

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,

RECORD ON APPEAL

Volume I of II

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

)
) IN THE COURT OF COMMON PLEAS
) C A NO. 07-CP-29-0593

Travis A. Roddey, Individually and as the
Personal Representative of the Estate of Alice
Monique Beckham Hancock, deceased,

Plaintiff,

v.

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

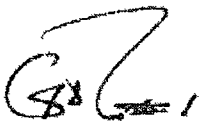
Defendants.

)
)
) ORDER BARRING EVIDENCE
) OF PLAINTIFF'S NEGLIGENT
) HIRING CAUSE OF ACTION
) ON GROUNDS OF
) OF RES JUDICATA
)
)
)

THIS MATTER CAME BEFORE THE COURT on Defendants' motion *in limine* to bar evidence pertaining to Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment (collectively referred to as the "negligent hiring" cause of action) on the grounds it is res judicata. Appearing at the hearing were S. Randall Hood and Whitney B. Harrison on behalf of the Plaintiff, and W. Howard Boyd, Jr. and Stephanie G. Flynn on behalf of the Defendants. For the reasons set forth below, Defendants' motion to bar evidence of Plaintiff's negligent hiring cause of action is GRANTED.

PROCEDURAL HISTORY

Plaintiff, Travis L. Roddey, as Personal Representative of the Estate of Alice Monique Beckham Hancock ("Hancock" or "Decedent"), initiated this wrongful death and survival action against Defendants arising out of a single-car accident that occurred on June 20, 2006, in Lancaster County, South Carolina. The accident occurred after Decedent's sister, Donna Beckham, shoplifted items in the Lancaster Wal-Mart store and the women fled from the store in



Hancock's vehicle. Approximately two miles from the store, Hancock lost control of her vehicle, left the roadway, and collided into a tree, resulting in her death.

Defendant Derrick Jones, a security officer employed by U.S. Security Associates ("USSA"), followed the women for some distance off of the Wal-Mart property in his USSA truck. Plaintiff has admitted Jones was not an employee of Wal-Mart. USSA officers were independent contractors, and Wal-Mart had no role in the hiring, training, and supervision of Jones, nor ownership interest in the USSA truck. USSA security officers were tasked only with serving as a source of information to Wal-Mart regarding activity in the parking lot, recording useful information, and assisting if requested by Wal-Mart.

The trial of this case commenced in the Lancaster County Court of Common Pleas on April 6, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case, Wal-Mart moved for a directed verdict on the grounds that (1) there was no negligence on the part of Wal-Mart, (2) no evidence that any negligent acts or omissions on the part of Wal-Mart were a proximate cause of the accident, and (3) even if any negligence on the part of 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. The only acts of alleged negligence on the part of Wal-Mart addressed at the directed verdict stage were those of Wal-Mart's employees in requesting Jones's assistance (by allegedly asking Jones to delay and/or speak to Beckham as she left the store and obtain Hancock's license tag number) and failing to tell Jones to stop pursuing Hancock when they saw what was occurring. Plaintiff made no claim Wal-Mart had liability for negligent hiring, training, supervision and/or entrustment, did not contest that Jones was not an employee of Wal-Mart, and set forth no other grounds in opposition to Wal-Mart's dismissal from the case. The trial court

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granted Wal-Mart's motion for directed verdict, holding (1) there was no evidence of negligence on the part of Wal-Mart and (2) alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident. Oral requests and a written motion for reconsideration were restricted to evidence establishing the elements of breach of duty and proximate causation against Wal-Mart and no elements of Plaintiff's other cause of action for negligent hiring, supervision, training and/or entrustment. The only other motion presented at the directed verdict stage was USSA's motion for a directed verdict on the negligent hiring cause of action, which was denied. The trial continued against USSA and Jones.

At the conclusion of trial on April 13, 2010, the case was submitted to the jury. On Plaintiff's negligence claim, the jury found Hancock was 65% negligent and Jones/USSA were 35% negligent in causing the accident. On Plaintiff's negligent hiring cause of action against USSA, the jury found USSA was negligent in hiring Jones, but such negligence was not a proximate cause of the accident.

Following the verdict, Plaintiff filed a Motion to Alter or Amend the Judgment and for a New Trial based, in part, on the trial court's alleged error in directing a verdict in favor of Wal-Mart. Plaintiff alleged no error with regard to the jury's verdict in favor of USSA on negligent hiring. As to Wal-Mart, Plaintiff's argument was restricted to breach of duty and proximate causation, elements establishing negligence. Plaintiff contended the error required a new trial "as to all of the defendants" because "[a] comparative negligence charge asks the jury to compare the negligence of the plaintiff against the negligence of all of the parties on the other side of the lawsuit." Comparative fault, however, is only an issue with respect to the negligence action since there was no apportionment of fault on the negligent hiring claim.



Plaintiff's post-trial motions were denied, and Plaintiff subsequently filed a Notice of Appeal. In Appellant's Initial Brief to the South Carolina Court of Appeals, Appellant framed the only issue on appeal as "[w]hether the trial court erred when it granted a directed verdict in this negligence action in favor of Wal-Mart." Plaintiff did not appeal the jury's verdict in favor of USSA on the negligent supervision hiring claim. Plaintiff's arguments were limited to Wal-Mart's alleged acts establishing the elements of his negligence cause of action- breach of duty and proximate causation. Plaintiff reasoned a new trial was required as to "all Defendants" because the law of comparative negligence, a defense raised to Plaintiff's negligence cause of action, requires the jury to compare the negligence of Plaintiff against the combined negligence of all Defendants.

The Court of Appeals affirmed the directed verdict for Wal-Mart in a split decision (1-1-1). The Court, in three separate opinions, only addressed evidence of Wal-Mart's negligence, foreseeability and Hancock's comparative negligence. Justice Few found there was evidence of negligence and the events were foreseeable to Wal-Mart, but voted to affirm because he believed Hancock was more than 50% at fault. Justice Short voted to affirm because he believed there was a lack of proximate causation. Justice Huff dissented and would have reversed the directed verdict in favor of Wal-Mart and remanded for a new trial against Wal-Mart alone. While Justice Huff acknowledged Plaintiff requested a new trial as to all Defendants, he found Plaintiff waived that argument by not including it in the statement of issues on appeal, stating that "[t]hough [Plaintiff] cites law concerning the effect of a jury finding of comparative negligence on a plaintiff's ultimate ability to collect damages, he provides no supporting authority for his assertion that a court may require a new trial against defendants against whom a verdict has

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already been found and who are not then held responsible for damages based upon the jury's finding as to the relative percentages of negligence assigned to the various parties."

Plaintiff's Petition for Rehearing was denied, and Plaintiff filed a Petition for a Writ of Certiorari to the Supreme Court. In the opinion issued by the Supreme Court, Acting Justice Toal stated at the outset, "[Plaintiff] appeals the court of appeals' decision affirming the trial court's grant of Wal-Mart's motion for a directed verdict on [Plaintiff's] negligence claim." The Supreme Court analyzed Wal-Mart's breach of its duty of care, proximate cause, and apportionment of fault under the comparative negligence framework. The Court ultimately ruled the trial court should have submitted to the jury the issues of Wal-Mart's negligence and proximate cause, and remanded the negligence cause of action for a new trial as to all defendants. The Court rationalized that the jury could find the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent. The Supreme Court did not order that the retrial revived any cause of action not before it on appeal and did not address or mention the negligent hiring action.

This matter is now before this Court for a retrial of the case. In connection with the retrial, Plaintiff has notified Defendants of his intent to seek the introduction of evidence supporting Plaintiff's former cause of action for negligent hiring, training, supervision and entrustment against USSA. Defendants oppose the admission of any evidence regarding Plaintiff's former negligent hiring cause of action on the grounds that the cause of action was previously determined by a jury, was not appealed and is barred by operation of law under principles of res judicata. This Court makes the following findings and conclusions.

FINDINGS AND CONCLUSIONS

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Causes of action for negligence and for "negligent hiring, training and supervision" are "separate and distinct requiring different kinds and quantities of proof." See Longshore v. Saber Sec. Servs., 365 S.C. 554, 563 (Cl. App. 2005) (emphasis added). Negligence cases turn on proof of duty, breach, causation and damages, while negligent hiring cases turn on knowledge of the employer and foreseeability of harm to third parties, which is analyzed by examination of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. See Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Cl. App. 2005). Negligent supervision cases impose a duty on an employer, under certain circumstances, to exercise reasonable care to control an employee acting outside the scope of his employment and likewise require knowledge of the employer and foreseeability of harm to third parties in establishing the employer knows or should know of the necessity and opportunity for exercising control. See Lemon v. Sheriff of Sumter County, F.Supp.2d, 2012 U.S. Dist. LEXIS 22196 (D.S.C. Feb. 22, 2012); see also Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) (an employer may be liable for negligent supervision if the employee intentionally harms another when: (1) the employee is present on the premises of the employer or is using a chattel of the employer and (2) the employer knows or has reason to know he has the ability to control his employee and knows or should know of the necessity and opportunity for exercising control). Accordingly, in the Longshore case, it was error for the trial court to have applied a jury's apportionment of fault in the negligence action to an award of actual damages in the negligent hiring, training and supervision action. See Longshore, 365 S.C. at 562-63.

Plaintiff's two causes of action in this case were not only subject to separate proofs, but were also treated separately on the verdict form submitted to the jury at trial. On appeal,

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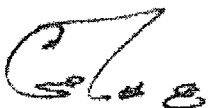
however, Plaintiff only challenged the directed verdict in favor of Wal-Mart, which was limited to issues of Wal-Mart's breach of duty and proximate causation, elements establishing negligence. While Plaintiff contended a reversal of the directed verdict would require a new trial as to all defendants so that the jury had the opportunity to apportion fault between Plaintiff and all Defendants in the negligence action, Plaintiff did not appeal the jury's verdict rendered separately on Plaintiff's negligent hiring, training, supervision and entrustment cause of action against USSA. Nor does the rationale offered for remand of the negligence action as to all Defendants—so that the jury could apportion fault under the comparative negligence framework as between Plaintiff and all Defendants—apply to the cause of action for negligent hiring/supervision, where the jury was not asked to apportion fault between the Plaintiff and any party as to that cause of action.

An appellate court can only speak to the issue(s) before it on appeal. See Austin v. Specialty Transp. Servs., 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004) (a portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case); State v. Bray, 342 S.C.23, 535 S.E.2d 636 (2000) (it is error for an appellate court to consider issues not raised to it); Hendrix v Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995) (an issue not preserved for review should not be addressed by an appellate court). Accordingly, if Plaintiff believed the directed verdict in favor of Wal-Mart on Plaintiff's negligence cause of action infected the entire jury's verdict not only on Plaintiff's negligence cause of action, but also on the separately plead negligent hiring/supervision cause of action, Plaintiff should have appealed the jury's verdict rendered on the negligent hiring/supervision claim in addition to Wal-Mart's directed verdict for negligence. However, because Plaintiff did not appeal the jury verdict on Plaintiff's cause of action for

negligent hiring, training, supervision and/or entrustment, it was never before the appellate courts and is res judicata. Holding otherwise would require this Court to unduly conflate the two separate causes of action in order to revive the negligent hiring/supervision cause of action.

"Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996). The doctrine of res judicata "had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action." First Nat'l Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated. See Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992); Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

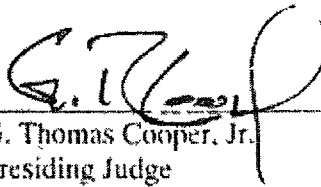
To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986), Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993). There is no question but that the elements of res judicata have been met. Plaintiff's separate cause of action for negligent hiring, training, supervision and/or entrustment as to USSA was already tried to a jury verdict in this case.



For the foregoing reasons, the Court hereby grants Defendants Motion *in limine* to bar evidence pertaining to Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment on grounds of res judicata, and Orders that the trial of this case will proceed against all Defendants on Plaintiff's cause of action for negligence.

AND IT IS SO ORDERED.

November 2, 2016



G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Travis A. Roddey, Individually and as the
Personal Representative of the Estate of Alice
Monique Beckham Hancock, deceased.

Plaintiff,

v.

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

Defendants.

)
) IN THE COURT OF COMMON PLEAS
) C.A. NO. 07-CP-29-0593

)
) **ORDER DENYING PLAINTIFF'S**
) **MOTION TO RECONSIDER**
)
)

This matter comes before the Court by way of Plaintiffs' Motion to Alter and/or Amend the Judgment pursuant to Rule 59(e), SCRPC dated November 5, 2016. Specifically, Plaintiffs ask this Court to reconsider its Order Barring Evidence of Plaintiff's Negligent Hiring Cause of Action on Grounds of Res Judicata that was dated November 2, 2016, and filed November 4, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. This reconsideration applies not only to Plaintiff's Negligent Hiring, Training, Supervision and/or Entrustment cause of action, but also to any evidence offered to support that cause of action as set forth in this Court's Order dated November 2, 2016.



Accordingly, this Court hereby **DENIES** Plaintiffs' Motion under Rule 59(e), SCRPC, to reconsider this Court's November 2, 2016, Order. Furthermore, pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Cauden, South Carolina
November 7, 2016


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017C P290593

Travis A. Ruddy, Individually and as the Personal
Representative of the Estate of Alice Monique
Beckham Hancock, deceased,
PLAINTIFF(S)

Wal Mart Stores East, LP, U.S. Security Associates, Inc.,
and Derrick L. Jones,
DEFENDANT(S)

Submitted by _____ Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self Represented Plaintiff

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC ☐ Rule 41(a), SCRPC (Vol. Nonsumpt)
☐ Rule 43(k), SCRPC (Settled). ☐ Other Dismissed without prejudice _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(g), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore, to confirm, vacate or modify arbitration award ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING TOWNSHIP COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT BY FILING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (normal order to follow) ☒ Statement of Judgment by the Court

ORDER INFORMATION

PLAINTIFF TRAVIS A. RUDDY'S MOTION TO STAY IS DENIED

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the accuracy contained in this form must be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



Judge Code 3126

Date 11-7-16

9:56 AM

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ in attorneys of record or to parties (when appearing pro se) as follows:

Randy Hood; Whitney Harrison; Shawn B. Deery
ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephanie Flynn; Howard Boyd
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

The South Carolina Court of Appeals

Travis A. 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.

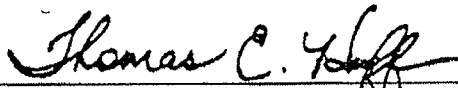
Appellate Case No. 2016-002248

ORDER

Appellant has filed a notice of appeal from the circuit court's order barring evidence of Appellant's negligent hiring/training/supervision/entrustment cause of action on the grounds of res judicata. Appellant has also filed a motion to stay the trial scheduled for November 14, 2016, pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules, arguing that because Appellant has served and filed a notice of appeal, the trial court now lacks jurisdiction to proceed with the trial. Respondents filed a return opposing the motion and also argue that this court should dismiss the appeal because it is interlocutory and without merit. Appellant filed a reply.

First, after careful consideration, Respondents' request to dismiss this appeal is denied. *See* S.C. Code Ann. § 14-3-330(2)(c) (1976) (providing that "[a]n order affecting a substantial right made in an action when such order . . . strikes out an answer or any part thereof or any pleading in any action" is immediately appealable); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial."). Nothing, however, prevents the parties from addressing the issue of appealability in their briefs.

Second, because the resolution of this appeal will determine whether the negligent hiring cause of action can proceed below, this appeal affects the underlying trial of this case. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter[] affected by the appeal' under Rules 205 and 241(a)."). Accordingly, the trial court lacks the power to proceed with the trial while the appeal is pending, and Appellant's motion to stay the trial is granted.



FOR THE COURT

Columbia, South Carolina

cc: The Honorable G. Thomas Cooper
The Honorable Jeff L. Hammond
S. Randall Hood, Esquire
Shawn Boyd Deery, Esquire
Whitney Boykin Harrison, Esquire
Stephanie G. Flynn, Esquire
W. Howard Boyd, Jr., Esquire

FILED

November 9, 2016

The Supreme Court of South Carolina

Travis A. Roddey, Individually and as the Personal
Representative of the Estate of Alice Monique Beckham
Hancock, deceased, Appellant,

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MAR 06 2017

SC Court of Appeals

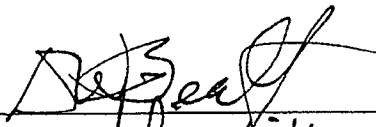
v.

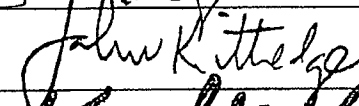
Wal-Mart Stores East, L.P., U.S. Security Associates,
Inc., and Derrick L. Jones, Respondents.

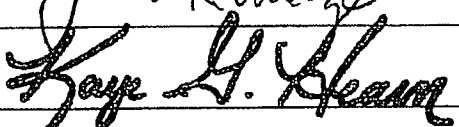
Appellate Case No. 2017-000003

ORDER

Appellant moves for this appeal to be certified to this Court pursuant to Rule 204(b), SCACR. Respondents have not filed a return to the motion. The motion is granted.



C.J.


J.


J.

Few, J. and James, J., not participating

Columbia, South Carolina

March 6, 2017

cc:

The Honorable Jenny Abbott Kitchings

Stephanie G. Flynn, Esquire
W. Howard Boyd, Jr., Esquire
S. Randall Hood, Esquire
Shawn Boyd Deery, Esquire
Whitney Boykin Harrison, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

v

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

Appellate Case No. 2012-213375

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 27615
Heard October 8, 2015 – Filed March 30, 2016

REVERSED AND REMANDED

John S. Nichols and Blake Alexander Hewitt, both of
Bluestein Nichols Thompson & Delgado, LLC, of
Columbia; S. Randall Hood and William Angus
McKinnon, both of McGowan Hood & Felder, LLC, of
Rock Hill; and Brent Paul Stewart, of Stewart Law
Offices, LLC, of Rock Hill, for Petitioner.

W. Howard Boyd, Jr., and Stephanie G. Flynn, both of
Gallivan, White & Boyd, P.A., of Greenville, for
Respondents

ACTING JUSTICE TOAL: Petitioner appeals the court of appeals' decision affirming the trial court's grant of Wal-Mart's motion for a directed verdict on Petitioner's negligence claim. We reverse and remand for a new trial.

FACTUAL/PROCEDURAL BACKGROUND

The following facts are undisputed. On June 20, 2006, Alice Hancock waited in her vehicle in the parking lot of Wal-Mart while her sister, Donna Beckham, attempted to shoplift several articles of clothing.¹ Hope Rollings, a Wal-Mart customer service manager, noticed Beckham attempting to shoplift and alerted several other employees, including fellow manager Shawn Cox and the on-duty security guard Derrick Jones of U.S. Security Associates, Inc. (USSA), which provided security in the Wal-Mart parking lot pursuant to a contract with Wal-Mart.

Ultimately, Beckham exited Wal-Mart without the clothing. However, Jones approached her in the parking lot. Beckham ran towards Hancock's vehicle, and Jones followed her in his truck and blocked Hancock's vehicle with his truck. After Beckham entered Hancock's vehicle, Hancock turned the vehicle around and drove towards the parking lot's exit, with Jones following. Hancock exited the parking lot onto a highway, and Jones followed. Approximately two miles from Wal-Mart, Hancock's vehicle left the highway and crashed. Hancock died at the scene of the accident.

Travis Roddey, the personal representative of Hancock's estate (Petitioner), brought an action alleging negligence on the part of Wal-Mart, USSA, and Jones. At trial, there was varying witness testimony, especially with regard to the course of events that occurred between Jones and the two Wal-Mart customer service managers—Rollings and Cox—and between Jones and Beckham.

Beckham testified that when she exited Wal-Mart, she heard Jones yelling from his vehicle, "Hey, I need to talk to you." According to Beckham, Jones "zoomed in on [them]" and blocked Hancock's vehicle as she entered Hancock's

¹ Beckham testified that Hancock was unaware of her intention to shoplift from Wal-Mart.

backseat. Beckham testified that she remained crouched in the backseat as they drove, but looked up periodically to see Jones following behind them at a close distance with his emergency lights on and frequently flashing his high beam headlights. Beckham testified that about two miles from Wal-Mart, Hancock remarked that "he's still on our ass," Beckham observed Jones "on [their] bumper," and then Hancock's vehicle "shot off to the left" and crashed.

Rollings testified that when she saw Beckham attempting to shoplift, she radioed Cox,² and instructed the door greeters to stop Beckham and ask for a receipt if she exited the store. Rollings explained that she then walked to the parking lot and notified Jones of the suspected shoplifting. Rollings testified that she did not have authority or responsibility over Jones, and that she did not intend for Jones to approach, delay, or stop Beckham. Rollings acknowledged that Wal-Mart policy prohibited employees from pursuing shoplifters beyond the parking lot,³ but testified that she could not radio Jones to tell him to stop pursuing

² Cox testified that the night of the incident, the following employees had radios: Cox, Rollings, Jones, and assistant manager Chuck Campbell.

³ Specifically, Wal-Mart's policy for investigating and detaining suspected shoplifters provides:

NEVER pursue a fleeing Suspect more than approximately 10 feet beyond the point you are located when the Suspect begins to run to avoid detention. Ten feet is about three long steps. This limitation applies both inside and outside the facility.

NEVER pursue a Suspect who is in a moving vehicle

NEVER pursue a Suspect off the Facility's property.

NEVER use a moving vehicle to pursue a Suspect.

TERMINATE the pursuit of a Suspect, if the Suspect begins to enter a vehicle.

LET THE SUSPECT GO, rather than continue a pursuit that is likely to injure or cause harm to someone.

Further, the Guidelines for Private Security Contractors provide that security

Hancock's vehicle because only one person could speak into the radio at a time, and other employees were using the radio during the incident. Further, she remembered Cox telling Jones to "[j]ust get the tag number [from Hancock's vehicle,]" but was unsure whether Cox knew that Jones was pursuing Hancock's vehicle when Cox gave the instruction to Jones.

Cox testified that the night of the incident, Rollings notified her of Beckham's shoplifting. After Beckham abandoned the clothing and exited Wal-Mart, Cox walked outside and saw Jones driving down the aisle of the parking lot where Hancock's vehicle was parked. Cox testified that Hancock's vehicle struck a median in the parking lot and headed toward the exit, at which point Cox instructed: "Get her tag number." Cox testified that she did not intend for Jones to follow Hancock out of the parking lot and acknowledged that it was Wal-Mart policy not to pursue shoplifters, but stated that Jones was not a Wal-Mart employee. According to Cox, she observed Jones's truck two car lengths behind Hancock's vehicle as they exited the parking lot, but that Jones was less than two car lengths behind as she saw them driving away.

Jones testified that the night of the incident, he received a call on his radio informing him that Beckham shoplifted and that she was exiting Wal-Mart. According to Jones, he asked: "[W]hat do you want me to do because I'm a security officer, I'm not a police officer. I cannot detain, so what do you want me to do?" Jones testified that he was instructed to delay Beckham by talking to her. When he saw her exit the store, he attempted to engage her in conversation, at which point she ran to Hancock's vehicle. Jones testified that he then blocked Hancock's vehicle with his truck "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.'" Jones testified that at the time, he was under the impression that if he did not get the license plate tag number, he could be fired for not doing his job. According to Jones, both Rollings and Cox repeatedly instructed him to get the license plate tag number. After telling them that he could not see the tag number and that Hancock's vehicle was "about to leave the parking lot," Jones testified that through the radio, someone said, "Man, well, you got to do what you got to do. You need to get that license plate tag number."

contractors are prohibited from using their vehicles in an attempt to apprehend any suspects, and only allow their vehicles to leave Wal-Mart property for gas or maintenance of the vehicle. These guidelines also note that it is the responsibility of Wal-Mart management to enforce Wal-Mart policies and procedures.

Jones knew that he was not supposed to leave the parking lot, but stated that he felt pressure due to the instruction to "do what you got to do," which Jones interpreted to mean pursuing Hancock's vehicle beyond the parking lot. Jones testified that even after he told Wal-Mart employees over the radio that Hancock's vehicle was leaving the parking lot, Wal-Mart employees continued to instruct him to obtain the license plate tag number. Jones stated that he was in radio communication with Wal-Mart employees until a highway on-ramp, where he witnessed Hancock's vehicle almost cause an accident. He then lost sight of Hancock's vehicle until he later saw lights flashing on the side of the road, where he found Beckham screaming for help and Hancock severely injured.

Jeff Gross, Petitioner's expert witness in parking lot security, guard force, and loss prevention, testified that several of Wal-Mart's policies were violated "through tacit approval of [Wal-Mart]." Gross further testified that Wal-Mart "didn't do anything to stop [Jones] . . . [T]hey told him to go out and get [the] license plate number, with that they didn't give any other instruction or guidance." Gross stated that "the very headwaters of this problem starts with [Wal-Mart employees] not following their own policies [and] asking [Jones] to do something that [Wal-Mart] specifically says they won't do themselves and they don't want their contractors to do." Finally, Gross testified that Cox witnessed the pursuit and had enough time to process the information, yet chose not to use the radio to instruct Jones to end the pursuit. Based on the testimony of the parties involved in the incident, Gross opined that there was sufficient range on the radios to communicate beyond the Wal-Mart parking lot.

Chip Tipton, a representative for Wal-Mart, testified that he saw no evidence that any Wal-Mart employee violated Wal-Mart policies, and found no fault in the employees' failure to instruct Jones to end the pursuit. Regardless, Tipton stated that he did not believe the radio's range would have enabled Wal-Mart employees to call Jones back because there were often issues with radio transmission inside Wal-Mart itself.

At the conclusion of Petitioner's case, Wal-Mart moved for a directed verdict on three grounds: (1) Petitioner presented no evidence that Wal-Mart breached its duty of care; (2) Wal-Mart's actions were not the proximate cause of Hancock's death as a matter of law; and (3) Hancock's fault in causing her own death was more than fifty percent as a matter of law. The trial court granted the motion on Wal-Mart's first two grounds, finding insufficient evidence that Wal-Mart was negligent, and that even if Wal-Mart was negligent, there was a lack of proximate cause because the events were not foreseeable. The trial court stated that at that

point, it could not find Hancock more than fifty percent negligent as a matter of law. Upon the conclusion of trial, the jury found that Hancock was sixty-five percent at fault, and that USSA and Jones were collectively thirty-five percent at fault.

The court of appeals affirmed the trial court's decision to grant Wal-Mart's motion for a directed verdict in a split opinion. *See Roddey v Wal-Mart Stores E, LP*, 400 S.C. 59, 732 S.E.2d 635 (Ct. App. 2012). Chief Judge Few found that the trial court should not have directed a verdict on the basis that there was insufficient evidence of Wal-Mart's negligence because evidence existed that Wal-Mart employees violated Wal-Mart policies. Chief Judge Few further found that the actions of Jones and Hancock were foreseeable. Nevertheless, Chief Judge Few determined that the trial court should have granted Wal-Mart's directed verdict motion on the following grounds: (1) the jury's factual determination of fault apportionment between Hancock, Jones, and USSA was binding on Petitioner even though Wal-Mart's actions were not included in the jury's analysis; and (2) Hancock was more than fifty percent at fault as a matter of law. Judge Short concurred in a separate opinion, finding that Wal-Mart was entitled to a directed verdict because it was not foreseeable that Jones would leave the parking lot and continue to aggressively pursue Hancock for several miles.

Judge Huff dissented, agreeing with Chief Judge Few that evidence existed from which a jury could find that Wal-Mart was negligent, and that negligence proximately caused the injuries that occurred. Judge Huff also stated that while a jury still could have found Hancock sixty-five percent negligent even after considering Wal-Mart's liability, it could also have conceivably found—after factoring in Wal-Mart's negligence—that Hancock was less than fifty percent at fault. Accordingly, Judge Huff opined that the trial court should have submitted the issues of negligence and proximate cause to the jury.

We granted Petitioner's petition for a writ of certiorari to review the court of appeals' decision pursuant to Rule 242, SCACR.

STANDARD OF REVIEW

When ruling on a motion for a directed verdict, the trial court must view all evidence and all reasonable inferences in the light most favorable to the nonmoving party, and if the evidence is susceptible of more than one reasonable inference, the trial court should submit the case to the jury. *Unlimited Servs., Inc. v. Macklen Enters., Inc.*, 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991). In a comparative negligence case, the trial court should grant a directed verdict motion if the sole reasonable inference from the evidence is the nonmoving party's negligence exceeded fifty percent. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). Comparing the negligence of two parties is ordinarily a question of fact for the jury. *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997). This Court is "reticent to endorse directed verdicts in cases involving comparative negligence." *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002).

ANALYSIS

Viewing the evidence in the light most favorable to the nonmoving party—Petitioner—we find that there is evidence from which a jury could determine that Wal-Mart was negligent, and that its negligence proximately caused the injuries in this case. Accordingly, we hold that the trial court should have submitted to the jury the issues of Wal-Mart's negligence and proximate cause, and we remand for a new trial as to all of the defendants.

I. Evidence of Wal-Mart's Breach of its Duty of Care

To prove a cause of action for negligence, a plaintiff must show. (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). In a given case, a court may establish and define the standard of care by looking to the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines. *Id.* at 140, 638 S.E.2d at 659. Evidence of a company's deviation from its own internal policies is relevant to show the company deviated from the standard of care, and is properly admitted to show the element of breach. *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005); see also *Caldwell v. K-Mart*

Corp., 306 S.C. 27, 31, 410 S.E.2d 21, 24 (Ct. App. 1991) (holding that K-Mart's loss prevention manual was relevant on the material issue of the reasonableness of K-Mart's actions, and noting that in negligence cases, internal policies or self-imposed rules are often admissible as relevant on the issue of failure to exercise due care (citations omitted))

There is evidence that Wal-Mart breached its duty of care, and therefore, the trial court erred in finding that the directed verdict was proper on that ground. While a jury could conclude from the evidence that Wal-Mart employees merely requested Jones to delay Beckham or obtain the license plate tag number of Hancock's vehicle in a manner that did not violate Wal-Mart's policies, there is also evidence that Wal-Mart employees violated Wal-Mart's policies by instructing Jones to engage in the pursuit that occurred. Specifically, there is evidence indicating that Wal-Mart employees directed Jones to obtain Hancock's license plate tag number while observing Jones following Hancock's vehicle in the parking lot and even after Jones stated that Hancock's vehicle was leaving the parking lot. Accordingly, there is evidence from which a jury could find that Wal-Mart employees either instructed Jones to act in violation of Wal-Mart's policies, or acquiesced in Jones's improper pursuit of Hancock and Beckham.

II. Proximate Cause

To show proximate cause, a plaintiff must show both causation in fact and legal cause. *Madison*, 371 S.C. at 146, 638 S.E.2d at 662 (citing *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992)). A plaintiff proves causation in fact by establishing that the injury would not have occurred "but for" the defendant's negligence, and legal cause by establishing foreseeability. *Id.* (citing *Oliver*, 309 S.C. at 316, 422 S.E.2d at 130) "Foreseeability is determined by looking at the natural and probable consequences of the complained of act, although it is not necessary to prove that a particular event or injury was foreseeable." *Id.* (citations omitted). The defendant's negligence does not have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury. *Id.*

An intervening force may be a superseding cause that relieves an actor from liability, but for there to be relief from liability, the intervening cause must be one that could not have been reasonably foreseen or anticipated. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 217, 609 S.E.2d 565, 569 (Ct. App. 2005). In other words, the intervening negligence of a third party will not excuse the first

wrongdoer if such intervention ought to have been foreseen in the exercise of due care. *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 89, 502 S.E.2d 78, 83 (1998). "In such case, the original negligence still remains active, and a contributing cause of the injury." *Id.* Accordingly, if the intervening acts are set into motion by the original wrongful act and are the foreseeable result of the original act, the "final result, as well as every intermediate cause, is considered in law to be the proximate result of the first wrongful cause." *Wallace v. Owens-Ill., Inc.*, 300 S.C. 518, 521, 389 S.E.2d 155, 157 (Ct. App. 1989).

As an initial matter, there is evidence that "but for" Wal-Mart employees instructing Jones to obtain Hancock's license plate tag number, the accident would not have occurred. Moreover, viewing the evidence in the light most favorable to Petitioner, the trial court erred in finding the directed verdict was proper as to foreseeability, because there is more than one reasonable inference as to whether the consequences of the Wal-Mart employees' actions were foreseeable. It is a natural and probable consequence that a contracted security guard would follow instructions from Wal-Mart employees telling him to "do what you got to do," including pursuing a suspect off-premises. Furthermore, Wal-Mart's own policies demonstrate that Wal-Mart recognized the danger of pursuing a shoplifting suspect, and it was reasonably foreseeable that instructing a contracted security guard to engage in such pursuit would be dangerous.

We find that there is sufficient testimony indicating that upon the Wal-Mart employees' instruction to obtain Hancock's license plate tag number, Jones's actions were *not* independent unforeseeable intervening acts. There was evidence presented that: Wal-Mart employees' instructions led Jones to drive through Wal-Mart's parking lot in pursuit of Beckham; Wal-Mart employees directed Jones to obtain Hancock's license plate tag number while observing Jones pursue Beckham and Hancock in his patrol vehicle, with both vehicles being operated recklessly; and Wal-Mart continued to instruct Jones to obtain the tag number even after Jones informed them that Hancock's vehicle was leaving the parking lot.

Accordingly, there is evidence that Jones's acts—which were the foreseeable results of Wal-Mart employees' actions—were set into motion by the original wrongful acts of Wal-Mart. We therefore reverse the court of appeals' decision to uphold trial court's grant of a directed verdict on the issue of proximate cause.

III. Apportionment of Fault

Unlike Chief Judge Few, we do not view Wal-Mart's liability as strictly

derivative of Jones's or USSA's liability. In addition to Petitioner's claim that Jones was Wal-Mart's agent and thus, Wal-Mart is vicariously liable for his conduct, Petitioner also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault.⁴ In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.

CONCLUSION

Based on the foregoing, we reverse the court of appeals' decision and remand for a new trial as to all defendants.

REVERSED AND REMANDED.

BEATTY and HEARN, JJ., concur. PLEICONES, C.J., dissenting in a separate opinion in which KITTREDGE, J., concurs.

⁴ The dissent, by adopting Chief Judge Few's rationale, merely assumes the outcome of the jury's deliberations when it is impossible to know what would influence the jury's comparison if the jury was permitted to consider Wal-Mart's liability. Here, we cannot say that the sole reasonable inference to be drawn from the evidence was that Hancock was more than fifty percent negligent in light of the testimony that Wal-Mart employees instructed Jones to follow Hancock. *Bloom*, 339 S.C. at 422, 529 S.E.2d at 713 ("In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." (citation omitted) (emphasis added)). Therefore, it would be inappropriate for this Court to speculate. *See Thomasko*, 349 S.C. at 11, 561 S.E.2d at 599 ("Because the term is relative and dependant on the facts of a particular case, comparing the negligence of two parties is ordinarily a question of fact for the jury. For these reasons, this Court is reticent to endorse directed verdicts in cases involving comparative negligence." (internal citations omitted)).

CHIEF JUSTICE PLEICONES: I respectfully dissent and would affirm the decision of the Court of Appeals. I agree with Chief Judge Few.

Even under [Petitioner's] theory of the case, Wal-Mart's conduct merely provides some explanation of what motivated Jones' actions. Wal-Mart's negligence could affect how much of the remaining 35% of fault is attributable to Jones, for if Jones was motivated by Wal-Mart's improper actions, arguably he would bear less of the fault for Hancock's death. However, Wal-Mart's actions can have no effect on Hancock's fault. Wal-Mart obviously did not advise or instruct Hancock to flee, nor did it enable her actions by failing to adequately supervise her. There is no evidence in the record that Hancock knew anything about what Wal-Mart told Jones. Therefore, Wal-Mart's alleged conduct could not have reduced Hancock's proportion of fault in the way it could have reduced that of Jones. Even if the jury had been permitted to consider Wal-Mart in its apportionment of fault, Wal-Mart's conduct could not have affected the jury's determination that Hancock was 65% at fault.

Because Wal-Mart's conduct could not have reduced Hancock's fault, [Petitioner] is bound by the jury's finding that she was 65% at fault, and the trial court's decision to grant Wal-Mart a directed verdict could not have prejudiced [Petitioner].

Therefore, I believe we must affirm. *See O'Neal v. Carolina Farm Supply of Johnston, Inc.*, 279 S.C. 490, 497, 309 S.E.2d 776, 780 (Cl.App. 1983) (affirming directed verdict without deciding whether trial court erred because jury's verdict made error harmless).

Roddey v. Wal-Mart Stores E., LP, 400 S.C. 59, 68, 732 S.E.2d 635, 639-40 (Cl. App. 2012).

Moreover, I am not convinced that even if Petitioner were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. In arguing for a joint retrial, Petitioner relies on *Williams v. Slade*, 431 F.2d 605 (5th Cir. 1970). In *Williams*, the "innocent" passenger sued both the driver of the automobile in which she was riding and the driver of the other car involved in the accident. The trial court directed a verdict in favor of one of the drivers, and the jury returned a verdict in favor of the other. In *Williams*, either of the defendants,

or both, might have been liable to the plaintiff. Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike the *Williams'* innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury trial and the possibility of liability.

KITTREDGE, J., concurs.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

S.C. Supreme Court

Brooks P. Goldsmith, Circuit Court Judge

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

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, and
Derrick L. Jones, ... Respondents.

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QUESTIONS PRESENTED

- I Did the trial court err when it granted Wal-Mart a directed verdict and held that there was no evidence that Wal-Mart was negligent even though there *was* evidence that Wal-Mart employees violated the company's policies?
- II Did the trial court err when it granted Wal-Mart a directed verdict and found that it was not foreseeable for a violation of Wal-Mart's company policies to result in a serious injury?
- III Does the trial court's error in granting Wal-Mart a directed verdict require a new trial against *all* defendants because there is no way to be sure how the wrongful dismissal of a co-defendant affected the comparative negligence verdict against the remaining defendants?

STATEMENT OF THE CASE

Alice Hancock died in a car crash as she drove her sister away from a Wal-Mart store in Lancaster. This was after Ms. Hancock's sister attempted to shoplift from the store.

Ms. Hancock's sister said that at the time of the crash, the women were being chased by a security guard who was assigned to patrol Wal-Mart's parking lot. Although the evidence is contested, there is some evidence that Wal-Mart employees instructed the security guard to pursue the women. This violated several of Wal-Mart's company policies.

The parties tried the case to a jury and at the close of the plaintiff's case, the trial court granted Wal-Mart a directed verdict by reasoning that there was no evidence of Wal-Mart's negligence and that even if Wal-Mart *had* been negligent, there was no proximate cause between Wal-Mart's negligence and Ms. Hancock's death. The trial continued against the security guard and his employer.

This appeal revolves around whether the decision to grant Wal-Mart a directed verdict was correct.

This incident occurred one evening in June of 2006 after Ms. Hancock drove to Wal-Mart with her sister. The women entered the Wal-Mart together, but Ms. Hancock left the store before her sister and returned to her vehicle in the parking lot. While Ms. Hancock was in the car, her sister attempted to shoplift some blue jeans and a denim skirt.

Wal-Mart employees watched Ms. Hancock's sister and followed her through the store as she attempted this. When a Wal-Mart employee stationed at the store's exit asked Ms. Hancock's sister for a receipt, Ms. Hancock's sister claimed that the receipt was in the car. After that, she placed the bags of merchandise on the floor of the store and left. See (App.p.289, line 1 - p.290, line 4) (from the sister's testimony); (App.p.333, line 16 - p.334, line 20) (testimony of Shaun Cox, a Wal-Mart employee).

Although this conduct meets the definition of shoplifting under South Carolina law, Ms. Hancock's sister was not a shoplifter under Wal-Mart's company policy. A person commits the crime of shoplifting by taking possession of a merchant's property with the intention of not paying for that property. See S.C. Code Ann. § 16-13-110(A)(1) (2003). Wal-Mart's policy is different. Wal-Mart says that an "unlawful taking" does not occur until a person passes the last point of sale and exits the facility. See (App.pp.372-73) (under "Four Elements" and "Unlawful Taking").

Wal-Mart's policy for dealing with shoplifters is detailed and lengthy. It is in the Appendix from page 374 to page 378. Only certain employees are allowed to investigate suspected shoplifters, and even then, the policy provides both specific and general directions to guide those interactions. The policy says to "put people first," to "use caution," and to prioritize everyone's safety over the recovery of merchandise.

Once she was in the parking lot, Ms. Hancock's sister encountered Derrick Jones, a parking lot security guard employed by U.S Security Associates

The two people had a short verbal exchange. Ms. Hancock's sister said that Jones "screamed" at her. (App p 290, line 3 - p.291, line 12). Jones said that he politely asked to speak with Ms Hancock's sister and she declined. (App p 185, lines 5-20)

Ms. Hancock's sister then moved quickly towards her car while Jones maneuvered his truck in an attempt to block the women. (App p 185, lines 17-20) (Jones's story); (App.p.246, line 19 - p 249, line 22) (an expert witness's description). This left Jones's vehicle and Ms Hancock's car facing one another. (App p.249, lines 12-18).

Ms. Hancock's sister climbed into the back seat of her car, and Ms. Hancock backed her car up—away from Jones—and drove rapidly out of the parking lot. (App p.188, lines 5-25); (App.p.291, line 20 - p.292, line 12). Jones followed behind.

Jones explained his conduct by describing that Wal-Mart employees had asked him to delay the women and then to get their license tag number. (App.p.184, line 20 - p.185, line 4). He also said that Wal-Mart employees repeated the instruction about getting the license tag as the women were driving off the premises (App.p.222, line 12 - p 225, line 8).

Wal-Mart denied asking Jones to delay the women (App.p.321). The relevant employee also said she only made one request for the vehicle's tag number. (App p 337)

The witnesses offered very different versions of what happened next.

According to Ms Hancock's sister, Jones followed the women out of the parking lot, driving close to their bumper and flashing his high beams. (App.p 293, lines 8-25). Ms. Hancock's sister said that this continued for about two miles and that after she heard Ms

Hancock exclaim that Jones was still right behind them, she heard and felt a bump before the vehicle shot off the road and crashed. (App.p.294, line1 - p.295, line 16).

Jones's version was that he followed the women out of the Wal-Mart parking lot but lost them shortly thereafter. He claimed that he discovered the wreck only after he gave up his search and turned his truck around to drive back to the store. (App p 188, line 5 - p 194, line 12) (Jones's deposition testimony); see also (App pp.406-410) (Jones's written statements).

The parties stipulated at trial that Ms Hancock was driving the speed limit at the time of the accident. See (App.p 306, lines 8-9; p 307, lines 3-16).

Ms Hancock's personal representative filed this lawsuit on May 9, 2007, bringing claims for simple negligence as well as negligent hiring, training, and supervision. The complaint alleged that Wal-Mart and U.S. Security were vicariously liable for Jones's actions. The complaint also alleged direct liability against Wal-Mart for improperly instructing Jones to follow Ms. Hancock's vehicle and to obtain her license tag number

The negligent hiring claim was based on the fact that Jones's criminal background (a drug conviction) should have disqualified him from being employed as a security guard. See (App.p 237, lines 7 - p.239, line 6)

All of the defendants answered and alleged, among other things, that Ms. Hancock's negligence exceeded any negligence of their own.

The parties tried the case to a jury for six days in April of 2010. Jones did not attend

On the fourth day of trial, after the plaintiff rested his case, the trial judge granted Wal-Mart's motion for a directed verdict. The court ruled that there was "insufficient

evidence that Wal-Mart was negligent, or even if they were there is a lack of proximate cause that the events were not foreseeable.” (App p.365, lines 15-22).

The case proceeded against both U.S. Security and Jones, and at the end of the case, the jury returned a verdict that apportioned 65% of the fault for the accident to Ms Hancock and 35% to the remaining defendants See (App.pp.124-26) (the verdict form) The jury found that U.S. Security negligently hired Jones, but the jury also found that this negligence did not proximately cause Ms Hancock’s death. *Id*

Mr. Roddey made a timely post-trial motion, see (App.p.150), which the court denied on June 4, 2012. See (App.p 127) Seven days later, Mr. Roddey initiated his appeal.

The Court of Appeals affirmed in a 1-1-1 decision. See 400 S.C. 59, 732 S.E 2d 635 (Ct App. 2012); also at (App.pp.1-27). Each judge applied different reasoning for his vote

Chief Judge Few voted to affirm because although he found that there was evidence of Wal-Mart’s negligence, he believed that Wal-Mart’s conduct could not have reduced any of Ms. Hancock’s comparative fault. (App.pp.4-8). He also opined that no jury could have concluded that Ms. Hancock was less than 50% at fault for the crash (App.p.8).

Judge Short voted to affirm because he believed that Derrick Jones’s actions in following the women were unforeseeable and an “intervening” cause (App.pp.9-10).

Judge Huff voted to reverse. He wrote that comparative negligence and foreseeability were issues for the jury, but he would have ordered a new trial only against Wal-Mart. (App.pp.21-27) Judge Huff rejected Mr. Roddey’s argument that the doctrine of comparative negligence required a new trial as to all of the defendants He reasoned that Mr Roddey had abandoned this issue during briefing (App.p.27 n 10).

ARGUMENT

This should not be a difficult case. Although the evidence is contested, it ought to be apparent that there is at least *some* evidence of Wal-Mart's negligence. The law seems to plainly establish that a defendant's violation of its own policies will tend to show a breach of the standard of care, and although Wal-Mart may feel that its employees did not violate the company's policies, a reasonable jury could disagree. The trial court said that there was "no" evidence that Wal-Mart was negligent. Respectfully, this reasoning was wrong.

It ought to be equally obvious that the trial court's reasoning on proximate cause was incorrect. A serious injury is more than just a foreseeable consequence of violating Wal-Mart's policy. Avoiding injuries is a main reason why the policy exists. The policy says so.

This error requires a new trial as to all of the defendants. Ms. Hancock might have 65% of the fault compared only to Derrick Jones, but that fraction says nothing about how her liability compares to Wal-Mart's liability or how Wal-Mart's liability and Jones's liability relate to one another. Comparative fault requires the jury to weigh the plaintiff's conduct against the combined negligence of *all* of the defendants. No equation can tell us how much liability the jury would have assigned to the empty chair at the defendants' table. When multiple defendants could be liable on the same claim, there has to be a retrial.

I. The trial court erred when it held that there was no evidence of Wal-Mart's negligence. Evidence that Wal-Mart workers violated Wal-Mart's policies is evidence of Wal-Mart's negligence.

If a defendant violates its own policies, that violation constitutes evidence of negligence. This Court's decisions explain the justification for the rule. A successful negligence claim requires the defendant to have breached the standard of care, and the

standard of care in a given case can be established by the common law, by statutes, by industry standards, or by a defendant's own policies and guidelines. *Madison ex rel Bryant v Babcock Ctr.*, 371 S C 123, 140, 638 S.E 2d 650, 659 (2006) (citing *Peterson v Nat'l R R Passenger Corp.*, 365 S C. 391, 397, 618 S.E.2d 903, 906 (2005))

Here, Wal-Mart has adopted a detailed policy that prioritizes personal safety over recovering inventory and prosecuting shoplifters. If Wal-Mart violated that policy, any such violation is evidence that Wal-Mart breached the standard of care it voluntarily assumed.

The record contains ample evidence that Wal-Mart breached its policies

The policy instructs that only certain employees called "Authorized Associates" are allowed to investigate or detain a suspected shoplifter. (App p 374). Wal-Mart has specified the procedure for approaching a suspect, see (App.p.390), and it has identified factors that suggest the potential for a hostile confrontation. See (App.p.388). The policy cautions employees to never pursue a suspect who is in a moving vehicle, to never pursue a suspect off of Wal-Mart's property, to never use a vehicle to pursue a suspect, and to terminate the pursuit if the suspect begins to enter a vehicle. (App p.375).

