THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2016-002248

Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, Deceased,. ..... Appellant,

V.

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

INITIAL REPLY BRIEF

McGowan, Hood & Felder, LLC

Whitney B. Harrison
Shawn Deery
1517 Hampton Street
Columbia, South Carolina 29201
Phone: (803) 779-0100

S. Randall Hood
1539 Health Care Drive
Rock Hill, SC 29732
Phone: (803) 327-7800

ATTORNEYS FOR APPELLANT

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ARGUMENT

This appeal is simple. The inquiry is whether the trial court erred in striking Appellant's negligent hiring and supervision cause of action and barring any evidence in support of the cause of action. The answer rests in the Court's reason for granting a new trial: it was an error to dismiss Wal-Mart from the case. The trial court was bound by the Court's decision to grant a new trial. As to the evidentiary ruling, barring any evidence related to negligent hiring and supervision eviscerates the grant of a new trial because the barred evidence relates to both causes of action.

There are three facts that cannot be disputed. One, Appellants alleged two causes of action against all Respondents: negligent pursuit and negligent hiring and supervision—which included pleading respondeat superior. (Second Amended Complaint). Two, Wal-Mart moved for a "directed verdict in their favor on all causes of action in the complaint" which was granted. (Tr. 592). Three, this Court found the grant of the directed verdict was in error and returned the case for a new trial. *See Roddey v. Wal-Mart Stores East., LP*, 415 S.C. 580, 784 S.E.2d 670 (2016), *reh'g denied* (May 5, 2016).

Respondents attempt to refute these facts and disregard the trial court's errors by inviting an extensive review of the underlying trial and appeal to create justifications for the trial court's orders. This attempt, however, cannot reconcile the errors. When taken to fruition, Respondents' arguments lead the Court to only one result—Wal-Mart's requested dismissal "from all causes of action in the complaint" was granted in error. Respondents' reasoning reveals their attempt to side-step the awarded relief of a new trial before the trial court. Moreover, it highlights Respondents' decision to re-caption their motion to strike as an evidentiary motion when drafting a proposed order to make Appellant's appeal appear interlocutory and bar Appellant from effectively proceeding on either cause of action. This is perhaps most noticeable in Respondents'

evidentiary discussion in their brief. Respondents' legal arguments adamantly focus on the elements of the cause of action and give little attention to the myriad of evidence now barred. In sum, the outcome here is unjust and contradicts this Court's granted relief.

The fundamental disconnect by the trial court and Respondents is that Wal-Mart sought to be dismissed outright from the case on all causes of action and that motion was granted. Appellant appealed the grant of the directed verdict as to Wal-Mart. This Court held that Wal-Mart was dismissed in error. Wal-Mart's removal permeated the remainder of the trial, i.e. both causes of action. For that reason, Respondents' reliance on *Industrial Welding Supplies, Inc. v. Atlas Vending Co.*, is misplaced. 276 S.C. 196, 201, 277 S.E.2d 885, 887–88 (1981). Unlike *Industrial Welding Supplies*, in which legal issues could be distinguished, the error here stems from Wal-Mart's removal outright on all causes of action. Improperly removing Wal-Mart affected the negligent hiring and supervision cause of action, rendering *Industrial Welding Supplies* inapplicable.

Any uncertainty regarding the scope of this Court's awarded relief, i.e. the causes of action to be retried, should have been addressed in a petition for rehearing. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (noting the law of the case applies to issues explicitly decided and to those that are necessarily involved in the appellate court's ruling); *Nelson v. Charleston & W. Carolina Ry. Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957) (explaining where the Court granted a new trial in the first appeal for errors in the charge, it inferentially determined the trial court had not erred in refusing defendant's motion for a directed verdict "for if there had been error in this respect it would have been unnecessary to consider any other questions"). Respondents had the opportunity to seek clarification from this Court. Respondents did not challenge the grant of the new trial, i.e. to all causes of action as pled in the complaint.

(Respondent' Petition for Rehearing–April 14, 2016; Order Denying Respondent's Petition for Rehearing; May 5, 2016 Remittitur). *See* Rule 221(a), SCACR; *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009); *see also Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right."). Accordingly, the Court's expressed relief is the law of the case.

Turning to the evidentiary ruling, the trial court's order is unfounded. The evidentiary ruling hinders Appellant's ability to prove his case. The trial court's order exceeds the traditional notion of a motion in limine and effectively serves as a dispositive order for both causes of action. The evidence now barred is the very evidence relied on by the Court in directing a new trial. *See* Appellant's Brief 17-19 (providing direct examples of the evidence discussed in the Court's opinion).

Respondents attempt to repudiate the trial court's error through a discussion of preservation, elements of the two causes of action including respondeat superior, and the verdict form.[1] An examination of those arguments is futile for this appeal. These arguments ignore the basic tenant that evidence of Jones's hiring, supervision, and entrustment was the catalyst of the pursuit. This evidence is necessary and relevant. The negligent pursuit cause of action cannot be presented without discussing the directions and instructions Jones received as Wal-Mart's and U.S.

