, where it was not hemmed in by other cars. Inexplicably, when Beckham also walked out of the Wal-Mart store, she headed directly toward Hancock's new location despite her claim that the shoplifting and get-away were not jointly coordinated. Even assuming, however, that Hancock did not know Beckham intended to shoplift, it would defy logic to believe that Hancock did not reach that conclusion at the very latest when Beckham began running from Wal-Mart and jumped into the back seat of Hancock's moving vehicle.

Even if a jury could conclude that Hancock's actions in driving toward her sister was not an indication she was complicit in shoplifting, Hancock then indisputably had a choice. While she could have chosen to stop and determine what was happening, Hancock immediately chose to back her vehicle down a parking lot aisle at a high rate of speed, striking a median before she was able to redirect her car and drive forward. Hancock then drove across several parking aisles, continued through both a traffic sign and traffic signal, and dodged around other vehicles in the roadway, all in an obvious effort to get away from Wal-Mart as fast as possible. Hancock certainly had no legal obligation to stop for Jones, but her extreme reaction supports the inescapable conclusion she was overwhelmingly negligent and reckless.

Obviously, once the vehicles were out of sight, Wal-Mart had no role in or knowledge of what was occurring. While Petitioner points out there is some evidence that Hancock may have been driving the speed limit at the time her vehicle left the roadway, that does not mean she was driving with all due care, nor lessen her negligence. Regardless of Hancock's speed, she alone failed to make a curve in the roadway and

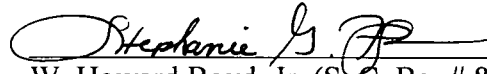
maintain control of her vehicle, resulting in the single-car accident. Here, as in Bloom and multiple of the other exemplary cases, the inescapable conclusion is that, as a matter of law, Hancock's fault exceeded fifty percent as a cause of the accident.

On a final note, Petitioner has suggested Wal-Mart had some sort of supervisory responsibility over Jones and negligently entrusted him with a vehicle, which would be a basis for independent liability. The relationship between USSA and Wal-Mart was, however, very clearly delineated. USSA security officers were not agents or employees of Wal-Mart, but were independent contractors. (See Security Services Master Agreement, App. p.290-91). All of the personnel and equipment, including the security truck, affixed with a light on top and "U.S. Security" decals on both sides of the vehicle, were provided by USSA, and Wal-Mart had no involvement in the hiring, firing, training, and/or supervision of USSA personnel. (App. p.353, lines 6-13; p.346, line 1-p.347, line 23; p.338, lines 13-14; p.336, lines 5-8; p.321, lines 6-13; See also Security Services Master Agreement Addendum, App. p.425). Hence, despite that a claim of negligent hiring, training, supervision and entrustment can be a basis for independent liability, there was no relationship between Jones and Wal-Mart to support such a claim against Wal-Mart. Moreover, that claim was never pursued against Wal-Mart at trial, has never heretofore been raised in the context of this appeal, and cannot be now raised for the first time on appeal.

### **CONCLUSION**

For all of the foregoing reasons, Respondents respectfully request this Court affirm and uphold the grant of a directed verdict to Wal-Mart.

Respectfully submitted,



---

W. Howard Boyd, Jr. (S. C. Bar # 826)  
Stephanie Flynn (S.C. Bar # 16653)  
GALLIVAN, WHITE & BOYD, P.A.  
55 Beattie Place, Suite 1200  
P.O. Box 10589  
Greenville, SC 29603  
(864) 271-9580  
(864) 271-7502 FAX  
[hboyd@gwblawfirm.com](mailto:hboyd@gwblawfirm.com)  
[sflynn@gwblawfirm.com](mailto:sflynn@gwblawfirm.com)  
Attorneys for Respondents

April 6, 2015

Greenville, SC

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

Appeal from Lancaster County  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

---

Opinion No. 5028 (S.C. Ct. App. Filed Aug. 29, 2012)

---

**RECEIVED**

APR 7 2015

**S.C. Supreme Court**

Travis A. Roddey, as the Personal  
Representative of the Estate of  
Alice Monique Beckham Hancock,.....Petitioner,

v.

Wal-Mart Stores East, LP, U.S. Security  
Associates, Inc., and Derrick L. Jones,.....Respondents.

---

**PROOF OF SERVICE**

---

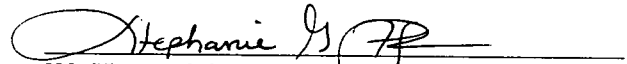
The undersigned hereby certifies that on the 6<sup>th</sup> day of April, a copy of the Brief of Respondents was served by placing a copy of the Brief in an envelope with sufficient postage prepaid, and mailing it to counsel for Petitioner as follows:

Blake A. Hewitt, Esquire  
Bluestein, Nichols, Thompson & Delgado, LLC  
Post Office Box 7965  
Columbia, South Carolina 29202

S. Randall Hood, Esquire  
William A. McKinnon, Esq.  
McGowan, Hood, Felder & Johnson, L.L.C.  
1539 Health Care Drive  
Rock Hill, SC 29732

Brent P. Stewart, Esquire  
Stewart & Love  
P.O. Box 670  
Rock Hill, SC 29731-6670

April 6, 2015



W. Howard Boyd, Jr. (S.C. Bar # 826)

Stephanie Flynn (S.C. Bar # 16653)

GALLIVAN, WHITE & BOYD, P.A.

55 Beattie Place, Suite 1200

P.O. Box 10589

Greenville, SC 29603

(864) 271-9580

(864) 271-7502 FAX

[hboyd@gwblawfirm.com](mailto:hboyd@gwblawfirm.com)

[sflynn@gwblawfirm.com](mailto:sflynn@gwblawfirm.com)

Attorneys for Respondents

Stephanie G. Flynn  
A member of the South Carolina Bar  
Direct 864.271.5426  
SFlynn@GWBlawfirm.com



Gallivan, White & Boyd, P.A.  
ATTORNEYS AT LAW

55 Beattie Place, Suite 1200  
Post Office Box 10589 (29603)  
Greenville, South Carolina 29601  
Telephone 864.271.9580  
Facsimile 864.271.7502  
www.GWBlawfirm.com

April 6, 2015

**VIA FACSIMILE &  
FEDERAL EXPRESS**

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201

**RECEIVED**  
APR 7 2015  
S.C. Supreme Court

Re: Travis A. Roddey, Individually and as the Personal Representative of the  
Estate of Alice Monique Beckham Hancock, deceased v. Wal-Mart Stores  
East, LP, U.S. Security Associates, Inc. and Derrick L. Jones  
C.A. No.: 2007-CP-29-0593  
Case Tracking No. 2012-213375

Dear Mr. Shearouse:

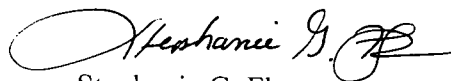
Please find enclosed herein for filing the original and seventeen (17) copies of the Brief of Respondents (one of which is unbound) in connection with the above-captioned matter. I have also enclosed a Proof of Service of the Brief of Respondents on counsel for the Respondents. We would greatly appreciate your filing 15 copies of the Joint Brief, clocking the additional copies of the same, and returning them to us in the enclosed, self-addressed, stamped envelope.

Thank you very much for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

With kind regards,

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.



Stephanie G. Flynn

SGF/

Enclosures

cc: Blake A. Hewitt, Esq. (w/encls.)  
William A. McKinnon, Esq. (w/encls.)  
Brent P. Stewart, Esq. (w/encls.)