Derrick Jones said that Wal-Mart did not follow these rules. He said 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" the suspect until the Wal-Mart employees could get out there. (App.pp.184-85). Jones further testified that Wal-Mart employees instructed him to get the tag number of Ms. Hancock's vehicle (App.pp.185-86) Jones said that Wal-Mart repeated the instruction to get the tag number, even when it was obvious that doing this would require a vehicular pursuit on a public street. (App.pp.191, 219, 223-24).

Wal-Mart disputes this version of events and that is Wal-Mart's prerogative, but at the directed verdict stage, the court does not weigh testimony, decide issues about credibility, or resolve conflicts in evidence. *Fairchild v South Carolina Dep't of Transp*, 398 S.C. 90, 99, 727 S.E.2d 407, 411 (2012). *Erickson v Jones Street Publishers*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). Those questions belong to the jury.

There is evidence of Wal-Mart's negligence. This Court should reverse the trial court's ruling to the contrary.

II. The trial court erred when it held that there was a lack of proximate causation. Avoiding a serious injury is one of the main reasons why Wal-Mart's policy exists.

The term "proximate cause" describes two concepts. "Cause in fact" which is also known as "but-for" causation, and "legal causation" which hinges on foreseeability. *Oliver v. South Carolina Dep't of Highways & Pub Transp.*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992). The trial court's analysis focused on the "foreseeability" component. It summarily held that "the events were not foreseeable" (App p.365).

There are two reasons why this reasoning is incorrect.

First, the trial court's holding is flawed factually. The court seems to have been saying that it was unforeseeable for Jones to follow the women in his vehicle, but that view overlooks Jones's testimony. Jones has said that Wal-Mart employees told him to get the car's tag number and that Wal-Mart repeated this instruction when it was obvious that the task required a vehicular pursuit on a public street. (App pp 191, 219, 223-24). It wasn't unforeseeable for Jones to follow the women. He said that Wal-Mart employees instructed and encouraged him to do it.

Second, the trial court's decision wrongly implies that legal causation hinges on the foreseeability of someone's conduct as opposed to the foreseeability of the plaintiff's injury. The law does not tie liability to whether Wal-Mart could anticipate Jones's actions or whether Wal-Mart might have predicted that Ms. Hancock would crash her car a couple of miles away from the store. Instead, it generally is enough that the plaintiff's injury be of the type that would naturally flow from the defendant's negligence. *Young v Tide Craft*, 270 S.C. 453, 463, 242 S.E.2d 671, 675-76 (1978). Jones's actions are not the test. 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 serious injury or death.

That test is satisfied here. Wal-Mart's materials repeatedly stress that its policy has been designed to protect the well-being of employees, customers, and shoplifting suspects. (App pp 375, 377, 389). Wal-Mart cautions employees that the way to stay in control of the situation is to follow the policy, (App p.377), and Wal-Mart further warns that "[i]n most cases, proper techniques will reduce the possibility of confrontations leading to injuries." (App.p.379). The policy recognizes that if a suspect enters a vehicle, that conduct might indicate a potentially violent situation (App p.388). Wal-Mart also advises employees to let the suspect go rather than engage in a pursuit "that is likely to injure or cause harm to someone." (App p 376). A serious injury is more than just a foreseeable consequence of violating Wal-Mart's policy. Avoiding a serious injury is one of the main reasons why Wal-Mart's policy exists.

One of Wal-Mart's trial strategies was to ignore Jones's testimony about how this situation unfolded and to paint its employees' conduct in an innocuous light. Wal-Mart

would say that there is nothing risky about shadowing Ms Hancock's sister inside the store, asking to see her receipt, and asking Derrick Jones to try and take a vehicle's tag number.

There are two problems with this line of argument.

First, it ignores Derrick Jones's testimony, and at the directed verdict stage, the only version of events that counts is the version that is most favorable to the plaintiff

Second, Wal-Mart's policy seems to specifically contemplate that any interaction with a shoplifter is risky and that what appears harmless might actually be a critical mis-step from a risk-management perspective. Derrick Jones was not trained to acquire the tag number of a moving vehicle, and he certainly was not trained in how to accomplish this task while at the same time safely operating his vehicle in the Wal-Mart parking lot. At trial, Ms. Hancock presented the testimony of a witness who was qualified as an expert in parking lot security, guard force management, and loss prevention (App.p.325-36)(qualification) This person opined that the reason Wal-Mart has its policy is because "pursuits are dangerous." (App p.245) He also said that the "headwaters of this problem" was Wal-Mart's asking Jones to take actions which Wal-Mart's policy specifically forbids. (App.p 250)

A reasonable jury could find that a serious injury is a foreseeable result of violating Wal-Mart's policy. The Court should reverse the ruling below, which holds the opposite.

III(a). This error requires a new trial against all defendants because there is no way to know how much fault the jury would have assigned to the empty chair.

South Carolina's form of comparative negligence requires the jury to weigh any of the plaintiff's contributory negligence against the combined negligence of all of the defendants. This has been the law since the Court adopted modified comparative negligence

in *Nelson v Concrete Supply Co* 303 S.C. 243, 245, 399 S.E 2d 783, 784 (1991) The plaintiff's recovery will be reduced in proportion to his or her own negligence, but as long as the defendants' combined negligence exceeds the plaintiff's share of the fault, the plaintiff can recover See *Creech v South Carolina Wildlife & Marine Res Dep't*, 328 S.C. 24, 33 n.1, 491 S.E 2d 571, 575 n.1 (1997) (citing *Nelson*), see also S.C. Code Ann. §§ 15-38-10 to -70 (2005 & Supp. 2014) (the Uniform Contribution Among Tortfeasors Act).

A straightforward application of this rule leads to the conclusion that if two defendants have potential liability on the same claim, the wrongful dismissal of one defendant will require a new trial as to all defendants. There is no formula that will tell us the share of liability that the jury would have allocated to Wal-Mart if Wal-Mart had been in its rightful place at the defendants' table. That determination is for the jury.

Cases from other jurisdictions recognize this principle. Some of them describe the situation as a dismissal of one defendant that nevertheless "infected" the verdict against the others. *Buffett v Vargas*, 914 P.2d 1004, 1011 (N.M. 1996), *Williams v Slade*, 431 F.2d 605, 608 (5th Cir. 1970). New York seems to prefer to say that "the interests of justice" require the wrongful dismissal of one defendant to demand a retrial as to all defendants with potential liability. *Gadani v Dormitory Auth.*, 856 N.Y.S.2d 268, 270 (N.Y. App. Div. 2008) (listing several cases with this language). The underlying rationale of these decisions appears to be the same. When a defendant is erroneously excluded from trial, there is no way to be sure how that exclusion impacted the jury's determination of the remaining defendant's negligence. The wrongful exclusion left the jury with an "all or nothing" choice. *Williams*, 431 F.3d at 609. Limiting the retrial to one defendant makes the same error. *Id.*

Judge Huff believed that Mr. Roddey's failure to include the previous paragraph in his brief constituted abandonment of this argument. (App.p 27 n 10).

Mr. Roddey's principal brief to the Court of Appeals gave this argument its own heading and cited two South Carolina cases—*Nelson* and *Creech*—that explained the law of comparative negligence. (App pp.60-61) Neither U S Security nor Jones opposed this argument. The respondents never argued that the court should *not* order a new trial as to them. See (App.pp.63-98) (the respondents' brief)

This Court's "abandonment" jurisprudence speaks of short, conclusory statements that are presented without any supporting authority. E.g., *State v Jones*, 344 S C. 48, 58, 543 S E.2d 541, 546 (2001). That is not what happened here. Mr. Roddey's argument was (hopefully) lucid, grounded in the definition of comparative negligence, and it was not opposed by the respondents. Had the respondents contested the point, Mr. Roddey would have cited the foreign authorities which seem to demonstrate that his argument is correct

III(b). Alice Hancock is not automatically due the majority of fault for her death. A reasonable jury could find Wal-Mart to be more negligent than Ms. Hancock or Derrick Jones and at worst, this is a case where all parties are guilty of significant negligence.

Chief Judge Few voted to affirm even though he believed the trial court was wrong about there being no evidence of negligence and about there being no legal causation between Wal-Mart's alleged conduct and Ms. Hancock's death. He gave two reasons for this vote. First, he believed that Wal-Mart's conduct could not have reduced any of Ms Hancock's comparative fault (App.pp.4-8) Second, he opined that no jury could have concluded that Ms Hancock was less than 50% at fault for the crash. (App.p.8).

- i. Wal-Mart would necessarily be able to reduce Ms. Hancock's percentage of fault because Wal-Mart could be *more* culpable than Derrick Jones.

The proper analysis on this point is related to the same reasoning why the wrongful exclusion of Wal-Mart requires a new trial as to all of the defendants. When a defendant is wrongfully excluded from trial, there is simply no way to know how that exclusion impacted the jury's view of everyone else's liability. *Williams*, 431 F.3d at 609

Wal-Mart is unique among the parties. Wal-Mart is the only party that has adopted detailed and specific guidelines for dealing with suspected shoplifters. This policy was presumably the result of careful research and thoughtful risk-management decisions. The significance of this point is that the law typically assigns greater culpability to a party who knows the risks and engages in risky conduct anyway. It would not be out of bounds for the jury to see Wal-Mart as more culpable than Jones. Wal-Mart recognized that these situations are dangerous but engaged an un-trained person like Jones and gave him no directions

Chief Judge Few's analysis also overlooks the distinction between derivative liability and direct liability. Negligent entrustment is a claim of independent liability against Wal-Mart. This Court's decision in *James v. Kelly Trucking Co.* recognizes this principle. A defendant can be liable in tort if the defendant hires someone, fails to train someone, or fails to supervise someone in a way that creates an unreasonable risk of harm to the public. See 377 S.C. 628, 631, 661 S.E.2d 329, 330-31 (2008). A jury could find Wal-Mart to be more negligent than Jones because Wal-Mart was the supervisor who knew better. By saying that a jury could *not* do this, Chief Judge Few's decision limits the difference between derivative and direct liability to a label that carries no practical effect.

- ii. At worst, this is a case where all parties are guilty of significant negligence. At best, Ms. Hancock was simply driving away from someone who had no right to detain her

This Court has instructed that if the facts show both parties guilty of negligence or willfulness, questions of negligence, proximate cause, and contributory negligence should be submitted to the jury. *Kennedy v. Custom Ice Equip Co.*, 271 S.C. 171, 175, 246 S.E.2d 176, 178 (1978) (quoting *Wilson v. Marshall*, 260 S.C. 271, 274, 195 S.E.2d 610, 611 (1973)). The Court has followed this principle on several occasions when defendants sought to avoid trial on the grounds that the plaintiff's own conduct appeared to be the obvious cause of the plaintiff's injury. See *Davenport v. Cotton Hope Plantation Horizontal Prop Regime*, 333 S.C. 71, 86, 508 S.E.2d 565, 573 (1998) (plaintiff who fell down dimly lit stairwell); *Creech*, 328 S.C. at 24, 491 S.E.2d at 571 (plaintiff who fell off a boat dock). and *Easler v. Hejaz Temple A A O N M S of Greenville*, 285 S.C. 348, 329 S.E.2d 753 (1985) (plaintiff who voluntarily participated in an organization's hazing activities).

Chief Judge Few cited one case—*Bloom v. Ravoir*—in support of his decision that Ms. Hancock was more at fault as a matter of law, but as the Court's decision in *Bloom* describes, that case involved circumstances where the evidence of the plaintiff's "greater negligence" is overwhelming and the defendant's negligence was only "slight." See 339 S.C. 417, 424, 529 S.E.2d 710, 714 (2000) (emphasis in original). The plaintiff in *Bloom* was struck by a car when he darted out from between two parked cars and into a dark and rainy street in Charleston. The Court's decision recites that the defendant who struck Mr. Bloom had been driving the speed limit and was not driving recklessly.

Those circumstances are meaningfully different than Wal-Mart directing an untrained security guard to engage in a vehicular pursuit. It does not matter if the pursuit was supposed to be temporary and was designed to gather information like a vehicle's tag number. Either way, Wal-Mart's policy recognizes that this activity was highly dangerous and improper.

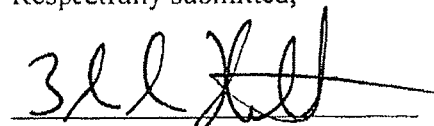
Derrick Jones had no right to detain Ms. Hancock, and it is important to recall the stipulation that Ms. Hancock was driving the speed limit at the time of the crash. Ms. Hancock is not automatically more at fault for her death. This is an evaluation for the jury.

CONCLUSION

This should not be a difficult case. The evidence is contested, but it ought to be apparent that there is evidence of Wal-Mart's negligence, and it ought to be equally apparent that a serious injury is more than just a foreseeable consequence of violating Wal-Mart's policy. Avoiding injury is a main reason the policy exists. This Court should reverse the trial court and the Court of Appeals, and it should remand this matter for a new trial against all defendants.

February 13, 2015

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LANCASTER COUNTY

Court of Common Pleas

S.C. Supreme Court

Brooks P Goldsmith, Circuit Court Judge

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

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, and
Derrick L. Jones, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served
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& DELGADO, LLC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Lancaster County
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Brooks P. Goldsmith, Circuit Court Judge

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Wal-Mart Stores East, LP, U.S. Security
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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,¹ 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

¹ 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.² 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.

² 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 pursue³ 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.⁴ (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

³ 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).

⁴ 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.⁵ 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

⁵ 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,⁶ 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

⁶ 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,⁷ 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

⁷ 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); Traweck 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.⁸ 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.⁹ 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

⁸ 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.

⁹ 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 Hancock¹⁰ 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

¹⁰ 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 finding¹¹ 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

¹¹ 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,¹² 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

¹² 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,¹³ 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,¹⁴ 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,

¹³ 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)

¹⁴ 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. Ravoir, 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); Snively 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 (4th 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.¹⁵

¹⁵ 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

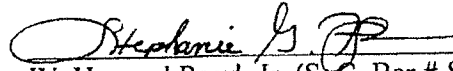
maintain control of her vehicle, resulting in the single-car accident. Here, as in Bloom and multiple of the other exemplary cases, the inescapable conclusion is that, as a matter of law, Hancock's fault exceeded fifty percent as a cause of the accident

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,



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Stephanie Flynn (S.C. Bar # 16653)

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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

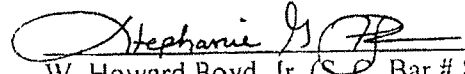
The undersigned hereby certifies that on the 6th day of April, a copy of the Brief of Respondents was served by placing a copy of the Brief in an envelope with sufficient postage prepaid, and mailing it to counsel for Petitioner as follows:

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April 6, 2015


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Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Appeal from Lancaster County
Court of Common Pleas

APR 14 2016

Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 27615 (S.C. Filed Mar. 30, 2016)

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

RESPONDENTS' PETITION FOR REHEARING

This Court published its recent 3-2 decision in *Roddey v. Wal-Mart Stores East, LP*, on March 30, 2016. See Op. No. 27615 (Shearouse Adv. Sh. No. 13, p. 22). Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the Respondents, Wal-Mart Stores East, LP, U.S. Security Associates, Inc. ("USSA"), and Derrick L. Jones, petition this Court for rehearing of its majority decision. As set forth more fully below, the Respondents respectfully submit that the Court overlooked or misapprehended the following points in its decision:

1 The Court's majority opinion misapprehends or overlooks the fact that Jones' pursuit of Beckham and Hancock was not "set into motion" by any wrongful acts on the part of Wal-Mart, but began spontaneously when Beckham began to run from

Jones and he followed her, and that it would have continued regardless of any instruction by Wal-Mart. Jones claims that, before the pursuit began, he had been given no "distinctive instructions" when he asked Wal-Mart employees what, if anything, they wanted him to do. (App. p 219, lines 6-14) He was told nothing other than "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). At that time, Beckham was still in the store and no one knew what she was going to do. Wal-Mart had given Jones no instructions to formally detain Beckham, a function reserved for Wal-Mart loss prevention personnel, nor had any Wal-Mart employee asked Jones to follow or obtain any information from or regarding Beckham. 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, Jeffrey Gross, criticize that act (App. p.235, line 16-p 236, line 16).

After Beckham abandoned her bag of stolen merchandise at the interior doorway leading to the exit of the store, Wal-Mart considered the incident to be over, as Wal-Mart had not actually been deprived of the merchandise (App. p 335, lines 17-19). Hence, no Wal-Mart employees followed Beckham outside or made any effort to stop her from leaving, and they were therefore not outside and in view of Jones and Beckham when they encountered each other. As soon as Jones spoke to Beckham as she walked by his security vehicle, Beckham began to run, prompting Jones to turn his vehicle around and follow. No employees of Wal-Mart saw any portion of those events until Jones had already followed Beckham to the middle of the parking lot, Beckham had already jumped

into the backseat of Hancock's vehicle, and Jones had effectively blocked Hancock's vehicle by turning his security truck into the same aisle of the parking lot.

Despite that the sequence of events unfolded as outlined above, some of the Court's reasoning appears to be predicated, in part, on the conclusion that Jones' pursuit was prompted at the very outset by instructions from Wal-Mart. For instance, in its majority opinion, the Court noted that Wal-Mart employees' instructions *led* Jones to drive through Wal-Mart's parking lot in pursuit of Beckham (p 9) and that Jones' acts were set into motion by the original wrongful acts of Wal-Mart. However, as there is no evidence that any Wal-Mart employee instructed Jones to obtain the license tag number of Hancock's vehicle *before* Jones had already initiated the pursuit through the parking lot, no act by Wal-Mart can reasonably be said to have set into motion those events

Just as Wal-Mart did not incite Jones to pursue Beckham by asking him to follow her and get her license tag number at any time *before* they were already engaged with each other in the middle of the parking lot, it is incorrect to say that Wal-Mart, at any point, instructed Jones to *actually* engage in a pursuit, as noted at a couple of points in the opinion.¹ A Wal-Mart employee (Cox) only asked Jones to get Hancock's license tag number at the moment when she saw Hancock had turned around and Jones was in a position to see it, which occurred in a matter of seconds after she walked outside and saw the vehicles. She also provided an explanation for yelling out to get the tag, to wit, that she meant for Jones to get the tag number *and stop*. (App p 344, lines 9-16) Jones affirmed that he was asked to get the license tag number of the vehicle, and while he testified he was *not* told to follow anyone off of the property, Jones read into the request

¹ The Court noted, on page 8, that there was evidence that Wal-Mart employees violated Wal-Mart's policies by instructing Jones to engage in the pursuit. The Court also noted, on page 9, it was reasonably foreseeable that instructing a contracted security guard to engage in such pursuit would be dangerous

to get the tag number much more than was actually said to him. In any event, it is obvious that any instruction to get the tag number in the midst of the ongoing pursuit was superfluous and could not have influenced Jones to have engaged in the pursuit, which he had already initiated on his own.

In addition to the above, the majority opinion misapprehends or overlooks the fact that there is no evidence in the record establishing that Jones would have discontinued his pursuit at any point after it began. Jones had begun the pursuit without any purpose or end goal. There is no evidence he needed a reason to keep going. Jones should have been able to see Hancock's license tag when he was directly behind her vehicle in the parking lot, which was why Cox yelled out into the walkie-talkie to get the tag. As explained by Wal-Mart's General Manager, Chris Tipton, asking Jones to obtain Hancock's license tag number while in the parking lot was not a violation of Wal-Mart policy (App p 351, lines 3-17). Even Plaintiff's pursuit and loss prevention experts agreed that recording the license tag number in the parking lot was reasonable and explainable (App p. 260, lines 14-23; p 277, lines 8-21). Yet, Jones continued in his pursuit.

According to Beckham's testimony, Jones then remained in close range of Hancock's vehicle for the next two miles away from the property while flashing his lights², which, if true, and without guessing what Jones' motivations might have been, would seem inconsistent with an effort to just obtain Hancock's license tag number. It is obvious he must have been motivated by something else given the method in which Beckham claims he was pursuing Hancock (and assuming Beckham's testimony to be true). The totality of the circumstances establishes that the only reasonable inference to

² No one other than Beckham has offered testimony regarding these acts, none of which were witnessed by Wal-Mart

be drawn from the evidence is that Jones independently initiated *and* decided to continue a pursuit for more than two miles and that Wal-Mart's attempt to have Jones get the license tag number in the midst of the ongoing pursuit, while Jones and Hancock were still in the parking lot, had no bearing on either the initiation of the chase by Jones or on his actions (*i.e.*, tailgating and flashing his lights) once the vehicles were away from the property and no longer in view

In view of the above, Wal-Mart's acts could not have served as either a but-for or legal cause of the accident.

2. The Court's majority opinion misapprehends or overlooks the fact that it should disregard Jones' testimony that he was somehow having an ongoing conversation over a walkie-talkie while in the midst of pursuing Hancock and Beckham at a high rate of speed in the parking lot. As set forth by the majority opinion, Jones testified that both Rollings and Cox repeatedly instructed him to get the license plate number, that he was telling them he could not see it, and that he told them Hancock was about to leave the parking lot. All the while, Jones contended both of the Wal-Mart employees continued to instruct him to obtain the license tag number. Testimony may be properly disregarded as inherently incredible where it is refuted by facts which are of common knowledge. See Still v. Hampton & Branchville R.R., 258 S.C. 416, 425 (1972). Here, communications between Jones and Wal-Mart were only possible and being made over walkie-talkies, the basic function of which is incontrovertible and of which this Court may take judicial notice. See id. Walkie-talkies do not operate like telephones, but are hand-held, two-way radio transceivers and, although any number of persons can listen at one time, only one radio on the channel can transmit at a time. Pushing the "push-to-talk" button turns off

the receiver and turns on the transmitter. If more than one person attempts to talk simultaneously, the channel is jammed and no one can listen.

Despite the limitations of a walkie-talkie system, and without even considering the limited range that they had even within the Wal-Mart store, it is incredible to believe that Jones could have had the ability to be hotly pursuing Hancock and Beckham, maneuvering his security truck around the islands that defined the aisles and exit of the parking lot, and maneuvering through a stop sign and stop light, past other vehicles in the intersection at a high rate of speed, all while having a back and forth conversation with more than one person. South Carolina law recognizes, and common sense dictates that self-serving statements are inherently less reliable than self-inculpatory statements. See Jones v. Catoe, 345 S.C. 389, 402, 548 S.E.2d 587, 594 (2001). See also Rule 804(b)(3), SCRE (providing exception to rule against hearsay where the statement, at the time of its making is against declarant's pecuniary or proprietary interest, the rationale being the assumption that persons do not make statements which are damaging to themselves unless satisfied that the statements are true). It is not at all unlikely Jones' testimony was motivated by trying to find some explanation for continuing a pursuit, which he initiated entirely on his own accord, well beyond his limited "jurisdiction" (i.e., the Wal-Mart parking lot), despite knowing that he was not allowed to leave and never should have left the parking lot. Jones' testimony in regard to these alleged communications, which serves as support in the majority opinion for the finding that there is some evidence of Wal-Mart's negligence, is inherently incredible and should be discounted.

3. The Court's majority opinion misapprehends or overlooks the fact that, while evidence of a company's deviation from its own internal policies is relevant to

show the company deviated from the standard of care, Wal-Mart did not employ and had no authority over Jones. Wal-Mart further had no duty or responsibility to supervise him. Jones was to act independently and in accordance with USSA's guidelines. Accordingly, while Jones' violation of those rules that were applicable to him could constitute evidence of *his* negligence, Jones was not subject to Wal-Mart's policies and was not supposed to engage in any loss prevention activities. His violation of Wal-Mart's internal policies cannot therefore be probative of Wal-Mart's negligence. Wal-Mart's liability has to rise and fall on the acts of its own employees in following Wal-Mart's policies and procedures.

In examining the actions taken by Wal-Mart employees, there is no evidence any Wal-Mart employee acted inappropriately in any interaction with Hancock or Beckham, nor did any Wal-Mart employee try to circumvent their rules by procuring Jones to do something they could not. While Beckham was still in the store and it was unclear what she was going to do, Jones claims that he was only told to speak with Beckham for a moment to perhaps delay her. No one asked Jones to physically detain Beckham or to follow her as she left the Wal-Mart store. Yet, after Beckham dropped her stolen merchandise inside and left the store, and before anyone at Wal-Mart was outside or had any idea what was occurring, Jones independently began pursuing Beckham the second she ran, with no instruction or prodding. Wal-Mart had no knowledge of the chase until Hancock, Beckham and Jones were fully engaged with each other in the middle of the parking lot. Hence, Wal-Mart cannot be said to have procured Jones to pursue Beckham and Hancock in violation of Wal-Mart policy.

There is also no prohibition in Wal-Mart's policies in asking that Jones get the license tag number at the moment when Jones was positioned directly behind Hancock and could have done just that. 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.

That Wal-Mart acquiesced in Jones leaving the parking lot and proceeding with the pursuit of Beckham and Hancock away from the property is based entirely on Jones' own subjective interpretation of what someone *meant* for him to do when they yelled out to get the tag. The testimony by Wal-Mart employees regarding the intent of that request, however, was clear. They meant for him to get the tag and stop. There was no direction ever given to leave the property or to continue to pursue, nor did they expect Jones would do so given USSA's guidelines which make clear that Jones is to remain on the property. (App. p.324, lines 8-10, p 325, lines 2-9, p 338, lines 4-7; p 342, lines 7-12) Jones likewise admitted he knew he was not supposed to leave the parking lot. Accordingly, there was no evidence of violation by Wal-Mart employees of their policies and procedures.

4 The Court's majority opinion misapprehends or overlooks the fact that, even considering Petitioner's claims that there are grounds to find Wal-Mart independently liable (and not just vicariously liable through Jones), Wal-Mart's conduct could not have had any bearing on Hancock's proportion of fault. The reaction and resulting acts of both Beckham and Hancock were solely, and at all times, responsive to

Jones' acts. They had no interaction with any Wal-Mart employee that spurred them to flee. Before the chase began, Hancock was already waiting in her vehicle, and Beckham had responded to the inquiry by the Wal-Mart door greeter for a receipt by placing the bag of stolen merchandise onto the floor and walking outside, with no one following her. At that point, neither Beckham nor Hancock had any further contact with any Wal-Mart employee.

The examination then must turn to the actions taken by the two participants in the vehicular pursuit—Hancock and Jones. There is no evidence Hancock had any knowledge that Wal-Mart told Jones anything. Wal-Mart also had no interactions with Hancock that prompted her to react in the manner than she did. Hancock responded initially to her sister when she saw Beckham running toward her in the parking lot. She drove toward her sister and then reacted to Jones when she saw that his security truck was in front of her by backing up at a high rate of speed before hitting a concrete median and turning around, all of which occurred before any Wal-Mart employee yelled to Jones to get the tag. After speeding toward the exit and running through a stop sign and red light to get out of the Wal-Mart parking lot, Hancock continued to flee at a high rate of speed for over two miles, narrowly avoiding other collisions until she lost control of her vehicle and failed to negotiate a curve, driving straight off of the roadway, across a yard, and into some trees. Because Wal-Mart's conduct does nothing to explain Hancock's response, it cannot have had any effect on the jury's apportionment of fault to her. The jury considered all of Hancock's actions, as well as the testimony of Jones and all of the involved Wal-Mart employees who testified at trial, before finding that Hancock was 65% at fault in causing the accident. Petitioner should be bound by that determination.

4 The Court's majority opinion misapprehends or overlooks the fact that Petitioner failed to preserve for appellate review the argument that the Court could procedurally grant a new trial as against defendants who received a non-erroneous verdict, favorable to them, which was not otherwise challenged in any respect. While Petitioner has maintained that his arguments fairly encompassed his position that a new trial as to Plaintiff's negligence cause of action should be granted as to all defendants, the majority opinion did not consider that Petitioner failed to set forth that point in crafting the issue on appeal. Having failed to do so, Petitioner's position should not have been considered. 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).

Even if Petitioner had fashioned the issue on appeal so as to clearly assert his request for remand as to all defendants, the Court did not consider Petitioner's failure to set forth case law analyzing the propriety of a retrial for all defendants when some have received a favorable jury verdict that was not found to be in error. Rather, Petitioner only made the conclusory argument that the comparative negligence framework would so require. The cases cited did not, however, address or analyze issues of remand in cases involving multiple defendants who received differing outcomes through the trial process.

As an initial matter, the fact that South Carolina has adopted a comparative negligence model is no guarantee to any litigant that a jury will have the opportunity to

assess liability on the part of every single, potentially culpable defendant, for reasons both within and beyond that litigant's control. Secondly, there are no South Carolina cases that extrapolate from the comparative negligence framework the result that has been mandated here. There is, however, case law in many other jurisdictions addressing precisely this issue in a direct way and holding that 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 another. See Jack v. Booth, 858 N.W.2d 711 (Iowa 2015) (citing 58 Am. Jur. 2d New Trial § 29, at 102 (2012)). Ultimately, only one such case was cited by Petitioner in his Reply Brief in support of Petitioner's position, after Respondents pointed out Petitioner's failure to have directly addressed the issue. See Williams v. Slade, 431 F.2d 605 (5th Cir. 1970).

In Williams, involving an automobile accident in which an innocent passenger sued both the driver of the vehicle in which she was a passenger and the driver of the other involved vehicle, the trial judge directed a verdict in favor of one driver, while the jury, left with an all or nothing decision, returned a verdict in favor of the other driver. The Fifth Circuit reversed and ordered a new trial as to both defendants because the court reasoned that *someone* had to be liable to the innocent plaintiff passenger. There was no evidence suggesting an unavoidable accident. Accordingly, a proper trial could only be held where the jury had the choice of holding liable one or the other of the drivers, or both.

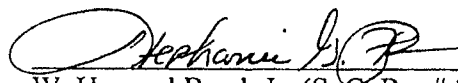
Here, there is no basis for saying that one or all of the defendants *must* inevitably be liable to Plaintiff. Rather, this case involved significant issues as to comparative fault on the part of Hancock in acting as the get-away driver, driving recklessly, and losing

control of her vehicle, resulting in her single-vehicle accident and death. If Jones is found not to be at fault in causing the accident, which occurred over two miles away from the Wal-Mart property, and with no involvement by any Wal-Mart employee, how is there any conceivable way that Wal-Mart could be liable for the same accident? In this case, following a six-day trial in which the jury had the benefit of Jones' testimony, as well as that of all involved Wal-Mart employees,³ the jury determined Hancock was most at fault in the accident in which Jones and Hancock were the direct participants. That verdict should stand.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request this Court grant this Petition, permit rehearing, withdraw its prior decision, and enter a new opinion upholding and affirming the decisions rendered by the trial court, as affirmed by the Court of Appeals.

Respectfully submitted,



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Stephanie Flynn (S. C. Bar # 16653)

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Attorneys for Respondents

April 13, 2016
Greenville, SC

³ Wal-Mart was only absent from one day of trial before the jury rendered its verdict.

The Supreme Court of South Carolina

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

v.

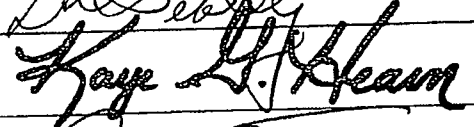
Wal-Mart Stores East, LP, U.S. Security Associates, Inc.,
and Derrick L. Jones, Respondents.

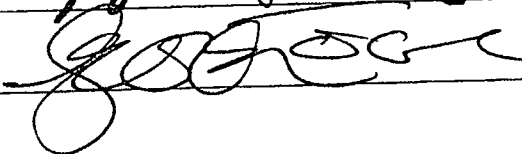
Appellate Case No. 2012-213375

ORDER

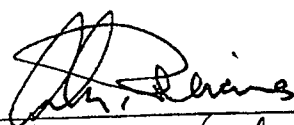
The Petition for Rehearing filed in the above entitled matter is denied.

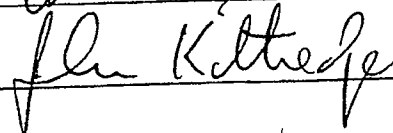





_____ A.J.

I would grant the Petition for Rehearing.

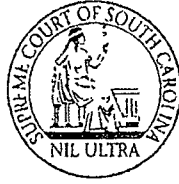



_____ J.

Columbia, South Carolina
May 5, 2016

cc:

W. Howard Boyd, Jr., Esquire
Stephanie G. Flynn, Esquire
Blake Alexander Hewitt, Esquire
John S. Nichols, Esquire
Brent Paul Stewart, Esquire
S. Randall Hood, Esquire
The Honorable Jeff L. Hammond



The Supreme Court of South Carolina

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CLERK OF COURT

BRENDA F. SHEALY
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May 5, 2016

The Honorable Jeff L. Hammond
PO Box 1809
Lancaster SC 29721-1809

REMITTITUR

Re: Travis Roddey v. Wal-Mart Stores
Lower Court Case No. 2007-CP-29-00593
Appellate Case No. 2012-213375

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.



Very truly yours,

CLERK

cc: W. Howard Boyd, Jr., Esquire
Stephanie G. Flynn, Esquire
Blake Alexander Hewitt, Esquire
John S. Nichols, Esquire
S. Randall Hood, Esquire
Brent Paul Stewart, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Travis A. Roddey, Individually and as)
the Personal Representative of the Estate)
of Alice Monique Beckham Hancock,)
deceased.)

Case No. 2007-CP-29-0593

Plaintiff,)

vs)

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

Wal-Mart Stores, Inc , Wal-Mart Stores)
East, Inc , WSE, Investment LLC, WSE)
Management, LLC, Wal-Mart Stores East,)
LP, U S Security Associates, Inc , and)
Derrick L. Jones)

Defendants)

PARTIES

Plaintiff:

1 The Plaintiff, Travis A. Roddey (hereinafter "Plaintiff" or "Roddey"), is a citizen and resident of the County of Lancaster, State of South Carolina and is the duly appointed Personal Representative of the Estate of Alice Monique Beckham Hancock (hereinafter "Decedent" or "Hancock"). He brings this action on behalf of the Estate of Decedent, for damages recoverable pursuant to section 15-5-90, Code of Laws of South Carolina (1976) and for damages recoverable by the statutory beneficiaries of Decedent pursuant to section 15-51-10, et seq, Code of Laws of South Carolina (1976, as amended).

Defendants:

2 Wal-Mart Stores, Inc (hereinafter "WM") is an entity which has different commercial facilities located in many States of the United States, including the State of South

Carolina. Upon information and belief, WM is incorporated in Arkansas and licensed and doing business in the County of Lancaster, State of South Carolina.

3. Wal-Mart Stores East, Inc. is an entity which has different commercial facilities located in many States of the United States, including the State of South Carolina. Upon information and belief, Wal-Mart Stores East, Inc. is incorporated in Arkansas and licensed and doing business in the County of Lancaster, State of South Carolina.

4. WSE Investment, LLC is an entity which has different commercial facilities located in many states of the United States, including the State of South Carolina. Upon information and belief, WSE Investment, LLC is incorporated in Arkansas and licensed and doing business in the County of Lancaster, State of South Carolina.

5. WSE Management, LLC is an entity which has different commercial facilities located in many states of the United States, including the State of South Carolina. Upon information and belief, WSE Management, LLC is incorporated in Arkansas and licensed and doing business in the County of Lancaster, State of South Carolina.

6. Wal-Mart Stores East, LP is an entity which has different commercial facilities located in many states of the United States, including the State of South Carolina. Upon information and belief, Wal-Mart Stores East, LP is a limited Partnership created in Arkansas and licensed and doing business in the County of Lancaster, State of South Carolina.

7. Upon information and belief, Wal-Mart Stores East is a limited Partnership owned and controlled by WSE Management, LLC and WSE Investments, LLC. Upon information and belief, Wal-Mart Stores East, Inc. is the sole member of the two LLC's which own Wal-Mart Stores East, LP. Upon information and belief, Wal-Mart Stores East, Inc. is a wholly owned and

controlled subsidiary of Wal Mart Stores, Inc. Wal Mart Stores East, Inc. WSE Investments LLC, Wal Mart Management LLC and Wal Mart Stores LP are all part of one umbrella entity which owns and controls all of the subsidiaries (hereinafter "Wal Mart Enterprises" or "WME")

8 The Defendant, U. S. Security Associates, Inc (hereinafter "USI") is, upon information and belief, a company organized and existing under the laws of the one of the States of the United States and hires, trains and supervises persons in the field of security USI specifically employs people in the state of South Carolina, including the County of Lancaster, State of South Carolina

9 Derrick L. Jones, is upon information and belief, a citizen and resident of the county of Lancaster, State of South Carolina

10. Upon information and belief, on June 20, 2006, while working as an agent and employee of USI and agent of WME, Jones contributed to an accident which caused the death of Alice Hancock

11 Upon information and belief, Defendant Jones, at all times herein complained, was an agent, servant or employee of the Defendant, USI, and all acts or omissions complained of herein occurred during the course and scope of his employment with said Defendant and are therefore imputed to the Defendant, USI, under the doctrine of respondeat superior

12 Upon information and belief, the Defendants WME, had agents, servants, and employees, whose acts or omissions complained of herein, were performed during the course and scope of such employment and/or agency and their actions are imputed to Defendant WME, under the doctrine of respondeat superior.

13 At all times relevant to this action, Defendants WME had a contract with USI to provide Security Services to WME and its customers in the parking lot of the Wal Mart Store located on Highway 919n Lancaster County, South Carolina. Upon information and belief, this contractual agreement created an agency relationship between WME and USI and all of the actions and omissions of USI and its agents and/or employees are imputed to WME through agency and/or apparent agency.

14 The negligent acts, omissions and liability of Defendants WME, USI and Jones, also refer to and include their agents, principals, employees and/or servants both directly and vicariously, pursuant to principals of corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.

15 By virtue of the relationship between WME and its customers and specifically the decedent, WME had a duty to conduct all security operations including those performed by USI and/or Jones in a safe and reasonable manner.

16 By virtue of the conduct of WME, USI and Jones as alleged below, the duties of the defendants to the decedent were breached and contributed to the death of the decedent.

JOINT AND SEVERAL LIABILITY

17 That all of the above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, are a contributing proximate cause of the Plaintiff's damages, injuries and losses.

JURISDICTION AND VENUE

18 The accident underlying this case happened in the County of Lancaster and the

Plaintiff and one of the Defendants (Derrick L. Jones) are residents of the County of Lancaster, State of South Carolina. This court has original jurisdiction since there is no diversity of citizenship between the Plaintiff and all of the Defendants.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

19 The Plaintiff is informed and does believe that Jones and USI were agents of WME on June 20, 2006 and were providing a benefit of security services on that day.

20 Prior to this date, Jones had applied for and been hired as a security guard with USI though he had not received certification or approval for being a security guard in South Carolina by the South Carolina Law Enforcement Division (hereinafter "SLED")

21 Though Jones had been hired without being licensed, USI obviously failed to perform a background check on Jones since he had a strong arm robbery charge and drug charges unresolved against him at the time of his hire by USI.

22 USI should have run a background check on Jones since he was not licensed by SLED and a simple five minute check would have revealed he was not qualified to be hired as a security guard.

23. USI then proceeded to hire Jones to provide security services though he had multiple criminal charges pending against him at the time of hire.

24 USI provided outdoor security services to Wal Mart on a contract basis for the Wal Mart store located on Highway 9 in Lancaster, South Carolina.

25 Upon information and belief, Wal Mart has policies and procedures in place for its employees and the agents of its security service providers to NEVER follow people out of a store parking lot.

26 Upon information and belief, USI has policies and procedures in place for its employees and the agents to NEVER follow people out of a store parking lot

27 On June 20, 2006, Alice Hancock and her sister were shopping in the Wal Mart Store located on Highway 9 in Lancaster County, South Carolina when Hancock left the store and went to her car

28 Hancock's sister remained in the store to shop and left a short time later

29 When Hancock's sister proceeded to the exit area of the Wal Mart store, she was asked for a receipt for the items in her bag by an employee

30 Hancock's sister then laid down the bag and exited the store

31 As Hancock's sister left the store, Jones shouted at Hancock's sister to come to his truck

32 Upon information and belief, the truck in which Jones was in did not have any lights on the vehicle which would have been indication that it was a security guard truck

33 This incident happened at approximately 10 00 PM at night

34 Hancock's sister then walked quickly to Hancock's car

35 At approximately the same time that her sister got into Hancock's vehicle, a truck driven by Jones sped towards Hancock in a quick and abrupt manner. The entire scene was caught on videotape footage maintained by Wal Mart

36 Hancock then did a three point road turn to attempt to avoid the truck of Jones, who ended up behind the car of Hancock

37 - Upon information and belief, an employee of the Wal Mart Store on Highway 9 in Lancaster County had communication with Jones and advised him to get the license plate of

Hancock

38 Upon information and belief the employee of Wal Mart did not advise Jones to leave the parking lot to get the tag of Hancock's car

39 Hancock then left the parking lot of the Wal Mart store on Highway 9 in Lancaster and was followed from the parking lot by Jones

40 When Hancock left the Wal Mart, she was inexplicably pursued by Jones though Hancock's sister had left her bag at the exit of the Wal Mart store located on Highway 9 in Lancaster County

41 Jones then engaged in a high speed chase with Hancock and her sister for more than one mile, though every policy of WME and USI seemed to indicate that he was NEVER to follow someone from the parking lot. This action by Jones violated every duty owed to decedent by defendants and contributed to the course of events that resulted in Ms. Hancock's death

42 Upon information and belief, during this chase in which Jones had never identified himself as a security agent for Wal Mart, he was following close to the bumper of the vehicle driven by Hancock and flashing his lights on and off.

43 Upon information and belief, during this chase he never communicated to the police or anyone from Wal Mart that he was engaged in a high speed chase

44 As a result of the actions and inactions of Defendants, Hancock and her sister were involved in a vehicular crash.

45 Jones then lied to law enforcement authorities about his role in the accident and has given different versions of what occurred during the chase

46 Unfortunately, Hancock was killed in the vehicle accident and her sister suffered

grievous bodily harm

47 This accident occurred because USI failed to do a five minute background check. Jones failed to follow policies and procedures, employees of Wal Mart instructed Jones to get the license plate of Hancock's car and many other negligent acts by Defendants

FOR A FIRST CAUSE OF ACTION
(Negligence - Respondeat Superior - Wrongful Death)

48 The Plaintiff repeats and realleges paragraphs 1 through 47 as though set forth herein verbatim, and would further allege

49. The Plaintiff is informed and does believe that the Defendants had a duty to the decedent to conduct any security services in regard to her or any other person, including her sister, in a safe and reasonable manner. Upon information and belief the defendants were negligent, careless, reckless, wanton, and grossly negligent in regard to their actions concerning the decedent and her sister at the time and place hereinabove mentioned in the following particulars

- a in having it's agent or employee follow the car of Hancock out of a parking lot,
- b in violating written engagement policies,
- c in failing to keep the USI Truck under proper control,
- d in failing to cease following Hancock's vehicle after it exited the Wal Mart parking lot,
- e in failing to use the accepted standard or practice within the security guard arena in regard to rules of engagement and pursuit,
- f. in failing to recognize the danger of following someone from a parking lot in a high speed pursuit
- g. in failing to inform Ms Hancock for the reason of Jones' pursuit,

- h in failing to follow policies and procedures of WME and USI.
- i In generally failing to use the degree of care and caution that a reasonably prudent person or entity would have used under the same or similar circumstances
- j. In violating laws enacted to protect the safety and health of the motoring public so as to constitute negligence per se,

All of which constitutes negligence, carelessness, recklessness, wantonness and/or gross negligence and is attributable to the Defendants WME and USI by virtue of the doctrine of agency and/or respondeat superior

50 As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness by Defendants, and the breach of duties owed to Decedent by Defendants, the Plaintiff's Decedent suffered from severe debilitating injuries which resulted in her death, as a result of which the Plaintiff's Decedent's statutory beneficiaries have lost the aid, comfort support, society and companionship of the Decedent and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10 et seq, Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action

FOR A SECOND CAUSE OF ACTION
(Negligent Hiring, Training, Supervision and Entrustment - Wrongful Death)

51. The Plaintiff repeats and realleges paragraphs 1 through 50 as though fully set forth herein verbatim and would further allege

52 The Plaintiff is informed and does believe that the Defendants had a duty to the decedent to conduct any security services in regard to her or any other person, including her

sister, in a safe and reasonable manner. Upon information and belief the defendants were negligent, careless, reckless, wanton and grossly negligent in regard to their actions concerning the decedent and her sister at the time and place hereinabove mentioned in the following particulars:

- a In failing to conduct a proper pre-hiring investigation into Jones,
- b In failing to properly train Jones on the rules of engagement and pursuit,
- c In failing to properly supervise Jones,
- d In entrusting a vehicle to Jones when USI knew or should have known that Jones would not drive the vehicle in a proper manner,
- e In failing to conduct proper pre-employment screening of Jones so as to discover his criminal charges of strong arm robbery and drugs pending at the time of his hire;
- f In hiring Jones as a security guard when he had not been approved the State Law Enforcement Division,
- g In failing to institute a proper system to ensure that security guard applicants were carefully screened prior to their hire,
- h. in failing to properly train Jones,
- I In failing to properly supervise Jones;
- j in advising Jones to follow the vehicle of Hancock to obtain her license plate
- k In failing to have in place policies and procedures to train and/or monitor their employees and/or agents, or if such procedures were in place, in failing to enforce them,
- n In failing to have in place adequate policies and procedures to mandate compliance with statutes, laws, and regulations regarding the engagement of perceived wrongdoers, or if such policies and procedures were in place, in failing to enforce them,
- o In failing to have in place an adequate safety program for agents or employees of

Defendants,

- p In failing to ensure that Jones had the proper training and experience to be able to understand how to react when he was advised to obtain the license plate number of Hancock's vehicle.
- q In entrusting security services to USI when WME knew or should have known they would be inadequate or improper.
- r In failing to properly investigate Jones' driving record and/or ability to drive to ensure that Jones possessed the requisite skill and attention to maintain control of and ability to drive a vehicle:
- s In failing to ensure that Jones had sufficient, adequate and current training, credentials and skills to properly drive a vehicle for USI.

All of which constitutes negligence, carelessness, recklessness, wantonness and/or gross negligence and is attributable to the Defendants WME and USI by virtue of the doctrine of agency and/or respondeat superior

53. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness by Defendants, and the breach of duties owed to Decedent by Defendants, the Plaintiff's Decedent suffered from severe debilitating injuries which resulted in her death, as a result of which the Plaintiff's Decedent's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the Decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10, et seq, Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action

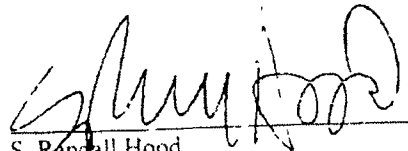
FOR A THIRD CAUSE OF ACTION
(Negligence - Respondeat Superior - Survivorship Action)
(Negligent Hiring, Training, Supervision and Entrustment - Survivorship Action)

54 Plaintiff repeats and realleges paragraphs 1 through 53 as though set forth herein verbatim, and would further allege

55 The Plaintiff's Decedent's estate, as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, and the breach of duties owed to Decedent by Defendants, as aforesaid, has incurred expenses in the form of funeral, burial, medical and property expenses. The Plaintiff is further informed and does believe that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, and the breach of duties owed to Decedent by Defendants, as aforesaid, the Plaintiff's Decedent suffered fear, physical pain, and suffering, and mental and emotional distress and anguish in the time before her death, for which the Plaintiff's Decedent's estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

WHEREFORE, Plaintiff, respectfully prays for judgement against the Defendants for all actual damages, special damages, consequential damages, and punitive damages in this action, the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]



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Rock Hill, South Carolina

July 25, 2007

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Travis A. Roddey, Individually and as
the Personal Representative of the Estate
of Alice Monique Beckham Hancock,
deceased,

Case No. 2007-CP-29-0593

Plaintiff,

SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

vs.

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

Defendants.