[1] Respondents direct the Court to review the verdict form in which Wal-Mart is absent to demonstrate two separate causes of action exist. *See* Respondent's Brief at 8 & 12. Appellant readily agrees there are two distinct causes of action. Wal-Mart's absence from the verdict form demonstrates that all parties and the trial court understood Wal-Mart was effectively removed from the case when the directed verdict was granted. It would have been improper for Wal-Mart to be listed on the jury verdict form because following the directed verdict Wal-Mart was no longer a party to the case. *See generally Machin v. Carus Corp.*, Op. No. 27714 (S.C. Sup. Ct. filed Apr. 26, 2017) (Shearouse Adv. Sh. No. 17 at 18) (holding a nonparty may not be placed on a jury verdict form).

Security's agent/employee—starting from his first day on the job through the fatal crash. Even if the Court were to agree with the assertion that the negligent hiring and supervision cause of action is not part of the remand based on preservation, it does not follow that evidence of such should be inadmissible.

Respondents' contention that the elements of the two causes of action are distinguishable does not negate the entwined nature of the two causes of action and the fact that the same evidence addresses both. Respondents suggest that differing elements make the hiring and supervision evidence inappropriate.[2] This is unsupported by the factual record before this Court and ignores the general purpose of evidence. *See* Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). The Court's opinion repeatedly acknowledged the supervision and instruction Jones received the night of the pursuit. *See e.g., Roddey*, 415 S.C. at 585, 784 S.E.2d at 673 (noting Jones "was instructed to delay Beckham by talking to her"); *Id.* ("because the whole time all [he was] hearing from [Wal–Mart] was, 'You've got to get that license plate tag. We need that license plate tag number'"); *Id.* (explaining Jones "felt pressure due to the instruction" from Rollings and Cox). Distinguishable elements of the two causes of action does not render the evidence improper.

Respondents also argue that evidence like the application process, background checks, drug screening procedures, and licensing has nothing to do with the negligent pursuit. On the contrary,

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[2] Additionally, Respondents spend a considerable portion of their brief discussing the elements of the causes of action and whether Appellant could satisfy the elements based on their suggested absence of respondeat superior. *See* Respondents' Brief 17–19. While respondeat superior is pled in the second amended complaint, Respondents' argument on satisfying the elements is not before this Court. This discussion belongs at a summary judgment hearing, not in this appeal. *See* Rule 56, SCRCP. The issue before this Court is whether evidence may be presented, not the sufficiency of such evidence.

this evidence goes directly to Jones's credibility. Jones knew he did not have a valid license, was using drugs, and had not complied with the license requirements. Appellant should be allowed to address Jones's credibility before a jury and the fact that he lied on his application and was knowingly driving without a license the night of the fatal crash. *Weaver v. Lentz*, 348 S.C. 672, 683, 561 S.E.2d 360, 366 (Ct. App. 2002) (noting that when a witness takes the stand, "he puts his credibility at issue and is subject to impeachment on cross examination"); Rule 607, SCRE ("The credibility of a witness may be attacked by any party . . ."). *See also*, 65 A.L.R.3d 705 (noting drug use is often "relegated to the issue of the credibility of the witness" and that most courts "recognize that drug use may affect a witness's testimonial credibility"); *Id.* (explaining "some courts . . . have held or recognized that drug use evidence is admissible to show inability to tell the truth or a tendency to lie"). In sum, the trial court's order ignores this Court's unqualified ruling and cripples the new trial by excluding a properly-pled cause of action and its supporting evidence. Moreover, the trial court's evidentiary order further inhibits a retrial because, as demonstrated in this Court's earlier ruling, the excluded evidence is crucial to both of Appellant's causes of action. Therefore, the trial court's order must be reversed to comply with this Court's earlier ruling and to grant Appellant the full scope of relief that ruling was meant to provide.

CONCLUSION

Based on the forgoing reasons, the trial court's orders should be reversed and remanded for a new trial as to all causes of action.

McGowan, Hood & Felder, LLC

Whitney B. Harrison
Shawn Deery
1517 Hampton Street
Columbia, South Carolina 29201
(803) 779-0100

S. Randall Hood
1539 Health Care Drive
Rock Hill, SC 29732
Phone: (803) 327-7800
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PROOF OF SERVICE

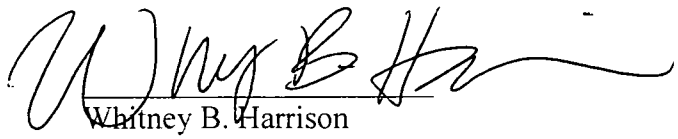
The undersigned hereby certifies that on June 12, 2017, she served counsel for Respondent with the *Initial Reply Brief* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Howard Boyd
P.O. Box 10589
Greenville, SC 29603

Stephanie G. Flynn
Smith Moore Leatherwood LLP
2 West Washington Street, Suite 1100
Greenville, SC 29601

Signature Page to Follow

Respectfully submitted,



June 12, 2017
Columbia, SC

Whitney B. Harrison
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201
(803) 779-0100
(803) 7878-0750 (fax)
wharrison@mcgowanhood.com
ATTORNEY FOR APPELLANT