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OFFICE OF THE CLERK
COURT

The Plaintiff, complaining of the Defendants, would allege as follows

PARTIES

Plaintiff:

1. The Plaintiff, Travis A. Roddey (hereinafter "Plaintiff" or "Roddey"), is a citizen and resident of the County of Lancaster, State of South Carolina and is the duly appointed Personal Representative of the Estate of Alice Monique Beckham Hancock (hereinafter "Decedent" or "Hancock"). He brings this action on behalf of the Estate of Decedent, for damages recoverable pursuant to section 15-5-90, Code of Laws of South Carolina (1976) and for damages recoverable by the statutory beneficiaries of Decedent pursuant to section 15-51-10, et seq., Code of Laws of South Carolina (1976, as amended)

Defendants:

2. Wal-Mart Stores East, LP, (hereinafter "WME") is an entity which has different commercial facilities located in many states of the United States including the State of South

Carolina Upon information and belief, Wal Mart Stores East, LP is a limited Partnership created in Arkansas and licensed and doing business in the County of Lancaster, States of South Carolina

3 The Defendant, U S Security Associates, Inc (hereinafter "USI") is upon information and belief a company organized and existing under the laws of the one of the States of the United States and hires, trains and supervises persons in the field of security. USI specifically employs people in the State of South Carolina, including the County of Lancaster. State of South Carolina

4 Detrick L Jones, is upon information and belief a citizen and resident of the county of Lancaster, State of South Carolina.

5 Upon information and belief, on June 20, 2006, while working as an agent and employee of USI and agent of WME, Jones contributed to an accident which caused the death of Alice Hancock

6 Upon information and belief, Defendant Jones, at all times herein complained, was an agent, servant or employee of the Defendant USI, and all acts or omissions complained of herein occurred during the course and scope of his employment with said Defendant and are therefore imputed to the Defendant, USI under the doctrine of agency or respondeat superior

7 Upon information and belief, the Defendant WME, had agents servants and employees, whose acts or omissions complained of herein, were performed during the course and scope of such employment and/or agency and their actions are imputed to Defendant WME, under the doctrine of agency or respondeat superior

8 At all times relevant to this action, upon information and belief Defendants WME

had a contract with USI to provide Security Services to WME and its customers in the parking lot of the Wal Mart Store located on Highway 9 in Lancaster County, South Carolina. Upon information and belief, this contractual agreement created an agency relationship between WME and USI and all of the actions and omissions of USI and its agents and/or employees are imputed to WME through agency and/or apparent agency.

9 The negligent acts, omissions and liability of Defendants WME, USI and Jones, also refer to and include their agents, principals, employees and/or servants, both directly and vicariously, pursuant to principals of corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.

10 By virtue of the relationship between Defendants and customers of WME who visited the store and persons who used the parking lot of the store and were under the security services of WME, USI and Jones, Defendants had a duty to conduct all security operations including those performed by USI and/or Jones in a safe and reasonable manner.

11 By virtue of the conduct of WME, USI and Jones, as alleged below, the duties of the Defendants to the Decedent were breached and contributed to the death of the Decedent.

JOINT AND SEVERAL LIABILITY

12 That all of the above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, were a proximate cause of the Plaintiff's and Decedent's damages, injuries and losses.

JURISDICTION AND VENUE

13 The accident underlying this case happened in the County of Lancaster and the

Plaintiff and one of the Defendants (Derrick L. Jones) are residents of the County of Lancaster State of South Carolina. This court has original jurisdiction since there is no diversity of citizenship between the Plaintiff and all of the Defendants.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

14 The Plaintiff is informed and does believe that Jones and USI were agents of WME on June 20, 2006 and were providing a benefit of security services on that day.

15 Prior to this date, Jones had applied for and been hired as a security guard with USI though he had not received certification or approval for being a security guard in South Carolina by the South Carolina Law Enforcement Division (hereinafter "SLED")

16 Though Jones had been hired without being licensed, USI obviously failed to perform a background check on Jones since he had a strong arm robbery charge and drug charges unresolved against him at the time of his hire by USI.

17 USI should have run a background check on Jones since he was not licensed by SLED and a simple five minute check would have revealed he was not qualified to be hired as a security guard.

18 USI then proceeded to hire Jones to provide security services though he had multiple criminal charges pending against him at the time of hire.

19 USI provided outdoor security services to Wal Mart on a contract basis for the Wal Mart store located on Highway 9 in Lancaster, South Carolina.

20 Upon information and belief, Wal Mart has policies and procedures in place for its employees and the agents of its security service providers to NEVER follow people out of a store parking lot.

21 Upon information and belief, USI has policies and procedures in place for its employees and the agents to NEVER follow people out of a store parking lot

22 On June 20, 2006 Alice Hancock and her sister were shopping in the Wal Mart Store located on Highway 9 in Lancaster County South Carolina when Hancock left the store and went to her car

23 Hancock's sister remained in the store to shop and left a short time later.

24 When Hancock's sister proceeded to the exit area of the Wal Mart store, she was asked for a receipt for items in her bag by a WML employee

25 Hancock's sister then laid down the bag and exited the store

26 As Hancock's sister left the store, Jones shouted at Hancock's sister to come to his truck

27 Upon information and belief, the truck in which Jones was in did not have any lights on the vehicle which would have been indicated that it was a security guard truck

28 This incident happened at approximately 10 00 PM at night

29 Hancock's sister then walked quickly to Hancock's car

30 At approximately the same time that her sister got into Hancock's vehicle, a truck driven by Jones sped towards Hancock in a quick and abrupt manner The entire scene was caught on videotape footage maintained by Wal Mart

31 Hancock then did a three point road turn to attempt to avoid the truck of Jones, who ended up behind the car of Hancock

32 Upon information and belief, an employee of the Wal Mart Store on Highway 9 in Lancaster County had communication with Jones and advised him to get the license plate of

Hancock

33 Upon information and belief, the employee of Wal Mart did not advise Jones to leave the parking lot to get the tag of Hancock's car

34 Hancock then left the parking lot of the Wal Mart store on Highway 9 in Lancaster and was followed from the parking lot by Jones

35 When Hancock left the Wal Mart, she was inexplicably pursued by Jones though Hancock's sister had left her bag at the exit of the Wal Mart store located on Highway 9 in Lancaster County

36 Jones then engaged in a high speed chase with Hancock and her sister for more than one mile, though every policy of WME and USI seemed to indicate that he was NEVER to follow someone from the parking lot. This action by Jones violated every duty owed to Decedent by Defendants and contributed to the course of events that resulted in Ms. Hancock's death

37 Upon information and belief during this chase in which Jones never identified himself as a security agent for Wal Mart or USI, he was following close to the bumper of the vehicle driven by Hancock and flashing his lights on and off

38 Upon information and belief, during this chase Jones never communicated to the police or anyone from Wal Mart that he was engaged in a high speed chase

39 As a result of the actions and inactions of Defendants, Hancock and her sister were involved in a vehicular crash

40 Jones then lied to law enforcement authorities about his role in the accident and has given different versions of what occurred during the chase

41 Unfortunately, Hancock was killed in the vehicle accident and her sister suffered

grievous bodily harm

42 This accident occurred because USI failed to do a five minute background check. Jones failed to follow policies and procedures, employees of Wal Mart instructed Jones to get the license plate of Hancock's car and many other negligent acts by Defendants

FOR A FIRST CAUSE OF ACTION
(Negligence - Respondeat Superior - Wrongful Death)

43 The Plaintiff repeats and realleges paragraphs 1 through 42 as though set forth herein verbatim, and would further allege

44 The Plaintiff is informed and does believe that the Defendants had a duty to the Decedent to conduct any security services in regard to her or any other person in a safe and reasonable manner. Upon information and belief, the Defendants were negligent, careless, reckless, wanton, and grossly negligent in regard to their actions concerning the Decedent and her sister at the time and place hereinabove mentioned in the following particulars

- a in having it's agent or employee follow the car of Hancock out of a parking lot;
- b in violating written engagement policies,
- c in failing to keep the USI Truck under proper control,
- d in failing to cease following Hancock's vehicle after it exited the Wal Mart parking lot,
- e in failing to use the accepted standard or practice within the security guard arena in regard to rules of engagement and pursuit,
- f in failing to recognize the danger of following someone from a parking lot in a high speed pursuit,
- g in failing to inform Ms Hancock for the reason of Jones pursuit,
- h in failing to follow policies and procedures of WME and USI,

- 1 In generally failing to use the degree of care and caution that a reasonably prudent person or entity would have used under the same or similar circumstances
- 2 In violating laws enacted to protect the safety and health of the motoring public, so as to constitute negligence per se.

All of which constitutes negligence, carelessness, recklessness, wantonness and/or gross negligence and is attributable to the Defendants WME and USI by virtue of the doctrine of agency and/or respondeat superior.

45 As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness by Defendants, and the breach of duties owed to Decedent by Defendants, the Plaintiff's Decedent suffered from severe debilitating injuries which resulted in her death, as a result of which the Plaintiff's Decedent's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the Decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10, et seq., Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION
(Negligent Hiring, Training, Supervision and Entrustment - Wrongful Death)

46. The Plaintiff repeats and realleges paragraphs 1 through 45 as though fully set forth herein verbatim and would further allege:

47 The Plaintiff is informed and does believe that the Defendants had a duty to the Decedent to conduct any security services in regard to her or any other person in a safe and reasonable manner. Upon information and belief, the Defendants were negligent, careless,

reckless, wanton, and grossly negligent in regard to their actions concerning the Decedent and her sister at the time and place hereinabove mentioned in the following particulars

- a In failing to conduct a proper pre-hiring investigation into Jones
- b In failing to properly train Jones on the rules of engagement and pursuit
- c In failing to properly supervise Jones.
- d In entrusting a vehicle to Jones when LSI knew or should have known that Jones would not drive the vehicle in a proper manner
- e In failing to conduct proper pre-employment screening of Jones so as to discover his criminal charges of strong arm robbery and drugs pending at the time of his hire.
- f In hiring Jones as a security guard when he had not been approved the State Law Enforcement Division.
- g In failing to institute a proper system to ensure that security guard applicants were carefully screened prior to their hire,
- h in failing to properly train Jones,
- i In failing to properly supervise Jones.
- j in advising Jones to follow the vehicle of Hancock to obtain her license plate
- k In failing to have in place policies and procedures to train and/or monitor their employees and/or agents or if such procedures were in place, in failing to enforce them.
- n In failing to have in place adequate policies and procedures to mandate compliance with statutes, laws, and regulations regarding the engagement of perceived wrongdoers, or if such policies and procedures were in place, in failing to enforce them;
- o In failing to have in place an adequate safety program for agents or employees of Defendants.
- p In failing to ensure that Jones had the proper training and experience to be able to understand how to react when he was advised to obtain the license plate number

of Hancock's vehicle

- q In entrusting security services to USI when WME knew or should have known they would be inadequate or improper
- r In failing to properly investigate Jones' driving record and/or ability to drive to ensure that Jones possessed the requisite skill and attention to maintain control of and ability to drive a vehicle,
- s In failing to ensure that Jones had sufficient, adequate and current training, credentials and skills to properly drive a vehicle for USI.

All of which constitutes negligence, carelessness, recklessness, wantonness and/or gross negligence and is attributable to the Defendants WME and USI by virtue of the doctrine of agency and/or respondeat superior.

48 As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness by Defendants, and the breach of duties owed to Decedent by Defendants, the Plaintiff's Decedent suffered from severe debilitating injuries which resulted in her death as a result of which the Plaintiff's Decedent's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the Decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10, et seq. Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A THIRD CAUSE OF ACTION

(Negligence - Respondeat Superior - Survivorship Action)
(Negligent Hiring, Training, Supervision and Entrustment - Survivorship Action)

49 Plaintiff repeats and realleges paragraphs 1 through 48 as though set forth herein verbatim, and would further allege

50 The Plaintiff's Decedent's estate as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, and the breach of duties owed to Decedent by Defendants as aforesaid, has incurred expenses in the form of funeral, burial, medical and property expenses. The Plaintiff is further informed and does believe that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants and the breach of duties owed to Decedent by Defendants as aforesaid the Plaintiff's Decedent suffered fear, physical pain, and suffering, and mental and emotional distress and anguish in the time before her death, for which the Plaintiff's Decedent's estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

WHEREFORE, Plaintiff, respectfully prays for judgement against the Defendants for all actual damages, special damages, consequential damages, and punitive damages in this action, the costs and disbursements of this action and for such other and further relief as this court deems just and proper.


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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Travis A. Roddey, Individually and as the
Personal Representative of the Estate of Alice
Monique Beckham Hancock, deceased,

Plaintiff,

v.

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

Defendants

IN THE COURT OF COMMON PLEAS

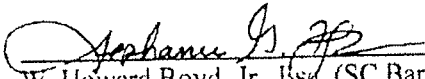
**DEFENDANTS' MOTION FOR AN
ORDER EXCLUDING PLAINTIFF'S
CAUSE OF ACTION FOR
NEGLIGENT HIRING, TRAINING,
SUPERVISION AND/OR
ENTRUSTMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT AS TO SUCH CLAIMS**

C.A. NO. 07-CP-29-0593

YOU WILL PLEASE TAKE NOTICE that Defendants, Wal-Mart Stores East, LP ("Wal-Mart"), U.S. Security Associates, Inc ("USSA"), and Derrick L. Jones, prior to the trial of this case, will move the Court for an order excluding Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment on the grounds that the cause of action could only have been applicable against USSA, was previously determined by a jury, was not at issue on appeal, is severable from Plaintiff's negligence cause of action, and is *res judicata*. In the alternative, the Defendants seek summary judgment on Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, on the grounds that there is no proximal nexus between Jones' prior "bad acts" and his actions in pursuing Plaintiff's decedent from the Wal-Mart premises on the date of the accident. Because it was not foreseeable to USSA that Jones would misconduct himself in the manner alleged herein, Plaintiff's cause of action for negligent hiring, training, supervision and entrustment must fail

This motion is based on the South Carolina Rules of Civil Procedure, South Carolina Rules of Evidence, Defendants' supporting Memorandum of Law, filed or to be filed, and the applicable common and statutory laws of the State of South Carolina.

October 17, 2016


W. Howard Boyd, Jr., Esq. (SC Bar #826)
Stephanie G. Flynn, Esq. (S C Bar #16653)
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Attorneys for Defendants

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	C.A. NO. 07-CP-29-0593
Travis A. Roddey, Individually and as the	)	
Personal Representative of the Estate of Alice	)	DEFENDANTS' MEMORANDUM OF
Monique Beckham Hancock, deceased,	)	LAW IN SUPPORT OF THEIR
	)	MOTION FOR AN ORDER
Plaintiff,	)	EXCLUDING PLAINTIFF'S
	)	CAUSE OF ACTION FOR
	)	NEGLIGENT HIRING, TRAINING,
v	)	SUPERVISION AND/OR
	)	ENTRUSTMENT OR, IN THE
Wal-Mart Stores East, LP, U.S. Security	)	ALTERNATIVE, FOR SUMMARY
Associates, Inc., and Derrick L. Jones,	)	JUDGMENT AS TO SUCH CLAIMS
	)	
Defendants	)	

INTRODUCTION

This matter is now before the Court on Defendants' motion for an order excluding Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment (hereinafter referred to as the "negligent hiring" cause of action) from being re-litigated during the retrial of this case. This memorandum of law is submitted in support of Defendants' motion. Specifically, Plaintiff's cause of action for negligent hiring was previously and conclusively determined by a jury, was not at issue on appeal, is severable from Plaintiff's negligence cause of action, and is, therefore, *res judicata*. In the alternative, the Defendants are entitled to summary judgment as to Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment. The only inference to be drawn from the evidence is that Defendant Derrick Jones' conduct on the date of the accident was not and could have been foreseeable to Defendants U.S. Security Associates, Inc. and Wal-Mart Stores East, LP¹, so as to place U.S. Security Associates, Inc. and Wal-Mart Stores East, LP, on notice of potential harm to third parties.

¹ Defendants do not concede the cause of action for negligent hiring, training, supervision and/or entrustment is even applicable to Wal-Mart

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The plaintiff, Travis L. Roddey, Individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock (sometimes referred to hereinafter as "Hancock" or "Decedent"), initiated this wrongful death and survival action against Defendants arising out of a single-car accident that occurred on June 20, 2006, in Lancaster County, South Carolina. The accident occurred after the decedent's sister, Donna Beckham, shoplifted items in the Lancaster Wal-Mart store, located on Highway 9, and the women fled from the store in Hancock's vehicle. Approximately two miles from the store, Hancock lost control of her vehicle, left the roadway to her left, drove through a grassy area and collided head-on into a tree.

On the evening of the incident, Defendant Derrick Jones was working for USSA as a security guard, having only been hired approximately 30 days earlier. While Wal-Mart handled all of its own loss prevention activities, it contracted with USSA, a private security contractor, to provide a uniformed security officer and USSA truck to patrol the parking lot of the Wal-Mart store. (See Security Services Master Agreement, Ex. A). The presence of the security officer and vehicle were designed to serve as a deterrent to unlawful activity and to provide a sense of security for customers. (See Guidelines for Private Security Contractors, Ex. B). As expressly set forth in both the Security Master Services Agreement between Wal-Mart and USSA and the Guidelines for Private Security Contractors, security officers were not agents or employees of Wal-Mart, but were independent contractors. Wal-Mart had no role in the hiring, training and/or supervision of Jones and had no ownership interest in the USSA security truck used by USSA security officers. At most, security contractors were to be a source of information for Wal-Mart with regard to activity in the parking lot, record useful information, and assist if requested by Wal-Mart. (Guidelines for Private Security Contractors, Ex. B)

Jones became aware that Wal-Mart employees had witnessed Beckham placing merchandise into Wal-Mart bags at an unmanned register after a Wal-Mart employee, Hope Rollings, saw Jones outside of one of the entrances and walked outside briefly to let him know. (Transcript p. 496, line 1-p. 498, line 25, Ex. C) She gave him no other instructions (See id.) Jones, who had possession of a walkie-talkie, could hear the walkie-talkie traffic pertaining to Beckham, including that she was walking toward the General Merchandise exit, and he therefore drove the USSA security vehicle toward that exit. (See id.) He claims to have asked what to do and being told to "kind of like delay" Beckham. (Jones Depo, p. 35, line 23-p. 36, line 4, Ex. D)

As Beckham walked to the exit, she was asked by a Wal-Mart door greeter to produce a receipt. Beckham responded that her sister had it and put the bag of merchandise down before walking outside. (Transcript p. 233, lines 5-11, Ex. C). During this time, the Decedent was waiting in her vehicle for Beckham. After Beckham exited the store, she encountered Jones, with whom she had a very brief exchange as she passed his truck,² and immediately began running through the parking lot toward the Decedent's vehicle. (Transcript p. 132, lines 2-7, p. 134, lines 11-17, p. 206, lines 10-15, Ex. C) The Decedent, who evidently saw Beckham running toward her, began driving the wrong way down an aisle of the parking lot to meet Beckham and, as Beckham reached the Decedent's car, she jumped into the back seat on the driver's side of the vehicle. (Transcript p. 134, lines 20-25; p. 145, lines 11-15; p. 206, lines 16-25, Ex. C)

As soon as Beckham began running, Jones unilaterally made a three-point turn in his USSA security truck to follow her. He met Hancock's vehicle in the middle of the parking lot, just after Beckham had jumped into the back seat, prompting Hancock to put her car in reverse and back at a high rate of speed, striking a median before turning around to leave the Wal-Mart parking lot. Jones continued to follow Hancock as she drove toward the exit. He claims that, as

² Jones claims he asked to speak with Beckham for a moment, while Beckham claims Jones yelled at her

he was following Hancock toward the exit, one or more Wal-Mart employees who had only just walked outside and saw what was occurring, yelled to get the tag number (Transcript p 527, line 9-p. 528, line 3, p 507, line 19, Ex. C) Both Hancock and Jones turned onto Highway 9 By-Pass and continued to drive as quickly as possible from the scene. While the testimony pertaining to the routes taken by the parties following the encounter in the parking lot differs, Hancock's vehicle left the roadway around two miles from the store, driving through a grassy area before colliding head-on with a tree on the left-hand side of the road. Jones was not involved in the accident, and there was no evidence of any contact between the vehicles at any point.

In Plaintiff's Second Amended Complaint, Plaintiff alleged the accident was caused by the negligent acts of Defendant Jones, the security guard employed by USSA, in pursuing Hancock out of the Wal-Mart parking lot. Plaintiff further alleged that Defendants U.S. Security Associates, Inc., and Wal-Mart Stores East, LP, were vicariously liable for the negligent acts of Jones and for the negligent hiring, training, supervision and entrustment of a vehicle to Jones. Defendants denied any liability to Plaintiff in connection with the wrongful death and survival actions.

The first trial of this case commenced in the Lancaster County Court of Common Pleas on April 6, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case on April 9, 2010, Wal-Mart moved for a directed verdict on the grounds that (1) there was no negligence on the part of Wal-Mart, (2) no evidence that any negligent acts or omissions on the part of Wal-Mart were a proximate cause of the accident, and (3) even if any negligence on the part of 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. (Trial Transcript, p.594, lines 5-10; p 599, lines 1-12, Ex. C) The

only acts of alleged negligence on the part of Wal-Mart that were addressed at the directed verdict stage were the actions of Wal-Mart's own employees in allegedly asking Jones to stop and/or speak to Donna Beckham as she left the store, asking Jones to obtain Hancock's license tag number and failing to instruct Jones to stop his pursuit of Hancock before the vehicles were out of sight. (See generally, Trial Transcript, p 593, line 2-p 594, line 5; p 594, line 23-p 598, line 25; p 599, lines 12-20, p. 601, line 11-p 603, line 14, Ex C) In opposition, the fact that Wal-Mart did not employ Jones, which was mentioned by Defendants' counsel during the directed verdict stage (Trial Transcript p 593, lines 23-24, Ex. C), was never contested. Plaintiff also never contended there were any grounds establishing that Wal-Mart was liable for the negligent hiring, training, supervision and/or entrustment of Jones, or that the alleged wrongful acts by Wal-Mart supported any cause of action other than negligence

After considering arguments of counsel, 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. (Trial Transcript p 603, lines 15-22, Ex. C). As with Plaintiff's oral argument at the directed verdict stage, Plaintiff's motion for reconsideration of the directed verdict in favor of Wal-Mart also addressed only the alleged actions of Wal-Mart employees in asking Jones to delay Beckham, asking him to get the license tag number, and failing to tell Jones to stop (See generally, Plaintiff's Notice of Motion and Memorandum in Support of Motion to Reconsider, Alter, and Amend Order Granting Directed Verdict to Wal-Mart, Ex E). Plaintiff's counsel never contended there were any acts on the part

of Wal-Mart supporting a cause of action for negligent hiring, training, supervision and/or entrustment. The reason for that is clear, as the evidence and testimony elicited at trial did not support any such claim, nor could it seriously be contended that the cause of action for negligent hiring, training, supervision and entrustment applied to any party other than USSA. The only other motion presented at the directed verdict stage was a motion seeking a directed verdict in favor of USSA as to the negligent hiring cause of action. (Trial Transcript p 604, line 15-p 605, line 25, Ex. C). That motion was denied, and the trial continued against both USSA and Jones.

At the conclusion of the six-day trial on April 13, 2010, the case was submitted to the jury. The jury returned a verdict, finding as to Petitioner's negligence claim, Hancock was 65% negligent and Jones and USSA were 35% negligent in causing the accident (See Verdict Form, Ex. F) On Plaintiff's cause of action for negligent hiring, training, supervision and entrustment against USSA, the jury found that, while USSA was negligent in hiring Jones, such negligence was not a proximate cause of the accident. (See *id*) Even had the jury not so decided, the jury was not asked to apportion fault between Plaintiff and USSA as to the negligent hiring cause of action

Plaintiff subsequently filed a Motion to Alter or Amend the Judgment and for a New Trial. One of the alleged errors supporting Plaintiff's motion was Plaintiff's contention that the trial court erred in directing a verdict in favor of Wal-Mart. (See Plt's Mot to Alter or Amend the Judgment and for a New Trial, pp. 4-6, Ex. G). Plaintiff's argument on that point was entirely directed to alleged acts of negligence on the part of Wal-Mart in its interactions with Jones on the night of the incident. Plaintiff, referencing the jury's allocation of fault among the parties in the negligence cause of action, contended that the error required a new trial as to all defendants so that the jury could compare the Decedent's negligence with Defendants' combined negligence

in causing the accident Plaintiff did not address any allegations of negligent hiring, training, supervision and/or entrustment on the part of Wal-Mart. Moreover, none of the other alleged points of error were directed to the jury's verdict in favor of the defense on Plaintiff's negligent hiring cause of action.

Plaintiff's post-trial motions were denied, and Plaintiff subsequently filed a Notice of Appeal. In Appellant's Initial Brief to the South Carolina Court of Appeals, Appellant framed the only issue on appeal as "[w]hether the trial court erred when it granted a directed verdict *in this negligence action* in favor of Wal-Mart" (App. Initial Br. p. 1, Ex. H) (emphasis added). The entirety of Plaintiff's arguments pertaining to the issue on appeal were directed to the circumstances surrounding the pursuit, specifically the alleged negligent acts or omissions on the part of Wal-Mart in enlisting Jones' involvement in the situation, in allegedly encouraging him to pursue the Decedent, and in failing to tell Jones to stop. None of the evidence or testimony submitted by Appellant to the Court related to the negligent hiring cause of action. In addition, while Appellant contended that the error of the trial court in directing a verdict in favor of Wal-Mart would require a new trial as to *all Defendants*, Appellant did not expand his request for relief to apply to *all causes of action*. Rather, Appellant argued he was entitled to have a jury compare Decedent's negligence with the combined negligence of all Defendants as it related to the accident, adding that it was Appellant's position that the evidence showed the Decedent was driving the speed limit at the time of the accident and that the accident was not caused by reckless driving on her part. The jury had *not* been asked to compare Decedent's negligence with the negligence of any Defendant in connection with the negligent hiring cause of action. Hence, the sole rationale supporting a reversal and remand of the case as to the negligence cause of action could not have even applied to the negligent hiring cause of action.

Just as the negligent hiring claims were not addressed in post-trial motions or before the Court of Appeals, such claims were also not addressed before the South Carolina Supreme Court. At the very outset of the Supreme Court's opinion, Acting Justice Toal framed the issue before the Court as directed to the propriety of the "trial court's grant of Wal-Mart's motion for a directed verdict on Petitioner's *negligence claim*" Roddev v Wal-Mart, 784 S.E.2d 670, 672 (S.C. 2016) (emphasis added) (Ex. I). The entire opinion addresses the acts and omissions of the various parties as they pertained to the actual pursuit and then analyzes Wal-Mart's alleged acts and omissions under the elements required to prove a cause of action for negligence (*i.e.*, duty, breach, causation and damages). The Supreme Court opinion never even makes mention of or references that there was ever any cause of action at issue in the case other than negligence.

I. Because Plaintiff's cause of action for negligent hiring was previously and conclusively determined by a jury, was not at issue on appeal, and is severable from Plaintiff's negligence cause of action, the issue has become of the law of the case, is *res judicata*, and is not entitled to be re-litigated during the trial of this case on remand.

Causes of action for negligence and for negligent hiring, training, supervision and entrustment are "*separate and distinct* requiring different kinds and quantities of proof." See Longshore v. Saber Sec. Svcs., 365 S.C. 554, 563 (Ct. App. 2005) (emphasis added). While negligence cases turn on proof of duty, breach, causation and damages, negligent hiring cases turn on knowledge of the employer and foreseeability of harm to third parties, which is analyzed by examination of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. See Doc v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005). Indeed, the causes of action were pleaded separately in Plaintiff's initial and amended pleadings. They were also addressed separately on the verdict form ultimately submitted to the jury. There was no evidence presented of negligent hiring by Wal-Mart during Plaintiff's case at trial and, accordingly, at the directed

verdict stage, the arguments of *both* sides on the motion for a directed verdict in favor of Wal-Mart addressed *only* the alleged negligence on the part of Wal-Mart as those acts pertained to the pursuit by Jones of the Decedent. Specifically, Plaintiff solely criticized Wal-Mart's acts in involving Jones in any interaction with Beckham, instructing Jones to obtain the Decedent's license tag number, and the failure of any Wal-Mart employee to tell Jones to stop chasing the Decedent. Plaintiff did not contest the characterization that the only cause of action pertinent to Wal-Mart was, for negligence or defense counsel's statement that Wal-Mart had not employed Jones. Plaintiff also put forth no theory against Wal-Mart premised on the negligent hiring of Jones. A motion to reconsider that issue, as well as post-trial motions, also made no reference to a negligent hiring claim against Wal-Mart. All of the evidence and testimony that was addressed was directed to Wal-Mart's alleged negligence in connection with the pursuit.

Just as Plaintiff did not raise the negligent hiring issue in trying to persuade the trial court to reverse its directed verdict in favor of Wal-Mart, Plaintiff also did not frame his issues on appeal before either the South Carolina Court of Appeals or Supreme Court as encompassing any cause of action other than negligence in connection with the pursuit. That the case should be remanded as to *all Defendants* was based solely on the contention that the jury should be required to compare Decedent's negligence with the combined negligence of all Defendants as it related to the accident. This rationale could not apply to the negligent hiring cause of action as the jury had not been asked to compare the negligence of the Decedent with that of USSA on that cause of action.

What is most telling is that the Supreme Court's opinion makes clear that it only addressed the negligence cause of action pertaining to the pursuit. At no time did the Court even reference that Plaintiff had ever made a claim for negligent hiring, training, supervision and/or

entrustment. Because Plaintiff did not preserve for appeal any issues relating to the negligent hiring cause of action, and it is abundantly clear that cause of action was never before the appellate courts, the appellate courts could not grant a new trial on the negligent hiring claim, and Plaintiff is now barred from re-litigating that cause of action on remand. The uncontested decision of the jury on the negligent hiring issue is now the law of the case. See Town of Mt Pleasant v. Jones, 335 S.C. 295, 298-299, 516 S.E.2d 468, 470 (Ct. App. 1999) (an unappealed ruling becomes the law of the case, and will be presumed by any appellate court to be the correct decision)

Not only is the uncontested jury verdict, holding that the negligent hiring of Jones by USSA was not a proximate cause of the accident, now the law of the case, but the doctrine of *res judicata* also bars Plaintiff from re-litigating the issue at trial. All of the elements for *res judicata* to apply in this instance are met. The identity of the parties is the same; the identity of the subject matter is the same, and the negligent hiring cause of action was fully adjudicated in the first trial. See Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1998). Plaintiff never contested at the directed verdict stage that the negligent hiring cause of action applied to Wal-Mart, nor did Plaintiff in any motion for reconsideration address alleged acts of negligence on the part of Wal-Mart other than those directed to negligence in initiating, encouraging and/or failing to stop the pursuit. Rather, Plaintiff allowed the trial to continue to completion as to USSA and Jones and, even in post-trial motions, did not contend Wal-Mart had any liability for the negligent hiring of Jones.

Simply put, Plaintiff had his day in Court on his negligent hiring cause of action, which really had nothing to do with Wal-Mart from the outset, and which was definitively determined by a jury not to have been a proximate cause of Plaintiff's alleged injuries and damages. Plaintiff

cannot now bootstrap a retrial of the negligent hiring cause of action into the retrial of this case on remand after failing to appeal it to either the South Carolina Court of Appeals or Supreme Court. Accordingly, Defendants request that this Court exclude Plaintiff's negligent hiring cause of action and limit the retrial of this case to Defendants' negligence in the pursuit of Decedent, which was the sole basis for Plaintiff's appeal.

II. Even if Plaintiff's negligent hiring claim is back before this Court, the only reasonable inference to be drawn from the evidence is that there is no proximal nexus between Jones' prior "bad acts" and his actions in following Hancock from Wal-Mart premises. Because it was not foreseeable that Jones would misconduct himself in the manner alleged herein, Plaintiff's cause of action for negligent hiring, training, supervision and entrustment must fail.

There is no sufficient proximal nexus between Jones' prior "bad acts" and his actions of June 20th, 2006, in pursuing Decedent out of the Wal-Mart parking lot. In other words, assuming USSA was fully aware of all of Jones' prior bad acts when Jones was hired by USSA, those bad acts would not have been predictive of Jones' behavior on June 20th, 2006. Based on those acts, it would not have been foreseeable to USSA that Jones would pursue and aggressively follow a shoplifter off of Wal-Mart property in violation of his training and post-orders, drive recklessly, and ultimately cause a motor vehicle accident resulting in the death of the shoplifter's accomplice.

Plaintiff's claims for negligent hiring, training, supervision and entrustment are premised on the fact that, at the time that Jones was hired by USSA, he had pending criminal charges,³ a conviction for marijuana possession, multiple violations on his drivers' license,⁴ and an initial

³ Jones had been arrested and charged with common law/strong arm robbery, which charges were later dismissed. He had also been arrested and charged for misdemeanor first offense of possession of less than one gram of methamphetamine or cocaine base, misdemeanor possession of drug paraphernalia, and misdemeanor first offense of possession of 28G or less of marijuana or 10G or less of Hash. Jones received a fine in connection with the charged offense of misdemeanor first offense possession of 28G or less of marijuana only, while the remaining charges were also dismissed.

⁴ Specifically, Jones' driving records from North Carolina and South Carolina included a single accident and citation for driving without a license in 2002, citations for speeding (10-mph or less) and operating with improper lights in

drug screening that was positive for THC, or marijuana. Nonetheless, Jones' criminal charges (most of which were dismissed), traffic violations, and positive drug screening would not have made it foreseeable to USSA and Wal-Mart that Jones was in the habit of misconducting himself in the manner alleged herein, such that he would be a danger to Decedent. Negligent hiring cases turn upon (1) knowledge of the employer and (2) foreseeability of harm to third parties. See Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) citing Di Cosola v. Kay, 91 N.J. 159, 450 A.2d 508, 516 (1982). The court has analyzed these elements in terms of the "number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused." Id. citing Polk v. May Dept. Stores Co., 133 OR. App. 410, 891 P.2d 686, 691 (1995); Gaines v. Monsanto Co., 655 S.W.2d 568, 571 (MO. Ct. App. 1983). Whether the employer knew that the offending employee was in the habit of misconducting himself in a manner dangerous to others is the appropriate inquiry under this analysis. See ATC, Inc., 367 S.C. at 306, 624 S.E.2d at 450-451 (citing SECOND RESTATEMENT OF TORTS § 317, comment C). "Accordingly, many courts have recognized that a plaintiff must demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." ATC, 367 S.C. at 206, 624 S.E.2d at 451. The Court of Appeals in ATC further noted that, due to this standard, many courts have dismissed negligent hiring and negligent retention cases when the party relies on a single incident of misconduct to establish a propensity for the conduct complained of. See Sullivan v. St. Louis Station Assocs., 770 S.W.2d 352 (Mo. Ct.App.1989), Moore v. Hoosier, 43 F.Supp.2d 978 (N.D.Ind.1998).

2005, and citations for failure to give or giving an improper signal, operating with improper lights, and a controlled substance violation in February 2006.

South Carolina's analysis of the necessary causal nexus between an employee's prior conduct and the ultimate harm sustained by a third party is also in line with other jurisdictions as well as The Restatement (Second) of Torts §317. ("The mere fact that the servants are using the master's chattels dangerously or misconducting themselves upon the master's premises is not enough to make the master liable. It is necessary to show that the master knew of the practices, and that he did not take the appropriate steps to stop them, or at least that he reasonably should have discovered them." RESTATEMENT (SECOND) OF TORTS §317, Reporter's Notes, *citing* Walker v. Hannibal & St. Joseph R. Co., 121 Mo. 575, 26 S.W. 360, 24 L.R.A. 363, 42 Am. St. Rep. 547 (1894), Walton v. New York Cent. Car Co., 139 Mass. 556, 2 N.E. 101 (1885), DeRyss v. New York Central R. Co., 275 N.Y. 85, 9 N.E. 2d 788 (1937); Dincher v. Great A. & P. Tea Co., 356 Pa. 151, 51 A. 2d 710 (1947)).

It is axiomatic that Jones' prior arrests, conviction for marijuana possession, traffic offenses, and positive drug screening are not indicative of a proclivity to operate a vehicle in a dangerous manner and to aggressively pursue a shoplifter in the context of Jones' job as a security officer. The record is entirely devoid of any evidence that Jones ever previously acted in an aggressive manner toward any Wal-Mart customer, that he had previously pursued any Wal-Mart customers on foot or in his vehicle in a reckless or menacing manner, and/or that he had ever even spoken to a Wal-Mart customer. No witness has ever described having any problems with Jones as a security guard at Wal-Mart prior to the date of the accident. According to Wal-Mart's Assistant Manager, Charles Campbell, had a security guard employed by USSA done something wrong, Campbell would have either talked to the guard directly or called the guard's supervisor. At no time, however, did Campbell ever become aware that Jones had

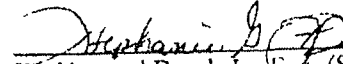
engaged in any inappropriate behavior on the job, nor did he ever have to go to Jones' supervisor for any reason (Campbell Dep 60 17-61 9, Ex. J)

Accordingly, this situation is far removed from the type of scenario in which South Carolina courts have held employers to be liable for negligent hiring, training, supervision, and entrustment. See, e.g., Doe v Greenville Hospital System, 323 S.C. 33, 448 S.E.2d 564 (Ct. App. 1994) (finding that defendant hospital was liable for negligent hiring and supervision after an employee, a security guard, committed a sexual assault, where the hospital was aware of previous complaints that the guard had engaged in inappropriate sexual behavior while previously working in another position in the hospital). Compare Doe v ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct.App. 2005) (holding that a reasonable jury could *not* conclude, based on employee's attempt to kiss a co-worker, that the employer knew or should have known that the employee was likely to commit a sexual assault in the future); Comei v Tandy Corp., 295 S.C. 133, 367 S.E.2d 436 (Ct.App. 1988) (finding that the store owner owed no duty to plaintiff and was not liable for negligent hiring where the offending employee, who had a prior criminal record, staged a robbery and identified plaintiff, who was innocent, as the responsible party). Without some evidence that Jones had previously engaged in the kinds of acts at issue in this case, *i.e.*, using his vehicle to try to block someone or engaging in a vehicular pursuit, Plaintiff has failed to establish a causal nexus between Jones' prior acts and the ultimate harm suffered by the Decedent. Accordingly, Plaintiff's claims of negligent hiring, training, supervision and entrustment should be dismissed as a matter of law.⁵

(signatures appear on following page)

⁵ A prior jury already recognized that, while USSA was negligent in hiring Derrick Jones, such negligence was not a proximate cause of the accident at issue in this case

October 17, 2016


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EXHIBIT A

SECURITY SERVICES MASTER AGREEMENT

THIS SECURITY SERVICES MASTER AGREEMENT ("Contract") is made this 1st day of October, 2004, by and between Wal-Mart Stores, Inc., its subsidiaries, divisions, stores, and affiliated companies ("Wal-Mart"), a Delaware corporation, with its principal place of business at 702 S.W. 8th Street, Bentonville, AR 72716, and U.S. Security Associates, Inc. a corporation with offices at 200 Mansell Court, Roswell, Georgia, 30076, ("Contractor")

WHEREAS, from time to time, Wal-Mart may desire certain security services as described below at certain locations as specified by Wal-Mart Security Services at facilities of Wal-Mart; and

WHEREAS, Contractor has expertise in providing security services and desires to offer such services to Wal-Mart; and

WHEREAS, Wal-Mart desires to enter into this agreement on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premises and mutual promises in this Contract and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Wal-Mart and Contractor agree as follows:

1. DESCRIPTION OF SERVICES. Contractor shall perform, on a non-exclusive basis, all security services as more fully described on the applicable ADDENDUM(S), and for the specific locations, identified in the applicable ADDENDUM(S), attached to and incorporated in, this Contract (the "Services"). As used herein, the term "Contract" shall include this Master Agreement and each ADDENDUM(S) hereto. All Services shall be performed in strict accordance with the provisions and terms of this Contract. All authorizations for services that are not included within this Contract must be in writing and approved by Wal-Mart's Security Services Division in advance of performance. Failure to obtain advance written approval from Wal-Mart's Security Services before commencing such additional services may result in non-payment.

2. TERM. This Contract shall be in force for one (1) year from the Effective Date (as defined herein) and shall continue thereafter on a month-to-month basis on the same terms and conditions, until terminated by either party. Each party may terminate this Contract or any month-to-month extension thereof without cause with thirty (30) days' prior written notice specifying the date this termination is to be effective. The "Effective Date" shall mean the date on which this Contract is executed by an authorized officer of Wal-Mart. This Contract shall not be legally binding upon Wal-Mart until the Effective Date. In the event of a material breach by Contractor, Wal-Mart reserves the right to terminate this Contract immediately. The parties acknowledge and agree that both parties have the absolute right to either terminate this Contract in its entirety or to terminate one or more ADDENDA, and any reference herein to the right to terminate this Contract shall be deemed to provide such party with such partial termination rights.

3. PRICE AND PAYMENT. Wal-Mart shall pay to Contractor for its performance of the Services the rates in the schedule set forth in the ADDENDUM(S). Contractor shall not issue any invoice to Wal-Mart for Services not yet performed nor issue any invoice at any rates other than those on the ADDENDUM(S). Wal-Mart shall pay to Contractor correctly invoiced amounts within thirty (30) days after Wal-Mart's receipt of Contractor's undisputed invoice. The time required to process Contractor's invoice may be extended by Wal-Mart if required documentation is not submitted with each invoice. Invoices must have the following information in order for payment to be made: (a) invoice number; (b) invoice date; (c) date(s) that the Services were

provided; (d) detailed description of the Services provided, (e) itemized invoice amount; (f) store number; and (g) Contractor's Wal-Mart vendor number. Invoices should be sent to the Wal-Mart facility at the address set forth in the applicable ADDENDUM of this Contract. Contractor represents that all invoices for work performed hereunder shall accurately and truthfully set forth the work actually performed and the billing for those Services. In the event any invoices are found to be inaccurate, Wal-Mart may terminate this Contract upon thirty (30) days notice. In addition to providing the invoice, at Wal-Mart's request, Contractor shall provide evidence to Wal-Mart in a form satisfactory to Wal-Mart that, in its sole discretion, Contractor paid in full all amounts, including wages, due to individuals who perform Services under this Contract. Wal-Mart may withhold any and all invoice payments to Contractor if Wal-Mart believes or has reason to believe that individuals who perform Services under this Contract have not been paid in full, including wages.

4. INDEPENDENT CONTRACTORS. Wal-Mart and Contractor enter into this Contract as independent contractors and at arms' length. Neither Wal-Mart nor Contractor has the right, and shall not seek, to exercise any control over the other party, its employees, or its agents. Contractor shall control the methodology for performing the Services to meet Wal-Mart's specifications and Contractor's Scope of Work in the ADDENDUM(S). Each party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, benefits, and other terms and conditions in regard to its own employees. Neither Contractor nor any of its employees or agents may be considered Wal-Mart's agents or employees for any purpose and have no authority to act or purport to act on Wal-Mart's behalf. Neither Contractor nor its employees or agents are entitled to receive any benefits, including but not limited to, salary, vacation pay, sick leave, retirement benefits, social security, workers' compensation, health, disability, unemployment, and stock options, that Wal-Mart may provide to its employees.

Furthermore, the Contractor shall comply with all federal, state, county, and municipal licensing and certification laws, statutes, rules, regulations, codes and ordinances applicable to the Services and hereby covenants and agrees that all Contractor employees assigned to the Wal-Mart's facility are, and will be, properly registered, licensed and/or certified. Contractor shall be solely responsible for obtaining, at Contractor's sole expense, all authorization and permits required by governmental authorities having jurisdiction over the Services.

Furthermore, it is understood and agreed between the parties that Contractor, in performance of its duties, may from time to time use vehicles to patrol the Wal-Mart parking areas. Contractor hereby covenants and agrees that all Contractor employees are, and will be, fully qualified to operate such vehicles, whether owned or leased by either Contractor or Wal-Mart, pursuant to federal, state, county, and municipal laws, statutes, rules, regulations, codes and ordinances. Contractor shall diligently perform background checks on all of Contractor's employees, including but not limited to, employees who will be operating vehicles. Contractor shall disqualify, and shall prohibit and prevent, any and all Contractor employees from driving vehicles on any Wal-Mart premises for failure to maintain a safe driving record, using a totality of the circumstances approach. Factors to consider in disqualification shall include, but shall not be limited to, one or more citations for driving while intoxicated (DWI), one or more citations for driving under the influence (DUI), one or more citations for reckless driving, driver's license suspension(s) and multiple speeding tickets. Under no circumstance shall any Contractor employee operate a vehicle on Wal-Mart property if that employee does not have a valid and current driver's license.

5. NON-EXCLUSIVE. Contractor shall perform the Services for Wal-Mart on a non-exclusive basis. Wal-Mart retains the right to contract with others in the business of providing security services as Wal-Mart determines from time to time and may assign work to others as it determines necessary while assigning no work to Contractor under this Contract. Wal-Mart makes no projections about the quantity of Services under this Contract, and Contractor may not rely in any way on any past or perceived projections or expectations of work. Wal-Mart shall not have any responsibility or liability in connection with any act or expenditure, including expenditures for equipment, materials, supplies, hiring, or capital, by Contractor because of any actual or perceived projections or expectations as to work.

6. QUALITY OF SERVICES. Day-to-day and operational management of the Services shall be within the sole control of Contractor. Contractor shall perform the Services in a professional and workman-like manner. Contractor shall ensure that all Contractor's employees, agents, and subcontractors present a neat, clean and professional appearance and conduct themselves in a business-like manner at all times while on Wal-Mart property. Services must meet the approval of Wal-Mart and shall be subject to Wal-Mart's general right of inspection and supervision to secure the satisfactory completion thereof. Contractor shall use the best practices acknowledged in the industry and shall adhere to Wal-Mart's policies and specifications regarding the Services. If Wal-Mart, in its sole discretion, finds the Services provided by Contractor do not meet Wal-Mart's approval, Wal-Mart shall notify Contractor of said Services and may withhold payment of any amounts that Contractor invoices Wal-Mart for said Services. In such an event, Wal-Mart may elect, without prejudice to any other right or remedy that Wal-Mart may have under this Contract, at law or in equity, to (i) accept such non-conforming Services, in which case the fees payable to Contractor under this Contract will be reduced in a manner acceptable to Wal-Mart, or (ii) provide Contractor with ten (10) days notice to correct such service issue(s) at Contractor's sole expense. If Wal-Mart provides Contractor with the opportunity to correct such service issue(s) and Contractor fails to do so to Wal-Mart's satisfaction within the time specified above, Wal-Mart shall have the right, without prejudice to any other right or remedy that Wal-Mart may have under this Contract, at law or in equity, to (x) correct the service issue(s) at Contractor's expense and to deduct the cost thereof from any amount owed to Contractor by Wal-Mart or (y) without taking over the Services, furnish or cause to be furnished the necessary supplies or equipment and/or employ or cause to be employed the necessary workmen to remedy the service issue(s) at the expense of Contractor. Contractor shall, within ten (10) days from receipt of an invoice therefore, reimburse Wal-Mart for any and all costs and expenses incurred in correcting such service issue(s). In addition to the other remedies provided in this Section, if Wal-Mart does not approve Contractor's Services, Wal-Mart may terminate, in its sole discretion, this Contract immediately.

7. HEALTH AND SAFETY. Contractor shall:

a. Comply with any and all federal, state, or local laws, rules, statutes, regulations, and ordinances covering work-place safety, including, but not limited to, the Occupational Safety and Health Act,

b. Take all precautions to protect the safety and health of the individuals who perform Services under this Contract and the public, and

c. Upon request by Wal-Mart, with respect to any individual performing any of the Services under this Contract, Contractor shall obtain from said employee, and submit to Wal-Mart, a certification verifying that the individual has not been convicted of any felony or misdemeanor involving dishonesty.

8. DEFINITIONS, INDEMNITY, WAIVER, AND OBLIGATION TO DEFEND.

a. DEFINITIONS. For purposes of this Contract:

"Arise from" means directly or indirectly, in whole or in part, (i) to occur in connection with or as a result of, (ii) to cause, or (iii) to result in.

"Claims" mean all foreseeable and unforeseeable damages (including actual, incidental, direct, indirect, consequential, special, exemplary, and punitive), losses, injuries, penalties, disbursements, claims, costs, charges, assessments, expenses (including Legal Costs), demands, litigation, settlement payments, lawsuits, legal proceedings, actions, causes of action (whether in tort, contract, or strict liability and whether in law, equity, statutory, or otherwise), liabilities, sanctions, or judgments.

"Defend" means to oppose on behalf of another party actual or potential Claims in litigation, arbitration, mediation, any alternative dispute resolution method, actions, or other proceedings with counsel acceptable to the party being defended and to pay all costs associated with the preparation and prosecution of the defense.

"Indemnified Persons" means Wal-Mart and its subsidiaries, affiliates, officers, directors, employees, and agents.

"Indemnify" means to protect and hold a party harmless from and against actual or potential Claims and/or to compensate a party for actual or potential Claims.

"Injury" means (i) any harm or damage to, impairment of, theft of, loss of, or loss of use of, any property, (ii) any bodily harm or personal injury (including sickness or disease) to, or death of, any person, (iii) lost income or profits, (iv) any economic loss, or (v) any other injury, damage, or harm, arising or claimed to arise from this Contract, including any breach of this Contract; the performance of Services under this Contract; any actual or alleged failure by Wal-Mart, through or based upon the actions of Contractor, or Contractor to provide to any person any or adequate warnings, labels, or instructions; any actual or alleged violation by Wal-Mart, through or based upon the actions of Contractor, or Contractor of any law, statute, ordinance, order, rule or regulation; any act, activity, or omission of Wal-Mart, through or based upon the actions of Contractor, or Contractor including, but not limited to, activities on Wal-Mart's premises or elsewhere; any action, involving any theory of law, that Contractor's employees, agents, or other persons for whom Contractor is responsible might assert against Wal-Mart; or any actual or alleged use by Wal-Mart, through or based upon the actions of Contractor, or Contractor, of any vehicle, equipment, supplies, fixtures, or materials.

"Legal Costs" means court costs, attorneys' fees, experts' fees, and other expenses incurred in investigating, preparing, and/or prosecuting the defense of, or settling any Claims in, whether prior to or after commencement of any legal action, including litigation, arbitration, mediation, any alternative dispute resolution method, actions, or other proceedings.

"Waive" means to relinquish knowingly and voluntarily a right and/or to release another party from liability.

"Wal-Mart" shall mean Wal-Mart and its subsidiaries, divisions, stores and affiliates.

b. INDEMNITY AND WAIVER. Contractor shall indemnify and defend Indemnified Persons from and against any and all Claims Arising from, or alleged to Arise from, Injury Contractor shall promptly notify Wal-Mart of the assertion, filing, or service of any Claims against Indemnified Persons. If Wal-Mart receives notice of Claims, Wal-Mart will provide notice of the Claims to Contractor. Upon receipt of notice, from whatever source, of Claims against Indemnified Persons, Contractor immediately shall take necessary and appropriate action to protect the Indemnified Persons' interests with regard to the Claims. Any and all counsel whom Contractor provides to Defend Indemnified Persons shall accept, and acknowledge receipt of, Wal-Mart's Indemnity Counsel Guidelines and shall conduct the Defense of Indemnified Persons strictly in accordance with the Guidelines. If Wal-Mart, in its discretion, reasonably exercised, determines that the counsel is unacceptable, Wal-Mart may replace the counsel. Contractor, as part of its Indemnity obligation under this Contract, shall pay to the new counsel or reimburse to Wal-Mart any and all fees and expenses as to the new counsel, including any and all expenses or costs to change counsel. Wal-Mart shall at all times have the right to direct the defense of, and to accept or reject any offer to settle, any Claims against Indemnified Persons.

c. SCOPE OF INDEMNITY, OBLIGATION TO DEFEND AND WAIVERS. All Indemnities, Waivers, and obligations to Defend in this Contract are and shall be (i) independent of, and will not be limited by, each other or any insurance obligations in this Contract (whether or not complied with) or damages or benefits payable under workers' compensation or other statutes and (ii) will survive the termination of this Contract until all Claims against Indemnified Persons are fully and finally barred by applicable law. The Indemnity, Waiver, and obligation to Defend provisions in this Contract shall include all applicable law affecting the validity or enforceability of those provisions, and the applicable law will operate to amend those provisions to the minimum extent necessary to bring the provisions into conformity with the applicable law. The provisions, as modified, shall continue in full force and effect. **ALL INDEMNITIES, WAIVERS AND OBLIGATIONS TO DEFEND IN PARAGRAPH 8(b) OF THIS CONTRACT SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR INDEMNIFIED PERSONS' BENEFIT, REGARDLESS OF THE CAUSE(S) OR ALLEGED CAUSE(S) OF THE CLAIMS, REGARDLESS OF WHETHER THE CLAIMS ARE GROUNDLESS, FRAUDULENT, OR FALSE, AND REGARDLESS OF WHETHER THE CLAIMS ARE CAUSED OR ALLEGED TO BE CAUSED BY ANY OF THE INDEMNIFIED PERSONS' ACTIVE OR PASSIVE NEGLIGENCE, BY THE SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OR FAULT OF ANY INDEMNIFIED PERSON AND CONTRACTOR, ITS' AGENTS, REPRESENTATIVES, OR EMPLOYEES, BY ANY INDEMNIFIED PERSON'S LIABILITY WITHOUT FAULT, BY ANY INDEMNIFIED PERSON'S STRICT LIABILITY, BY ANY INDEMNIFIED PERSON'S INTENTIONAL ACT, OR BY ANY INDEMNIFIED PERSON'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.**

9. INSURANCE.

a. COVERAGE. Contractor shall procure and maintain during the term of this Contract, at Contractor's sole cost and expense, with an insurance company or companies acceptable to Wal-Mart, the following insurance in the amounts and with the conditions set forth:

(i) Workers' Compensation insurance with statutory limits or if no statutory limits exist, with minimum limits of \$500,000 per occurrence.

(ii) Employer's Liability insurance with minimum limits of \$500,000 per occurrence, \$1,000,000 general aggregate

(iii) Commercial General Liability insurance, including Personal and Advertising Injury, Products-Completed Operations, Medical Payments, Bodily Injury, and Property Damage, with minimum limits of \$2,000,000 per occurrence, \$5,000,000 general aggregate. Contractor shall cause each insurance company to delete any contractual liability exclusion with respect to the insurance, including insurance coverage for personal injury.

(iv) Business Automobile Liability insurance with minimum combined single limits of \$1,000,000. Contractor shall cause each insurance company to provide coverage for liability arising out of the operation of owned, hired, and non-owned vehicles.

(v) Umbrella/Excess Liability Insurance with minimum limits are acceptable to meet the above defined requirements. Contractor shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverage's required in this Contract, with the same inception and expiration dates as Commercial General Liability insurance, and with coverage that "drops down" for exhausted aggregate limits under liability coverage's in this Contract and to issue an endorsement with aggregate limits of insurance per location.

b. REQUIREMENTS. Contractor shall cause each insurance company (i) to issue the insurance on an occurrence basis, (ii) to provide defense as an additional benefit and not within the limits of liability, (iii) to issue an endorsement to all policies that the policies are primary and that Wal-Mart's policies are excess, secondary and noncontributing, (iv) to issue an endorsement to all policies to provide a waiver of subrogation in favor of Wal-Mart, (v) to issue an endorsement to all policies, except the workers' compensation and employer's liability insurance policies, to include Wal-Mart and its subsidiaries, affiliates, officers, directors, employees, and agents as "additional insureds," and (vi) to include in each insurance policy a provision that the insurance company or companies shall not cancel, non-renew, or change coverage from the requirements of this Contract without providing at least 30 days' advance written notice to Wal-Mart. The insurance company or companies shall not exclude from coverage the negligence, strict liability, or gross negligence, whether sole or otherwise, of the "additional insureds." Contractor releases Wal-Mart and its subsidiaries, affiliates, officers, directors, employees, and agents from any liability covered by the insurance for which subrogation is waived; the release applies to any liabilities, no matter how caused, not just to insurance proceeds actually received. Contractor shall provide to Wal-Mart at least 30 days' advance written notice of any contemplated cancellation, non-renewal, or change in insurance coverage. Contractor shall provide to Wal-Mart a certified copy of any and all insurance policies required in this Contract if Wal-Mart requests a copy.

c. DEDUCTIBLE. Contractor shall not procure an insurance policy or policies with deductibles or self-insured retention in excess of \$10,000 or with an endorsement restricting, limiting, or excluding coverage in any manner without Wal-Mart's prior written approval. Contractor shall pay all deductibles in the insurance that Contractor is required to provide under this Contract.

d. CERTIFICATES. Contractor shall provide to Wal-Mart on or before the Effective Date and at least 30 days prior to the expiration of a policy or policies of insurance in effect during the term of this Contract a certificate or certificates of insurance evidencing all required insurance in this Contract and acceptable to Wal-Mart. All certificates, among other things, shall:

(i) Show Wal-Mart Stores, Inc., its subsidiaries and affiliates as a certificate holder and Wal-Mart's address as 1105 SE 5th Street, Bentonville, Arkansas 72716-0610.

(ii) Show Contractor as the Named Insured.

(iii) Show the names of the insurance companies providing each coverage, their addresses, the policy numbers of each coverage, and policy dates of each coverage.

(iv) Show the name of the person providing the certificate and that person's address and telephone number.

(v) Contain the signature of an authorized representative of the person providing the certificate.

(vi) Show that each insurance company named Wal-Mart and its subsidiaries, affiliates, officers, directors, employees, and agents as additional insureds in each insurance policy.

(vii) Confirm waivers of subrogation.

(viii) Show the amounts of all deductibles and self-insured retentions.

(ix) Show the primary status of each insurance policy and the aggregate limits per location.

(x) Have attached copies of all required endorsements to each insurance policy, and not contain the phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or representatives," or similar phrases and shall include the commitment that each insurance company shall issue each insurance policy to the Named and additional insureds, that each policy is in full force and effect, and that each insurance company shall give to Wal-Mart at least thirty (30) days' advance written notice, by certified mail, return receipt requested, in the event of cancellation, non-renewal, or change in coverage of any insurance policy.

(xi) Contain the following express provision: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, thirty (30) days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested."

(xii) Have any and all disclaimers deleted from the certificate.

c. **BREACH: INDEMNITY.** Contractor's failure to procure and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If Contractor fails to remedy the breach within five (5) days after notice from Wal-Mart, Wal-Mart may, in addition to any other remedy available to it, at its option, purchase the insurance, at Contractor's expense, or immediately terminate this Contract. Contractor shall Indemnify and Defend Indemnified Persons

from and against any Claims Arising from Contractor's failure to procure and/or maintain the insurance.

10. EQUIPMENT. Contractor shall provide all necessary equipment, including equipment repair and maintenance, to perform the Services. Contractor shall not use any Wal-Mart equipment in any way or for any purpose unless Wal-Mart provides advance written consent to Contractor for it to use Wal-Mart's equipment and designates in writing the equipment that Contractor may use, the times during which Contractor may use the equipment, the locations where Contractor may use the equipment, and the purposes for which Contractor may use the equipment.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS. The following representations, warranties, and covenants are made by Contractor at the time and from the Effective Date hereof and shall survive any termination of this Contract.

a. **Business Status; etc.** Contractor is a corporation duly organized, validly existing and in good standing, under the laws of the State of Delaware. To the extent required by applicable law, Contractor has qualified as a foreign business eligible to conduct business in the state where the Services are rendered and under the laws of all other jurisdictions where the nature of its business or the nature or location of its assets requires such qualification. The execution, delivery, and performance by the parties to this Contract are within its powers, have been duly authorized by all necessary action, and do not and will not contravene its charters, agreement of partnership, or by-laws. This Contract constitutes the valid and legally binding Obligations of Contractor, enforceable in accordance with its terms.

b. **Taxes & Assessments.** In addition to, and not in limitation of, the foregoing obligations and covenants, Contractor shall be responsible for any and all federal, state and local taxes arising from or relating to the performance of the Services and all other activities and obligations under this Contract, including, without limitation, all federal, state and local unemployment taxes and federal and state income and social security taxes to be withheld from wages.

c. **Compliance with Laws.** Contractor represents to Wal-Mart that Contractor is duly certified, licensed, registered and/or otherwise authorized under applicable laws, statutes, rules, regulations, codes and ordinances to perform the Services. Contractor shall secure and maintain all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the performance of the Services and all other activities and obligations under this Contract. Contractor shall comply with any and all federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances.

d. **Employees** Contractor assumes the legal obligation for its employees' wages, benefits, payroll deductions, including, but not limited to, all federal, state, and local taxes, unemployment (FUTA/SUTA), and workers' compensation, as well as the employer's share of social security obligations (FICA).

Contractor warrants that it shall comply with all federal, state, and local laws, ordinances, statutes, rules, and regulations governing the employment of its workers, including, but not limited to, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.; the Child Labor Act, 29 U.S.C. §212 et seq.; the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq.; the Economic Dislocation and Worker Adjustment Act, 29 U.S.C. §565 et seq.; the Employee

Polygraph Protection Act of 1988, 29 U.S.C. §2001 et seq.; the Equal Pay Act of 1963, 29 U.S.C. §201 et seq.; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq.; the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324a et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. §553 et seq., the Older Worker Benefit Protection Act, 29 U.S.C. § 621 et seq.; and the Omnibus Budget Reconciliation Act of 1986, 29 U.S.C. § 623 et seq.

Wal-Mart reserves the right to demand proof of performance with the warranties provided by the Contractor under this Contract. Wal-Mart shall have the right to refuse, in its sole discretion, any individual whom Contractor proposes to perform Services under this Contract. Contractor warrants that should Wal-Mart be named as a respondent or defendant in any administrative or judicial proceeding based upon an alleged violation of any federal, state or local law, regulation or ordinance arising out of the Contractor's employment of individuals performing Services under this Contract, Contractor shall indemnify, defend and hold harmless Wal-Mart from any and all liability due to the Contractor's actions. If Contractor breaches this Section, Wal-Mart may terminate this Contract immediately, in its sole discretion.

Contractor hereby covenants and agrees that all employees of Contractor assigned to any Wal-Mart facility are, and shall during the term of this Contract be, properly registered, licensed and/or certified pursuant to applicable laws, rules, regulations, statutes, codes, orders and ordinances that may govern the performance of the Services.

12. IMMIGRATION COMPLIANCE. Contractor (i) has complied, and shall at all times during the term of this Contract comply, in all respects with the Immigration Reform and Control Act of 1986, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules and regulations relating thereto, (ii) has properly maintained, and shall at all times during the term of this Contract properly maintain, all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees, and (iii) has responded, and shall at all times during the term of this Contract respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of this Contract, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Contractor or any of its employees. Contractor shall, on a bi-annual basis during the term of this Contract, conduct an audit of the I-9 Forms for its employees and shall promptly correct any defects or deficiencies which are identified as a result of such audit. Wal-Mart may, in its sole discretion, terminate this Contract immediately if, at any time during the term, (x) Contractor violates or is in breach of any provision of this paragraph 12 or (y) the USCIS determines that Contractor has not complied with the Immigration Reform and Control Act of 1986, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, or any of the laws, rules and regulations relating thereto.

13. NOTICES. All notices and other communications required or permitted under this Contract shall be in writing delivered by hand, commercial courier, or certified mail, return receipt requested, to:

If to Wal-Mart: Wal-Mart Stores, Inc.
Attn.: Don M. Walker, Mailstop 0610
1105 Southeast Fifth Street
Bentonville, AR 72715
Phone: (479) 277-0289

If to Contractor: U.S. Security Associates, Inc.
Attn: Alton Harvey
200 Mansell Court, Fifth Floor
Roswell, Georgia 30076-4852
Phone: 800-730-9599 x1420

Notice shall be deemed given upon delivery by hand, upon delivery to commercial courier for next business day delivery properly addressed and prepaid, or upon placing the notice in the U.S. mails properly addressed and with sufficient postage for certified mail, return receipt requested.

14. Assignment; Benefit; Binding Effect. Contractor shall not assign this Contract without Wal-Mart's prior written consent, which Wal-Mart, in its sole discretion, may give or withhold. This Contract shall inure to the benefit of, and be binding upon, the parties to this Contract and their respective successors and assigns. Wal-Mart, in its sole discretion and without Contractor's consent, may assign this Contract to a subsidiary or affiliate.

15. LIMITATION OF LIABILITY. THE MAXIMUM LIABILITY, IF ANY, OF WAL-MART FOR ALL DAMAGES, INCLUDING CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSON OR PROPERTY WHETHER ARISING FROM WAL-MART'S BREACH OF THIS CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT, STATUTE, TORT OF ANY KIND, OR OTHERWISE WITH RESPECT TO THIS CONTRACT IS LIMITED TO AN AMOUNT NOT TO EXCEED THE CURRENT INVOICED AMOUNT FOR SERVICES. IN NO EVENT SHALL WAL-MART BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, DIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST INCOME, LOST REVENUES, BUSINESS INTERRUPTION, OR LOST BUSINESS ARISING FROM THE RELATIONSHIP BETWEEN CONTRACTOR AND WAL-MART, INCLUDING ALL PRIOR DEALINGS AND AGREEMENTS, OR THE CONDUCT OF BUSINESS UNDER, OR BREACH OF, THIS CONTRACT OR THE TERMINATION OF THIS CONTRACT OR BUSINESS RELATIONS WITH CONTRACTOR, REGARDLESS OF WHETHER CONTRACTOR SEEKS DAMAGES UNDER ANY THEORY OF LAW AND EVEN IF CONTRACTOR ADVISED WAL-MART OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR ONLY MAY RECOVER DAMAGES, IF ANY, WITHIN THE LIMITATIONS IN THIS CONTRACT. THOSE DAMAGES, IF ANY, SHALL CONSTITUTE CONTRACTOR'S EXCLUSIVE REMEDY IN LIEU OF ANY OTHER REMEDY CONTRACTOR MAY HAVE AT LAW OR IN EQUITY.

16. AUDIT. Contractor shall at all times keep just and true books, records, and accounts at its place of business ("Facility") showing the actual costs and expenses that Contractor incurs in connection with the Services and that Contractor paid in full all amounts, including wages, due to individuals performing Services and all taxes, including unemployment, income and social security taxes, which may be payable or may otherwise be required to be withheld from wages. Wal-Mart or its duly authorized representative shall have the right, during the term of this Contract and for two years after its termination, to enter Contractor's Facility to examine and audit the books, records, and accounts that pertain to this Contract. Contractor shall make all books, records and accounts available to Wal-Mart or its representative for the audit.

17. NO THIRD PARTY BENEFICIARIES. Nothing in this Contract is intended, or shall be deemed, to confer any rights upon any person who is not a party to this Contract, except for the Indemnified Persons under Paragraph 8.

18. NO FIDUCIARY RELATIONSHIP. Nothing in this Contract creates any relationship of trust or fiduciary relationship between Wal-Mart and Contractor. This Contract does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the independent contractor relationship between the parties unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

19. NO SUBCONTRACTORS. Contractor shall not subcontract or delegate to any person the right or obligation to perform any Services. If Contractor breaches this Section, Wal-Mart may terminate this Contract immediately.

20. COUNTERPARTS. This Contract may be executed in one or more counterparts, all of which shall be deemed one and the same agreement and shall become effective on the Effective Date.

21. MERGER. This Contract constitutes the full understanding of the parties, a complete allocation of risks between them, and a complete and exclusive statement of the terms and conditions of their agreement. All prior agreements, negotiations, dealings, and understandings, whether written or oral, regarding the subject matter of this Contract, are superseded by, and merged into, this Contract.

22. MODIFICATION. The terms of this Contract can only be modified or amended by a written agreement signed by Wal-Mart and Contractor.

23. SECTION HEADINGS. Section headings are for convenience only and may not be construed as part of this Contract or as a limitation on the scope of the particular sections.

24. GOVERNING LAW; CONSENT TO JURISDICTION. This Contract shall be construed, governed, and enforced under the laws of the State of Arkansas, without regard to the internal law of Arkansas regarding conflicts of law. The parties mutually consent to submit to the jurisdiction of the federal and/or state courts of Benton County, Arkansas. The parties shall bring any action or suit concerning this Contract or related matters only in federal or state court in Benton County, Arkansas. The parties shall not raise, and do hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Section. The parties acknowledge that they have read and understand this clause and agree voluntarily to its terms.

25. NON-WAIVER; CUMULATIVE REMEDIES. If either party fails to give notice or enforce any right under this Contract, the failure shall not constitute a waiver of the right, unless the parties reduce the waiver to writing and the waiving party signs the writing. If a party waives its right in writing, the waiver shall not constitute a waiver of any other right or of a subsequent violation of the same right. The rights and remedies of Wal-Mart hereunder are cumulative to, and not exclusive of, any rights or remedies which Wal-Mart would otherwise have in law or at equity.

26. SEVERABILITY. If any term, covenant or condition of this Contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term, covenant or condition to persons or

circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of this Contract shall be valid and enforced to the fullest extent permitted by law.

27. NO BUSINESS GUARANTEE; NO RELIANCE ON ORAL REPRESENTATIONS OR PROMISES. Wal-Mart has no obligation to provide any minimum amount of business to Contractor, and no person has authority to make any representations or promises of business to Contractor on Wal-Mart's behalf or about Wal-Mart's intentions or expectations of renewing or extending this Contract or providing any present or future business to Contractor. If Contractor makes any expenditures, investments, or commitments in reliance on any present or future business from Wal-Mart under this Contract or otherwise, Contractor does so at Contractor's own risk and without any obligation whatsoever from Wal-Mart.

28. CONFIDENTIALITY. Contractor recognizes that it may come into possession of Wal-Mart Confidential Information (as hereinafter defined). Contractor shall hold confidential and shall not use or disclose, and will cause its employees, officers, directors, managers, partners, affiliates and other representatives (collectively, the "Representatives") to hold confidential and not use or disclose, all Wal-Mart Confidential Information, and shall only disclose the Wal-Mart Confidential Information to such of its Representatives with a "need to know" such information. As used herein, "Wal-Mart Confidential Information" means all information concerning Wal-Mart and its affiliates, subsidiaries, employees, suppliers and customers that is not available to the general public, that reasonably or logically may be considered to be confidential or proprietary, or that may reasonably be expected to do harm to Wal-Mart if divulged, in each case together with all analyses, compilations, studies, data, reports, interpretations, forecasts, documents and records, whether prepared by Contractor or others, that contain or otherwise reflect such information. At any time upon the request of Wal-Mart, and in any event upon the termination of this Contract, Contractor shall return to Wal-Mart all such Wal-Mart Confidential Information, including, without limitation, all written and electronic copies thereof, all storage devices on which any Wal-Mart Confidential Information is stored, and all other materials containing or incorporating any Wal-Mart Confidential Information, including any and all excerpts, parts, portions, transcriptions, copies, facsimiles and reproductions of any Wal-Mart Confidential Information. In connection with performing the Services, Contractor may have access to material non-public information about Wal-Mart or its affiliates, subsidiaries, suppliers, customers or employees. Contractor acknowledges and agrees that federal and state securities laws prohibit Contractor or its Representatives from trading in Wal-Mart's securities while in the possession of material non-public information regarding Wal-Mart. Contractor further acknowledges and agrees that information obtained while performing the Services may constitute material non-public information. Contractor irrevocably agrees that neither it nor any of its officers or directors shall trade any Wal-Mart securities during any period in which Contractor possesses material non-public information.

29. PUBLICITY. Contractor shall not refer to Wal-Mart or any company affiliated with Wal-Mart in any advertising or published communication without the prior written approval of Wal-Mart, which approval may be withheld in Wal-Mart's sole discretion. Contractor shall not use, or allow to be used, Wal-Mart's name, logo, trademarks, service marks, patents, copyrights or trade dress without the prior written approval of Wal-Mart, which approval may be withheld in Wal-Mart's sole discretion.

30. INFORMATION SECURITY. Contractor represents that it currently follows, and shall for so long as it is performing any Services under this Contract continue to follow, industry best practices as a means to prevent any compromise of its information systems, computer networks, or data files ("Systems") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Wal-Mart. In the event Contractor's systems are breached or compromised in any way, Contractor shall give Wal-Mart immediate notice of the nature and scope of the breach or compromise. Contractor shall apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and anti-virus software, maintaining said countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing and ~~operating security mechanisms~~ in the manner in which they were intended sufficient to ensure Wal-Mart will not be impacted nor its operations disrupted; and permitting only authorized users access to Wal-Mart Systems. Contractor shall use up-to-date anti-virus tools to remove known viruses and malware from any email message or data transmitted to Wal-Mart; prevent the transmission of attacks on Wal-Mart via the network connections with Wal-Mart and prevent unauthorized access to Wal-Mart Systems via the Contractor's networks and access codes. In accordance with all applicable law and regulations, Contractor shall safeguard confidential, protected, individually identifiable personal information (health, financial, identity) which is received, transmitted, managed, processed, etc. In the event that Contractor provides financial services that involve the collection of personally identifiable financial information of Wal-Mart customers, Contractor shall maintain a current SAS70 Type II audit.

31. ATTORNEY'S FEES. In the event of any action or proceeding brought by either party against the other under this Contract, the prevailing party will be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees.

32. COMPLIANCE WITH CALIFORNIA LAW. If any Wal-Mart facility subject to this Contract is located within the State of California, Contractor shall complete Attachment 1 to the ADDENDUM for such facility in its entirety and both Wal-Mart and Contractor shall execute Attachment 1. A separate Attachment 1 must be completed for each facility located within the State of California that is subject to this Contract. The execution of Attachment 1 is required in addition to, and not in place of, the execution of this Contract and the applicable ADDENDUM by Contractor and Wal-Mart. Contractor shall comply in all respects with all of the terms, conditions and obligations in Attachment 1. The terms and provisions of Attachment 1 are hereby incorporated by reference into, and made a part of, this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and year first above written.

U.S. Security Associates, Inc.

By: Len Lesperance
 Print Name: Len Lesperance
 Title: Controller
 Date: 10-24-04

Wal-Mart Vendor No.: 723921

Wal-Mart Stores, Inc.

By: Kenneth H. Senger
 Print Name: Kenneth H. Senger
 Title: Vice President, Global Security
 Date: 10-26-04



ADDENDUM

This ADDENDUM reflects the following:

- (X) Addition of new facility for service
() Modification of current service, Effective Date

for the Security Services Contract between Wal-Mart and U.S. Security Associates dated October 26, 2004.

FACILITY # 1030

ORIGINAL START DATE: February 25, 2006 @ 4pm

I. SCOPE OF WORK

A. The Contractor shall provide security services for the following Wal-Mart facility #1030 located at 805 Highway 9 Bypass West, Lancaster, South Carolina, 29720. All capitalized terms used but not defined in this ADDENDUM shall have the respective meanings ascribed to them in the Contract.

B. Contractor shall provide security services, including personnel and equipment, and will be responsible for such security services, including but not limited to the following:

1. Patrolling the parking lot and exterior of WAL-MART continuously in a manner highly mobile and visible to the public and WAL-MART customers and associates;
2. Observing and immediately reporting to WAL-MART management all suspicious and/or criminal activity;
3. Submitting written reports to WAL-MART management and the WAL-MART District Loss Prevention Supervisor of any observed and/or reported incidents;
4. Referring WAL-MART customers to WAL-MART management for assistance;
5. And if applicable, the following additional services: none

II. SECURITY PERSONNEL AND EQUIPMENT PROVIDED BY CONTRACTOR

A. Contractor shall provide one guard(s) for each shift at the above listed facility.

B. Contractor's guards will be equipped with standard Contractor's company issued uniform attire, operating supplies, and equipment mandated by Contractor or required pursuant to the Contract, and shall at all times comply in all respects with applicable local, state and federal laws, statutes, rules, regulations, codes, ordinances and orders governing security guard companies or the provision of the Services. WAL-MART will not be obligated to provide any security personnel, uniforms, equipment or patrol vehicles as a backup source to Contractor.

C. All security guards will be unarmed unless expressly authorized by WAL-MART in writing.

D. Security guards are to avoid physical contact with WAL-MART customers, if possible. Should a confrontation with a customer occur, security guards are to take necessary precautions to protect themselves, customers, and WAL-MART associates. If, at any time, force becomes necessary, the security guards shall use only the minimum amount of force necessary and make an immediate report of the incident to WAL-MART management. Security guards shall never use chokeholds to detain a customer, and shall never chase a customer off WAL-MART property, on foot or in a

Facility# 1030

vehicle. Security guards shall not attempt to remove an offending customer from their vehicle. If injuries to the security guard result, photographs must be promptly taken of the injuries and given to WAL-MART management. Photographs shall never be taken of any WAL-MART customer. All incidents must be reported to WAL-MART management immediately.

- E. Contractor shall provide the following information regarding any vehicle used in patrolling the exterior of the facility within thirty (30) days after the Effective Date or the date on which such vehicle is purchased, as applicable: Vehicle make, model, color, and VIN number.

F. Contractor will be responsible for providing fuel, maintenance, insurance, and repairs for the above described vehicle.

III. SECURITY PERSONNEL SCHEDULE

The regular hours of guard service will be as follows on the days so designated: The hours will be from 4pm (1600) until 6am (0600), seven days a week for the permanent parking lot patrol.

IV. PAYMENT

A. WAL-MART agrees to pay Contractor a security guard rate of \$12.29 per hour in accordance with the provisions of Paragraph 3 of the Contract. WAL-MART agrees to pay Contractor a vehicle rate of \$300.00 per week, including fuel and maintenance.

B. WAL-MART agrees to pay Contractor a security guard rate of \$18.44 per hour for holidays and overtime, providing all overtime Services must be approved in writing by WAL-MART before any such overtime Services are performed. Holidays include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, and the following additional holidays, if applicable: none

C. No overtime will be approved that arises or results from, or is otherwise due to, Contractor's scheduling errors.

V. COMPLIANCE WITH CALIFORNIA LAW

If the WAL-MART facility subject to this ADDENDUM is located within the State of California, Contractor shall complete Attachment 1 to this ADDENDUM in its entirety and both WAL-MART and Contractor shall execute Attachment 1. The execution of Attachment 1 is required in addition to, and not in place of, the execution of the Contract and this ADDENDUM by Contractor and WAL-MART. Contractor shall comply in all respects with all of the terms, conditions and obligations in Attachment 1. The terms and provisions of Attachment 1 are hereby incorporated by reference into, and made a part of, the Contract and this ADDENDUM.

Facility# 1030

This ADDENDUM is incorporated into, and a part of, the Contract and is governed by the terms thereof.

Acknowledged and Agreed to by:

U.S. SECURITY ASSOCIATES, INC.

By: Alton Harvey
SignatureAlton Harvey
Print NameVice President, National Accounts
TitleDate: 2/10/2006

WAL-MART STORES, INC.

By: Kenneth H. Senger
SignatureKenneth H. Senger
Print Name
Senior Vice President
Global Security, Aviation and Travel
Title
Wal-Mart Stores, Inc.

Date: _____

2/17/06

EXHIBIT B

Guidelines for Private Security Contractors

Wal-Mart Stores, Inc., its Affiliates and Subsidiaries, has contracted with your company to perform services as a security contractor and, as such, you're considered an independent contractor. Contractors should know that the job you are performing is critical to the success of our company. Because of the sensitive nature of the position, it is extremely important that the Contractor be aware of the following guidelines. If at any time there is any doubt or concern about how to proceed, please ask for the opinion of a member of the Wal-Mart management team as how to react.

The primary function of the private security contractor is to provide our customers with a safe shopping experience. The basic security method consists of two parts. The first, protection, enables the security contractor to protect persons and property by acting as a deterrent in order to prevent thefts, damages, or accidents. The second, communications, enables the security contractor to be a source of information to Wal-Mart management.

- In general there are two types of patrol or duty stations at Wal-Mart Stores, Inc.
- One is a mechanized patrol in an automobile or other approved form of transportation of all the paved areas that surround the building.
- Second is either stationary or moving foot patrol. Foot patrols are assigned to a specific area to observe customer behavior, control pedestrian access, and report any criminal activity or unusual circumstances to Wal-Mart management.

The following Wal-Mart Guidelines will apply entirely or in part to either duty station.

- 1 All Security Contractors must read and adhere to the following Wal-Mart guidelines.
- 2 The Security Contractor should arrive at the start of his/her shift well rested and ready for work and review all logs and reports from the previous shift in order to be familiar with any previous incidents.
- 3 All Security Contractors should maintain a positive attitude. Conduct yourself in such a manner where your integrity is not in question.
- 4 Security Contractors must be courteous, well mannered, and exhibit self-control at all times. In performing this duty, it is expected that you will be neat in appearance, friendly, courteous, and subdued in tone.
- 5 The Security Contractor must check in with Wal-Mart management before the shift begins. The facility will provide a radio to be able to stay in contact with Wal-Mart management.
- 6 If the relief Security Contractor is late or does not arrive, please notify a member of Wal-Mart management so that your employer can be contacted and arrangements made. It is important that Wal-Mart have security at all times contracted for.
- 7 Because Wal-Mart expects security at specific areas, if the Security Contractor must leave his/her post, please notify a member of Wal-Mart management first.
- 8 The patrol vehicle will be driven continuously during the specified hours of operation, except during approved meal times and bathroom breaks. When stopping for approved breaks do not park the vehicle in the same spot each time.
9. If the specified hours of operation are less than 24 hours, please park the patrol vehicle in its designated area.
- 10 The vehicle's beacon, strobe, or light bar should be operational at all times.
- 11 No unauthorized passengers in the patrol vehicle.

12. Visually inspect the patrol vehicle at the start of your shift for safety violations
13. Don't patrol the parking lot in the same manner each day. Vary your routine so your patrol pattern can't be established. Double back occasionally.
14. The patrol vehicle should not leave Wal-Mart property except for gas or maintenance
15. For safety, please drive at a slow speed, wear your seatbelt, and be aware of other cars and pedestrians that may be in or around the Wal-Mart parking lot
16. For safety, always be alert for cars backing out of parking spaces and customers walking between cars.
17. At no time are Security Contractors allowed to eat, drink, smoke, litter, use profane language or engage in verbal arguments with other employees or customers while on duty. First impressions are often lasting impressions
18. Wal-Mart requests any unsafe conditions be reported to management at the Facility.
19. Security Contractors are not to place themselves in immediate danger. If it is apparent that a danger of a serious nature exists, the officer should withdraw from the situation if he/she reasonably believes it to be dangerous and he/she is to report the dangerous situation immediately to Wal-Mart management on site.
20. Immediately notify Wal-Mart management on site any suspicious activity observed. Wal-Mart management will contact the appropriate police, fire or medical agency. You should observe the activity and record any information that will help with the investigation. At no time should you try to apprehend, or use your vehicle to apprehend any suspects.
21. Specific items that should be in the patrol vehicle at all times include but are not limited to, incident reports, forms, logbooks, flashlight with extra batteries, foul weather gear, radio, fire extinguisher, and first aid kit. Additionally if required by law, a local or state contractors license
22. Security Contractors are not a policing force and should not be used as one. It's Wal-Mart management's responsibility to enforce Wal-Mart policies and procedures.
23. Approved meal times and other breaks cannot be taken while still in the patrol vehicle. Wal-Mart management should be notified when leaving the vehicle for all breaks.
24. Security Contractors are not to jump start batteries, change flat tires, round-up shopping carts, pick up trash, attempt to unlock locked vehicles, or any other similar duty that is not related to security.
25. Security Contractors are not to have vehicles towed off the premises, remove vehicles from fire lanes, request recreational vehicle operators or semi-tractor trailers to leave the premises or issue any trespass warnings. These functions are to be handled by Wal-Mart management
26. In the event of a shoplifter situation, the security contractor should act as a witness, and only assist when directed to by a member of Wal-Mart management or Loss Prevention, or when you see the Wal-Mart associate in trouble or danger.
27. While on duty and on Wal-Mart property, Security Contractors may not have in their possession any weapons, including but not limited to firearms, batons, mace, handcuffs, or other similar devices.
28. Wal-Mart Stores, Inc. only allows duly qualified and sworn, uniformed law enforcement contractors to carry a firearm while on Wal-Mart property. Private Security Contractors under contract are not allowed to carry firearms even if so licensed by the state. Any exceptions must be made in writing from the Wal-Mart home office only.
29. Think safety first. Always remember to protect yourself and, if possible, assist others before attempting to protect property. Remember, Security Contractors are precluded from searching or pursuing suspects, etc

30. Security officers will not fraternize with Wal-Mart associates or customers while on duty.
31. Security Contractors shouldn't provide any medical aid unless the Security Contractor is a qualified Emergency Medical Technician or the like. We recognize that you may have an ethical duty to provide care.
32. Each Security Contractor should inform the next shift of any unusual activity observed during the last shift.
33. Turn into Wal-Mart management any found merchandise or money.
34. Security Contractors will wear Contractor issued uniforms and identification badges at all times while on duty.
35. Security Contractors while on duty on Wal-Mart property will not address any questions presented by the news media. Politely state that you are not a Wal-Mart employee and refer the inquiry to a member of Wal-Mart management. Immediately notify Wal-Mart management of this inquiry.
36. Report to Wal-Mart management any individuals or groups trying to solicit or distribute literature for political purposes on Wal-Mart premises.
37. Radio checks should be conducted every 30 minutes during the hours of darkness.

Exhibit C:

Excerpts of Trial Transcript

(pg. 132, 134, 145, 206 233, 496-98, 507, 527-28, 593-94, 598-99, 601-605)

See Trial Transcript: R. 527

Exhibit D:
Transcript of Derrick Jones

The parties have agreed to provide the Jones' deposition in its entirety at its first appearance in the record

11/25/2008

State of South Carolina	)	
	)	
County of Lancaster	)	
	)	2007-SP-23-593
Travis A Roddey as the	)	
Personal Representative of	)	
the Estate of Alice	)	
Monique Beckham Hancock,	)	Deposition
deceased,	)	
	)	of
Plaintiff,	)	
	)	Derrick L Jones
vs.	)	
	)	
Wal-Mart Stores East, LP,	)	
U.S. Security Associates,	)	
Inc., and Derrick L	)	
Jones,	)	
	)	
Defendants		

Deposition of Derrick L. Jones, taken before Sandra A. Reed, a notary public in and for the State of South Carolina, commencing at the hour of 10:08 a.m., Tuesday, November 25, 2008, at the office of McGowan, Hood & Felder, L.L.C., 1539 Health Care Drive, Rock Hill, South Carolina.

Reported by
Sandra A. Reed

Southern Reporting, Inc

803 749.8100

www.southernreporting.net

11/25/2008

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APPEARANCES
 For Plaintiff: N. Randall Hoot, Esq.
 William A. McKinnon, Esq.
 McQueen Hood & Elder, LLC
 1510 Health Care Center
 Rock Hill, South Carolina 29730
 For Defendant:
 Stephen G. Flynn, Esq.
 Galanter, White & Bond, P.A.
 Post Office Box 19189
 111 Beane Place, Suite 200
 Greenville, South Carolina 29601

For Plaintiff and Mr. Jones: Defendant
 Stephen G. Flynn, Esq.
 Galanter, White & Bond, P.A.
 Post Office Box 19189
 111 Beane Place, Suite 200
 Greenville, South Carolina 29601

For Mr. Jones: Defendant
 G.D. "Doc" Morgan, Jr., Esq.
 McQueen Hood & Elder, LLC
 1510 Health Care Center
 Rock Hill, South Carolina 29730

Video-grapher: George Marabel
 Also present: Travis Roddey
 Larnia Cooper

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EXHIBITS

Plaintiff's Exhibit No. 1, Three-ring binder, Tabs 1 through 49, with Table of Contents labeled "Deposition Log, Roddey v Wal-Mart, et al"

1 Q And can I ask you some -- excuse me -- Ms. Hoot, ask
 2 I'm going to ask you some questions -- and if I
 3 ask you anything that you don't understand, will
 4 you let me know?
 5 A I will.
 6 Q Okay. And if there's something that -- that you
 7 need to see a document or anything, if you just let
 8 us know. Between all of us attorneys, we've got
 9 lots of papers, so we'll try to find whatever you
 10 need to be able to give us as accurate an answer as
 11 possible, okay?
 12 A All right.
 13 Q Is it fair for me to assume that if you don't ask
 14 for something, you're able to answer it?
 15 A Yes.
 16 Q Okay. If you need to take a break for any reason
 17 you just let us know, we'll be glad to do that.
 18 Okay?
 19 A Okay.
 20 Q A couple of ground rules. If -- if you don't
 21 understand something or you -- you -- you -- you
 22 have a question about something I've asked you, you
 23 need to direct any kind of query to me as opposed
 24 to someone else.
 25 A Okay.

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Page 5

STIPULATIONS

1 It is stipulated by and between counsel for
 2 the respective parties that all objections are
 3 reserved until the time of trial, except as to
 4 the form of the questions.
 5 This deposition is being taken pursuant to the
 6 South Carolina Rules of Civil Procedure.

7 The reading and signing of this deposition is
 8 waived by the deponent and counsel for the
 9 respective parties.

Whereupon,

11 Derrick L. Jones, being duly sworn and
 12 cautioned to speak the truth, the whole truth
 13 and nothing but the truth, testified as
 14 follows.

EXAMINATION

BY MR. HOOD

18 Plaintiff's Exhibit No. 1, Three-ring
 19 binder, Tabs 1 through 49, with Table of
 20 Contents labeled "Deposition Log, Roddey
 21 v Wal-Mart, et al"

23 Q Mr. Jones, my name is Randy Hood, and I'm here
 24 today on behalf of the family Ms. Beckham

A Uh-huh

1 Q Okay?
 2 A Uh-huh.
 3 Q And -- and I'll be glad to answer it, and then if
 4 we need to ask Ms. Flynn or -- or someone else to
 5 help, then we can do that. But the rules direct
 6 that you -- you ask me that question.
 7 A Okay.
 8 Q Okay?
 9 And if -- if there's any time you need to take
 10 a break, just let us know because it's -- you know,
 11 we're going to be here for a while, and it's not a
 12 -- I'm not here for some endurance test. And if
 13 you need to take a break, we've got water, we've
 14 got drinks, we've got anything you need. So, you
 15 --
 16 A Okay.
 17 Q -- know, if you need anything, you just let us
 18 know.
 19 A All right.
 20 Q All right?
 21 The last -- the last thing -- and this is the
 22 hardest thing, I think, for most people -- is when
 23 you go through a deposition, they always want to
 24 say "uh-huh" or "unh-unh" or they'll shake their
 25 head. We've got to get a verbal response for you

Pages 2 to 5

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1	because madam court reporter has to be able to get	1	A Uh-huh
2	an accurate record of what we're going to be	2	Q -- or a few days ago
3	discussing today, okay?	3	A Uh-huh
4	A Okay	4	Q And this is a request to admit to you
5	Q And if I -- if I prompt you, it's only because	5	A Uh-huh
6	that's just -- that's just the rules	6	Q Okay?
7	A Okay	7	Why don't you read No. 1 for me and then you
8	Q And -- and the last thing I'll ask a question,	8	read your response for the record --
9	and if you'll wait till I get my question out to	9	A Okay
10	give your response, I would appreciate that. And	10	Q -- for this jury
11	if I ever cut you off, I'm telling you now it's	11	A Responses No. 1 says, "Admit that Derrick Jones' SC
12	unintentional. Let me know, "I wasn't finished,"	12	driver's license was suspended on June 20th, 2006."
13	and I'll be glad to let you finish because when we	13	Q And what was your answer?
14	talk over each other, the court reporter can't get	14	A "Response Defendant Derrick Jones admits that --
15	it down accurately, okay?"	15	this request upon information and belief. No. 1
16	A Okay	16	never admitted that.
17	Q Now, could you please -- excuse me -- could you	17	Q Okay. So were you lying or your lawyer lying?
18	please tell us your full name?	18	MS FLYNN No
19	A My full name is Derrick Lamont Jones	19	A No. I'm not lying. Far as June 20th of 2006 --
20	Q Okay. Mr. Jones, where do you live at?	20	Q Yes
21	A I live at 2376 Baron Dekalb Road, Camden, South	21	A -- that my license was suspended? No
22	Carolina, ZIP Code 29020	22	Q Okay. Well, let's go to, then, Tab No. -- in this
23	Q Okay. And what's your date of birth?	23	notebook you've got --
24	A My date of birth is 9/28/78	24	A Yes
25	Q Okay. And do you have a South Carolina driver's	25	Q -- I've got a bunch of tabs for you
Page 7		Page 9	
1	license?	1	A Okay. What tab are we going to?
2	A Yes, I do	2	Q We're going to Tab 54
3	Q Is it suspended?	3	A Tab 54?
4	A Yes. Currently it is	4	MS FLYNN I don't have 54
5	Q Okay. How did you get to this deposition today?	5	MR MCKINNON Forty-nine
6	A My lawyer Stephanie Flynn	6	THE DEPONENT I don't --
7	Q Okay	7	MR HOOD Forty-nine I'm sorry
8	A Uh-huh	8	MR MCKINNON For 49
9	Q And how did you get to Stephanie Flynn's office?	9	THE DEPONENT Oh, okay
10	Where'd she pick you up at?	10	MR HOOD I've got it
11	A She picked me up at my residence	11	THE DEPONENT Tab 40
12	Q Okay	12	MR HOOD I apologize.
13	A Uh-huh	13	THE DEPONENT No
14	Q Are you working anywhere right now?	14	MR HOOD I've got -- some --
15	A Not at this moment	15	THE DEPONENT Not --
16	Q Okay. Are you driving your car at this time?	16	MR HOOD -- of these --
17	A No, sir	17	THE DEPONENT -- a problem.
18	Q You were driving your car on June 20th, 2006	18	MR HOOD -- are --
19	right?	19	MR MCKINNON Yeah.
20	A Yes, sir.	20	THE DEPONENT Forty-nine Hold on.
21	Q Your license was suspended at that time, though,	21	(Sotto voce discussion between
22	right?	22	Mr. McKinnon and Mr. Stewart)
23	A No, sir	23	(Sotto voce discussion between
24	Q Well, let me show you this. This is something we	24	Mr. Hood and Mr. McKinnon)
25	received yesterday -- or --	25	THE DEPONENT Forty-nine

Pages 6 to 9

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1 Q Now if you go to the second page this -- well
 2 the first page -- do you see whose name it is?
 3 A Yes, sir. It's my name.
 4 Q Okay. And if you go to the second page, go down
 5 about -- about three-quarters of the way, and it
 6 says -- do you see where it says, "S-u-s-p 036,
 7 controlled substance violation"?
 8 A "S u s-p" - yes, sir.
 9 Q Okay.
 10 A Uh-huh.
 11 Q And it says, "Suspension Begins", do you see that?
 12 A Uh-huh.
 13 Q What does it say?
 14 A It says, "6/17/2006".
 15 Q So your license was suspended on the day that this
 16 accident happened, right?
 17 A From this paper saying that? Yes, sir.
 18 Q And your lawyer admitting it too, right?
 19 A I guess from what the paper is saying, yes, sir.
 20 Q Okay. So at the time that you had this accident
 21 and you were driving this vehicle, you weren't even
 22 allowed to drive, were you?
 23 A Due to the fact of the date on this paper, I would
 24 say "no".
 25 Q Okay. Now, Mr. Jones, I'm going to tell you before

Page 11

1 -- I'm going to get into some questions, and I'm
 2 going to ask you some questions about this
 3 accident.
 4 A Okay.
 5 Q And -- and some of these questions -- I don't know
 6 if you've talked to your lawyer about this, but I'm
 7 going to ask you some questions.
 8 A Uh-huh.
 9 Q And I will -- I'm going to tell you right now
 10 some of your answers may incriminate you.
 11 A Okay.
 12 Q And if you -- you know, that's something you need
 13 to discuss with your lawyer, and if you need to
 14 discuss with her or if you need to plead the 5th on
 15 something, you can -- y'all are welcome to -- to
 16 have that conversation. That's -- that's not for
 17 me to be here a part of, but I'm going to ask you
 18 some of those questions.
 19 A Okay.
 20 Q And if you feel -- if you and your lawyer feel like
 21 you need to plead the 5th, you do what you got to
 22 do, okay?
 23 A (Nods head up and down).
 24 Q So this license -- your license was suspended on --
 25 on June 20th, 2006, right?

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1 A Seeing that I see that stated "for as your name go
 2 and your tabs, I would say "yes".
 3 Q Okay. And so why were you driving the truck then?
 4 A Well at that time -- was not bring to my attention
 5 that my license was suspended. Prior to me getting
 6 this job, I did appear at a -- I did have a court
 7 hearing with me, and I had a lawyer which his name
 8 is Douglas J. Robinson of Camden, South Carolina.
 9 Me and Mr. Robinson -- we had a trial just with me,
 10 the judge, the prosecutor in the case, and the
 11 clerk of courts. That was the only people that was
 12 in the courtroom at that time.
 13 I was -- my lawyer advised me to bring my
 14 license to court because there would -- they
 15 probably would be a possibility that they would
 16 take it from me or suspend it. When we did have
 17 that court appearance, I was -- my license -- the
 18 license was never brought up -- was never a issue
 19 of my license being suspended -- was never taken
 20 [sic] from me. So at that point, no, I didn't
 21 have no knowledge that my license was suspended --
 22 Q Is it --
 23 A -- prior to me getting this job.
 24 Q Is it your testimony under oath to this jury that
 25 you were not aware that when you pled guilty to a

Page 13

1 marijuana violation that it would not result in an
 2 automatic suspension of your driver's license?
 3 A Yes, that is my testimony.
 4 Q Okay. And so you're saying that the judge,
 5 Mr. Robinson -- none of these people ever told you
 6 that when you pled guilty, that you were going to
 7 have an automatic suspension of your license?
 8 A No. What I was told by my -- by Mr. Robinson was,
 9 "Bring your license on the date of your trial just
 10 in case they ask you or tell you that your license
 11 is suspended because they will need to take it from
 12 you."
 13 When I did bring it, I had my license in hand
 14 the whole time on -- at trial. The judge never
 15 told me, "I'm going to need to take your license
 16 from you" or "Your license is suspended." I never
 17 received anything in the mail stating that my
 18 license was suspended. So prior to me getting the
 19 job with U.S. Security, I was under the impression
 20 that my license was not suspended.
 21 Q Okay. Well, let's talk about when you -- when you
 22 did become an employee there. Go to Tab 14,
 23 please.
 24 A Tab 14. Okay. Okay.
 25 Q At that very first page --

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Page 14		Page 16	
1	A Uh-huh	1	MR MCKINNON Twenty-eight
2	Q -- you took a -- this is a drug test you took on	2	THE DEPONENT Twenty-eight
3	5 16 2006, do you see that?	3	MR HOOD Twenty-eight And we're going to
4	A Yes sir	4	the middle It's like it -- they are -- it's
5	Q You had marijuana in your system at that time	5	probably -- about 15 pages in there's a
6	didn't you?	6	there's a sheet and it says, "kk" and it's
7	A No, sir Because I passed the test	7	right after that And it's the purpose --
8	Q You didn't --	8	it's the employee drug screening, Policy No
9	A I got --	9	650-01
10	Q -- pass --	10	THE DEPONENT Okay
11	A -- the --	11	MR HOOD, (To the deponent) It's right here
12	Q -- the --	12	THE DEPONENT Have ' passed it or
13	A -- job	13	MR HOOD Yeah Hold one second I think you
14	Q -- test, did you?	14	--
15	A I mean, yeah, I did.	15	THE DEPONENT It's about 15 pages in?
16	Q Well, that doesn't have a line beside that "THC"	16	MR HOOD Let me see if we can find -- that's
17	it seems like you got something in --	17	it
18	A Yeah	18	THE DEPONENT Okay
19	Q -- your --	19	MR HOOD That's it It's the next one KK
20	A I --	20	There we go
21	Q -- system	21	THE DEPONENT Okay
22	A -- see -- I see that But at the time I took the	22	MR MCKINNON It's about two-thirds in
23	test, I passed the test Mr Bill Thompson took	23	MR HOOD There we go
24	the test. He the one performed the test with me	24	MR MORGAN Two-thirds in?
25	And at the time -- at that time I -- I assume to	25	MR HOOD There we go
Page 15		Page 17	
1	appear to have passed the test because he the one	1	MR MCKINNON Yeah
2	signed off on it If I had failed the test, it was	2	Q This is a U S Security Associates policy and
3	not bring to my knowledge	3	procedure The date of that is April 15th, 2004, do
4	Q Okay So Mr Bill Thompson is the person that then	4	you see that?
5	hired you even though you had a test that	5	A Yes, sir
6	indicated marijuana in your system?	6	Q Do you see the -- where it says, "The Purpose"
7	A Yes, sir I was hired by Mr Bill - W tham	7	A Yes, sir
8	Thompson	8	Q And could you read what it says for purpose?
9	Q Okay And my question to you is You were hired,	9	A For purpose it says, "To provide the company policy
10	even though this test indicates you had marijuana	10	and procedure regarding employee drug screenings"
11	in your system, right?	11	Q Okay And then do you see "5" under "Procedure"
12	A Yes, sir I was hired	12	A Yes, sir
13	Q Okay Now, then let's go to Tab No 32 The 28 --	13	Q And do you see where it has "5 1 Preassignment Drug
14	it's going to be 28	14	Testing?"
15	A Twenty-eight?	15	A Yes, sir
16	Q Yes	16	Q Can you read that for us?
17	A Okay Tab 28	17	A Yes, sir "All applicants for employment will be
18	Q Excuse me I'm sorry I apologize Thirty-one	18	administered a five-panel drug screen as part of
19	A Thirty-one Tab 31	19	the employment process as defined in paragraph
20	Q I apologize It was 28	20	644 of the phrase to employment eligibility and
21	A Twenty-eight?	21	background screening section of U S P & P, 630-02
22	Q I was wrong It's my fault, man	22	The following procedures will apply "
23	A Not a problem at all Thirty, 29 28	23	Q Okay Now, if you go to the next page
24	MR MORGAN (To Mr Hood) All right Which	24	A Okay
25	one're we on?	25	Q Okay And -- and I'm going to look at -- do you see

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Page 20

1 where it has "S" I

2 A Yes

3 Q Okay Could you read that for us?

4 A "In each of the drug -- in each of the drug columns

5 there must be a visible line at the control entry

6 marked "CFL" If there is no line in any of the CTL

7 entries the test is invalid and additional tests

8 must be conducted until a valid result is achieved"

9 Q Your testimony today is that Mr. Thompson did not

10 require another test to be taken, right?

11 A Yes, sir

12 Q And so even though there wasn't a visible line, he

13 did not require that?

14 A Yes, sir I --

15 Q Okay

16 A It was no to my knowledge that there wasn't a

17 visible line I was not there I didn't -- I

18 wasn't able to be shown the drug screening after I

19 took the test You understand what I'm saying?

20 Q Sure.

21 A After I took the test, I was not shown that I was

22 either -- either negative or positive

23 Q Okay

24 A It was just -- I was told, "Oh, you're -- everything

25 came out fine" And then I was put through the

Page 19

1 training process

2 Q To your -- took a drug test today, would you come up

3 positive for marijuana?

4 A I'm not necessarily sure It could It could not

5 be

6 Q You -- you smoke on occasion, don't you?

7 A Here and there

8 Q Okay And it says, "S I" --

9 A "S" --

10 Q "S" --

11 A -- "21" --

12 Q -- "1" --

13 A "5" --

14 Q -- "5" --

15 A -- "2" --

16 Q -- "4" -- Excuse me

17 A "5 4" I'm sorry

18 Q Yes Could you read that for us?

19 A Yes, sir "The absence of a visible line at any of

20 the drug entries indicates a presumptive positive

21 test for the presence of that particular drug If

22 this occurs, the applicant is considered ineligible

23 for hire"

24 Q Okay And under this particular policy, it appears

25 that you were not even eligible to be hired on May

1 of 2006, right?

2 MS FLYNN Object to me for not to the

3 deponent? Go ahead

4 MR HOOD (To the deponent) Go ahead

5 MS FLYNN You can answer

6 THE DEPONENT Oh I'm sorry

7 A Say that again, sir

8 Q It appears from this policy you were not even

9 eligible for hire on this date, were you?

10 MS FLYNN Object to the form

11 A I would say with the evidence presented today far

12 as me seeing that -- that test saying that I was

13 positive

14 Q Yes

15 A -- then yes I wasn't eligible to be hired

16 Q Okay

17 A But like I said under my knowledge, I was negative

18 Q Okay And -- and have you ever taken a drug test

19 before?

20 A Yes I've taken plenty of drug tests before

21 Q Okay Have you failed some drug tests?

22 A I might've failed or e

23 Q Okay Now, in -- in this particular case -- when --

24 when this occurred, you -- you came up on this

25 particular scene, and -- and you saw this car off

Page 21

1 the side of the road, right?

2 A Yes, sir

3 Q And when you saw this car off the side of the road,

4 I think you said there was a -- a -- a African-

5 American female that drove up, and you asked her to

6 call the police?

7 A Yes, sir Her and her daughter

8 Her and her daughter

9 A Uh-huh

10 Q And then there was another guy that came up who was,

11 like, either EMS or some other type of person.

12 A I had heard that he was a volunteer fire --

13 Q Fire --

14 A -- fighter or --

15 Q Yes

16 A -- something like that.

17 Q Right Right And -- and you saw him, right?

18 A Yes, sir

19 Q But you left before the police got there, didn't

20 you?

21 A Wrong I left after the -- they was taken out of

22 the vehicle and was put into the ambulance That's

23 when I left the scene

24 Q Okay

25 A Yes

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1 Q So -- so your testimony under oath is that you were
2 there the entire time that the police were there?
3 A Yes --
4 Q Okay. And even if somebody else said you had
5 already left, are you saying that they're lying?
6 A Yes, sir. I'm saying that they're lying, and I'll
7 tell them in their face that they're lying.
8 Q Okay.
9 A When I was on scene -- I stayed on scene, like I
10 said, until they were taken out of the vehicle and
11 was placed on stretchers and was being placed into
12 the ambulance. That's when I left.
13 Q Did you tell the police that your license was
14 suspended at that time?
15 A I didn't have no knowledge that my knowledge was
16 suspended at that time, sir.
17 Q Okay. When did you become aware that your license
18 was suspended?
19 A I came aware that my license was suspended after the
20 incidents was -- had done took place. Maybe --
21 maybe a week or two maybe. I'm not -- I'm not
22 really sure of the time length, but I know it was
23 definitely after the fact I had talked to Mr. Bill
24 Thompson. And Mr. Bill Thompson then had told me
25 "Well, do you" -- he asked me, "Well, do you know

1 A Yes, sir.
2 Q Well, under the policy you're supposed to do it
3 immediately after such an incident, aren't you?
4 A I have no --
5 MS LYNX Object
6 A -- idea.
7 MS FLYNN -- to the form.
8 A I --
9 Q But --
10 A -- have --
11 Q But you didn't take the test until six days after
12 the accident, right?
13 A I could say that could be accurate.
14 Q Why -- why six days after as opposed to the day of?
15 A I have no idea, sir.
16 Q Who would've been the person that would've been
17 responsible for doing that?
18 A For doing the drug screening?
19 Q Yes.
20 A I would -- I would have to say I guess, Bill
21 Thompson. I mean that's --
22 Q Okay.
23 A -- the person -- I would only say that because
24 that's the person that did my initial drug screening
25 -- the first one. So I would have to say he would

Page 23

Page 25

1 that your license is suspended?"
2 And I said "Well, no. My license shouldn't be
3 suspended because I went to court about -- you know,
4 I had, you know, the little trial or whatever -- and
5 my license should have not been suspended."
6 Q Okay. So Mr. Thompson is the one that told you that
7 -- that your license was suspended, right?
8 A Yes. He said that he had inquired background checks
9 on me -- SI ED background checks and all kind of
10 background checks -- and that he done found out that
11 my license was suspended. And at that time I had
12 advised him "Well, I had no idea that my license
13 was suspended."
14 Q Did Mr. Thompson tell you this within a day or two
15 after the accident?
16 A I want to say -- I'm really not sure. It probably
17 was maybe, a day or two. It could've been a day or
18 two or a -- it could've been a week.
19 Q Okay. But -- but it was within a day or two or a
20 week after the accident when --
21 A Yes, sir.
22 Q -- he informed you of that?
23 A Yes, sir.
24 Q Okay. Now, they had you take a -- a drug test after
25 this accident, right?

1 have to be the one that would've had to come back
2 and do that again. Which, when I did do the drug
3 test, he administered it. He --
4 Q And Mr. Bill Thompson was who?
5 A My supervisor.
6 Q Okay.
7 A Yes.
8 Q And was he on site at that U.S. Security post in
9 Lancaster County, or was he out of Charlotte, North
10 Carolina? Or where was he located?
11 A Far as where his office was located?
12 Q Yes.
13 A In Charlotte, North Carolina.
14 Q Okay. And did you report to him on a weekly basis
15 or a daily basis or
16 A No. I couldn't say that we reported on a weekly
17 basis. At the site -- far as at the site, it was
18 just me and my father running the site. So I
19 probably would say maybe -- maybe once a week we
20 talked to Bill. Either I talked to Bill or my
21 father talked to Bill.
22 Q Well, you know, in this particular case, when
23 there's been some kind of an incident, you're
24 supposed to fill out an incident report, right?
25 A Yes, sir.

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1 MS FLYNN Right 2 Q Did you fill out an incident report in this 3 particular case? 4 A Yes sir 5 Q Okay. Do you know why we've not been provided the 6 incident report? 7 A No sir I don't 8 MR. HOOD (To Ms. Flynn): Do you know why 9 we've not been provided that incident report? 10 MS FLYNN They've never located an incident 11 report other than the two written statements 12 that have been provided -- the one to the police 13 and the one to Wal-Mart 14 A Not only did I -- not only did I submit a incident 15 report I have also submitted at least three 16 writings -- written statements prior to that 17 accident. You know what I'm saying? I -- I went 18 out -- when the accident first happened and I did 19 arrive back Wal-Mart, I wrote a handwritten 20 statement then. Then when the cops came and they 21 questioned me and I had to talk down with them, I 22 wrote another report. Then I wrote a incident 23 report. I done wrote, like, three/four reports 24 Q Okay. This incident report that you did, this was 25 -- you know that you had forms at U.S. Security	1 they say the "uh-huh" or "uh-huh" 2 A Oh -- sorry 3 Q That's no -- that's no problem 4 A I'm -- I'm sorry 5 Q And so in regard to that did he ever show you any 6 of the results of this background check or did he 7 show you something? 8 A In regard to that I was sent something in the mail 9 about my license being suspended, from Bill 10 Thompson. I want to -- I -- I don't want to say 11 necessarily it might've not been from Bill Thompson 12 himself but it -- it came from U.S. Security. I 13 received something in the mail from U.S. Security, 14 stating that -- you know -- to follow up to me in his 15 conversation. And he -- he -- he sent me 16 information, stating that at that time, yeah. You 17 know he showing me that my license was suspended 18 and all kind of other stuff. Yeah. But he had -- 19 he had sent me something -- 20 Q Okay. 21 A -- in the mail 22 Q So -- so was there a letter on, like, U.S. Security 23 letterhead that would've accompanied this from 24 someone and then had some other material? 25 A I want to say it -- I -- I -- I'm thinking it was
Page 27	Page 29
1 where you -- 2 A Right 3 Q -- would do an incident -- 4 A And we -- 5 Q -- report? 6 A -- kept them in the U.S. Security truck. That's how 7 I know I've -- I'd -- I'd wrote a incident report 8 Q Okay. And when you -- when you wrote this incident 9 report do you know what you did with this incident 10 report? 11 A Yes I -- I put it in a book where we supposed to 12 file incident reports. My father actually signed 13 off on the incident report because he was the 14 officer relieving me. And it should've been in the 15 file 16 Q Okay. And -- now, you -- you've said that Bill 17 Thompson about a week after this occurred -- 18 sometime within one or two days to a week after this 19 occurred that Bill Thompson did a -- did a 20 background check? 21 A Uh-huh 22 Q Or received some results from a background check? 23 A Uh-huh 24 Q Did you have an opportunity to look at -- and you've 25 got to give me a "yes" or a "no." This is where	1 the SLED background checks or the background checks 2 that they was waiting on or whatever the case may 3 be. I don't really know 4 Q Okay 5 A But I did receive, like, a letter in the mail from 6 U.S. Security, showing that -- yeah. It's saying -- 7 he was basically showing me that, "Yeah. It's 8 saying that your license is suspended. It's saying" 9 -- this, that, and the third 10 Q And -- and this -- this was a letter from U.S. 11 Security, right? 12 A Like I said, prior -- I talked to Bill, and Bill 13 said "Yeah. Well you know, your license has been 14 suspended." 15 I -- and I told him, "No. I was not aware." 16 That's when he told me "Well, I'm -- I'm going 17 to send you what I -- what I've, you know 18 retrieved, and I'm going to show you." 19 And that's what he did 20 Q Okay. I'm going to -- I'm going to -- 21 MR. HOOD (To Mr. McKinnon) What's the number 22 for the SLED stuff? 23 MR. MCKINNON It's early. It's like 12 or 13 24 MR. HOOD Let me see 25 THE DEPONENT Tab 13?

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1 MR MCKINNON Let --
 2 MR HOOD Let's --
 3 MR MCKINNON -- me --
 4 MR HOOD -- see
 5 MR MCKINNON -- look real --
 6 MR HOOD I've --
 7 MR MCKINNON -- quick
 8 MR HOOD -- got to find my -- let me get my
 9 index
 10 MR MCKINNON Tab 13, maybe
 11 A Tab 13
 12 Q This is a letter from SLED to you specifically
 13 A Uh-huh
 14 Q Do you see that?
 15 A Uh-huh
 16 Q And this is not from U.S. Security And this
 17 doesn't appear to be something that was sent to U.S.
 18 Security It looks like it was sent to you, do
 19 you see that?
 20 A Yeah I see it says "Mr Derrick L Jones,
 21 261 Dixon Road" yes
 22 Q Now, is it your testimony today that you also
 23 received something from U.S. Security about your
 24 license being suspended?
 25 A Well, I want to say "yes" because when I talked to

1 that as well
 2 A Okay
 3 MR HOOD (To Mr Flynn) Is there something
 4 else that we're not getting?
 5 MS FLYNN I've given you everything that I've
 6 got -- I mean, everything that I -- I've asked
 7 and asked and asked That's everything that I
 8 know that exists
 9 MR HOOD Who -- who would we need to talk to
 10 at -- at -- at U.S. Security to find out if
 11 they're giving -- and I -- and I know it's not
 12 you But I need to find out because, you know
 13 we're taking his deposition today, and we're
 14 entitled to ask him questions about those
 15 particular documents because he has a right to
 16 be able to answer questions about those
 17 documents And if they're not giving you the
 18 documents, how am I supposed to ask him
 19 questions about them?
 20 MS FLYNN I understand I believe that they
 21 have given me everything I've been told and
 22 -- affirmed to me that they've -- I've been
 23 given every shred of document -- every piece of
 24 evidence relating to this accident So to my
 25 knowledge there's nothing else that's left I

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1 Bill on the phone and when -- when he -- once he was
 2 telling me that, you know, I'm getting all these
 3 charges, and he was telling me, "It's saying that
 4 your license is being suspended" --
 5 Q I'm --
 6 A -- due to the fact of -- of the marijuana charge and
 7 all this and all that -- he's like, "I'm going to
 8 send you what I've retrieved"
 9 So if this is a letter from SLED directly --
 10 sent directly to me, then, yes I've received more
 11 than one letter
 12 Q Okay And -- and you would've received that letter
 13 from U.S. Security, right?
 14 A Right
 15 Q Now, the -- and the reason I ask that is --
 16 A Uh-huh
 17 Q -- I go through this -- and feel free -- and --
 18 A Okay
 19 Q -- and you can look through this entire packet
 20 A Okay
 21 Q I don't see one thing in this SLED packet that talks
 22 about your license being suspended
 23 A Okay
 24 Q And I'm wondering where that document is from --
 25 from U.S. Security because we haven't been provided

1 would certainly -- I have no problems asking
 2 again
 3 MR HOOD Have they lost an incident report?
 4 MS FLYNN They've not -- they've not told me
 5 that they ever had one
 6 MR HOOD Okay And I'm just going to put
 7 this on the record And -- and of course, you
 8 can object, but I'm going to at this time -- we
 9 obviously are going to continue with the
 10 deposition, but I'm going to request that the
 11 deposition be -- remain -- that it remain open
 12 If other documents are found, that we be
 13 allowed to be able to question Mr Jones about
 14 those particular documents because it appears
 15 that there are at least two -- we're only
 16 30 minutes into this thing -- there are two
 17 specific documents that Mr Jones can recall
 18 that we have not been provided at this
 19 particular time, even though Ms Flynn has said
 20 they have done an exhaustive search and she has
 21 provided us everything and every stick of paper
 22 they can find in regard to this accident
 23 MS FLYNN In the event that -- that
 24 additional documents do arise, I don't have an
 25 objection to the limited scope of the --

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1 MR HOOD Okay
 2 MS FLYNN -- Jealousy --
 3 MR HOOD Okay
 4 MS FLYNN -- related to those documents
 5 specifically
 6 MR HOOD Okay
 7 Q Mr Jones now I'm going to probably just kind of go
 8 through this thing just from the beginning --
 9 A Okay
 10 Q -- basically But I think we're going to start at
 11 I think, Tab 4
 12 A Tab 4 Okay
 13 Q Okay Now, this is a -- this is a statement from
 14 Shawn Cox, who I think was a customer service agent
 15 or a customer service individual at Wal-Mart
 16 A Okay
 17 Q A, the top it's dated June 20th, 2006
 18 A Uh-huh
 19 Q Feel free to read this whole thing because I'm just
 20 going to ask you about two or three sentences in
 21 here
 22 A Okay
 23 MR MORGAN (To Mr McKinnon) Tab what?
 24 MR MCKINNON Tab 4 It's Shawn Cox's
 25 handwritten statement, Doc

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1 A Okay
 2 Q Okay Going down probably about -- the page, and I
 3 start with -- at -- towards the bottom it says "I
 4 told him -- security -- to get her tag number"
 5 It's at the very -- it's towards the bottom. It's
 6 -- said --
 7 A Uh-huh
 8 Q -- "I told" --
 9 A Saying, "and sped towards the stop sign She did
 10 not stop I told him -- security -- to get the" --
 11 yes Yes Right
 12 Q Okay And it says "I told him -- security -- to
 13 get her tag number right after she started towards
 14 'Chick-fil-A', do --
 15 A Uh-huh
 16 Q -- you see that?
 17 A Yes, sir
 18 Q What do you recall about what you were told by Wal-
 19 Mart to do in regard to this specific incident?
 20 A I know it was around 10-10 15ish, somewhere around
 21 there. I got the call over the walkie-talkie,
 22 telling me that there was a shoplifter coming out of
 23 the GM side At that time I asked them, "Well, what
 24 do you want me to do because I am a security
 25 officer, I'm not a -- I'm not a police officer I

1 cannot detain so what do you want me to do"
 2 They told me Well just try to kind of like
 3 delay -- you know try to delay her Try to talk to
 4 her until we can get out there"
 5 When she came out, it kind of appeared to me
 6 that she walked right up to my truck When I rolled
 7 the window down I saw, "Hey, how you doing?"
 8 She said, "Hey how you doing?"
 9 I say "Can I talk to you for a minute, ma'am?"
 10 She said, "Well let me just throw my bag in the
 11 car, and I'll be right back"
 12 I say, "Well you know, no need for all that
 13 It'll -- it'll just take a minute"
 14 Once I said "It'll just take a minute," that's
 15 when she took out running She got in the car At
 16 that time they were trying to -- they were -- they
 17 were trying to leave but my truck was blocking the
 18 exit, far as, like, you know how you come down the
 19 aisle? And my truck was blocking that exit, so they
 20 backed up
 21 Q Well you actually pulled your truck around to block
 22 their exit --
 23 A Right
 24 Q -- didn't you?
 25 A Because I was trying to get the license plate tag

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1 because the whole time all I'm hearing from Wal-Mart
 2 was "You've got to get that license plate tag We
 3 need that license plate tag number"
 4 Q Did they tell you why they needed the license plate
 5 tag?
 6 A No I can't necessarily say they specified the
 7 urgency or the reason why I had to get the license
 8 plate tag but they did specify I needed to get that
 9 license plate tag number
 10 Q Okay And what was your understanding of what would
 11 happen if you didn't get the license plate tag
 12 number?
 13 A I just kind of -- I mean the way -- the way they
 14 were coming off, I kind of felt like if I didn't get
 15 this license plate number I -- I -- I could be
 16 fired for, you know not doing my job They can go
 17 back to Bill They can go back to L S Security and
 18 say, "Well, we don't want him back here on our site
 19 because he's not -- he's not up to the task He
 20 didn't do what we said we wanted him to do" That's
 21 how I kind of felt then
 22 Q Okay And did you recognize the voice that came
 23 over that walkie-talkie?
 24 A Actually, it was more than one voice At first I
 25 was talking to Hope Then I was talking to Mr Cox

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1 And it was kind of going back and forth. I would -
 2 I would want to say Ms. Cox more than Ms. Hope.
 3 But, yeah. It was kind of back and forth.
 4 Q So they were both asking you to get the tag number?
 5 A Yes, yes, sir.
 6 Q Okay. And when they both asked you to get the tag
 7 number, did you feel like you had to get it at all
 8 costs?
 9 A Not necessarily at all costs. I want to say - when
 10 you say "at all costs" it's -- it's -- it kind of come
 11 across like, "by any means necessary." Now, I'm not
 12 going to say necessarily by any means necessary. I
 13 -- I did feel a sense of urgency in the -- in the
 14 sense of I had to get this license plate tag. But
 15 once the suspects flew out of the parking lot and
 16 almost -- they had almost had an accident before they
 17 even left from the front of the -- the Wal-Mart. I
 18 kind of slowed up, like, Wow, because they -- they
 19 almost had a -- a real bad accident. They ran
 20 through the red light, so that kind of slowed me up.
 21 Plus it was -- it was cars in my way now, so I
 22 couldn't really -- you know, like I was telling
 23 them, they wanted to make it seem like it was a
 24 chase. It was no chase. You know, I was just
 25 basically trying to get -- do my job and get the

1 plate tag number, even if it meant going out the
 2 parking lot.
 3 A Right.
 4 Q Okay.
 5 A That's the way they made -- that's the way they came
 6 across.
 7 MR. MORGAN: Object to the --
 8 A It --
 9 MR. MORGAN: -- form.
 10 A -- was like "We don't -- we can care less whether
 11 you can leave the parking lot or not. You need to
 12 get that license plate tag number."
 13 Q Okay. And you ran a red light, too, to get that
 14 license plate tag number.
 15 A Actually --
 16 Q -- didn't you?
 17 A -- when they ran -- yes. When they -- when they ran
 18 the red light, I came to a stop first because it was
 19 car -- like I said, they almost had an accident. It
 20 was cars exiting the Wal-Mart at that light. It was
 21 cars exiting. They almost had an accident there, so
 22 that's what slowed me up. You know what I'm saying?
 23 Q Sure.
 24 A Instead of -- you know, so I wouldn't hit the other
 25 cars. So I kind of you know, slowed up and went

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1 license plate tag. I couldn't really chase them
 2 anyway because once they went through that red
 3 light, they almost -- they almost then had an
 4 accident.
 5 Q Well, you, basically -- you pulled in front of them.
 6 A Uh-huh.
 7 Q They then backed up --
 8 A Uh-huh.
 9 Q -- and went the other way, and then you went right
 10 behind them, didn't you?
 11 A Uh-huh. I went behind them, yes, sir.
 12 Q And then you followed them all the way out of the
 13 parking lot, didn't you?
 14 A Uh-huh. Uh-huh.
 15 Q And when you --
 16 A Uh-huh.
 17 Q -- followed them out of the parking lot, you weren't
 18 supposed to do that, were you?
 19 A No, sir. I was not supposed to follow them out of
 20 the parking lot. I'd come to that understanding --
 21 I knew that I wasn't supposed to follow them out of
 22 the parking lot but like I said, all I'm being told
 23 is "Look, you got to go get this license plate tag
 24 number."
 25 Q And so you feel like you had to get that license

1 around the other cars and continued to follow, yes,
 2 sir.
 3 Q Okay. And -- and you did that because you felt that
 4 Wal-Mart -- you had to get that for Wal-Mart?
 5 MR. MORGAN: Object to --
 6 A Yes --
 7 MR. MORGAN: -- form.
 8 A -- sir.
 9 Q If -- if you had not felt that urgency, you wouldn't
 10 have followed them out of the parking lot, would
 11 you?
 12 MR. MORGAN: Object to --
 13 A No, sir.
 14 MR. MORGAN: -- form.
 15 A Because I knew I shouldn't have followed them out of
 16 the parking lot. I mean, that was part of my -- my
 17 duties on site. Far as -- you know, we're not
 18 police. We're not able to detain, we're not able to
 19 really follow -- our whole job was parking-lot
 20 security. Make sure ain't no vandalism going on to
 21 cars, make sure that, you know -- stuff like that
 22 that's dealing with parking-lot stuff. But seeing
 23 that I felt like that it was real urgent that I got
 24 this license plate tag and that's how they was
 25 coming across like, "You -- look, man, you need to

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1 get this license plate tag'
 2 And I'm on the walkie-talkie telling them. 'I
 3 can't see this license plate tag number and they're
 4 about to leave the parking lot."
 5 "Man, well, you got to do what you got to do
 6 You need to get that license plate tag number."
 7 Q Okay. Now we go to Exhibit 5
 8 A Tab 5?
 9 Q Yeah. Exhibit 5
 10 A Okay. Exhibit 5. I have an Exhibit --
 11 Q This is --
 12 A -- 4
 13 Q -- I -- I think it's Exhibit 5. That's it.
 14 A That's it?
 15 Q Yes.
 16 A Okay.
 17 Q I -- and I think this is -- this is your statement
 18 A Yes, sir.
 19 Q Okay. If you could just read this to make sure this
 20 is accurate to the --
 21 A Okay.
 22 Q -- best of your recollection.
 23 A Okay. "At around 10 15" --
 24 Q Oh, just -- just to yourself and then I may ask you
 25 questions. But I just wanted to make sure that you

1 A Okay.
 2 Q Now, how long after that was it before you actually
 3 saw this car overturned? Or how long was it before
 4 the car overturned?
 5 A From the time that they called me on the walkie-
 6 talkie?
 7 Q Right.
 8 A It was -- it was a lot of even s that took -- I -- I
 9 have really -- to take a guess, I would probably say
 10 -- I have no clue. It may be a hour, maybe
 11 Somewhere around there.
 12 Q What about three minutes?
 13 A Three minutes?
 14 Q Yes.
 15 A No. Couldn't have happened that quick. For --
 16 reason why I say I couldn't have happened that
 17 quick, because once they got past and around the
 18 first car in the first accident, they continued to
 19 go down the road, 521. They almost had a second
 20 accident going up the ramp and almost slammed in the
 21 back of another lady's car. At that point they
 22 missed by swinging to the left, and they went down
 23 -- I want to say it's the Monroe -- the Monroe Road
 24 --
 25 Q Monroe --

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1 feel comfortable --
 2 A Oh.
 3 Q -- that this is accurate.
 4 A Oh. Oh, yeah, I -- I know it's accurate.
 5 Q Okay.
 6 A Yeah. I wrote this more than one time.
 7 Q At the top it says, "At around 10 -- 10 15."
 8 received a page over the walkie-talkie from Hope,
 9 saying that they had a white female, early to mid-
 10 30s wearing a white top and blue-like sweat pants
 11 coming out of GM entrance."
 12 A Uh huh.
 13 Q Do you -- do you see that?
 14 A Yes, sir.
 15 Q Okay. Now, do you -- are you aware it was really
 16 about 10 05?
 17 A No. That's why I said, "about around 10 15."
 18 Q Okay. Were you around that -- that -- were you
 19 aware that around 10 05, which is the date stamp --
 20 and I'll show you this video --
 21 A Okay.
 22 Q -- later in this thing --
 23 A Okay.
 24 Q -- it has a -- it has a time and date stamp of about
 25 10 05?

1 A -- where --
 2 Q -- Highway?
 3 A -- the -- where the accident actually occurred. At
 4 that point I was -- I was behind the lady at that
 5 point. They had done lost me. And it -- to be
 6 bluntly honest, the only reason why I really kind of
 7 like continued to search was basically because I
 8 knew I was getting ready to get off work. So I was
 9 just like, "Well, I'm going -- I'm going to go and
 10 look, and maybe -- maybe they feel like they done
 11 got away. And maybe they might turn around. Maybe
 12 this not the direction they really wanted to go.
 13 But maybe they might turn around, so if they turn
 14 around, I can turn around and get their license plate
 15 tag and head on back to Wal-Mart." That was it.
 16 When I -- when I went down Monroe Road, there's
 17 a apartment complex, maybe a little bit -- a little
 18 ways down the road to your right. And I thought
 19 maybe that had been them because it was a couple
 20 getting out of their car. It was people getting out
 21 of a car. So I thought maybe that's been them, so
 22 I could've just, you know, rolled in the parking
 23 lot, rolled behind their car, got the license plate
 24 tag number, and -- and hightailed it back to Wal-
 25 Mart. But it wasn't them.

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1 So I come out of that apartment don't even go to
2 the right, go on down a little bit further. Once I
3 was just like "Man they gone." I units around
4 Once I done turned around that's when I see
5 headlights -- well either headlights or hazard
6 lights flashing. That's when I backed up my truck,
7 and then when I got out of my truck, that's when I
8 heard the passenger -- the one that actually came
9 out of the store with the merchandise -- screaming
10 at the top of her lungs for help. I mean,
11 screaming. I -- I've never heard somebody scream
12 like I heard this lady scream.
13 Q Were you aware of the injuries she had?
14 A At the time when I got up to the car -- because I
15 hear her screaming, I goes to her side first. I
16 couldn't get her side door open. She's screaming,
17 saying that -- something to the effect of the chair
18 was on -- on top of her legs or something like that.
19 So I goes to the driver's side, and I'm trying to
20 get the driver's side door open. Once I did that, I
21 -- I observed the driver. She was laying there but
22 -- she was breathing, but it was faintly, like she
23 was losing it. Like, you could see she was losing
24 conscious [sic]. She was not really breathing that
25 much like -- (demonstrates) you know, real short

of losing consciousness.

2 A I don't know if she had lost -- far as -- what --
3 what do you mean by "if she had lost consciousness?"

4 Q Well, I mean her eyes were open? But they were
5 beginning to roll back in --

6 A Yeah.

7 Q -- her head?

8 A They were -- they were open but they wasn't like --
9 like say, you know, how we looking at each other

10 She didn't really like make eye contact. They
11 were -- they were, you know, rolling in her head

12 (Mr. McKinnon exits the deposition at
13 10:48 a.m.)

14 Q Were -- was she -- was she making -- I mean, she was
15 lightly breathing. Was she making any noises like
16 oh" or --

17 A No. Just really the -- the breathing --
18 (demonstrates), you know, gasping for air type
19 (demonstrates) --

20 Q Okay.

21 A -- you know like that.

22 Q Okay. Now, or -- I'm going to Tab 34.

23 A Tab 34. Okay.

24 Q Okay. If you go about halfway down, there's --
25 there's something that says, "0283485903 22 08 43"

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1 breaths.
2 At this the time, the passenger -- the one that
3 came out of the Wal-Mart -- was sitting there like,
4 "Please help us. Please help me. Please help us.
5 My legs" -- the chair was on her leg -- it was
6 actually on top of her legs. And she was -- she was
7 -- and she was in pain.
8 Q Now, you said when you opened the door, the -- the
9 -- the driver, she was lightly breathing --
10 A Yes --
11 Q -- right?
12 A -- sir.
13 Q And she was going -- she was losing consciousness --
14 A She was --
15 Q -- right?
16 A It was -- from what I can remember, when I opened
17 that door, she was -- she was laid back. And I -- I
18 -- I -- I say, "Ma'am, are you okay? Are you -- are
19 you all right?" She -- she -- she didn't even
20 respond. She was -- (demonstrates), and it was like
21 her eyes was rolling in the back of her head.
22 Q Okay.
23 A She didn't even respond.
24 Q Okay. She had not actually lost consciousness at
25 that time, right? She was -- she was in the verge

1 It's right -- 22 -- let me see. It's number --

2 (Mr. McKinnon enters the deposition
3 at 10:49 a.m.)

4 Q Okay. It's No. 3 right here.

5 A Okay.

6 Q Okay? This is the call log from 911 for --

7 A Oh.

8 Q -- for Lancaster County.

9 A Okay.

10 Q And it has the time of this phone call at -- when
11 you go below that "0" -- that "(803)" --

12 A Uh-huh.

13 Q -- "526" -- at 22 08 43.

14 A Uh-huh.

15 Q Do you see that?

16 A I see that.

17 Q Okay. And then it has -- the person that called is
18 on the right about two lines down. It says,

19 "Resident, Huey, Sam C.", do you see that?

20 A Yes, sir.

21 Q Okay. Now I will aver to you that this is the guy
22 that called 911 to report this crash --

23 A Okay.

24 Q -- at 10 08 43, which is about three minutes after
25 the --

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1 A I see that
 2 Q -- car left the parking lot
 3 A I see that
 4 Q Okay? And Mr Huey has given a affidavit
 5 A Okay
 6 Q Mr Huey's affidavit -- just so I want you to be
 7 able to see --
 8 A Okay
 9 Q -- it is 38
 10 A Okay Okay
 11 Q It says "I was outside with my dogs when I heard
 12 tires screeching. There was a silence of a second
 13 or two before I heard a very loud impact. I had a
 14 cordless phone with me as I came back into the
 15 house. I called 911. The time between hearing the
 16 impact and calling 911 was probably ten to
 17 fifteen seconds". do you see that?
 18 A I see that
 19 Q It appears based on this, this accident happened
 20 probably at about 22 08 30 to 22 08 43, somewhere in
 21 that time frame
 22 A Okay
 23 Q That's about three minutes after -- after this
 24 parking-lot incident
 25 A Okay Who is Mr Huey?

1 when -- when Ms Izzard came on the scene, right?
 2 A Yeah. I was already out of the vehicle
 3 Q Okay. You were already in the vehicle you had gone
 4 to the vehicle, you had checked on the driver, you
 5 tried to --
 6 A Wrong. Wrong. When Ms Izzard came up on the
 7 scene, I was at the passenger side, trying to get
 8 the passenger-side door open. I could not get the
 9 passenger side open. When she came down the road
 10 that's when I jumped back into the road and stopped
 11 her
 12 Q Okay
 13 A Uh-huh.
 14 Q So you had already stopped your car
 15 A Uh-huh
 16 Q You had gotten out of your car, right?
 17 A Uh-huh
 18 Q You had gone across the road
 19 A Uh-huh
 20 Q You had -- now -- were you on the same side of the
 21 road, or were you on the opposite side of the road?
 22 A Far as what? Far as where my truck was parked?
 23 Q Yes
 24 A Like I said, when I turned around and -- when I
 25 turned around, that's when I -- that's when I

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1 Q He's the person that called 911
 2 A Okay
 3 Q If you go to the next statement -- excuse me. It's
 4 -- might be the one before that. Let me see. I
 5 think it's -- it's Ms Izzard, the --
 6 MR. MCKINNON (To Mr Hood) It's --
 7 Q -- lady --
 8 MR. MCKINNON -- Tab -- Tab 43. Randy, is the
 9 --
 10 MR. HOOD It's Tab --
 11 MR. MCKINNON -- exhibit.
 12 MR. HOOD -- 43
 13 MR. MCKINNON Yeah
 14 MR. HOOD Not for me. It's not
 15 MR. MCKINNON Here. I'll give you Tab 43
 16 Q This is the statement of Ms Izzard. This is the
 17 African-American lady that -- that you spoke to
 18 A Uh-huh
 19 Q She called at about 22 10, which is probably two
 20 minutes after Mr Huey
 21 A Okay
 22 Q Okay? So there -- you know, Mr Huey calls 22 08.
 23 Ms -- Ms Izzard at 22 10
 24 A Okay
 25 Q Okay? Now, you were already out of the -- the car

1 noticed the -- the hazards going off. And I'm
 2 looking like, "What -- what -- what is that?" So I
 3 backs up. When I backed up, I backed up right there
 4 on the heel -- right there where they went off into
 5 the ditch. Right there
 6 Q On the same side of the road?
 7 A Yes, sir
 8 Q Now -- so you got there and you were on the same
 9 side of the road as they were on --
 10 A Uh-huh
 11 Q -- right?
 12 And you stopped your truck about the same place
 13 that they were off the -- the edge of the road,
 14 right?
 15 A Yeah. Kind of close to it
 16 Q Okay. And then you got out of your truck?
 17 A Uh-huh
 18 Q And you would've had to have kind of got out, and
 19 you would've been a little bit in the roadway and
 20 gone around the front of your truck --
 21 A Uh-huh
 22 Q -- right?
 23 And then you would've had to gone down and --
 24 A Actually, I came around the back of my truck
 25 Q You -- you would've come around the back of your

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1 truck?
2 A Right. Right. Because they was kind of like down
3 in a incline where --
4 Q About --
5 A -- the --
6 Q -- how -- how far do you think that was?
7 A As far as the incline go?
8 Q Yeah.
9 A Not too deep. It wasn't too deep but I was deep
10 enough. It was definitely like a hill.
11 Q Okay.
12 A A little --
13 Q Were --
14 A -- null.
15 Q -- they -- how -- how far were they off the road?
16 A They were -- they were not too far off the road.
17 Like I say, it was a incline.
18 Q Right.
19 A And it's like a hill right there where they went
20 off and you can kind of tell how they went off the
21 incline. And they just -- when they went off into
22 that ditch, they went straight and directly into
23 that tree. That's what it looked like. I mean, I
24 won't say -- they wasn't that far from the road, but
25 it was, you know a -- like, say if you got a

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1 -- a big yard and it's close to a road. And you got
2 a tree. Your tree is not going to be too far from
3 the road but it's going to be not too -- too close
4 to the road as well.
5 Q Okay. So would you say it -- like 30 or 40 feet off
6 the road or
7 A Thirty/forty feet? No. I wouldn't say 30/40 feet.
8 That's --
9 Q Fifteen/twenty feet?
10 A Fifteen/twenty feet?
11 Q Ten/twenty feet?
12 A I say about, maybe, five to ten feet.
13 Q Five to ten feet.
14 A Somewhere --
15 Q Okay.
16 A -- around there maybe.
17 Q Off the road. And that's where they hit the tree,
18 right?
19 A Yes.
20 Q Okay. Now, you would've had to go around behind
21 your truck --
22 A Uh-huh.
23 Q -- and you would've had to -- did you run, or did
24 you walk down to where the --
25 A Well --

1 Q -- passenger side --
2 A -- at first when I got out the truck I kind of was
3 still like "What the hell?" And when I heard the
4 lady screaming that's when I went running because
5 you know that kind of look me like, Wow. When I
6 heard her screaming like, just -- I've never heard
7 nobody scream the way she screamed that night. Pure
8 agony. Pure pain. And that's when I took off
9 running towards the car.
10 Q Okay. And when you got to the car was the window
11 down or was the window up?
12 A I'm not sure.
13 Q Okay.
14 A Not that I can remember.
15 Q When you got there was she in the back or the
16 front?
17 A It appeared that she was in the back of the car, if
18 I'm not mistaken.
19 Q Okay.
20 A It did kind of -- when -- when I -- when I got the
21 door open on the driver's side, she was in the back.
22 --
23 Q Okay.
24 A -- the -- you know, the -- the first -- the girl
25 that was with -- when she said the chair fell on her.

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1 --
2 Q Right.
3 A -- legs. She was in the back of the car. It
4 appeared.
5 Q Okay. So when you -- when you -- you get out of the
6 -- your car, you go around the back of your truck,
7 you hear her screaming, you go to the passenger side
8 of the car --
9 A Uh-huh.
10 Q -- right?
11 A Uh-huh.
12 Q And you got to say "yes" or "no"?
13 A Oh, yes. I'm sorry.
14 Q No problem.
15 A I did a "uh-huh".
16 Q And -- and when you got there, did you try to pull
17 the car door open?
18 A On the passenger side, yes. I did try to pull the
19 car door open. So I would -- I would -- I would say
20 the window couldn't have been open because if the
21 window was open, I would've tried to unlock the
22 door. I don't even know if the door was locked to
23 tell you the honest truth. I just know I could not
24 get that door open. It was -- it was stuck.
25 Q Okay. Now, when you were -- when you -- you come

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1 down. Then you try to -- to -- to get the door open
2 that's stuck. Were you also trying to talk to the
3 lady that was screaming through the glass or -- or
4 would --
5 A I was -- I was telling her, 'Ma'am, I'm -- I'm' --
6 you know, I -- I let her know who I was. I say,
7 "I'm trying to help you. I'm trying to get you out
8 you know. I can't get the door open." I was
9 telling her that, but she wasn't hearing that, man.
10 Ain't no way she could've heard that because she was
11 screaming out of her mind. Screaming.
12 Q Okay.
13 A I mean, I can't even describe the sounds. You --
14 you understand what I'm telling you?
15 Q Sure. She was in pain.
16 A Yes. Definitely. And I mean you know at that
17 point it was just, like, a scary situation. Like
18 this -- this lady could -- could be dying. You know
19 what I'm saying?
20 Q Right.
21 A I don't -- I don't know, you know. So when I seen
22 the first person coming down the road, that's when I
23 -- I went jumping like, "Ho. Stop. Please help."
24 You know what I'm saying?
25 Q Okay.

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1 A And that's how that happened. So I don't know if
2 she heard anything that came out of my mouth.
3 Q Okay. Now -- I mean, but you did try to -- you did
4 at least try to calm her down or you did try to talk
5 to her?
6 A Yes -- yes, sir. I did try to -- I -- I was trying
7 to talk -- I -- I don't know how good I was being,
8 trying to calm her down because I probably was, you
9 know, hysterical [sic] myself, like, Wow, you know
10 So I don't know how good of a job I was doing in
11 trying to calm her down, but I -- I know I was -- I
12 was definitely talking to her like, 'Ma'am, you
13 know, I'm trying to help.' You know, I -- you know,
14 I let her know who I was. I was -- I was pulling on
15 the door. I couldn't get the door open. I'm
16 telling her, "Ma'am, I can't get the door open. I
17 can't get the door open." And at that time when I'm
18 saying, "Ma'am, I can't get the door open," that's
19 when Ms. Lizzard and her daughter came down --
20 Q Okay.
21 A -- in the SUV.
22 Q Okay. Now, from the time that you got there until
23 you saw Ms. Lizzard -- that whole time you went
24 around the back of your truck, you went down and you
25 tried to render assistance; you tried to open the

1 car door --
2 A Uh-huh.
3 Q -- and you tried to talk to Ms. Beckham. What was
4 the amount of time you think it took you to -- to --
5 to do that?
6 A Wow.
7 Q Couple minutes?
8 A Maybe.
9 Q Okay.
10 A I have really no -- I really don't know. I mean it
11 was just like things started happening so fast, it
12 was just like, Wow. I -- I -- I really don't know
13 how long it took, you know, to be bluntly honest.
14 Q Okay. But I mean, in order for you to be able to
15 get out and go and do all those things, it would've
16 at least taken a couple of minutes, wouldn't it?
17 A Yes --
18 MS FLYNN Object --
19 A -- sir.
20 MS FLYNN -- to the form.
21 Q Okay.
22 MS FLYNN (To the deponent) All right. You
23 can answer it.
24 THE DEPONENT: Oh, sorry.
25 Q Okay. And so --

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1 A It would've have to take a little -- it would've had
2 to take some time. That's -- that's what I could
3 tell you.
4 Q Okay. Now, when you got there, was there -- was
5 there -- you've seen people kind of go off the road
6 before, right? And it's like -- it's like -- it's
7 like grass or there's dust that comes up?
8 A Uh-huh.
9 Q What -- what kind of -- how would you describe --
10 when you got there, what did you see?
11 A Like I said, when I rode -- when I went -- continued
12 to go down the road, I turned around. I didn't even
13 see them when I was going in that direction. I
14 actually didn't see them until I turned my vehicle
15 around and looked in my rearview. And that's when I
16 seen lights flashing.
17 Q Why did you turn around?
18 A I was getting ready to go back to Wal-Mart.
19 MS FLYNN You want to --
20 Q So you were on your --
21 A They were --
22 Q -- way to --
23 A They were --
24 Q -- Wal-Mart?
25 A Yeah. I was on my way back to Wal-Mart, like -- and

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1 I'm telling them on the walkie-talkie. 'Hey, they
2 gone. Man. I couldn't find them. I'm on my way
3 back.'
4 Q So were you able to maintain contact with these
5 people?
6 A All the way until we got to -- I would say right
7 there getting ready to go to the bypass. You
8 understand what I'm saying?
9 Q Sure.
10 A Like, saying if we coming -- like, when we went
11 through the red light and they goes up that other
12 little -- they go up a ramp and almost had an
13 accident. I'd say about right to when I got to that
14 ramp, that's probably around -- around the time we
15 started fading in and out. You could hear me, I
16 could hear them. But it was fading in and out then.
17 Q Were they aware that you were -- you were still
18 attempting to get the license --
19 A Yes --
20 Q -- tag --
21 A -- sir --
22 Q -- even --
23 A They --
24 Q -- though --
25 A -- was --

1 was questions that was asked. It was just
2 basically "Uh, well" -- maybe one "Where are you?"
3 Okay. Did you get the license plate tag number?
4 That's about it.
5 Q Did they ever -- the whole time that you -- from the
6 time you left the parking lot till you got back, did
7 anybody ever tell you you weren't supposed to leave
8 the parking lot?
9 A No.
10 Q What would've --
11 A No.
12 Q -- happened if they had told you that?
13 A For as me -- what I would've done?
14 Q Yes.
15 A I probably would've got upset about that because
16 it's like you know -- maybe I would've told them,
17 you know "Okay. It's a fine time to tell me that
18 now, seeing that you -- you were the one's resting
19 that I get this license plate tag number. Now you
20 want to -- talk about, 'Oh, you're not supposed to
21 leave,' you know. Yeah. We know I wasn't supposed
22 to leave. You know what I'm saying? But that's not
23 how you bring it across. You bring it across like
24 you wanted me to get this license plate tag number.
25 Stressed the fact that you wanted me to get this

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1 Q you weren't in the Wal-Mart --
2 A Yes, sir.
3 Q -- parking --
4 A They still was aware that I -- and -- and I -- I
5 stressed to them, "I'm -- I'm -- I'm on my way
6 back."
7 "Well, did you get the license plate tag
8 number?"
9 I'm, "No, sir. I didn't get the license plate
10 tag number. I can't -- they gone. You know what
11 I'm saying? They -- they gone."
12 Q So -- so this was after -- before you saw the car
13 but after you had left the parking lot, you were
14 still having radio contact and --
15 A Yes --
16 Q -- letting --
17 A -- sir --
18 Q -- them know that you had not gotten the --
19 A Yes --
20 Q -- number?
21 A -- sir. Yes --
22 Q And --
23 A -- sir --
24 Q -- what were they asking you?
25 A I was just -- we -- I don't necessarily know if it

1 license plate tag number. 'You need to get this
2 license plate tag number' is what I heard numerous
3 times."
4 Q Okay. Now, in regard to -- you -- you filled out an
5 application to become an employee with U.S. Security
6 Associates, right?
7 A Yes, sir.
8 Q And did you tell the truth on all of your -- the
9 questions that were asked on that application?
10 A I really don't know. Tell you the honest truth. To
11 be honest, I really don't know.
12 Q Well, you -- you had already been convicted of -- of
13 the marijuana possession, right?
14 A Right. Right.
15 Q And there --
16 A And prior --
17 Q -- was --
18 A -- to --
19 Q -- a question on --
20 A Yeah.
21 Q -- there about you had ever been arrested or
22 convicted of anything?
23 A Uh-huh.
24 Q And -- and there was a checked "no." And I was
25 wondering if you did that or if somebody knew that

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1 or -- how did that get there?
 2 A I -- I -- hey I'm not going to say I didn't check
 3 I "no" I could've checked it "no" because you
 4 know I was trying to get a job
 5 Q Sure, I mean --
 6 A So I could've checked it "no" I'm not going in
 7 necessarily say somebody else checked it "no" or --
 8 no I'm not going to -- no
 9 Q Well, it --
 10 A I could've checked it "no" ever
 11 Q It's hard economic times
 12 A Yeah You know I was trying to get a job But at
 13 the same time, it was just like I was never
 14 convicted of none of these crimes
 15 Q Were you -- you --
 16 A I was
 17 Q You --
 18 A -- I was --
 19 Q You pled guilty?
 20 A Right To the simple possession of marijuana And
 21 if I -- if I'm allowed, I would like to stress why I
 22 had to plead guilty to -- to simple possession of
 23 marijuana
 24 I pled guilty to simple possession of marijuana
 25 because when I went to jail, my charges was -- I got

1 you have found -- and it was more than one of them
 2 that searched my car So how could you have found
 3 crack cocaine in my car at all at the time, I'm in
 4 jail?
 5 So I ended up going back to jail at ten o'clock
 6 that morning I got back out at five o'clock I was
 7 -- I -- I was made to plead guilty for simple
 8 possession of marijuana because I was part of a plea
 9 bargain so they could drop the crack cocaine charges
 10 that they know wasn't no -- wasn't no way in hell
 11 they was going to be able to stick
 12 Q Well you -- you had pot though didn't you?
 13 A No, I didn't That's the whole thing This man
 14 didn't find no pot on me And he has no evidence
 15 and he never could prove or show no evidence that he
 16 found pot on me That's -- that's why I was so
 17 angry You understand?
 18 Q Sure
 19 A All right
 20 Q So your testimony is that you pled guilty to it but
 21 you didn't have any pot on you?
 22 A Hell, no This man didn't ever find no pot on me,
 23 man And this is why I went and -- and obtained a
 24 lawyer, you know But like my lawyer told me "Man
 25 the way they trying to write it up -- the way they

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1 stopped for not having a white light over my license
 2 plate tag That was my initial reason why I got
 3 stopped When I went to jail, my charges was simple
 4 possession of marijuana and not driving - not
 5 having a white light over your license plate tag
 6 number I stayed in jail from maybe, twelve
 7 o'clock to -- I got out of jail, like, 8:30 that
 8 morning
 9 When I'm looking for my car, I find my car
 10 They tell me, "Well, the precinct got a hold on your
 11 car"
 12 So I had to call this guy at the precinct He
 13 said, "Well you come on down We'll write you a
 14 slip, and you get your car"
 15 When I get down there, that's when they present
 16 to me, "Oh, well, we -- what do you know about crack
 17 cocaine that we found in your car?"
 18 I said, "Well, hell, you don't know nothing
 19 about -- I don't know nothing about no crack cocaine
 20 you found in my car because I been in jail"
 21 I mean, these people -- these officers on the
 22 scene searched my car for 30 to 45 minutes on the
 23 scene Tore it up from the rooster to the tooter
 24 Everything that was -- everything in my car from the
 25 inside to the trunk was on the ground So how could

1 -- they trying to come at it is -- is you know, you
 2 went to jail for pot, they searched your car, they
 3 found crack cocaine and you got to plead guilty to
 4 this -- to this -- to this marijuana charge in order
 5 to get off the crack cocaine charge"
 6 Q Okay And have you ever been arrested before or
 7 since?
 8 A No, sir
 9 Q Okay
 10 A No, sir I've never --
 11 Q So --
 12 A -- been arrested for marijuana --
 13 Q So --
 14 A I've never been arrested --
 15 Q -- for anything?
 16 A Not for none of that, no, sir
 17 Q I'm not talking about for any of that I'm talking
 18 about for anything
 19 A I have got arrested one time for -- me and a guy --
 20 his name is L. C -- we had a fight He calls the
 21 cops and tell them that I -- I robbed him -- strong-
 22 arm robbery, so I got arrested for strong-arm
 23 robbery, but that charge was dismissed too because
 24 when I was in jail -- in order for me to get out of
 25 jail they had -- he was considered the victim in my

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1 case so they had to get in contact with him before
 2 I was able to be let go
 3 And when they got in contact with him -- in
 4 front of me -- in front of the judge they contact him
 5 or -- by telephone. He -- he told them then "Look
 6 no I -- I -- I want to drop charges. No. This
 7 man do not you know pose a threat to me. I've not
 8 seen him 't'is, 'hat, and the 'bird. So I was
 9 never convicted of that
 10 Q Okay
 11 A But I have been arrested of that. I was arrested
 12 Q Okay. Now I'm going to go -- go back to your
 13 statement
 14 A Okay
 15 Q So --
 16 A What tab is that?
 17 Q That's Tab 5
 18 A Okay
 19 Q Going towards the bottom where it says "I'm
 20 thinking, 'Well, they got away.' So I searched the
 21 area. After about ten minutes, I gave up and was
 22 about to turn around" do you see that?
 23 A Yes
 24 Q That's not accurate, though, is it?
 25 A That was a -- that was a estimated -- that was a ...

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1 guess pretty much, of -- far as the time. Like I
 2 said, I -- I really don't know, you know, the times
 3 I mean so much stuff was going on. I mean --
 4 Q So, Mr. Jones after you --
 5 A -- it could've been ten minutes. It could've been
 6 three minutes. It could've been five minutes. It
 7 could've been a hour. I mean, at that time when you
 8 going through something like that, you're not --
 9 you're not sitting there looking at your watch like,
 10 "Oh, it's -- three minutes done passed."
 11 Q Okay. So we know that you put "ten minutes" here
 12 and you weren't sure if that's right. Now, when you
 13 filled out your application was that -- was that
 14 intentional that you put that you didn't -- you
 15 didn't have any convictions on your record, or was
 16 that --
 17 A No. That wasn't intentional because I was never
 18 convicted of anything.
 19 Q What do you think "pleading guilty" is?
 20 A That's a conviction. But like, I -- I explained my
 21 conviction, though. I explained that, I was, you
 22 know -- yeah. Okay. I was plead guilty to -- to
 23 simple possession of marijuana. But far as I was
 24 looking at it is is, I mean, I had to plead guilty
 25 to that --

1 'Sotto voce discussion between
 2 Mr. Stewart and Mr. McKinnon.
 3 A -- due to the fact of -- to get the crack cocaine
 4 trumped-up crack cocaine charges dropped, I was
 5 explained to me "Yes. You got to -- you going to
 6 have to take the bite on the marijuana charge."
 7 Q So -- so let me -- let me get it right. I just want
 8 to make sure -- please correct me.
 9 A Uh-huh.
 10 Q If you think that it's convicted, you would've put
 11 "convicted," but since it was trumped up, you didn't
 12 think you had to?
 13 A I guess so. Maybe.
 14 Q Okay. Okay. So basically, is it fair to say that
 15 you make up your own rules about what you think is
 16 right and not right?
 17 MS FLYNN: Object to the form.
 18 A No. It's not fair to say I make up my own rules,
 19 no.
 20 Q Well, then, what is it if you decide that it's --
 21 it's -- because it's trumped up, you don't have to
 22 put it on your -- your driver's -- I mean your
 23 application?
 24 A Mar., tell you honestly, I really don't know what is,
 25 man. I -- I really don't know what I was thinking

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1 If I put that on my application, like I said, I --
 2 at the time I was just trying to get a job. You
 3 know, I didn't have a job, I was trying to get a
 4 job.
 5 Q So -- so you would have done what it was necessary
 6 to tell -- whatever was necessary in order to get
 7 the job, right?
 8 MS FLYNN: Object to the form.
 9 A Would I have done anything to get the job?
 10 Q Well, I mean, you -- you -- you put that on -- on
 11 your application, right?
 12 A Did I put it on my -- I probably did.
 13 Q Okay. And -- and then on here it says that -- that
 14 you lost contact with these people, right?
 15 A Uh-huh.
 16 Q Correct?
 17 A That I lost contact with them?
 18 Q You -- you didn't see them crash?
 19 A No. I didn't see them crash.
 20 Q Okay. And so you would've gave whatever statement
 21 was necessary to keep your job, wouldn't you?
 22 A Well --
 23 MS FLYNN: Object --
 24 A I --
 25 MS FLYNN: -- to --

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1 A mean --
 2 MS FLYNN -- the form
 3 A -- if that's how you want to try to play it --
 4 you know "Okay. Because you put this application
 5 well then, there ain't no way in hell that your
 6 testimony could be true." That's fine if that's how
 7 you want to play it but no. And I will take any
 8 kind of polygraph test however you want to set it
 9 up, and it will come out true that I -- I did not
 10 see them crash. That's my testimony.
 11 Q Okay.
 12 A All right.
 13 Q So if you lied once, you ain't going to lie again
 14 right?
 15 MS FLYNN Object to the form.
 16 A However you want to put it. You know what I'm
 17 saying?
 18 Q I'm putting it the way that it is.
 19 A Okay.
 20 Q You lied on your application, so you lying in your
 21 statement too?
 22 MS FLYNN Object to the form.
 23 A No. No. I'm not lying on my statement. Actually
 24 --
 25 Q So --

1 I'm not doing that.
 2 Q Well, you also didn't put that you hit them in the
 3 back and pushed them off the road either --
 4 MS FLYNN Object --
 5 Q -- did --
 6 MS FLYNN -- to --
 7 Q -- you?
 8 MS FLYNN -- the form.
 9 A Are you serious?
 10 Q Yes, I'm serious.
 11 A So for the -- for the record, on the record, I've
 12 never pushed them. I never even seen them crash.
 13 Like I said, when I went down the road by the time
 14 I turned around, that's when I seen the lights
 15 flashing in my rearview. I backed up. That's when
 16 I -- I acknowledged that, it was them that had done
 17 crashed, because she was screaming.
 18 Q So you happened to be on the same side of the road
 19 at the same place where their car went off, and you
 20 were there about the same time that they crashed,
 21 but you didn't see it and you had nothing to do with
 22 it?
 23 A First of all, I wasn't -- how -- how you figure I
 24 was on the same side of the road? When I turned
 25 around, I -- I been time on the same side of the road.

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1 A -- everything --
 2 Q So --
 3 A -- on --
 4 Q -- do --
 5 A -- my --
 6 Q -- you --
 7 A -- statement. I -- is -- I wrote it the way I kind
 8 of seen it.
 9 Q Well -- well --
 10 A Far as the ten minutes go, you want to -- you want
 11 to put out a ten minute, and that's why I'm lying on
 12 my -- on -- on my statement? No. Like I said, when
 13 -- when it happened, I'm not sitting there looking
 14 at my -- at my watch like, "Oh, it's been ten
 15 minutes," or -- or, "It's been three minutes." It
 16 was a estimated -- it was a estimated time. It was
 17 a guess. I don't know how long it was or how long
 18 it took. No, I don't know. Because why? Because
 19 this lady is screaming off the top of her head --
 20 out of the top of her lungs. "Please help me. I am
 21 in pain."
 22 So, no. I'm not sitting there listening to
 23 this lady saying, "I'm in pain" and -- and looking
 24 at my watch, "Well, she's in pain at -- at -- at
 25 10.08," or, "She's in pain at 10-whatever." No.

1 Q Well --
 2 A I had to back up to get to them.
 3 Q Well, that's your story, and you're sucking to it,
 4 right?
 5 A Yeah.
 6 MS FLYNN Object --
 7 A I --
 8 MS FLYNN -- to --
 9 A -- had --
 10 MS FLYNN -- the --
 11 A -- to --
 12 MS FLYNN -- form.
 13 A -- back up and get to them.
 14 Q Well, if -- if it was about two minutes the way
 15 that you said under oath earlier --
 16 A Uh-huh.
 17 Q -- and that was about 10:10 when you talked to
 18 Ms. Izzard, you take that back two minutes about the
 19 same time that Mr. Huey did, you got there about the
 20 same time this accident occurred.
 21 A Wrong. I --
 22 MS FLYNN Object --
 23 A -- did --
 24 MS FLYNN -- to --
 25 A -- not --

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1 MS FLYNN the - 2 A get - 3 MS FLYNN -- form 4 A -- there at the same time, that that accident 5 occurred. No I did not 6 Q Okay. Well, explain that time line to me, then 7 A Man, like I just said, I can't explain the time 8 line. I mean, you know how long ago that's been? 9 That's been, like, two years -- almost three years 10 ago, dude 11 Q I - 12 A Are you serious? 13 Q I know. This family's been living with this -- 14 A Okay 15 Q -- with this deceased -- 16 A And I -- 17 Q -- mother -- 18 A And I - 19 MS FLYNN (To Mr. Hood and the deponent) 20 Please 21 Q -- for three years 22 A And I'm sorry about that 23 MS FLYNN Please 24 A And I'm sorry about that. I mean, you know, I - I 25 was -- I was -- I was hurt that night too. I was in --	1 A That's your opinion. That's how you want to feel. I 2 mean 3 Q Well, I'm living -- 4 A -- was -- I was -- 5 Q -- to get you 6 A I was -- 7 Q You - 8 A -- not -- 9 Q -- explain to me the time line. Mr. Jones. Why 10 don't you explain to me how it works? 11 (Sotto voce discussion between 12 Mr. Stewart and Mr. McKinnon) 13 A Well, far as the time line go, like I said, I wasn't 14 sitting there like this on my watch, like, "Oh, this 15 -- they crashed at such-and-such time. And she's 16 screaming at such-and-such time." No. That's not 17 what I was doing. So the time line could be a 18 little shaky, but other than that, the -- my story 19 is -- is intact 20 Q Okay 21 A And I'm sticking by it, like I said before 22 Q Oh, okay 23 A All right 24 Q Against Mr. Huey and Ms. Izzard and -- 25 A Well --
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1 shock. I didn't -- I mean, for real. Even the 2 cops, when they -- when they came to take my 3 testimony -- when they came to take my statement 4 they were telling me about: "Oh, well, they're no -- 5 they're no strangers to, you know, law enforcement 6 We know them. One just got out of prison." 7 And I told the cop then, "Man, I don't want to 8 hear that, man. This lady -- I'm just finding out 9 this lady done died, man. I don't want to hear 10 that." They didn't care that the lady done died 11 All they cared about was telling me about her police 12 record. I did care, though 13 So I am sorry about, you know, the family 14 grieving and going through what they going through 15 because I wouldn't want that for nobody. I wouldn't 16 want -- for my worst enemy, I wouldn't want nothing 17 like that to happen. You understand? 18 Q Yeah, I understand 19 A Oh, okay. Okay 20 Q I understand you were there about the same time this 21 thing went off the road 22 A Well -- 23 MS FLYNN Object -- 24 A -- that's -- 25 MS FLYNN -- to the form	1 Q -- everybody else? 2 A -- first of all, like I asked you in the beginning, 3 I don't even know who Mr. Huey was, and if he called 4 the police, why the hell wasn't he on the scene? 5 Q He heard the crash 6 A Okay. If he heard the crash, why wasn't he there on 7 the scene? Because Mr. Huey wasn't there, but 8 Ms. Izzard was. She was there, though. See, I 9 stood right next to Ms. Izzard until the cops and 10 them got them out of the car and put them into the 11 ambulance. Me and her stood there, and we talked 12 You understand? But Mr. Huey wasn't there. The -- 13 the person that you -- you telling that called on 14 the phone -- 911 first, where was he at? Since he 15 heard the crash and he called 911, why wasn't you 16 out there on the scene? Where were you at? What 17 was you doing that was so important? You heard the 18 crash. You called 911. Don't you want to see them? 19 Don't you want to see what's going on? If I call 20 911 -- if I hear a crash, I'm going to come outside 21 and I'm going to say, "Man, what's going on out 22 here?" You know what I'm saying? 23 Q Sure 24 A For real 25 Q All right

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1 A Definitely
 2 Q Let's -- let's look at Mr. Plyer's statement
 3 A Okay
 4 Q Mr. Plyer's statement is -- let me see. It is No
 5 44 for you
 6 A Forty four. Forty-four
 7 MR. HODD (To Mr. McKinnon) Sure
 8 Q This is Mr. Plyer's statement
 9 A Uh-huh
 10 Q I think this was the guy that probably -- the -- the
 11 volunteer fire guy or whatever he was that -- that
 12 came up on the scene
 13 A Uh-huh
 14 Q This seems to say that, you know, "Upon EMS's
 15 arrival, a white truck was parked about 15 feet
 16 behind the wrecked car on left side of road facing
 17 north. We asked him to move it, and the driver was
 18 the black man with the dark pants and buttoned white
 19 shirt," which was you
 20 A Uh-huh
 21 Q "He moved across the right-hand side of the road
 22 When state troopers arrived, I approached to tell
 23 them what we had. While telling him what I saw upon
 24 arrival I was going to point out the black man that
 25 was parked behind the wrecked car when I arrived."

1 Q Okay. So did you move your car while you were out
 2 there when the cops came or when --
 3 A Yes. When the cops came. I did move my car. I did
 4 And I -- and I want to point out -- and it says in
 5 here I was facing north. Then that means the
 6 they were facing south. Because like I said, I had
 7 to back up. When I -- when I seen them in my
 8 rearview, I had to back up. You know what I'm
 9 saying?
 10 Q Right.
 11 A So, yeah. I would've been facing north.
 12 Q Were --
 13 A Yeah.
 14 Q Were -- were there -- were there flashing lights, or
 15 were there just lights --
 16 A They looked --
 17 Q -- on?
 18 A It looked like it was the hazards on, you know? It
 19 was -- they were yellow lights. I know they were
 20 flashing, yes, sir.
 21 Q Okay.
 22 A Yes, sir, it was.
 23 Q Okay. Now, I want to kind of just go from you
 24 know, the -- to make sure I get in my mind exactly
 25 what -- what your testimony is about this. You said

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1 but he was already gone, so I asked the lady that
 2 was talking to him where he went, and she stated,
 3 "He went back to Wal-Mart."
 4 A Uh-huh
 5 Q Now, it's your testimony under oath today that you
 6 were there when the police got there --
 7 A I was there when the police got there
 8 Q -- and -- and you talked to the police on the scene
 9 A No. I did not say I talked to police on the scene
 10 I said I was there when the police got there. I
 11 actually witnessed them take these people out of the
 12 car. I actually seen them get taken out the car.
 13 I actually seen them get put in the ambulance. Me
 14 and the lady actually both seen them get put in the
 15 ambulance and that's when I left. After they got
 16 put in the ambulance, that's when I left. No. I
 17 never stated that I had talked to the police on the
 18 scene. No.
 19 Q Okay. Because in this it says, "When the fire truck
 20 and other fire personnel arrived, she moved to the
 21 right-hand side of the road", talking about
 22 Ms. Lizzard
 23 Did you continue talking -- how long do you
 24 think you were out there with Ms. Lizzard?
 25 A I have no clue

1 that -- that you -- you went down, and you -- you
 2 spoke to her. And then you went back and then you
 3 stopped Ms. Lizzard?
 4 A Uh-huh
 5 Q Did you -- when you went back up the road to stop
 6 Ms. Lizzard, did you go out in the middle of the road
 7 and wave your hands, or were you on the side of the
 8 road, or -- or --
 9 A I don't think I necessarily made it to the middle of
 10 the road. I was probably off to the side of the
 11 road, screaming like this. I mean, I am a big,
 12 black male, like it stare in there, so I'm pretty
 13 sure she seen me when them lights hit me. And I'm
 14 like this: "Hey, hey stop. I need help." So,
 15 yeah. I'm not -- I can't necessarily -- I don't
 16 really have a accurate place of where I was at in
 17 the road.
 18 Q Sure. Sure. And -- and then could you describe the
 19 conversation that you had with Ms. Lizzard?
 20 A Far as when she first pulled up on the scene?
 21 Q Sure. I mean, just when you first talked to her
 22 when she first drove up.
 23 A Yeah. I -- when I stopped her, I -- she say, "Is
 24 everything all right?"
 25 I say "Well, ma'am," I say "these ladies done

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1 appeared to have a accident. I said, "Could you
2 please call 911?" is what I told her.
3 Q Okay.
4 A That's -- that's what we talked about.
5 Q Okay. And when you said that other what happened
6 there?
7 A That's -- when she said "I'm going to call 911"
8 she was on the phone getting ready to call, I ran
9 back to go check on them.
10 Q Okay. And when --
11 A Uh-huh.
12 Q -- you ran back to go check on them, what -- what
13 side --
14 A That's --
15 Q -- of --
16 A -- when --
17 Q -- the car --
18 A That's when I went to the driver's side of the door
19 because I couldn't no longer get that -- I couldn't
20 get that passenger-side door open, so I went to the
21 driver's side of the door and I got that door open.
22 Q Okay. And what happened when you got that door
23 open?
24 A Like I said, when I got to that door and finally got
25 that door open, the driver was laying there, you --

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1 know kind of out of -- she was out of it. She was
2 -- I mean, she really -- other the gasp-for-air-type
3 sound that's the only kind of movement or sounds
4 she -- she was making. The other -- the
5 other woman was still screaming in pain, in agony.
6 I mean, like I said, screams that I ain't never
7 heard nobody make.
8 Q Right.
9 A You know, terrifying.
10 Q Okay. And -- and then when you got there -- when
11 you opened the door, what did you -- did she have on
12 her seat belt? Did she not have her seat belt on?
13 Do you recall anything --
14 A I --
15 Q -- like --
16 A -- don't --
17 Q -- that?
18 A -- recall.
19 Q Okay.
20 A I don't -- I don't really remember.
21 Q Did you try to render any aid to her, like try to
22 pull her out or -- or --
23 A The driver, I knew I couldn't have pulled her out.
24 I -- I couldn't even see her legs, honestly. I -- I
25 don't even remember seeing her legs. All I remember

1 whether laying back, you know what I'm saying? And
2 when -- when -- when I was observing her laying
3 back that's when -- what is it -- the -- the fire
4 the dude?
5 Q Yeah.
6 A That's where he was -- he was there by this time.
7 And you know it -- it was just crazy, man. I
8 don't -- I don't remember seeing no seat belts --
9 not that I can remember or anything like that. No.
10 Only thing I remember is I didn't try to. I don't
11 know CPR, and so, you know --
12 Q Sure.
13 A So the only thing I could've tried to do was try to
14 pull her out, but I didn't want to move her because
15 --
16 Q Sure.
17 A -- you know she was -- she was out of it, man. I
18 mean -- and by seeing that that even more you know
19 what I'm saying, just hypophened [sic] the situation
20 like, Wow, you know. So, yeah. I -- I couldn't do
21 nothing.
22 Q Okay. Now, after you -- you -- you -- you realized
23 you couldn't do anything and you see this fire guy
24 come up on the scene what happens then?
25 A He's talking to me, like -- he's asking me, like,

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1 "What happened?"
2 I'm like, "I really don't know what happened.
3 They had a accident." I said, "She's" -- I say, "We
4 need to get this lady out. She's screaming at the
5 top of her lungs. She's saying how, you know, her
6 legs" -- it was something about her -- I know it was
7 something about her legs. She kept saying something
8 about her legs.
9 And we tried to get her out. You know, we're
10 trying to open that door. While we're trying to
11 open that door, that's when police and people like
12 that start popping up on the scene. And from that
13 point on, I kind of just backed up off the scene --
14 you know, backed up off -- that's when I -- I was in
15 the road talking to Ms. Izzard.
16 Q Okay.
17 A When they got up there. You know, by that time they
18 -- they had got there and --
19 Q Do you recall the conversation you had with
20 Ms. Izzard?
21 A Not really. I recall maybe saying -- shh, I don't
22 even remember what we was talking about. I know she
23 asked me was I a cop. And I was like, "No. I'm a
24 security officer." You know what I'm saying? I --
25 I had no reason -- I don't even know why she

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1 would he asked me that when you can plainly see I
2 - it says "security"
3 But other than that, I don't really remember a
4 - a full-fledged conversation you know like that
5 -- you know, like -- you know but only thing I can
6 remember is we was talking about -- that she asked
7 me who I was I told her I was security from Wal-
8 Mart And she was like "Well" you know "what
9 happened?"

10 I said, "Well it seem to me that they done
11 went off this ditch right here and done hit a tree"

12 She was like, "Oh, okay"
13 And you know, I don't -- whatever else was
14 said, I -- I really don't know Probably general
15 conversation But other than that, though -- that
16 -- around that time while we talking, they --
17 they're -- they're tending to them in the car,
18 trying to pull them out, getting them out, putting
19 them in the ambulance At that time that's when I
20 did leave

21 Q Did -- did you hear -- before you got back in your
22 truck, did you have your walkie-talkie with you?

23 A Yes

24 Q Okay And -- and while you were there on the scene,
25 either when you first went down to try to open the

1 So I'm telling him "Well I'm about to do that
2 now I just got done finishing writing a statement
3 so I'm about to write this incident report"
4 So I was up there for a little second, you know
5 what I'm saying? I don't -- I can't recall how
6 long maybe I was up there, far as times
7 Obviously I'm not going well on times right now
8 but I was up there for a little second I was up
9 there for a minute I even talked to Hope and then
10 We -- we all -- it was another guy up there named
11 "Chuck"

12 Q Okay Do you know what y'all talked about?
13 A Basically, what happened When I -- when I was --
14 -- when I first came back to Wal-Mart and I was
15 telling them what happened and I was in the break
16 room writing the first statement that's when I
17 learned that the driver had passed, you know what
18 I'm saying? I didn't know --

19 Q Right

20 A -- that the driver was dead or had died, you know,
21 from -- I had come later on to know that she died on
22 the scene I didn't know that at first, you know
23 what I'm saying?

24 Q Sure

25 A I didn't know that until -- I didn't even know she

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1 passenger door or when you tried to flag down
2 Ms. Izzard, when you tried to open the passenger
3 door when you went back to talk to Ms. Izzard, was
4 -- was the walkie-talkie -- was there any
5 conversation going on the walkie-talkie?

6 A No, sir I think I was out of range at -- by that
7 time

8 Q Okay And then I believe you said that after you
9 and Ms. Izzard quit talking, then you went back to
10 Wal-Mart?

11 A Yes, sir

12 Q Okay Did you ever speak to any police officers
13 about what occurred?

14 A Not on the scene

15 Q Okay

16 A Not -- not on the scene of the accident I talked
17 to police after the fact They came to Wal-Mart I
18 had to come back up to Wal-Mart I actually stayed
19 at Wal-Mart for a minute, and I had -- I wrote the
20 first statement Then I wrote the incident report
21 that we can't seem to find I know I wrote this
22 incident report because when my father got up on the
23 scene, I'm telling him what's going on and what done
24 happened So he's stressing, "Well, you know you
25 got to write that incident report"

1 was dead until, like I say, Chuck -- I don't even --
2 I don't recall his last name, but I didn't know that
3 she was even dead until Chuck came and told me while
4 I was writing my statement: "Well, you know, the
5 lady done died you know"

6 I was like, "Wow That's that's crazy"

7 Q Okay

8 A You know?

9 MR. HOOD He told us we've got two minutes
10 left, so we can go on take a couple minutes
11 We can -- we can get you anything -- if there's
12 anything to eat or anything you need just
13 you just feel free, man

14 THE DEPENDENT Okay

15 (Off the record from 11:25 a.m. until
16 11:39 a.m.)

17 THE EXAMINATION BY MR. HOOD CONTINUES

18 Q Mr. Jones I want to try to go back to just a couple
19 things What is your dad's name?

20 A My dad name was Sammy Ray Jones

21 Q Okay And is Mr. Jones still employed with U.S.
22 Security?

23 A No, sir

24 Q But he was with them in, I guess May/June of 2006,
25 right?

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1 A Yes sir
 2 Q Okay Now was he considered a supervisor or was he
 3
 4 A No No I couldn't say so much -- no It was just
 5 me and him that worked the site When I was told
 6 about the job, they had just let go a prior officer
 7
 8 Q Uh-huh
 9 A -- for I don't know, whatever reason -- he was
 10 acting like he was a police officer, something like
 11 that -- and so, you know, I guess, you know, Bill
 12 and my dad talked about it And my -- you know my
 13 dad knew I was looking for a job so I guess he told
 14 Bill, "Well, you know, my son is looking for a job"
 15 And that's how that happened and -- but necessarily,
 16 no, he was not a supervisor We was just workers
 17 You know it was just --
 18 Q Did he ever sign off on your reports or
 19 A Not that I can remember
 20 Q Okay
 21 A Not that I can remember
 22 Q Now, where -- where does he -- I know that you've
 23 listed a couple of different addresses I've seen
 24 one in Lancaster and one in Camden
 25 A Uh-huh

1 was aware of that incident because like I say me
 2 and I didn't really too much he too much on talking
 3 terms far as my personal life go
 4 Q Okay
 5 A No
 6 Q Was he have been any of the -- would he have been
 7 involved in any way in your actual hire or would
 8 that have been Bill Thompson?
 9 A Far as hiring me?
 10 Q Yes
 11 A Just Bill Thompson I mean, he -- he took me up to
 12 the office to go fill out the application But
 13 other than that far as the hiring process that --
 14 that had to be nobody but Bill I mean, he wouldn't
 15 have nothing to do with hiring me, getting me hired,
 16 or nothing like that
 17 Q Okay I noticed on your driver's license the
 18 driver's license that you had with -- that they had
 19 -- you know they made a picture of your driver's
 20 license?
 21 A Right
 22 Q It still had the Camden address, but the application
 23 looked like it had the Lancaster --
 24 A Right
 25 Q -- address

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1 Q Does he live at either one of those --
 2 A I was -- those different addresses, I had lived in
 3 Camden Then I had moved to Lancaster with him --
 4 Q Okay
 5 A -- when I got -- you know, prior to getting a job.
 6 Q Okay
 7 A Uh-huh
 8 Q How long had you been living with him prior to
 9 getting a job?
 10 A I'd say about, maybe, two weeks
 11 Q Okay.
 12 A Somewhere around in there
 13 Q Now, has he become aware --
 14 A Three weeks
 15 Q Was he aware of this situation, involving -- in
 16 February of 2006, involving the marijuana and the
 17 crack cocaine and all that other stuff?
 18 A No. I don't -- I -- I can't say he was aware
 19 because, you know, me and my pops, we -- we -- we
 20 touch and go, you know what I'm saying Like, we
 21 talk here and there We don't -- we have not the
 22 best relationship but I ain't going to say the
 23 worst relationship
 24 Q Sure Probably like all of us
 25 A True, indeed So, no I can't so much say that he

1 A That's because I hadn't had -- got -- had a chance
 2 to get to the change of address and all that good
 3 stuff
 4 Q Did you ever change it, or just because your license
 5 was suspended, you just didn't go, it changed?
 6 A Not necessarily because my license was suspended
 7 Like I said, I didn't -- at the time I didn't know
 8 my license was suspended, so I just probably was
 9 being lazy on -- on the fact of changing the address
 10 and stuff like that
 11 Q Did anybody -- did Mr. Thompson ever ask you about
 12 why they were different?
 13 A No.
 14 Q Okay
 15 A Not to my -- not to my knowledge
 16 Q Okay Do you recall the conversation that you had
 17 with Mr. Thompson when you -- or -- I want to try to
 18 kind of go through your -- just your -- your hiring
 19 process.
 20 A Okay
 21 Q Now, in regard to Mr. Thompson -- I mean, let me
 22 kind of go back and I apologize
 23 If you would just kind of take me through when
 24 you first heard about the job -- and I may ask you
 25 some questions in between -- until you were actually

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1 hired. Just, like how did you hear about it?"
 2 A My mom and my father had -- you know he -- be
 3 coming into contact. You know they do what they
 4 do. And I guess that she had done told him that I
 5 had -- you know I hadn't had a job, you know
 6 whatever. And so he -- I guess he had told her
 7 because she told me through him, that "Well, your
 8 caddy say that there's a opening -- it's a position
 9 getting ready to open at -- for the company that he
 10 work with."
 11 So that's how I found out about the job
 12 initially. And he took me up there. When I finally
 13 got up there, you know, to his house so he can take
 14 me to go put the application in, I mean, he took me
 15 to go put the application in and that was pretty
 16 much it.
 17 Q When you put the application in, was that the same
 18 day they did the drug test and everything?
 19 A I want to say no.
 20 Q Okay.
 21 A I think they did the drug test during the training
 22 Q Okay.
 23 A If I'm -- if I'm not mistaken, I think they did the
 24 drug test during the training classes or -- or right
 25 there before we was getting ready to go through the

1 class?
 2 A Well we did the training class there.
 3 Q And he --
 4 A A.I.S. Security.
 5 Q In Charlotte?
 6 A Yeah. At the office in Charlotte.
 7 Q Right.
 8 A So I don't -- to my best recollection, I don't know
 9 if we did the training that same day I did the drug
 10 test. I want to say, yeah, maybe, but I'm not sure
 11 I might have came back because I know I came back a
 12 couple of days. I know we had three days of
 13 training alone, so I might've came back to do the
 14 drug test and then came back to do the training. Or
 15 it might have on the same day --
 16 Q Okay.
 17 A -- of -- you know, the training started
 18 Q Okay. Now -- now, when -- when you filled out your
 19 application, they did a -- a background check.
 20 right?
 21 A Uh-huh.
 22 Q Do you know -- do you know if -- if there was going
 23 be an NCI -- I mean like a -- a statewide background
 24 check or it was a Lancaster County background
 25 check?

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1 training classes because they had to come up there
 2 for the training classes. I think that day is when
 3 they did the initial drug test.
 4 Q Okay.
 5 A I'm not sure if they -- I -- I want to say, no, they
 6 didn't -- we didn't drug screen the first day I put
 7 my application in.
 8 Q Now, so --
 9 A I'm not 100 percent positive on that, but --
 10 Q That's the best you can recall.
 11 A That's the best I can recall.
 12 Q And to the best of your recollection, you would not
 13 have done the drug test until the day of your
 14 training?
 15 A Right. Right before training.
 16 Q Okay. And does that mean that they would have
 17 already hired you as an officer before they did the
 18 drug screen?
 19 MS FLYNN Object to the form.
 20 A No. I -- I did the drug test before I was able to
 21 even be put into the training class. You see what
 22 I'm saying?
 23 Q But -- but to the best of your recollection, would
 24 you have done the drug test and then you would've
 25 gone from taking the drug test over to the training

1 A No, I don't know.
 2 Q You don't know anything about that?
 3 A Uh-huh.
 4 Q Would -- would -- you wouldn't have told somebody to
 5 do Lancaster County only?
 6 A No.
 7 Q And that would've been decided by U.S. Security?
 8 A They just told me to get a background check, you
 9 know what I'm saying? So I just -- I just went and
 10 got a background check done, far as South Carolina
 11 go, you know what I'm saying. They say because I
 12 was -- I was being trained to go to -- into work in
 13 South Carolina. They was, like "So you have to
 14 have a background check done in South Carolina."
 15 Q Okay. Let's go to the SLED -- let me see. I think
 16 it's Tab 6. This is just your arrest record.
 17 A Okay.
 18 Q And this is -- this is just some information we've
 19 provided. It has -- it's not just the SLED arrest
 20 record. It has some other stuff as well.
 21 A Okay.
 22 Q It may've been something that -- this has the date
 23 of the check as March 21st, 2007. Then it says,
 24 "Derrick Lamont Jones," and then it has the strong-
 25 arm robbery that you told me about.

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1 A Uh-huh
 2 Q And then if you go over to the next page, it has the
 3 arrest for the crack cocaine
 4 A Uh-huh
 5 Q - possession of drug paraphernalia, and the
 6 marijuana. And you -- you had told us that -- that
 7 this was a charge and that you did not have any
 8 marijuana?
 9 A Right
 10 Q Okay
 11 A Right. Right. The way -- the way -- the way it was
 12 set up was his. I got charged with simple
 13 possession of marijuana. When the man stopped me,
 14 he said I -- but this man followed me for almost
 15 2 1/2 miles before he pulled me. When pulled me, he
 16 said, "The reason why I stopped you tonight is
 17 because South Carolina law permits you to have
 18 white light over your license plate tag number."
 19 When he said that, he followed up saying, "Well, I
 20 smell marijuana, so can I, you know, search your
 21 car?"
 22 I said, "Sure, you can search my car because
 23 I'm -- you know, I don't know where you're smelling
 24 marijuana." I said, "You're not even smelling" --
 25 I probably -- I think the reason why things

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1 went down. I can't say that I was 100 percent --
 2 what's the word I'm looking for? -- cooperative, far
 3 as, like, I might've been a little frustrated
 4 because, you know, this man had done followed me
 5 almost 2 1/2 miles before you pulled me. You know,
 6 if I would've slammed on brakes or had -- or if
 7 anything happened to where I had to slam on brakes,
 8 this man would've been in the -- in my backseat.
 9 That's how close he was on me, you know, following
 10 me. And so when he asked me if he could search my
 11 car, I gave him permission to search my car. He was
 12 like, "Well, do you mind if I search you?"
 13 You know? I was -- I didn't really say yes or
 14 nay. I was just like, "Whatever, you know, do what
 15 you got to do, so I can get -- get on -- so I can go
 16 on home," you know.
 17 So he searched me and when he searched me, he
 18 claimed to have done found what they call a "roach."
 19 But he never showed me the roach. He -- he did not
 20 finger like this, wasn't nothing in your hand, so
 21 what do you -- what are you taking me to jail for?
 22 I think basically he took me to jail because I told
 23 him when he stopped me and when we were talking, I
 24 said, "Man, look here, man, you know, you might as
 25 well let me go on home because you're not going to

1 get no badge of honor tonight. Just, you're not
 2 going to -- it's not going to be no major bus that
 3 you're going to" --
 4 You know what I'm saying? I was -- I was kind
 5 of being nasty because I was frustrated with -- I
 6 was tired. I mean, you had done been following me
 7 for -- for this long before you -- you pulled me.
 8 And then to come to me and say, "Oh, I'm pulling you
 9 because of a -- a white light not being over your
 10 license plate tag." Yeah, I was kind of
 11 frustrating, so I know I wasn't the most cooperative
 12 at the time.
 13 Q Okay. I'm going to Tab 7. Now this is -- this is
 14 just -- this is an incident report. Did -- this is
 15 -- this is a shoplifting report that was done. In
 16 regard to this, have you ever seen this report, this
 17 incident report?
 18 A Not that I can say so. No, sir.
 19 Q Okay. If we go to -- I like at the bottom of the
 20 page, it'll -- it'll say right here, "00983." It's
 21 like, the fifth page. I think -- or the fifth, or
 22 sixth page, but it's 00983.
 23 A Eight three. Uh-huh.
 24 Q This has an additional narrative.
 25 A Uh-huh.

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1 Q And this -- this says -- there was just a part -- I
 2 just want to ask you about a couple of things.
 3 A Okay.
 4 Q In the second paragraph, it says, "The security
 5 guard found the wreck while returning to Wal-Mart
 6 after first losing sight of the vehicle. He found
 7 the wreck at the intersection of Craig Manor Road
 8 and Monroe Highway."
 9 A Uh-huh.
 10 Q Is that where you found it at?
 11 A Yeah. I think that's the name of the road, Craig
 12 Manor and -- I know it was the Monroe Road Highway
 13 or something like -- I knew it was Monroe-something.
 14 Yes.
 15 Q Okay.
 16 A That's -- that's the road.
 17 Q It says, "He attempted to render aid to the
 18 occupants and did verify that this
 19 was the suspect vehicle. The SCHP is investigating
 20 the fatal accident." Do you see that?
 21 A Where are you right now?
 22 Q Just -- that's right under -- the couple sentences
 23 underneath that.
 24 My question to you is that, it appears that
 25 this was Patrolman Campbell?

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1 A Okay
 2 Q Do you recall speaking with Patrolman Campbell about
 3 this particular case?
 4 A If he's the guy that came -- that time at the Wal-
 5 Mart to give my statement to, then yeah I really
 6 don't know the names of the officers that I gave my
 7 statements to. Well, like I said I didn't talk to
 8 nobody on the scene. Didn't no cops talked to me on
 9 the scene. I didn't talk to no cops on the scene.
 10 Q Okay. I says -- at -- at the bottom of the fourth
 11 full paragraph, it says "Jones advised Trooper
 12 Howard that he tried to follow them to get their
 13 license plate number, but they were driving
 14 recklessly. And he lost sight of them on Craig
 15 Manor Road at U.S. 521."
 16 Do you see that?
 17 A Uh-huh.
 18 Q Do you recall making that statement?
 19 A Craig Manor Road.
 20 That could be true. That could be true because
 21 -- you know, when they were driving recklessly they
 22 did lose me and I didn't -- I wasn't able to obtain
 23 the license plate tag number.
 24 Q Well, 521 is the road that runs up and down -- it's
 25 not the road that -- they would've come off on --

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1 Highway 9, right?
 2 A 521 is the road that Wal-Mart is on.
 3 Q Okay.
 4 A Uh-huh.
 5 Q The -- the front of --
 6 A The front of Wal-Mart. That's 521.
 7 Q Right. And the side of it's Highway 9, right?
 8 A Off to the right?
 9 Q Yes. If you were going out the front door to the
 10 right.
 11 A If you coming out the front and you go to the right
 12 coming down, that's -- that's 521. And you go down
 13 a little bit further, you will go up a little ramp.
 14 Q Okay.
 15 A Now I have no idea what -- that might be No. 9 or
 16 whatever, but I know that's that ramp. That's why I
 17 keep saying that's the ramp because I don't know the
 18 road.
 19 Q Okay. And do you recall saying this to this
 20 particular trooper, that -- that you lost sight of
 21 them at Craig Manor Road at 521?
 22 A Not that I recall because I wouldn't have known the
 23 name of the road. See what I'm saying? That's why
 24 I keep saying they went up the ramp.
 25 Q Right.

1 A You know? I wouldn't have known the name of the
 2 road.
 3 Q Okay. Okay. Going to Tab 11. Okay. This says
 4 "U.S. Security Associates Security Officers Guide."
 5 Do you see that?
 6 A Yes, sir.
 7 Q Did you ever receive a little pamphlet like this
 8 from U.S. Security?
 9 A Yes, sir.
 10 Q Okay. I just want to go to the next page. Could
 11 you read No. 1 for me?
 12 A Hunh. "To accept the responsibilities and
 13 obligations of my role as a security officer that
 14 include protecting life and property, preventing
 15 and reducing crime within the limits of the facility
 16 we're assigned, upholding the law, and respecting
 17 the constitutional rights of all persons."
 18 Q Okay. Under "protecting life and property," how
 19 does leaving a parking lot and chasing somebody --
 20 how is that protecting life?
 21 A Well, like I said, I was n't chasing anyone. I
 22 didn't -- I -- well, that's what's being said, I was
 23 chasing them. But I don't feel like I was chasing
 24 them. I was just trying to get a license plate tag
 25 number. And I think by me trying to get they

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1 license plate tag number, that's what hypenated [sic]
 2 the situation, you know, to where they was driving
 3 as recklessly and stuff like that.
 4 Far as protecting life and property? I can't
 5 say that I was protecting anybody's life. Like I
 6 said, man, my duties was -- I was wrong for leaving
 7 that parking lot.
 8 Q Okay.
 9 A That was my mistake. That was the mistake that I
 10 made. But like I say, I made that mistake due to
 11 the fact of because I'm being told, "Oh, you need
 12 that license plate tag number."
 13 Q Okay.
 14 A "Go get it." I mean, far as I'm concerned, I'm not
 15 gone -- I'm not chasing you all hard down for some
 16 items that you stole out of Wal-Mart, you know what
 17 I'm saying. I mean, come on, this is Wal-Mart, I'm
 18 not taking it that serious. I did take my job
 19 serious, but not to the point to where I'm going to
 20 chase you down and bump the back of your car and
 21 make you have an accident. Naw. It's not -- it's
 22 -- no. It's not really the way. It's trying to make
 23 it be seen. Naw.
 24 Q Okay. I'm going to go to -- at the top it's -- like
 25 at the very top it has like, 1-0-0, that kind of

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1 thing
2 A Okay 'Mission'
3 Q Yes
4 A Uh-huh
5 Q Under 12 it says 'The -- the security officer is
6 not a police officer nor does he have any police
7 powers of arrest.' Do you see that?
8 A Where you at, Mr --
9 Q Under 12
10 A One point two
11 Q I'm -- I'm sorry. It's the next page.
12 A One point two?
13 Q Yes
14 A 'Enforcing client and company policies and' --
15 Q Under --
16 A No
17 Q -- 'Mission'
18 A "Mission" Right in here?
19 Q Yeah. And it'd be 1 -- 1.2, not 1 1.2, but 1 2
20 A One point -- 1 2 Oh, okay "The security officer
21 is not a police officer, nor does he have any police
22 powers of -- of arrest." You -- that's right
23 Q Okay So -- so you --
24 A That's -- I went into that situation knowing that I
25 could not detain them or arrest them. My -- my

1 Q Are you aware that he said that under their policy
2 that he is nobody supposed to be detained after
3 they had -- that they've left the goods here at the
4 door?
5 A No, sir. No, sir.
6 Q No one told you that?
7 A No, sir.
8 Q Have you ever been told that by Wal-Mart?
9 A No, sir.
10 Q Do you know why you haven't been told that by Wal-
11 Mart?
12 A No, sir.
13 Q Okay. At the bottom it says "The security's
14 officer's duty is to prevent rather than to
15 apprehend." Do you see that?
16 A Yes, I do.
17 Q Is that your understanding?
18 A Yes, it -- yes, it is. And that way -- like I said
19 before that was the mistake I made. Trying to
20 apprehend that license plate tag number, that was
21 the major mistake that I made. That was the only
22 mistake that I made, though.
23 Q Okay. Now I'm going to page -- and it is right
24 here it says, "page 7." You can just kind of see
25 the pages they are

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1 whole duty was then -- I mean, I'm going at it as
2 just trying to slow them up or trying to delay them
3 from leaving the parking lot so they can come and
4 detain them or whatever the case may be.
5 Q How are you going to slow them down or -- or -- if
6 you're -- if you're --
7 A Well, I just --
8 Q -- following them from the parking lot?
9 A Well, I'm talking about when they first came out of
10 the -- the Wal-Mart, you know, I'm being told "They
11 coming out of the Wal-Mart." But I couldn't detain
12 them, so I was just basically trying to, you know
13 talk to her, like, "Yo, hey. How you doing? Can I
14 talk to you for a minute?" Kind of slowing them up
15 -- trying to slow up the process so they could
16 detain them. I mean, we parking lot security, we
17 have -- I can't detain you for what you done store
18 out of the -- out of Wal-Mart. See what I'm saying?
19 Q Are you aware that a deposition has been taken of a
20 Wal-Mart person who said they had dropped any
21 merchandise that had been taken at the door and that
22 they had not actually shoplifted anything?
23 A No, sir.
24 MR MORGAN Object to form
25 A No, sir.

1 A Yeah
2 Q And it'd be page 7
3 A Okay
4 Q On 3 is --
5 A Uh-huh.
6 Q -- can you read that for us?
7 A Yes. "A security officer on duty cannot leave post
8 for any reason until properly relieved unless there
9 is no scheduled relief shift."
10 Q Okay. Was your dad scheduled to relieve you that
11 night?
12 A Yes, sir.
13 Q Okay. And so you were not supposed to leave your
14 post for any reason -- right?
15 A Yes, sir.
16 Q And -- and you left your post, right?
17 A Yes, sir, I did.
18 Q And when you left your post that meant that there
19 was nobody that was in that parking lot protecting
20 other people, right?
21 A That's true.
22 Q Okay. I'm going to page 11. It's 3 24
23 A Okay.
24 Q It says, "Post orders are written orders applicable
25 to specific client-duty assignments. They are the

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1 Client's define requirements of what must be
2 accomplished and how. Post orders will be --
3 utilize the following for that. And then it has
4 Post Location, Primary Mission, Secondary
5 Assignments, Emergency "procedures." Do you see
6 that?
7 A Uh-huh
8 Q Now what were -- are post-orders?
9 A My post-orders were basically pretty -- pretty
10 simple. Patrol the parking lot.
11 Q Yeah
12 A Basically, trying to make sure there's no vandalism
13 like that going on, trying to kind of make sure
14 there ain't no carts or nothing, like in the way
15 like in the -- in the aisles of the -- where the
16 cars park and stuff like that. Stuff like that.
17 Basically -- basically, patrol the parking lot.
18 Q Okay
19 A Uh-huh
20 Q Now -- now, I believe you've told us that -- that
21 you were -- in this case you were told to get the
22 tag number.
23 A Yes, sir.
24 Q Right? Now, you began working there about the
25 middle of May, right? Or May 20th somewhere around

1 I want to say -- well, kind of -- kind of like
2 behind the Wal-Mart on its another exit like
3 say from automatic side of Wal-Mart's another exit
4 that you can exit. That's where I had to go and --
5 you know, I kind of -- I didn't really ride too far
6 from the Wal-Mart. It was like right there pretty
7 much. It's a Wal-Mart, it's a Taco Bell, it was at
8 the time a lack in the Box and a Domino's Pizza.
9 I probably went from as far as the Wal-Mart to the
10 Jack in the Box to get the -- but I wasn't on Wal
11 Mart premises, is what I'm saying.
12 Q You left your post.
13 A Exactly.
14 Q Okay. And -- and that was the first day you worked?
15 A That was my first day.
16 Q Okay. And you were informed by Wal-Mart to do that?
17 A Yes.
18 Q Okay. Now other than that time and the time with
19 -- with Ms. Hancock, do you recall any other times
20 you were advised to get the tag number?
21 A No. Nope. No.
22 Q Okay. Now when you were advised on your first day
23 to go off premises to get a tag number, did you talk
24 to anybody about that?
25 A Let me think. After that incident happened, Bill

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1 -
2 A Somewhere around there. Yes, sir.
3 Q Now from that time until the time of this accident,
4 which was about 30 days --
5 A Uh-huh.
6 Q -- how many times had you been told to get the --
7 the tag --
8 A License plate --
9 Q -- number?
10 A -- tag number?
11 Q Yeah.
12 A Well, actually, that's a -- that's a real good
13 question, because my very first day that I worked at
14 Wal-Mart, I was told to go obtain a license plate
15 tag number, and they told me, 'You got to get that
16 license plate.' The same way they told me that
17 right. The same way my very first day I had to go
18 get a license plate tag number off the premises.
19 Q Off the premises?
20 A Off the premises.
21 Q And --
22 A The very first day of my job.
23 Q And when -- when you say 'off the premises,' what do
24 you mean?
25 A Like, the car was exiting from behind the Wal-Mart

1 Thomas came and visit me. And we talked --
2 Q Bill Thompson.
3 A Bill Thompson. I'm sorry. For the record, I'm
4 sorry. Bill Thompson came, talked to me. He --
5 actually, he was sitting there observing my shift
6 for a while before I even knew he was there. And he
7 came up to me, he was, like, just telling me, you
8 know, basically, you know, that we'll try to get
9 you. And he -- he -- he let me know, I'm not going
10 to say he didn't tell me. "You know you're not
11 supposed to leave off this lot." You know what I'm
12 saying. Because I had -- I told him about that
13 situation the very first day. And he say, "Well,
14 you know you're not supposed to leave this lot."
15 And I'm telling him then, I'm like, "Yeah. You
16 right. But what am I supposed to do? I mean, I'm
17 between the hard rock -- a rock and a hard place.
18 If they telling me, you know, 'Look, you got to go
19 get this license plate tag number,' and then you
20 telling me, 'Well, you know you ain't supposed to
21 leave this lot,' what am I supposed to do? And they
22 got to do is call you and tell you, 'Look, we don't
23 want him out here being -- securing in our parking
24 lot no more,' and my job is over."
25 Q What did -- when you told him that, "I'm between a

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1 "look and a hard place" where did he tell you
 2 A It was just like
 3 Q -- you were supposed to do?
 4 A "Look, you -- you just got to make a sound judgment
 5 You -- you can't -- you're not supposed to leave the
 6 parking lot."
 7 Q Okay. And -- and you know, do you know if
 8 Mr. Thompson went and had a conversation with
 9 anybody at Wal-Mart?
 10 A I don't -- I don't know if he had a conversation
 11 with them at Wal-Mart after that.
 12 Q Okay. But -- but he told you that it was up to you
 13 and your judgment as to whether you needed to leave
 14 or not.
 15 A Right. He was like, "You need to -- you know, you --
 16 far as your post-orders is, you're not supposed to
 17 leave the parking lot," which I knew that, you know
 18 what I'm saying. But he also advised me, "Look,
 19 man, you know, don't get -- don't get caught up with
 20 them," is what he said. "Don't -- don't get caught
 21 up with they shenanigans because they will try to
 22 push you."
 23 But like I told him, "What do you want me to
 24 do?"
 25 Q And what did he say?

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1 A And he was like, you know. "Well, basically, don't
 2 leave the parking lot. You got to do what you got
 3 to do, but don't leave the parking lot."
 4 Q Okay.
 5 A You know. Basically, not telling me anything
 6 honestly. I mean, to say, "Well, you know, you got
 7 to do what you got to do, but don't leave the
 8 parking lot," that's not really saying nothing. You
 9 know, that's not really telling me what do I
 10 supposed to do.
 11 Q If he had told you, "I don't care what they tell
 12 you, you cannot leave the parking lot," what would
 13 you have done in this case?
 14 A Then I -- I think I might've would've felt like
 15 Well, I'm not worried about them calling U.S.
 16 Security, you know, complaining on me because I
 17 would've felt like U.S. Security knows what's going
 18 on, far as how they do, you know what I'm saying?
 19 Q And would you have left the parking lot?
 20 A I don't think I would have left the parking lot. I
 21 -- well, I would have felt like -- I would have felt
 22 like my job wouldn't have been in question, you see
 23 what I'm saying?
 24 Q Sure.
 25 A I'd have been -- I'd have been fine.

1 Q They'd've had your back.
 2 A Yeah. You know what I'm saying. That's how I felt
 3 but when I talked to Bill and Bill, you know --
 4 like I said, he stated "You know the post-orders
 5 you're not supposed to leave the parking lot."
 6 But like I told him, "Well, what do you want me
 7 -- what I'm supposed to do? You know, I need my
 8 job."
 9 And he's like, "Well, you know, you got to do
 10 what you got to do, but you know you're not supposed
 11 to leave the parking lot."
 12 Q Now, on 3 2 7 5 it says "Report all security
 13 violations and safety hazard observed on the daily
 14 shift report and any other designated U.S.A. and/or
 15 client report forms."
 16 A Uh-huh.
 17 Q Do you see that?
 18 A Uh-huh.
 19 Q Now, I know you said you filled out an incident
 20 report, right?
 21 A I did.
 22 Q Now, was there a daily shift report that you would
 23 have filled out as well?
 24 A Yeah. We did have a daily shift report that we had
 25 to fill out on each shift.

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1 Q Okay. And would that daily shift report have
 2 contained this incident?
 3 A Not that I can -- I don't really recall if I put it
 4 in my incident -- in that daily shift report,
 5 because I had done wrote a -- a hand statement. I
 6 done wrote a statement once, and I wrote the
 7 incident report, so I just kind of like put the
 8 incident report with my daily log report. I mean --
 9 Q Okay.
 10 A I don't -- I couldn't -- I can't say either way if I
 11 put it in my log -- my daily log report or not.
 12 Q Okay. I'm now going down to 3 2 8.
 13 A Okay.
 14 Q It's on the same page, page 11. It says "On-duty
 15 security officers will not" --
 16 A Uh-huh.
 17 Q -- do you see that?
 18 A Yes.
 19 Q And this was a book that you had been provided at
 20 the time you came on, right?
 21 A Yes.
 22 Q Okay. If you go to the next page, and that's page
 23 12, it says -- could you read 3 2 8 13?
 24 A Yes. "Leave his post except when properly relieved
 25 by the designated relief or his supervisor or in

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1 case of an emergency by the client or his authorized
2 representative. Each such occurrence will be
3 documented on a U.S. form 517.01 incident report
4 and provided to the facility's site supervisor.

5 Q Okay. Now, I believe you told us that you filed
6 out an incident report.

7 A Yes, sir.

8 Q Now, did you provide it to the facility site
9 supervisor?

10 A That would've had to been Bill, and so no. Bill
11 was not in the area at that time. So I did file it.
12 We -- in our truck, we did have where -- where we
13 kept our -- our logs at for the daily shift, we also
14 kept our incident reports in the same log. So they
15 would've been filed in that log, you know what I'm
16 saying, until he got it.

17 Q So --

18 A I mean --

19 Q -- there -- there's a -- we've got -- we've been
20 provided with this shift report where it says you
21 signed on at a certain time and then your dad signed
22 on at a specific time.

23 A Uh-huh.

24 Q Would that've been the daily shift report that
25 would've been in the same place as the --

1 day when I got to work.

2 Q And did what do you remember that
3 conversation?

4 A It was basically like "What happened?" I told you
5 not to leave the parking lot. This then, and the
6 third and, you know, I can remember that part of
7 the conversation because he was kind of upset about
8 that, me leaving the parking lot. "I told you not
9 to leave the parking lot." I think he told me not
10 to -- you know, "It's going to be lawyers coming to
11 try to talk to you and don't talk to nobody." And
12 he advised me, you know, not to talk to no one, you
13 know that -- to tell them that you have -- "If you
14 want to know any questions, you have to call U.S.
15 Security." You know, stuff like that.

16 Q Okay. But you worked that day?

17 A Yes.

18 Q Okay. He didn't terminate you?

19 A Not that day.

20 Q You -- you weren't terminated until they got the
21 SLED report back, right?

22 A I think so.

23 Q Okay.

24 A I think so.

25 Q And it was only when SLED said -- said you --

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1 A It -- it --

2 A -- incident report?

3 A Yeah. It should've been right there because I
4 mean, the incident reports and the daily shift
5 reports is in the same folder.

6 Q Okay.

7 A See what I'm saying?

8 Q So you don't know why we would've gotten one but
9 didn't get the other?

10 A I -- I have no idea why y'all didn't get the other.

11 Q Okay. Okay. I'm looking at now 332 on page 13.

12 A Okay.

13 Q "Violations which may result in immediate
14 termination."

15 A Uh-huh.

16 Q Do you see that?

17 A Yes.

18 Q Do you see the second one where it says,
19 "Leaving/abandoning post?"

20 A Yes.

21 Q Now you were not -- you were not terminated for
22 leaving or abandoning your post, were you?

23 A Not automatically. Like, the very -- I think -- I
24 want to say the very next day after the accident, I
25 returned back to work. And I talked to Bill on that

1 A I think that -- I'm sorry to cut you off but --

2 Q No, no. I apologize. I may have cut you off.

3 A I think -- I think I might've worked maybe two to
4 three days after the accident. The first day I came
5 there, I talked to Bill. I was in my truck, and I
6 remember I was approached by a Wal-Mart lawyer,
7 African-American.

8 Q Darrell Bennett?

9 A Right. He tried to give me his card, trying to --
10 tried to have me talk to him -- and -- and I advised
11 him I couldn't talk to him. I want to say the -- I
12 want to say the next day I was on shift, that's when
13 the cops came and they did the investigation, far as
14 on the truck, and took my picture and took pictures
15 of the truck and stuff like that. Yeah, so I -- I
16 want to say about two to three days after the
17 accident, I still was working.

(Sotto voce discussion between
18 Mr. Hood and Mr. McKinnon)

19 Q Now, underneath that it says that there are other
20 violations which may result in immediate termination
21 would be knowingly submitting false
22 reports/fakehoods, you see that, right?

23 A Yes.

24 (Sotto voce discussion between
25

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1	Mr. Stewart and Mr. McKinnon	1	the three-day training process I guess you know
2	Q And dishonesty	2	And then after that only -- only training I had was
3	A Yes	3	you know, far as what I was supposed to do at the
4	Q Unnecessary use of force	4	site
5	A Yes	5	Q Okay Now I'm looking at No. 13
6	Q Conduct unbecoming a security officer	6	A Okay Tab 12
7	A Uh huh	7	Q Tab 13
8	Q You're aware of all of those that could be immediate	8	A Okay
9	terminations right?	9	Q This is the South Carolina Law Enforcement Division
10	A Yes sir	10	-- this is the termination of -- or where they just
11	Q Okay And now we go to -- now at the -- I'm going	11	did not -- they advise you that they're not going to
12	to the very -- the second-to-the-last page	12	give you a security guard license
13	A Okay	13	A Uh-huh
14	Q And it has "Receipt" And it has that -- you know,	14	Q Okay Do you see that?
15	that you signed -- you go on like, 12 and it's like	15	A I see it
16	the back one	16	Q Do you recall getting this letter?
17	A Talk --	17	A I recall getting a letter, stating -- showing me why
18	Q I think you go like right --	18	I'm not able to get a license and so I don't know
19	A Oh	19	if it's this letter. It may -- it probably -- more
20	Q It's the second-to-the-last page	20	than likely it is this letter, so then I would say
21	A Okay Okay	21	yes, I received this letter. But I don't know -- I
22	Q And that -- it says a "Receipt," and it's signed	22	didn't receive this letter until after I talked to
23	Did you ever sign for a book?	23	Billy I talked to Bill first before I received a
24	A Did I ever sign for a book? Not that I recall I	24	letter of any sort --
25	recall getting my book in training	25	Q Okay
Page 127		Page 129	
1	Q Okay They just gave it to you?	1	A -- you know, stating that this is why, you know,
2	A Yes	2	you're not being registered in South Carolina and
3	Q Okay	3	all that good stuff Bill terminated me over the
4	A I don't -- I don't remember signing for it I'm not	4	phone
5	going to say I didn't, but I don't remember signing	5	Q Okay Did he tell you why he terminated you?
6	for no book	6	A He told me, "Well, I got -- you know, I received
7	Q Okay And -- and did you -- did you read the book?	7	information on your background and it's -- it's
8	A Yes I read -- I ain't going to say I read the	8	showing that, you know, your license is suspended
9	whole book or, like just knew everything in the	9	and that, you know, you have marijuana charges And
10	book I skimmed through the book. I knew, you	10	you have crack cocaine charges and all kind of
11	know, some of the post-order -- the post-orders I	11	different charges, so I'm just going to have to
12	was supposed to be knowing, far as -- but far as	12	terminate you"
13	like knowing everything on -- on the conduct of a	13	And like I told him then, I say, "Well, that's
14	security officer, far as in any book, no, I -- I	14	crazy to me because I don't -- my license ain't
15	can't say that I read the whole book through and	15	suspended" That was my exact words to him "My
16	through and knew every detail	16	license ain't suspended"
17	Q Did they -- did they give you any training on the	17	Q Okay Now this says -- the very last paragraph
18	book?	18	says, "If you believe your application was denied in
19	A Like, when we went through the three-day training,	19	error, you may appeal this denial Your appeal must
20	it was -- it was very, you know, extensive training	20	be in writing containing the reasons you believe you
21	I'm not going to say they necessarily gave me	21	were incorrectly denied registration"
22	training on the book, but they gave me training on	22	Did you appeal this denial?
23	the site that I was going to be at	23	A No, I didn't because I was told I was fired so I
24	Q Okay	24	really didn't feel like there was no reason to
25	A I mean, we went through the initial training, far as	25	appeal

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1 Q Okay 2 A What I'm going to appeal for? I'm not going to -- I 3 mean, I appeal. I'm going to get my job back? 4 Q Okay. Going to the next page. This is the South 5 Carolina Law Enforcement Division, it looks like 6 this is some kind of proof of training and 7 verification of instruction in law and arrest 8 procedures. do you see that? 9 A Uh-huh 10 Q And it looks like the name of the private security 11 officer is Derrick Jones. do you see that? 12 A Yes. "Name of private security officer." Yes 13 "Derrick Jones Company" -- yes 14 Q Okay. And it says that "On 5/19/2006 the above 15 named officer successfully completed instruction in 16 selected private security principles topics." do you 17 see that? 18 A Uh-huh 19 Q Now, you said that this was a three-day training 20 session, right? 21 A Yes, sir 22 Q Okay. So you would've had three days of training 23 before you would've signed this, right? 24 A Yes, sir. I -- I would think so 25 Q Okay. And it looks like the training officer is	1 Q Now this -- this is dated 5/22/06. do you see that? 2 A the -- 3 A Yes. At the top of the -- 4 Q It says "Date of employment 5/22/06" 5 A Uh-huh 6 Q You were paid for this training, though, right? 7 A Yes 8 Q So even though this says 5/22/06 you had been 9 receiving training getting paid for it prior to 10 that time, right? 11 A Yes 12 Q Okay 13 A I should -- should have been 14 Q Now at the top it says "This application is for 15 employee registration as new." Do you see that on 16 the left side at the top? 17 A Yes, I do 18 Q Now I believe I've seen -- gosh, I mean, it's -- I 19 can't remember where I saw it, but I thought I had 20 seen a -- an application that you had done for 21 somebody where you had been a security guard back in 22 the late '90s 23 A Okay 24 Q Do you -- do you recall that? 25 A Yes. I was a security guard for Allied Security.
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1 Ricky Huck [sic]? 2 A Uh-huh 3 Q Do you know who Ricky Huck [sic] is? 4 A Yeah. I met him. Yes, sir. He trained me on -- on 5 site, pretty much showing me what to do, far as 6 post-orders. Same -- same kind of thing Bill did 7 when I -- when he came down here to visit me 8 That's what Rich [sic] -- what his name? Mr. Hucks? 9 -- that's what he did in the beginning, you know 10 what I'm saying. So I mean you know, telling me 11 about the speeds and everything like that, and how, 12 you know, riding in the parking lot and how we can't 13 detain nobody, we're not cops. Stuff like that 14 Q Okay 15 A Far as post-orders and stuff like that we went over 16 a lot of that 17 Q What -- what did he -- did he provide any training 18 in regard to leaving the premises? 19 A Basically, to lung me not to leave the premises 20 Q Okay 21 A I mean, like I say -- like I stated before, I was 22 told not to leave the premises. That was my mistake 23 that I made. 24 Q Okay. Now let's go to the next page 25 A Uh-huh	1 like in -- I was like, 18. It had to be, like, 2 '98 maybe 3 Q Okay 4 A Ninety-seven '98 somewhere around there 5 Q Did you have to get a -- a SLED security guard 6 clearance at that time? 7 A I want to say yeah. I know you had to be licensed, 8 so I guess if that's the license -- you know, the 9 process to be licensed, then yeah. Uh-huh 10 Q Did you become licensed? 11 A Yes. I was licensed in North Carolina. 12 Q Okay. And this was in North Carolina, right? 13 A Yes, sir. This was in Charlotte. 14 Q Okay. And -- and did -- was there any problem with 15 your application in North Carolina? 16 A No 17 Q Okay 18 A None at all 19 Q Now, at the bottom it has -- I'm sorry. Above that 20 it has, I guess, some references? 21 A Uh-huh 22 Q And you have Shonta Williams, John Little, and Myron 23 Ford 24 A Uh-huh 25 Q How do you know Shonta Williams?

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1 A Shonta Williams is a friend. We know her for --
 2 for a while now. Just kind of like when I moved to
 3 Charlotte, I met people you know what I'm saying?
 4 Q Okay
 5 A John Little. I used to be -- I used to do music with
 6 a company called "Longevity Entertainment," and
 7 that's how I come to know him. Myron Ford -- Myron
 8 Ford is just, well, one of the first people I was
 9 doing music with when I first moved to Charlotte,
 10 that's how I came to know him.
 11 Q Okay. Were -- were you deejaying/entertaining, or were
 12 you --
 13 A We', I'm a singer-songwriter --
 14 Q Okay
 15 A -- so, you know, that's what we was doing. Singer-
 16 songwriter, music producer, I can do studio
 17 engineering, stuff like that.
 18 Q Okay. Now, I see down at the bottom where it has
 19 "Name and Address of Employers," and it says "Wal-
 20 Mart, Camden 3/06 to 5/06", do you see that?
 21 A Right here? Yes.
 22 Q So you actually worked for Wal-Mart prior to working
 23 for U.S. Security, right?
 24 A Yes. I worked on a remodeling crew. At that time
 25 the Wal-Mart in Camden was remodeling their store.

1 contractor?
 2 A They hired us in through Wal-Mart, but they only
 3 hired us for as remodel crew.
 4 Q Okay.
 5 A You know what I'm saying.
 6 Q Okay. Did you have to go through any type of
 7 training or anything?
 8 A No.
 9 Q Okay.
 10 A No. No training.
 11 Q Now the next one that you have listed is Longevity
 12 Entertainment --
 13 A Uh-huh.
 14 Q -- 9/01 to 3/06.
 15 A Uh-huh.
 16 Q It says, "Deejay work, John Williams," and then it
 17 doesn't have anything over there as far as the
 18 reason for leaving -- leaving.
 19 A I left doing work for them because business kind of
 20 slowed up --
 21 Q Right.
 22 A -- at the time. I like I say I was doing studio
 23 engineering, so we was -- I was getting -- I was
 24 getting paid, like \$20 an hour, for as recording
 25 you. If you was an artist and you came in the

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1 and I worked there as part of the remodeling crew.
 2 Q Okay.
 3 A That's how I knew Chuck.
 4 Q Oh okay.
 5 A That's how I knew Chuck. That's how I knew who Chuck
 6 was, because after I done got up to Lancaster, while
 7 I was working at security up there, he had started
 8 working up there as well in -- at the Wal-Mart in
 9 Lancaster.
 10 Q Right.
 11 A Uh-huh.
 12 Q And it -- it says the reason for leaving "Job came
 13 to an end."
 14 A Right.
 15 Q What do you mean by that?
 16 A Right. It was only remodel -- we was only supposed
 17 to work a certain amount of weeks, just -- just as
 18 long as -- until we finished remodeling the Wal-
 19 Mart. That was it. That's the only reason why we
 20 was hired.
 21 Q Okay.
 22 A We wasn't necessarily being hired to work for Wal-
 23 Mart, we were hired to remodel Wal-Mart. After that
 24 was done, it was over.
 25 Q Did you work for Wal-Mart or did you work for a

1 studio and you was trying to buy studio time for
 2 however long it took you to finish -- or to record
 3 or finish your song. I got paid -- I got paid to
 4 record you.
 5 Q Sure. Now, it -- it appears that you worked there
 6 for almost five years.
 7 A Yeah. I was there for a while.
 8 Q Okay. Now, did you file tax returns from September
 9 of 2006 -- I mean from 2001 through 2006?
 10 A I don't think so.
 11 Q Okay.
 12 A No.
 13 Q How would we know how much money you were making for
 14 Longevity Entertainment?
 15 A I guess you wouldn't know.
 16 Q Okay.
 17 A I mean, it was -- it was pretty much, you know, kind
 18 of under the table type thing.
 19 Q Sure.
 20 A You know, it wasn't like we was filing taxes. It
 21 was just basically, "Okay. You know what I get paid
 22 for, so here you go." It was a cash transaction --
 23 type thing. It wasn't no checks or nothing like
 24 that or --
 25 Q Sure. Now was this your sole means of support

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1 During this time?

2 A Yeah. I could say so. I could say so. I think I

3 might've worked a couple months and out. I'd jobs here

4 and there. You know what I'm saying. But for the

5 most part, yes. That was my -- that was my bread

6 and butter for the most part.

7 Q Do you have any children?

8 A I have one.

9 Q Did you have any while you were working at Longevity

10 Entertainment?

11 A In '03.

12 Q Okay.

13 A I have a little daughter that was born in '03.

14 Q And did -- did they -- did -- did the -- your

15 daughter's mother go through any family court

16 situation to get child support or --

17 A Not at all.

18 Q Okay. Who -- who is the name of the child's mom?

19 A Carolyn Gary.

20 Q Okay. And so Longevity Entertainment, they -- they

21 wouldn't have had to provide anything to the court

22 to ensure that --

23 A No.

24 Q -- Any kind of child support?

25 A No. No.

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1 Q Is your child in North Carolina or South Carolina?

2 A She's in North Carolina now with her mom.

3 Q Okay. Okay. Now, it says "Were you ever arrested

4 or charged with any violations?" And you have "no"

5 on this -- this -- I guess it's the SI FD

6 application, said, "South Carolina Law Enforcement

7 Division", do you see that?

8 A Yeah, I see it.

9 Q And that wasn't true, was it? Because you had been

10 --

11 A It was.

12 Q -- arrested.

13 A Yeah. I had been arrested, you know what I'm

14 saying. But I guess I looked at it like, you know,

15 "arrested or charged," I should've put -- probably

16 put "yes" there because I have been arrested.

17 Q Sure.

18 A You know what I'm saying?

19 Q Sure.

20 A And -- but far as being charged, yeah, I was charged

21 with simple possession of marijuana, but I kind of

22 -- you know, I -- the way I felt about it, you know

23 what I'm saying. I just didn't feel like -- I was --

24 I was made to be charged for simple possession of

25 marijuana, pour -- more say -- more or less, you

1 know -- even me being actually caught with

2 marijuana, do you see what I'm saying? I was -- I

3 was framed for marijuana.

4 Q Sure.

5 A They never presented any evidence --

6 Q Okay.

7 A -- of them showing -- of them bringing any evidence

8 about marijuana -- any of that.

9 Q Okay.

10 A All I was told was "Look, if you plead guilty to

11 the marijuana, all the other charges -- drop 'em."

12 Where there -- where, in reality, it really wasn't

13 no other charges.

14 Q Okay. But this just says, "Have you ever been

15 arrested or charged?" --

16 A Right.

17 Q -- and you still put "no," right?

18 A Right.

19 Q Why'd you put "no" if it says "arrested?"

20 A I have no idea.

21 Q You -- you acknowledge today, though, that isn't

22 true.

23 A Unh-unh.

24 Q Okay. And -- and I see you signed the bottom of it

25 And it says that I understand that any license or

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1 registration certificate issued me will be

2 contingent upon the results of a complete character,

3 fitness investigation and I am aware that if -- that

4 willfully withholding information or seeking or

5 asking false statement on this application will be

6 basis for revocation or suspension by the South

7 Carolina Law Enforcement Division. I agree to these

8 conditions and hereby certify that all statements

9 made by me on this application are true and

10 complete, to the best of my knowledge.

11 Who signed that?

12 A I did.

13 Q And -- and --

14 A I did sign that.

15 Q And yet it wasn't true, right?

16 A (Shakes head from side to side.)

17 Q Right?

18 A Excuse me?

19 Q It wasn't true, was it?

20 A Like I say, I -- I -- to me it was -- I needed a

21 job, so I guess you can say it wasn't true, you know

22 what I'm saying.

23 Q Okay.

24 A That was -- that was another mistake.

25 Q Okay. Now I'm looking at the next page.

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1 A Uh-huh
 2 Q And it has "Voucher No. 3-7 -- and it has "Invoice
 3 date 3/17/06, Invoice Reg Amount 65", and it
 4 has "Derrick Jones. I don't even know what that
 5 is."
 6 A Where you at? Right here?
 7 Q Yes. Do you know what that is?
 8 A I really don't.
 9 Q Okay.
 10 A No, I don't.
 11 Q Okay. And I'm going to --
 12 A Sixty-five.
 13 Q -- two page past that.
 14 A Okay.
 15 Q And it says "05, robbery, no conviction.
 16 Possession Meth, COC '06 possession drug
 17 paraphernalia, nas" something. Do you know who
 18 wrote that?
 19 A I don't. I don't. Like I say, only time -- only
 20 person I was dealing with -- far as, you know, my
 21 application process and all, that was Bill.
 22 Q Okay.
 23 A So I -- couldn't -- I don't know if he wrote it on
 24 there or if he had somebody else write it on there,
 25 I -- I didn't write it.

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1 Q Sure. Sure. Now I'm looking at -- if you go past
 2 that, and then it starts where it's -- at the bottom
 3 it's 9010014.
 4 (Sotto voce discussion between
 5 Mr. Stewart and Mr. McKinnon)
 6 Q And it's -- it's the South Carolina Department of
 7 Public Safety Waiver Affidavit.
 8 A Okay.
 9 Q Now it says "Personally appeared before me Derrick
 10 Jones." Do you see that?
 11 A Uh-huh.
 12 Q And this would have been when you were at Wal-Mart
 13 with Trooper Howard, right? This says, "2 21 a m."
 14 A Uh-huh.
 15 Q You have to give us a "yes" or a "no."
 16 A Oh, I'm sorry.
 17 Q That's okay.
 18 A Uh-huh thing. Yes. Yes, sir.
 19 Q And now, I believe you said that you went by there
 20 for a little while that night and then left and then
 21 came back. How -- when -- if you could explain to
 22 me kind of when you came back to the Wal-Mart when
 23 you said you filled out the first written statement
 24 and you filled out the incident report, right?
 25 A Yes, sir.

1 Q And then you would have left, right?
 2 A I sat here for a second after that and talked to my
 3 pop and then, yes, I left.
 4 Q Okay. And -- and how long did you -- did you leave?
 5 A I have no idea.
 6 Q Where did you go to when you left?
 7 A Actually, at the time I was dating a -- I was dating
 8 a young lady that was working at the back of the
 9 Box, her name was Tasia [phonetic]. I can't tell
 10 you her last name, I want to say it was Tasia
 11 [phonetic] Brown, but I'm not too
 12 Q Okay.
 13 A But it -- her name was Tasia [phonetic]. I went
 14 there and when I got there that's when I was called
 15 on my cell phone by my father, like, "Where are you
 16 now? I need you to come back up here."
 17 And -- and when he was talking to me the
 18 police officer actually took the phone from him and
 19 we -- I talked to the police officer on the phone.
 20 And he told me -- asked me where was I at. And I
 21 told him where I was at. And he said, "Well, I need
 22 you to come on back up here. We need to check your
 23 statement and talk to you about some things."
 24 I said, "Okay. No problem. I'll be on my
 25 way." So I probably got back up there within 20 to

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1 -- about 20 minutes, 20/25 minutes, maybe. Not even
 2 that long probably.
 3 Q Okay.
 4 A Because it wasn't that far from where she lived to
 5 where the Wal-Mart is.
 6 Q Okay. And -- and -- now, your dad called you on
 7 your cell phone.
 8 A Uh-huh.
 9 Q Now, did you have your cell -- did you have a cell
 10 phone number at that time?
 11 A Yes.
 12 Q Okay.
 13 A Yeah. I had a Alltel phone at that time.
 14 Q Was it a South Carolina number or --
 15 A Yes.
 16 Q Okay. Do you recall the number?
 17 A I -- I want to say it was 803-127-1915.
 18 Q Okay.
 19 A I want to say that. But I'm not too -- too sure,
 20 but I know it was 803-427-19-something.
 21 Q Okay. Was it -- was the phone in Derrick L. Jones'
 22 name?
 23 A Yes. It was a prepaid phone.
 24 Q Okay. And when you say "prepaid," that means -- did
 25 -- you didn't get a bill showing the number --

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1 A No I didn't 2 Q -- of calls you made or anything like that? 3 A No I didn't have it on no -- no record or plan -- 4 was just pay-as-you-go-type deal 5 Q Okay And do you still have that phone? 6 A No I don't 7 Q Okay Going to the next page 8 A Okay 9 Q Okay Now I'm looking at -- this is a -- it says 10 "Continuation statement of Derrick Jones 11 6/21/2006 " You've signed it at the bottom 12 A Uh-huh 13 (Sotto voce discussion between 14 Mr Hood and Mr. McKinnon) 15 (Sotto voce discussion between 16 Mr Stewart and Mr McKinnon) 17 Q Now is this your handwriting, or is this Trooper 18 Howard's handwriting? 19 A That's my handwriting 20 Q Okay Because it looks like -- and I've compared 21 these statements 22 A Uh-huh 23 Q It looks like this second statement that you wrote 24 -- I mean this first statement that you wrote is 25 <u>nearly identical to the same statement that you did</u>	says where it's supposed to be "were driving" right? 3 A Where that at? On the first statement? 4 Q The -- the middle of the page -- yeah 5 A (The document reads to himself) 6 Q It's where it said, "They" -- 7 A "They" would be the -- 8 Q It says "They took off I proceeded to follow them 9 to get the license plate number. Suspects were 10 driving dangerously running a red light and almost 11 hitting another car " 12 A Uh-huh 13 Q Do you see where it says, "Suspects where driving" 14 -- w-h-e-r-e? 15 MR MCKINNON It'll say, "Suspects " 16 A Say about right here 17 Q "Suspects where driving 18 A Yeah Yeah Yeah 19 Q Now that's supposed to be "Suspects were driving," 20 right? 21 A Yeah 22 Q Okay 23 A That's "were/where " 24 Q And then I look over the -- your other statement -- 25 A Uh-huh
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1 for Trooper Howard 2 A Uh-huh 3 Q My question is Were you looking at this statement 4 when you wrote out the statement for Trooper Howard? 5 A No At the time when I wrote this statement out to 6 Trooper Howard, I had done already turned my first 7 statement in to Wal-Mart. My first statement, I 8 left there at Wal-Mart in the back where they -- we 9 pick up our walkie-talkies at 10 (Sotto voce discussion between 11 Mr Flynn and the court reporter) 12 Q Okay Here's the reason that I'm asking this 13 A Okay 14 Q And it doesn't make sense to me and maybe you can 15 help me 16 A Okay 17 Q I'm looking at both statements 18 A Okay 19 Q Okay? Now I'm going to go just -- just -- I'm going 20 to go to -- just -- just ask you a question about 21 this one statement 22 A Okay 23 Q It said -- down about the middle it says, "They 24 took off I proceeded to follow them to get the 25 license plate number. Suspects where driving " I	1 Q -- and it's identical 2 A Okay 3 Q Including the misspelling 4 A Okay 5 Q And so my question is How do you explain that it's 6 identical even down to the misspelling? 7 A I have no idea, but I know when I was sitting there, 8 it was two officers -- when they took this statement 9 right here, there was two officers on site plus my 10 father 11 Q Okay 12 A And they all can tell you, I sat right there I 13 wrote out -- I wrote out my statement Then they 14 asked me additional questions, and after that 15 that's when they started telling me about, you know, 16 the suspects and the victims' police record And I 17 kind of stopped them, like, "I don't even want to 18 hear that You know, you're trying to justify 19 something because they have a police record Man, 20 there was a lady there that -- that's done passed 21 and I" -- 22 So yeah, I mean, no, I didn't sit there and 23 copy nothing 24 Q Okay Okay 25 A Was it a coincidence that I spelled it the wrong way

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1 Q Okay. Maybe you know what I'm saying.
 2 Q Okay.
 3 A But no sir, I didn't -- I didn't copy it.
 4 Q Okay. I -- I'm going over now to this page right
 5 here. It's the next one I think after that.
 6 A Okay.
 7 Q It says, "Bill Kools" [sic] or -- "Kools" [sic] and
 8 it has a number, and it says, "Galagher Bassett".
 9 Do you see that?
 10 A Yes.
 11 Q Okay. Do you recall ever speaking with this guy?
 12 A I recall there was somebody that called me, and I
 13 think I -- I had bring this up to my lawyer. I say,
 14 "You know, somebody did call me and ask me some
 15 questions. And I -- I think I told them pretty much
 16 the same thing that I wrote down."
 17 Q Do you know if it was a recorded statement? Did
 18 they say, "I'm going to record what you're saying"?
 19 A Not that I recall. They could have said that, I
 20 don't know.
 21 Q Okay.
 22 A I don't know.
 23 Q Okay. Does -- does this name ring a bell to you?
 24 A Actually I thought it was "Boykin" because I kept
 25 telling my lawyer, "Well" -- I says, "I think

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1 there's somebody called "Boykin" that called "
 2 And then she was like, "Well, I'm going to try
 3 to figure it out or find it out who." But I thought
 4 it was Boykin so I guess -- I mean I could say
 5 maybe, yeah, because of the "Bill." But I thought
 6 it was Boykin. So I --
 7 Q Okay.
 8 A -- don't know.
 9 Q Going to the next --
 10 A Uh-huh.
 11 Q -- and this says, "6/26/06." Do you see that?
 12 A I do see that.
 13 Q And it says, "Derrick Jones collection date
 14 6/26/06." This would have been the drug test taken
 15 after the accident, right?
 16 A Yes, sir.
 17 Q Do you know why they waited six days?
 18 A I don't.
 19 Q Okay.
 20 A I don't know.
 21 Q Now, when -- when there's an incident, you -- you
 22 are aware, by going through your training, that they
 23 can take a drug test immediately after an incident.
 24 right?
 25 A Yes.

1 Q And -- and you don't know why they didn't take a
 2 drug test immediately after this incident?
 3 A I -- I don't. I don't. Like I say, I talked to
 4 Bill the -- the -- the very next day. I didn't talk
 5 to him that night. But I did talk to him the very
 6 next day. He called me at work.
 7 Q Okay. Now go back to -- to the next tab which is
 8 Tab 14. And this is the -- this is he -- it says,
 9 "Jones, collection date 6/16/06," and then it --
 10 under the FHC, there's no line you've seen that.
 11 A Uh-huh. I seen that.
 12 Q We've already talked about that.
 13 A Yes.
 14 Q Now can you tell me. When you did do this sample
 15 what was the protocol, or how were you asked to give
 16 the sample?
 17 A I was asked to urinate in the cup. They basically
 18 told me once I finished urinating in the cup to
 19 bring the cup out and then go back and wash your
 20 hands and stuff like that.
 21 Q Sure.
 22 A Yeah. So I -- you know I peed in the cup, came
 23 back out, gave them the cup, went, washed my hands,
 24 and waited for the result. That was it.
 25 Q Okay. Now, do you actually recall taking the second

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1 test or -- I mean, do you recall actually taking the
 2 second test, or you just recall this first test and
 3 you think there was a second test?
 4 A Yeah. I recall the first test. Like I -- like I
 5 stated before I don't really remember the second
 6 test.
 7 Q Sure.
 8 A I don't.
 9 Q Is it fair -- is it -- is it fair to say -- and I
 10 don't want to put words in your mouth. Is it fair
 11 to say you can't recall taking a second test,
 12 whether you did or you didn't take a second test?
 13 A Well I'm going to say this. Seeing that I -- after
 14 the accident I worked almost two to three days
 15 before I was fired, so I don't really remember
 16 taking the test because I wouldn't see what was --
 17 what would be the sense of it, you know what I'm
 18 saying?
 19 Q Sure.
 20 A You done already fired me 'you -- you understand'?
 21 Q Right.
 22 A So what would be the sense of me taking a test. I
 23 do think when I came up here -- I had to come and
 24 bring my uniforms back.
 25 Q Right.

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1 A And so I do think then that could be a possibility 2 or when I took the test then but -- 3 Q But is it fair to say you don't recall taking it? 4 A I I guess so 5 Q Okay 6 A I guess so 7 Q Okay 8 A I -- I'm guessing 9 MR HOOD: Do you all -- do you all want to take a 10 break? And let's -- let's just go check this 11 food and -- and we can -- we can go back on the 12 record 13 (Off the record from 12:38 p.m. until 14 1:17 p.m.) 15 THE EXAMINATION BY MR HOOD CONTINUES 16 Q Okay Mr Jones I think we were at Tab 14 and 17 A Yes 18 Q -- we'd looked at the -- we'd talked about the -- 19 the test 20 A Uh-huh 21 Q I'm looking at the next page 22 A Uh-huh 23 Q Let me keep going past that because I think we'd 24 actually talked about the 6/26/06 test. And then 25 I'm looking at -- it's at about two or three after	1 background check. He was like you know. We have 2 to do a background check on you. 3 Q Okay 4 A -- and stuff like that 5 Q Now I'm looking at two pages past that. It has 6 9010630. It's my understanding that they used a 7 some kind of confirmation process or some background 8 check program called "Path -- Past-Positive". 9 A Uh-huh 10 Q And on this it says "Past-Positive forms 11 transmitted since 6/2/2006, 6 a.m., 6/2/2006 12 8:16 a.m. Derrick Jones, 19" or "19 form" do 13 you see that? 14 A Uh-huh 15 Q Now -- and you got to give us a "yes" or "no". 16 A Oh, I'm sorry. Yes. 17 Q And have you ever heard of the term "Past-Positive" 18 as a -- as a program they used for background 19 checks? 20 A No sir. Not. 21 Q Okay 22 A -- that I can remember, no. 23 Q Okay. Do you know why they would've been submitting 24 something for this Past-Positive form, even after 25 you had already been hired?
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1 the 6/26. It's 9010028, the bottom 2 A Okay 3 Q And at the top it says "Applicant Consent Form". 4 A Okay 5 Q Now, is this your signature on this particular 6 document? 7 A Yes, sir. 8 Q Okay. And this is -- it says "By my signature 9 below, I authorize U.S. Security Associates and its 10 agents to make an independent investigation of my 11 background, references, character, past employment, 12 education, credit criminal, or police records, 13 including those maintained by both public and 14 private organizations and all public records for the 15 purposes of confirming the information contained on 16 my application and/or obtaining other information 17 which may be material to my qualifications for 18 employment", do you see that? 19 A Uh-huh 20 Q And you signed that form, right? 21 A I did. 22 Q And was it your understanding that they were going 23 to do a background investigation to confirm all the 24 stuff that was on your application was true? 25 A Yeah. He -- he told me that they was going to do a	1 A No, sir. 2 Q Okay. 3 A Only thing -- only -- only like, background 4 agencies I ever heard of is like, going through the 5 police departments or going through the court or 6 going, you know -- or SLID or something like that. 7 I've never heard of Past-Positive form. None of 8 that. 9 Q Okay. 10 A I don't know what that. 11 Q Then I'm looking at the next page, which is -- ends 12 in 31. 13 A Uh-huh. 14 Q Says, "Licensed Security Officer Training 15 Certificate. This certifies that Derrick Jones -- 16 and then it has a date that the training was 17 completed "5/18/06" and "John A. Vance", do you see 18 that? 19 A Uh-huh. 20 Q Now was he the person that would've have taught 21 legal issues for security officers? 22 A For us, like, when we was in the training class? 23 Q Yes. 24 A No. He didn't teach us. He didn't teach us. We 25 was -- while we were in training class, we were via

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1 satellite from a trainer from Atlanta
 2 Q Okay
 3 A And at the same time our class was going on I think
 4 he was teaching another class in order to say
 5 Durham, North Carolina, at the same time
 6 Q Okay
 7 A Either Durham or Greensboro
 8 Q Okay Was it -- was it like somebody that was in
 9 in Atlanta?
 10 A Uh-huh
 11 Q Do you remember the name of the gentleman?
 12 A I don't I knew he was a African-American, had
 13 short haircut He was sitting down majority of the
 14 time so I -- I can't tell you, like, his height or
 15 anything like that
 16 Q Sure
 17 A Slimmer build, though.
 18 Q Okay Now, do you know who John Nance is?
 19 A Yes I come across John Nance a couple times when I
 20 was up there at the office
 21 Q Can --
 22 A He's a African American as well
 23 Q Do -- do you know what he -- what was his post, or
 24 what was he -- what did he do?
 25 A I really didn't know

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1 Q Okay
 2 A I really didn't, you know -- I met him a couple
 3 of time in passing, you know, hi- and bye type
 4 stuff and not necessarily in conversation with him
 5 or pretty much knowing what he -- you know, what his
 6 role was
 7 Q Okay. And so if -- if they say that John Nance
 8 taught you all that stuff, you were actually taught
 9 by somebody in -- in Georgia right?
 10 A Right
 11 Q Okay And then below that has "5/19/2006, Leo" -- I
 12 don't know whether it was Bromitz [sic] or some --
 13 "Leo-something, III", do you see that?
 14 A Uh-huh
 15 Q Or a name that starts with "Leo" And I'm assuming
 16 that he didn't teach you either, that you were still
 17 being taught by the guy --
 18 A Let me ask you - let me ask you a -- I'm sorry I
 19 didn't mean --
 20 Q Sure
 21 A -- to cut you off
 22 Q Sure
 23 A Let me ask you a question John Nance, is he bald-
 24 headed?
 25 Q I - I have no idea.

1 THE DEPOSITION Do anybody know?
 2 (Sotto voce discussion between
 3 Mr Morgan Mr McKinnon and
 4 Mr Stewart)
 5 (An assistant enters and exits the
 6 deposition at 1:22 p.m.)
 7 A There were -- there was African-American there at
 8 the class He was -- I don't even -- he was
 9 African Is John Nance African?
 10 Q I don't know
 11 A Okay There was a gentleman that was a African, you
 12 know, pretty much letting us know when we can go on
 13 break or stuff like that
 14 Q Right
 15 A Know what I'm saying? Not necessarily teaching us
 16 anything It's just he'll let us know when we can
 17 go on break and stuff like that when was in the
 18 training class
 19 Q He was just watching over the training class?
 20 A Pretty much
 21 Q Okay Do you remember a "Leo"?
 22 A No That's why I asked if that may be could've been
 23 him That's why I asked if -- you know, who was
 24 Nance or did Nance have a bald head
 25 Q Okay

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1 A Now, I know it was two gentlemen up there that was
 2 African-American One -- did John Nance wear
 3 glasses?
 4 (Sotto voce discussion between
 5 Mr McKinnon and Mr Stewart.)
 6 Q I don't even know
 7 A I know this one guy, you know, he -- he say, "Praise
 8 the Lord" a lot I'm thinking that's Nance
 9 Q Okay Going to the next page
 10 A Okay
 11 Q It says at the top, "North Carolina Security Officer
 12 Training Scoring Sheet", do you see that?
 13 A Yes, sir
 14 Q Do you know why they have "North Carolina Security
 15 Officer Training Sheet," when you were actually
 16 being a security officer for South Carolina?
 17 A I -- I don't No
 18 Q Now, look at the Section 8 It says, "The security
 19 officer in North Carolina", do you see that?
 20 A I do see that
 21 Q Well, you don't -- you don't know where -- were you
 22 ever trained or did you ever take tests for the
 23 security officer in South Carolina?
 24 A Not that I I don't know No.
 25 Q Okay

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1 A I think these is just the tests that we took while
2 we were in the class.
3 Q Okay. Now I noted it was -- these have the
4 answers.
5 A Uh-huh.
6 Q Okay? And you've gotten scores and you did well.
7 My question is "Do you know what the questions were
8 that -- that you then responded to?"
9 A No.
10 Q Okay. Do you know where we would get the questions
11 from?
12 A Or y thing I could probably say is from L.S.
13 Security.
14 Q Okay.
15 A Because that's where we was at when we took these
16 tests.
17 Q Okay. Now, when you did this training, was some of
18 the training -- I know that there was a guy in
19 Atlanta but was some of it also videotaped? Where you
20 would watch a video?
21 A Not that I can remember. It was pretty much -- you
22 know we had, you know, books and stuff like that
23 and we went over a whole lot of stuff. It was just
24 him, though. It wasn't no videos. We --
25 Q Okay.

1 Q I'm looking now at the -- the next sheet.
2 A Okay.
3 Q And this sheet says, "Previous Residences. Start
4 with your most previous residence. You must list at
5 least the last three."
6 A Uh-huh.
7 Q And there it says, "From July 2005, To the
8 current", do you see that?
9 A Uh-huh.
10 Q And that would've been May 2006, right?
11 A Uh-huh.
12 Q And so I guess you had been at that residence for
13 about 11 months, right?
14 A September '05/2006. Uh-huh. I moved out of
15 Charlotte in -- I'd say, had to be --
16 Q No. The Charlotte, it looks like, it's from 9/02 to
17 1/03, and then from 1/03 to 7/05, you were in
18 Camden.
19 A Right.
20 Q 7/05 to May 2006 you were in Lancaster.
21 A I don't know why I would've put that there.
22 Q But at least according to this -- and I'm just
23 talking about according to this -- I would have
24 indicated that you had been in Lancaster for
25 11 months, right?

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1 A We pretty much listened to him all the time, and we
2 -- we listened to the guy that was training us from
3 Georgia.
4 Q Okay. When you say "books," what are you talking
5 about?
6 A Like I want to say it was, like, guides and
7 diagrams showing certain things. You know what I'm
8 saying? And stuff like that.
9 Q Okay. And those were not books you were given?
10 Those were just books that were maintained up in
11 Charlotte?
12 A Right.
13 Q Okay. And it's your testimony that, as far as this
14 sheet that -- that says at the top, "North Carolina
15 Security Officer Recording Officer Training
16 Scoring Sheet A," you don't know what the questions
17 are that would've caused you to respond, right?
18 A No, sir.
19 Q I'm looking at "North Carolina Security Officer
20 Training Score Sheet B", do you see that?
21 A Yes, sir.
22 Q Once again you don't know what the questions were
23 that would've caused you to respond accordingly, do
24 you?
25 A No, sir.

1 A Yeah.
2 Q So even though you'd've been there for 11 months,
3 your license that you gave them at that time
4 reflected a Camden address, right?
5 A Right.
6 Q Okay.
7 A That's why I don't understand why it would've --
8 they would've indicated that for me. Yeah, I see
9 that.
10 Q Okay. I'm going to -- it's about four pages over,
11 but it's 9010041. And this is still under Tab 14.
12 At the top it says, "Authorization for release of
13 information Lancaster County Sheriff's Office,
14 John W. Cauthen, Sheriff", do you see that?
15 A Yes.
16 Q Now it says, "Signature: Derrick Jones", do you see
17 that?
18 A Yes.
19 Q Is that your signature?
20 A Yes.
21 Q It says, "I hereby authorize the Lancaster County
22 Sheriff's Office to release information relating to
23 my criminal history record. I agree to hold any
24 source of information blameless for any error in
25 reporting this information. I release all persons."

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1 who ever from any lady -- a lady -- of for
2 resulting from releasing this information -- do you
3 see this?
4 A I do
5 Q Underneath that -- says, 'This criminal history'
6 provided by the Lancaster County Sheriff's Office
7 covers only offenses of the Lancaster County
8 Sheriff's Office", do you see that?
9 A I do
10 Q It says 'Arrests which would not include the arrest
11 for the City of Lancaster, Heath Springs, Kershaw
12 or highway patrol, which would include traffic
13 offenses. If you desire a complete criminal history
14 check, you would need to contact the South Carolina
15 Law Enforcement Division, otherwise you would need
16 to contact each individual agency in which a fee may
17 be charged'; do you see?
18 A I do see
19 Q Now, do you know why they only went to the Lancaster
20 County Sheriff's Office as opposed to getting a
21 statewide criminal records check?
22 A No. Only thing I could think of is maybe because of
23 my address
24 Q Okay. But even your address wouldn't be Lancaster
25 city. It wouldn't even include Lancaster city.

1 Q And --
2 A I was -- I was advised to get a -- I was advised on
3 what I would need
4 Q Okay
5 A -- basically. Far as, I would need a background
6 check, I would need valid, you know, driver's
7 license stuff like that
8 Q Okay
9 A That's what I was advised that I would need --
10 Q Who --
11 A -- when --
12 Q Who --
13 A -- I get up there
14 Q Who advised you of such things?
15 A Bill
16 Q Okay
17 A I was --
18 Q So you had talked to him before you -- the 16th?
19 A Well, he had advised my pops, and my pops told me
20 what did I -- what I -- when we was going to go up
21 there, what I needed --
22 Q Okay
23 A -- before we got there
24 Q Okay
25 A You know what I'm saying? So I went and got the

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1 records
2 A Right
3 Q Do you know why they would've done that?
4 A No, sir
5 Q Do you know how much it cost them to do this?
6 A No, sir
7 Q Okay
8 (Softly voice discussion between
9 Mr. McKinnon and Mr. Hood)
10 Q Okay. This -- I'm looking at this thing again. I'm
11 looking at the same sheet. This says "No conviction
12 data. Name search only. Lancaster County Sheriff's
13 Office, 5/11/2006", do you see that?
14 A I see that
15 Q Now, do you know why you were gone five days before
16 you went over to U.S. Security to get this
17 information? Had somebody told you to go there?
18 A Yeah. I was told to obtain an background check and
19 bring it with me while -- when I come up there
20 Yes
21 Q To -- to see Mr. Thompson?
22 A Yes
23 Q And so he had actually told you to get this prior to
24 coming to see him?
25 A Yes. I was --

1 test before we got to go up there
2 Q And do you know -- even though there's a background
3 check -- do you know what kind of background check
4 they were going to do? I know you gave them this,
5 but do you know what kind of background check they
6 were going to do?
7 A No. No
8 Q Do you know if they did a background check?
9 A I don't. All I know is I was advised what I -- what
10 I needed at the time of going up there to put in an
11 application and what I was going to need -- far as,
12 you know, what they needed from me. I was advised
13 what they needed from me was a background check and
14 my ID and --
15 Q Do --
16 A -- my social security
17 Q Do you know if your dad ever actually called Bill
18 Thompson and said, "Hey. What is he going to need
19 for him to come up there and" --
20 A I have no -- no --
21 Q That'd --
22 A -- clue --
23 Q -- be --
24 A -- if he --
25 Q -- something we'd have to ask your dad about that?

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1 A Yeah. Yes, sir. 2 Q Okay. I'm going past that, and it's 9410045 and at 3 the top it says "U S Security Associates, Inc 4 Application for Employment." 5 A Okay. 6 Q Okay. And this says, "Date of Application 7 5/16/06", do you see that? 8 A Yes. 9 Q That was the same date as the drug test, right? 10 A I'm thinking so, yes. 11 Q And so -- 12 A Same day. 13 Q -- basically the -- you would've filled out the 14 application on the same day that you would've given 15 the drug test? 16 A Exactly. 17 Q Okay. Go to the next page, please. 18 A Okay. 19 Q Under Question No. 1 -- 20 A Uh-huh. 21 Q Do you see that? 22 A Uh-huh. 23 Q It says, "Have you ever pled guilty to any crime 24 felony or misdemeanor?" and you've checked "No." 25 A Uh-huh.	1 A Yes, sir. 2 Q And were you applying for any type of a job to allow 3 you to work in Charlotte at this time? 4 A No. But he did tell me that -- and what I mean by 5 "him" I mean Bill. Mr. Thompson did tell me, "We 6 are going to send you to South Carolina, but just in 7 case we might need you to work in North Carolina at 8 any time, we -- we want to get ahead and register you 9 in North Carolina again as well." 10 Q Okay. 11 A Uh-huh. 12 Q I'm going to Tab 15. 13 A Okay. 14 Q This is a sign-in register. 15 A Uh-huh. 16 Q Do you see that? 17 A Uh-huh. 18 Q And about a little ways down, there's -- there's 19 "Sammy Jones and Derrick Jones 6/20/06 Derrick 20 Jones, 4:00 p.m., Sammy Jones, 11:00 p.m." 21 A Uh-huh. 22 Q Do you see that? 23 A I do. 24 Q Now, what I was wondering -- it looks like it starts 25 on 6/16 and it goes 11 to 6 -- like, the very first
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1 Q And we now know that that isn't correct. 2 A Right. 3 Q And in fact, you did plead guilty? 4 A Yes. I was -- I was -- yes. 5 Q Okay. 6 A Yes. 7 Q And then at the bottom it says, "I hereby certify 8 that all answers and statements in the application 9 are true and accurate to the best of my knowledge." 10 do you see that? 11 A I do see that. 12 Q And it says, "Signature of Applicant Derrick 13 Jones, Date 5/22/06", do you see that? 14 A I do see that. 15 Q Now, do you know why that says "5/22/06" but the 16 application was 5/16/06? 17 A I don't know why. Tell you the honest truth, I 18 really don't know why. 19 Q It just says this -- on this at the top it says, 20 "Unarmed Registration/Renewal Application, North 21 Carolina Private Protective Services, Board", do you 22 see that? 23 A Yes. 24 Q Now, you had already been a security guard licensed 25 in North Carolina, right?	1 one says "Sammy Jones, 6/16/06, 11 to 6:20." 2 A Uh-huh. 3 Q "Derrick Jones, 4:00 p.m. to 11:00 p.m." 4 A Uh-huh. 5 Q The next one says, "6/17, 11 p.m. to 6 a.m." You go 6 "4:00 p.m. to 11:00 p.m." 7 A Uh-huh. 8 Q Now you come on first, so why is his time before 9 the person that comes in before him? 10 A On what date? 11 Q On the 16th or the 17th? Because I mean the -- the 12 person that came in at four would've come in here 13 before him, and if they just put it in line, they 14 would've done that. Or was this done, like, at the 15 end of a week that y'all -- 16 A It's -- it -- the way it was set up was, like, 17 he worked third shift, I worked second shift. I 18 come in at four o'clock, I don't get off until 19 eleven o'clock. 20 Q Right. 21 A You know, and so far as the 16th go, I have no clue 22 why his name -- I think he might've put his name in 23 a first from -- I don't know. I have no idea -- 24 Q Okay. 25 A Why his name was there first.

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1 Q Okay
 2 A But I -- my -- my normal shift -- was second
 3 shift 4:00 p.m. to 11:00 p.m.
 4 Q Okay. And then this is -- when we were talking
 5 earlier about that incident report --
 6 A Yes.
 7 Q -- this was the sign-in sheet that you would have
 8 filled out that would've been put in the same place
 9 as the incident --
 10 A -- incident --
 11 Q -- reports?
 12 A -- reports? Yes, sir.
 13 Q Okay.
 14 (Sotto voce discussion between
 15 Mr. McKinnon and Mr. Hood.)
 16 Q Okay. Going to 630-02 which is paragraph -- I mean
 17 No. 16.
 18 A Okay.
 19 Q This -- at the top it says, "630-02, Employment and
 20 Screening Process for Security Officers, Date
 21 10/15/2002", do you see that?
 22 A I do.
 23 Q Do you see where it says, "Purpose"?
 24 A Yes.
 25 Q Could you read what the purpose is?

1 is "Screening" or I
 2 A Okay.
 3 Q I'm sorry. I apologize.
 4 A Oh.
 5 Q It'd be -- I'm going to page 8. At the top it has
 6 the page
 7 A Uh-huh.
 8 Q I'm going to page 8. Okay. It says, "6.62" It
 9 says, "After the manager receives a clearance to
 10 hire from the National Background Clearance Center
 11 and the applicant accepts the tendered employment,
 12 enter the new hire in the OSP Officer's Employee
 13 Maintenance System", do you see that?
 14 A I do.
 15 Q Do you know if Bill Thompson ever received a
 16 clearance to hire from the National Background
 17 Clearance Center?
 18 A I don't know.
 19 MR HOOD: Stephanie, we hadn't never got that
 20 Do you know if they've -- if there's some kind
 21 of thing? because we haven't gotten anything
 22 about that.
 23 MS FLYNN: I've never seen anything about it.
 24 (Sotto voce remark from Mr. Stewart
 25 to Mr. McKinnon.)

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1 A "To provide procedures of processing -- procession
 2 -- processing security officer hourly employees for
 3 employment."
 4 Q Okay. Okay. Under the -- I'm looking now at
 5 "Policy", do you see that?
 6 A Uh-huh.
 7 Q And then at the -- the last sentence under "Policy,"
 8 not 5.1 but just under 5 it says "The following
 9 must be accomplished before an employee can be
 10 allowed to work", do you see that?
 11 A I do.
 12 Q Now, if you go to 5-2 -- 5.2, do you see that?
 13 A Uh-huh.
 14 Q Could you read that for me?
 15 A It says, "No" -- "no individual will be allowed to
 16 work until the appropriate background screening
 17 clearance is granted by the state where the
 18 applicant is applying or a clearance is received
 19 directly from or a third party background screening
 20 vendor indicating the applicant's records are clear
 21 of disqualifying criminal activity."
 22 Q Okay. It doesn't appear that there was any kind of
 23 a state background check run, does it?
 24 A I -- it don't.
 25 Q Okay. Now I'm going to go to the next page which

1 MR HOOD: (To Mr. McKinnon) I don't care.
 2 (Sotto voce discussion between
 3 Mr. Stewart and Mr. McKinnon.)
 4 Q Okay. Now I'm going to page 11.
 5 A Okay.
 6 Q Page 11 has a Figure 9, Figure 10, do you see Figure
 7 9 and 10?
 8 A Yes, I do.
 9 Q One says, "Police Records Check," and the other
 10 says, "Criminal Records Check Supporting Documents."
 11 A Uh-huh.
 12 Q Do you see that?
 13 A I do.
 14 Q Do you know if either of those were ever done in
 15 regard to your employment?
 16 A No. I'm not sure.
 17 Q Okay.
 18 A I'm not sure.
 19 Q Okay. Now I'm going to go to where it says, "U.S.
 20 Security Associates, Inc. Employees must meet the
 21 following qualifications."
 22 MR. MCKINNON: The second-to-last page in that
 23 tab.
 24 A Okay.
 25 Q Okay. Number 1. "If required by the state where

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1 you're applying, you'll be licensed by the state to
 2 work as a security officer for U.S. Security
 3 Associates. You'll be charged with full licensing
 4 fee."
 5 Now, you were not licensed as a security guard
 6 at the time that you were hired by U.S. Security,
 7 right?
 8 A No.
 9 Q Have you ever heard of something called a
 10 "probationary employee" where you're able to work
 11 for a certain length of time until they wait for the
 12 SLED background check to be completed?
 13 A It's a possibility.
 14 Q Okay.
 15 A It's a possibility.
 16 Q Do you --
 17 A I -- I'm not sure.
 18 Q Have you --
 19 A I don't -- I don't think I've -- I don't think they
 20 told me nothing like that.
 21 Q Okay. Have you ever heard that it was only 20 days?
 22 A No.
 23 Q Okay. If you go to No. 2 --
 24 A Uh-huh.
 25 Q Excuse me. I'm sorry. Number 3 and this is in

1 you know what I'm saying?
 2 Q Okay. Now, in going to Sub 1
 3 A Okay.
 4 Q This is the "Security Officer and Security
 5 Supervisor Training," do you see that?
 6 A Yes.
 7 Q Okay. Can you tell us -- can you read what the
 8 "purpose" is?
 9 A "The purpose of this procedure is to define the
 10 minimum training requirements for security officers
 11 and security supervisors."
 12 Q Okay. Now do you see No. 4 where it says, "Policy"?
 13 A Yes.
 14 Q And it talks about that you're supposed to get eight
 15 hours of pre-assignment security officer basic
 16 training and eight hours of on-the-job training
 17 before assuming any regular duties, right?
 18 A Yes.
 19 Q Now, my question to you is: Out of all the training
 20 that you received from May 16th to May 19th or any
 21 on-the-job training that you received, how many --
 22 did they ever discuss with you what you're supposed
 23 to do in apprehending someone in a vehicle?
 24 A I'm pretty sure they might've covered it.
 25 Q And -- and what did they say?

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1 bold "You must have no criminal history and no
 2 alcohol-related convictions for the preceding ten
 3 years unless otherwise specified by your state or
 4 federal law", do you see that?
 5 A I do see that.
 6 Q So you wouldn't have actually met the -- the
 7 qualification to be an associate at the time of your
 8 hire, would you?
 9 A Nope.
 10 Q Okay. Number 4, it says, "You must be able to
 11 successfully pass a drug/alcohol screen prior to
 12 employment and periodically throughout your
 13 employment", do you see that?
 14 A I do see that.
 15 Q And obviously, because you -- it said you had THC
 16 you did not successfully pass a drug/alcohol screen
 17 prior to employment, did you?
 18 A From -- from what I seen, far as the evidence that's
 19 been shown today, it would appear that, no, I
 20 haven't, but, from what I was told, I was, you know,
 21 -- I was -- they told me I had passed.
 22 Q Mr. Thompson told you you passed?
 23 A Yes, sir.
 24 Q Okay.
 25 A I was -- I -- I was told that I was passed, so --

1 A I'm thinking, I mean -- well, I don't really know
 2 tell you the truth.
 3 Q Okay. Now --
 4 A I'm pretty sure if it was part of the training they
 5 would've covered it, but far as apprehending cars
 6 they just told me not to leave the parking lot.
 7 Q Okay.
 8 A You're not supposed to be apprehending any cars.
 9 Q Okay. Did they tell you what to do if -- if you're
 10 told to leave the premises or you feel like you're
 11 being led to leave the premises?
 12 A No.
 13 Q They didn't train you on what to do if --
 14 A No.
 15 Q If the --
 16 A They didn't.
 17 Q -- client's telling you to leave and you don't want
 18 to leave?
 19 A Right. They didn't never -- they never told me
 20 nothing like that. They just told me, Don't leave
 21 park -- don't leave -- don't leave premises.
 22 Q What was your understanding as to what would happen
 23 if you didn't follow the client's advice or what
 24 they wanted?
 25 A Far as the client?

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1 Q Yeah
 2 A They never talked about, far as, you know, the
 3 client. If, you know -- far as if the client wanted
 4 me to go off the premises and I didn't go, they
 5 never, you know -- I don't think -- I don't
 6 necessarily think he specified, you know, what would
 7 happen, you know what I'm saying, far as U.S.
 8 Security go. That's why I said earlier I didn't
 9 really know -- I'm asking you what to do. You're
 10 telling me don't go off the parking lot, and I'm
 11 telling you, Well, you know, what am I supposed to
 12 do then?
 13 And you -- you're telling me, Well, do what you
 14 got to do. Just don't go off the parking lot.
 15 That's not giving me an answer. Get what I
 16 mean? So, basically, you telling me use my own
 17 judgment.
 18 Q Okay.
 19 A You know what I'm saying?
 20 Q Sure.
 21 A At the time you feel what you got to do, do what you
 22 feel you got to do.
 23 Q Okay. I'm going to -- I'm going to now, to Tab 18.
 24 A Uh-huh.
 25 Q I'm looking at the second page.

1 talked about
 2 A Okay.
 3 Q And -- and your -- I mean, and -- and you've
 4 basically said you don't -- you don't know anything
 5 about this Past Positive Applicant Background
 6 Verification System, right?
 7 A No. I don't think I never seen none of this.
 8 Q Okay. This just has a -- I mean, at the very -- at
 9 the very top says "100 percent Real Time Pre-Post
 10 Audit" --
 11 A Uh-huh.
 12 Q -- "assures every element required in the background
 13 screen is completed on every candidate" do you see
 14 that?
 15 A Yes, I do see.
 16 MR MCKINNON: Excuse me.
 17 Q And -- and --
 18 MR MCKINNON: Well, see -- is that -- somehow
 19 the copying got messed up. What Randy's
 20 looking at is Tab 22 in our -- our books. It's
 21 printed sideways. It's in -- it says --
 22 THE DEPONENT: Oh, I'm sorry.
 23 MR HOOD: I'm sorry.
 24 THE DEPONENT: Am I at the wrong one?
 25 MR MCKINNON: Yeah. Okay. There was two.

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1 A Okay.
 2 Q This is U.S.A.'s -- or "U.S. Security Associates"
 3 Quality Assurance System," and it talks about how
 4 they hire people.
 5 A Okay.
 6 Q And they say at the core of their -- their
 7 certification is -- one of the things they say is,
 8 "Superior staff" -- "superior staffing. No security
 9 officer who works for U.S.A. has a criminal record
 10 or lacks immigration eligibility", do you see that?
 11 A I do.
 12 Q Now, do you know if they would have ever performed
 13 this certification or quality assurance system on
 14 you?
 15 A I don't understand the question. Say that again.
 16 Q Sure. If they had performed this quality assurance
 17 system on you and done a background check, they
 18 would've found that you had a criminal record,
 19 wouldn't they?
 20 A Correct.
 21 Q And then you wouldn't have ever worked for them,
 22 right?
 23 A Correct.
 24 Q Okay. Going to Tab 19. This is that "Past-Positive
 25 Applicant Background Verification System" that I had

1 MR STEWART: Yeah.
 2 MR MCKINNON: Twenty-two, yeah. I -- I
 3 believe it was this -- this --
 4 MR STEWART: (To Mr. McKinnon) Okay. Thank
 5 you.
 6 MR MCKINNON: I'm sorry.
 7 MR HOOD: Okay.
 8 Q It says, "100 percent 'Real Time' Pre-Post Audit
 9 assures every element required in the background
 10 screen is completed on every candidate", do you see
 11 that?
 12 A I do.
 13 Q And do you know what -- what background check was
 14 actually done on you?
 15 A Only -- only thing I -- only thing I know, as far as
 16 what they told me -- far as just a SLED -- you know
 17 what I'm saying -- and the one that I presented to
 18 them. That's it.
 19 Q Okay. So -- so you would've had the Lancaster
 20 County criminal record check, right?
 21 A Correct.
 22 Q And then you would've had the -- the SLED
 23 verification?
 24 A Right. That's --
 25 Q And --

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1 A They told me they was going to run a SLED they --
 2 Q And --
 3 A -- had to run a SLED
 4 Q And the SLED is the one that came back and said you
 5 were -- you were not eligible to become a security
 6 guard, right?
 7 A Correct
 8 Q Okay So really, the only one that would've
 9 supported you becoming a security guard was the
 10 Lancaster County criminal records check, right?
 11 A I'm -- yes. They --
 12 Q Okay And that's the only background screen that
 13 you're aware of?
 14 A That's the only one that they told me to bring to
 15 them. Now other -- other than that one, like I say,
 16 I knew about the SLED. He told me he was -- they
 17 was going to have to do SLED and you know when you
 18 get there, they going to tell you that you going to
 19 have SLED background and all that. So other than
 20 the one that I presented to them, the SLED one, I
 21 knew about the SLED. They was going to do SLED
 22 Q Okay
 23 A That's what they say anyway
 24 Q Okay I'm now going to 20
 25 A Okay Twenty -- 21, 20. All right

1 see that?
 2 A Yes
 3 Q "We are dedicated to recruiting and retaining
 4 individuals with characteristics of trustworthiness,
 5 motivation and reliability." do you see that?
 6 A Yes
 7 Q Now I understand why on your application you put you
 8 had never been arrested. I understand that because
 9 you just needed a job. But if they had done their
 10 correct background screen they would've seen that
 11 that was not a true statement, wouldn't they?
 12 A Yes
 13 Q Okay And that wouldn't have been something that
 14 would've inspired trustworthiness, would it?
 15 A No
 16 MS LLYNN Object to the term
 17 Q Going to -- okay Go to -- okay I'm going to --
 18 under Tab 25
 19 A Uh-huh
 20 Q Okay This is -- this is similar to that one we
 21 looked at earlier. It has a little different
 22 nuance and I want to know if you know about that
 23 It says "100 percent 'Real Time' Audit assures
 24 every element in a 70-step background screen is
 25 completed on every candidate", do you see that?"

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1 Q Okay This is -- says at the top, "Recruitment and
 2 Training Smart Recruiting and Training Strategies
 3 Improve Retention". do you see that -- that
 4 particular page?
 5 A Yes
 6 Q Under "How we recruit," it -- there's -- the second
 7 full paragraph says, "We use the most accurate,
 8 rigorous background screening system in the
 9 industry, including screening against the National
 10 Terrorist Watchlist. At the core of our employment
 11 policy is our Past-Positive Applicant Verification
 12 System, which is designed to meet all regulatory
 13 hiring and licensing requirements while rejecting
 14 unqualified applicants", do you see that?
 15 A I do
 16 Q Then the paragraph under that, it says, "Past-
 17 Positive ensures no criminal records," right?
 18 A I see that
 19 Q But that didn't happen in your case, right?
 20 A Far as what?
 21 Q It didn't ensure that there wasn't no criminal
 22 record, because you had one.
 23 A Oh, true. True. True
 24 Q It says, "Who We Recruit." Says "Our background
 25 screening process is selective and vigilant", do you

1 A I do
 2 Q Do you know what 70 step background screen was
 3 performed on you?
 4 A No
 5 Q Okay
 6 A Not at all.
 7 Q Okay
 8 A Not at all
 9 Q Going to 26
 10 A Seventy -- 70-step background check. Okay. Wow
 11 Q Okay I'm going to go to --
 12 A -- 26?
 13 Q No I'm going to go to 27, and let me double-check
 14 No. Not that. Number 28
 15 A Twenty-eight
 16 Q Okay This is -- says, "Policy No 130-01, Vehicle
 17 Driver Eligibility Requirements. Date
 18 February 10th, 2003, do you see that?"
 19 A Uh-huh
 20 Q What's the purpose of this?
 21 A "To -- to implement a procedure that will ensure
 22 U.S. Security Associates drivers are qualified
 23 licensed, and safe operators."
 24 Q Okay Now, I know that -- that -- and -- and we've
 25 discussed ad nauseam about this conviction -- or

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1 his pled -- where you pled guilty to this marijuana 2 conviction 3 A Yes 4 Q There's a statute in South Carolina that's on the 5 books that -- that I think -- that is a mandatory 6 suspension of your license if you plead guilty to 7 marijuana possession 8 A Okay 9 Q Okay? Now do you know if U.S. Security was aware of 10 that statute? 11 A No, I don't know 12 Q Do you know if they were aware that you would be 13 driving a car? 14 A If they was aware of I'll be driving a car? 15 Q Yeah 16 A Yeah they -- 17 Q You were -- you were patrolling that parking -- 18 A Yeah 19 Q -- lot 20 A I'm patrolling the parking lot so I'm pretty sure 21 they aware that I'm going to be driving this 22 vehicle 23 Q And would you agree that it's important to be able 24 to know that you have the ability to be able to 25 drive a vehicle with a valid driver's license?	1 A As of 6/17? 2 Q Yes 3 A That would be in June 17th? 4 Q Yes 5 A Like I said I had no knowledge that my license was 6 suspended 7 Q I understand that, but it appears it was suspended. 8 right? 9 A It appears that way 10 Q Okay And it -- 11 A It appears that way 12 Q If you didn't -- if your license was suspended then 13 you didn't have a valid driver's license at that 14 time, right? 15 A Correct 16 Q Okay Going to the -- go to the next page I'm 17 sorry I'm going to go -- and it's -- it's "n" 18 This is going to be -- 19 A Before you get to 29 or 20 Q Yes Yes 21 MR MORGAN Did you say "n" Randy? 22 MR HOOD Yes 23 MR MCKINNON "I L", actually I think 24 MR HOOD It's "n" 25 MR MCKINNON Oh it -- I'm sorry I'm
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1 A Yes 2 Q Okay And if you did not have a valid driver's 3 license you shouldn't be driving a vehicle? 4 A Correct 5 Q Okay Now I'm going to page 2 of this It says 6 '614. The National Background Screening Center 7 will initiate a driver background check', do you see 8 that? 9 A I do 10 Q Do you know if they did that? 11 A No, I don't know if they did that 12 Q Okay. Now I'm going to Exhibit 3 -- says 13 Exhibit 3 at the bottom -- to 130/01 It's page 5 14 A Okay 15 Q At the top could you read that for me? 16 A It says, "U.S. P&P" -- 17 Q Or just -- just the "No" -- 18 A Oh "No employee may drive either a company-owned 19 vehicle, a client vehicle, or a personal-owned 20 vehicle on company business without a valid driver's 21 license and a completed and approved U.S. Form 22 170/1 (Motor Vehicle History Report) in their 23 employee personnel file." 24 Q Okay And you agree that as of 6/17, it appears 25 that your driver's license was suspended right?	1 looking at the bottom O -- yeah, sorry 2 MR HOOD Yep 3 MR MCKINNON Sorry 4 MR MORGAN Uh-huh 5 (Sotto voce discussion between 6 Mr McKinnon and Mr Stewart) 7 A Okay 8 Q I think that's LL 9 A Yeah L 10 Q It'd be back -- 11 A Be back this way? 12 Q Well, this -- 13 A HH right there 14 Q Yeah Let's see. 15 A Okay 16 Q Okay So it'd be right there Okay 17 I'm looking at 11 of Tab 28 18 A Okay 19 Q And at the top it says, "Policy No 500-03 20 Subject Incident Reports, Date 10/10/2001 21 Approved J.P. Flowers", do you see that? 22 A I do 23 Q Do you see where it says, "purpose"? 24 A Yes 25 Q Okay And could you read what the purpose is?

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1 A Yes "To establish a procedure for documenting any
2 and all incidents at a client's facility. For
3 purpose of his procedure, an incident is any
4 occurrence at a client's site facility which is out
5 of the normal daily routine."
6 Q Okay. And -- and obviously, this going off premises
7 and having this incident, that was -- that was
8 outside the normal daily routine, right?
9 A Yes.
10 Q And so this was a type of thing that you would've
11 done an incident report for?
12 A Yes.
13 Q Can you -- do you see No. 4.1?
14 A Yes.
15 Q Okay. And this just says, "An incident report is to
16 be completed by each security officer involved in an
17 incident", do you see that?
18 A Yes.
19 Q And you complied with that policy, didn't you?
20 A I did.
21 Q It says, "4.2 Reports must be prepared with as
22 much detail as possible. The information on an
23 incident report often becomes the basic document
24 used in defense of follow-on legal action and/or
25 insurance claims", do you see that?

1 incident report?
2 A Not to my knowledge.
3 Q Okay.
4 A -- I don't know if he did or didn't.
5 Q Number 5.3. It says, "Branch management personnel
6 must complete an incident report in narrative form
7 using the RMS on the Internet. Reports filed using
8 the RMS will automatically be distributed to the
9 appropriate business unit head, their director of
10 administration and the general council. Other
11 distribution may be requested in the report", do you
12 see that?
13 A I do.
14 Q Do you know if any branch management personnel
15 completed an incident report?
16 A I don't.
17 Q Okay.
18 A I don't know.
19 Q Number 5.6. "A copy of incident reports concerning
20 matters which could possibly result in any other
21 type of insurance claim should be forwarded to
22 Hyland-MacLean for review. This can be -- this can
23 be accomplished using the RMS as well", do you see
24 that?
25 A I do.

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1 A I do.
2 Q Okay. It says, "5.1 Incident reports are normally
3 completed by the security officer involved in the
4 incident or as a first individual an incident is
5 reported to. If the incident reports -- warrants
6 immediate attention, the appropriate supervisor
7 and/or branch or operations manager should be
8 notified by telephone", do you see that?
9 A I do.
10 Q Did you notify anybody other than your father of
11 this particular incident?
12 A I didn't.
13 Q Okay.
14 A Not that night of the accident.
15 Q Okay.
16 A I didn't.
17 Q Okay.
18 A I didn't talk to Bill Thompson until the next day.
19 Q Okay. And then 5.2 says, "Supervisors can and
20 should complete the incident reports, in addition to
21 reviewing the security officer's report, as to their
22 personal involvement", do you see that?
23 A I do.
24 Q Do you know if Bill Thompson ever completed an

1 Q Do you know if a copy of the incident report was
2 forwarded to Hyland-MacLean for review?
3 A No, I don't. Not --
4 Q Okay.
5 A -- to my knowledge.
6 Q Okay. Now -- and I'm going to the next page.
7 A Okay.
8 Q And this says -- and this looks like just a blank
9 Exhibit 1 is just a blank, and it says, "Incident
10 Report" at the top.
11 A Uh-huh.
12 Q And is this the type of incident report that you
13 would have filled out?
14 A Yes.
15 Q Okay. And would you have filled out the entire
16 sheet?
17 A Yes.
18 Q Okay. And you would've put it into -- along with
19 your sign-in sheet?
20 A Yes.
21 Q And down here at the bottom it says, "Signature of
22 officer completing report." You would've signed
23 that, right?
24 A I would've signed that.
25 Q And then to the right of that it says, "Signature

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1 of security facility supervisor. Do you see that?

2 A I do.

3 Q And that would've been Bill Thompson, right?

4 A Yes.

5 Q And then it says "Reviewed by district branch project manager."

6 A Uh-huh.

7 Q You don't know who that would've been, do you?

8 A No.

9 Q Okay. But it would've gone through different chains of command with U.S. Security, right?

10 A It would've had to.

11 Q Okay.

12 A Basically, like I say, when we -- when I filed the incident report with my daily log, I -- I didn't give it to Bill. You know what I'm saying?

13 Q Sure.

14 A We just filed it like we normally do.

15 Q Okay.

16 A Like, every day we'd have to log in and you know, write what we did, far as on site, you know, on the shift, and you -- you filed that right there in the truck. I mean, we had everything in the truck. So I guess he would get that at the end of the week or, you know, when we had to turn in our time sheets.

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1 that's when he would receive incident reports and the daily log sheets and stuff like that.

2 Q Okay. And -- and -- and I -- you've seen where we got the sign in sheet, but we don't have the incident report.

3 A Yes.

4 Q And -- and you don't have an explanation for that?

5 A I -- I really don't.

6 Q Okay.

7 A I really don't.

8 Q Okay. Let's go to -- I'm going to now look at the sign in sheet.

9 A Uh-huh.

10 Q I'm sorry. We've already gone over that. Wait. Wait. Let me go a little bit -- I'm going to go over it some. But --

11 A Okay.

12 Q -- at -- we were under k at 650-01, "Employee Drug Screening."

13 A Okay.

14 Q Now we've -- we've looked at this a little bit, and your -- understand that this just basically goes over the policy regarding the drug screen, right?

15 A Right.

16 Q And I'm just going to -- I -- if you go to the third page, page 3 of 6.

1 A Okay. All right.

2 Q Under 5.1.8.

3 A Okay.

4 Q Can you read that first sentence for me?

5 A I can. "After the required copy is made, those applicants whose sample shows the presence of an illegal drug must be informed that they are ineligible for hire."

6 Q Did Bill Thompson ever inform you you were ineligible for hire?

7 A No.

8 Q If you go down to 5.2, do you see "5.2"?

9 A Yes.

10 Q "Drug Testing for Cause?"

11 A Yes.

12 Q It says, "Any employee who causes or contributes to an on-the-job accident or a near miss in which injuries occur, property damage results, or the potential for such injury or damage existed will be tested for cause. Testing where damage has occurred includes reasonable suspicion that an employee is under the influence of drug."

13 After this particular accident -- never mind.

14 Never mind. Never mind. I -- I -- I withdraw it.

15 Okay.

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1 Now when you took these tests to become the security officer with U.S. Security Associates, did you pass your test on the first try?

2 A Yes.

3 Q Okay.

4 A Yes. Now, you -- you talking about far as those --

5 A -- drug screenings or --

6 Q The -- no, no. Those things where you filled out and you --

7 A The --

8 Q -- you --

9 A -- tests?

10 Q -- got -- yes.

11 A Yeah. Yeah. Yeah. Okay.

12 Q Okay.

13 A Definitely.

14 Q Okay. I'm going to go to Exhibit 2A. It's page 8 of 21.

15 A Twenty-one.

16 Q Under "Security and Officer Supervised Security Supervised Training" [sic], and it has "Security officer" --

17 A What tab we going -- I'm sorry.

18 Q This is under Tab --

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1 A -- 29' 2 Q -- 28 3 A Twenty eight? Past "11" 4 Q It's before you get to 29. It's -- 5 A I think I might see it. It's like -- 6 Q -- 7 of 21. I think it's the next one. 7 A "4742-2 Vehicle," right? 8 Q Yes. Yes. 9 A Okay. 10 Q This says, "U.S. Security Academy Security Officer 11 Basic Training Score Sheet A", do you see that? 12 A Yes. 13 Q At the top it says, "Unit 1 Intro to Security" and 14 then "Policies and Procedures Unit 4, Professional 15 Conduct Unit 5, Effective Communications Unit 6, 16 Legal Authority." 17 Were you asked questions about -- and I mean, I 18 know this isn't exact, but to the one that you took, 19 you would've been asked questions under that -- 20 under -- that -- that would've pertained to that 21 specific heading, right? 22 A Correct. 23 Q And then you would've been trained and -- and if you 24 passed, you would -- excuse me -- you would've been 25 trained on what you're supposed to do under each of	1 again, it was a lot of documents. 2 Q Okay. 3 A So you know, I can't say whether you or may on that. 4 Q Okay. You wouldn't have been given the training 5 materials, right? 6 A Far as what? 7 Q As far as like, the hand -- I mean, if they had 8 been using stuff, like, to help train you, written 9 material you wouldn't have been given that written 10 material to take home or to keep. 11 A Not to take home. Only thing we was -- only thing 12 we took home was the handbook. 13 Q Okay. 14 A Uh-huh. And, like, the test scores. 15 Q Okay. 16 A Stuff like that. 17 Q Okay. This is -- I'm now looking at Tab 30. 18 A Okay. 19 Q I'm looking at the second page. 20 A Okay. 21 Q It says at the top "Drug Screen Consent Form and 22 Release." 23 A Uh-huh. 24 Q Do you see it says, "As an applicant for employment 25 or as an employee with U.S. Security Associates
Page 203	Page 205
1 those headings? 2 A Correct. 3 Q Okay. 4 A And we definitely would've talked about it in the 5 class, definitely -- 6 Q Okay. 7 A -- during the training. 8 Q Okay. And in its -- okay. 9 Going to Tab 29. This says at the top, "U.S. 10 Security Associates, Inc., Security Officer Basic 11 Training; 8 hours, Monday through Thursday, Course 12 Outline." Do you ever recall seeing this particular 13 document? 14 A I can't say that I recall seeing it at this point. 15 Q I -- I -- 16 A But. 17 Q I don't see anything in here -- and I'm just trying 18 to figure out -- I don't see anything in there about 19 vehicle pursuit, and I didn't know if you had 20 received any type of training in regard to vehicle 21 pursuit. 22 A No. I don't think so. 23 Q Okay. 24 A Far as vehicle pursuit and -- no. I don't -- I 25 don't remember seeing a paper like this, but then	1 (herein referred to as "The Company"), I, Derrick 2 Jones, agree to participate as permitted by law in a 3 drug screening program as conducted by the Company." 4 A Yes, sir. 5 Q Do you see -- 6 A Yes, sir. 7 Q And you did participate in that, didn't you? 8 A Yes, sir. 9 Q And then it says underneath that, "I authorize all 10 physicians who have prescribed medications for me 11 for any purpose, to disclose to U.S. Security 12 Associates, those medications prescribed, including 13 the date of the prescription." Do you see that? 14 A I do. 15 Q And then you signed that, right? 16 A I did. 17 Q And it's -- it looks like it was witnessed by W 18 Thompson. 19 A Right. 20 Q And it was dated 5/16/06. 21 A Okay. 22 Q Do you see that? 23 A I do. 24 Q And then underneath that it says, "This particular 25 drug screen test is being administered in connection

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1 with"
 2 A - "pre employment"
 3 Q -- "pre employment"
 4 A Uh-huh
 5 Q And then Results? Do you see where it says
 6 "Results?"
 7 A Yes. It says "negative"
 8 Q It's circled isn't it?
 9 A Yes, sir.
 10 Q And who is it posted by?
 11 A W. Thompson
 12 Q And that would be Bill Thompson, right?
 13 A Yes, sir.
 14 Q Do you know why he would post that as negative when
 15 in fact, it was positive?
 16 A I don't.
 17 Q Okay.
 18 A No, I don't.
 19 Q Going to Tab -- going to Tab 32. It says, "Officer
 20 Recruitment."
 21 A Okay.
 22 Q Once again, this is kind of talking about the Past-
 23 Positive-type thing. I -- I'm going to the third
 24 page.
 25 A Okay.

1 A Oh, yes. Yes. Yes.
 2 Q It can be "no" or "maybe" or anything. Just has to
 3 be verbal.
 4 And then you also had your Longevity
 5 Entertainment, right?
 6 A Yes, sir.
 7 Q Now, do you know if they ever called and confirmed
 8 your employment with Longevity Entertainment?
 9 A No, I have no knowledge of that.
 10 Q Okay. And have you ever spoken with anybody at
 11 Longevity Entertainment that would have verified
 12 that they had called them to confirm that you had
 13 worked there?
 14 A No.
 15 Q And I know that you said that you would get -- you
 16 knew if somebody came in there and they did some --
 17 some track work or they were cutting tracks or
 18 whatever that you would -- you would work as a
 19 production engineer, right?
 20 A Exactly.
 21 Q But that wasn't every day that that occurred, was
 22 it?
 23 A No. Not every day. Probably, maybe, I would say
 24 like about three -- three times a week --
 25 Q Okay.

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1 Q This says "The SOR program was -- was created to
 2 increase the universal potential security officers
 3 for our branches. Key features include:
 4 Identification of the most qualified candidates
 5 elimination of unqualified candidates based on a
 6 generally accepted set of standards." do you see
 7 that?
 8 A I do.
 9 Q And one of the things under there is, "Clean
 10 criminal record", do you see that?
 11 A I do.
 12 Q Okay. It also underneath that it says, "Possess a
 13 verifiable work record indicating stability,
 14 reliability, and suitability for security work", do
 15 you see that?
 16 A I do.
 17 Q Now, in this case you -- it appears on the
 18 application for U.S. Security that you had listed
 19 your -- your Wal-Mart employment, right?
 20 A Yes.
 21 Q And that was two months?
 22 A Uh-huh.
 23 Q Right?
 24 A Yeah. Somewhere around that.
 25 Q Got to give me a "yes" or "no".

1 A -- somewhere around there.
 2 Q It sometimes 4 hours, sometimes 8 hours, sometimes
 3 12 hours?
 4 A Sometimes 12, sometimes 16.
 5 Q It'd just depended -- whatever it took to get the
 6 job done?
 7 A Exactly.
 8 Q But in order for them to be able to -- to ensure
 9 that you had been working a steady job for five
 10 years, they would've had to have called them, right?
 11 A Yes.
 12 Q Okay. And you don't know if they called them?
 13 A I don't know if they called or not.
 14 Q Have you talked to anybody there about whether they
 15 know if they called them or not?
 16 A No.
 17 Q Okay. It says, "Possess characteristics such as
 18 honesty and personal integrity", do you see that?
 19 A Yes.
 20 Q And I know, once again, you -- you put what you put
 21 on the application because you wanted the job, but
 22 -- but that isn't the type of thing that would seem
 23 to indicate possess a characteristic such as honesty
 24 and personal integrity, would it?
 25 MS FLYNN Object to the form.

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1 A No
 2 Q Now I'm going to the next page 5110346
 3 A Okay
 4 Q At the top it says "Employment Screening Program"
 5 A Okay
 6 Q "U.S. Security Associates has the most accurate,
 7 rigorous screening system in the industry. We're so
 8 confident of its accuracy that we back it with a
 9 \$100,000 guarantee."
 10 A Wow
 11 MR HOOD (To Mr Morgan) Doc, you may need
 12 to make your claim
 13 Q Now --
 14 MR MORGAN Noted
 15 Q -- "U.S. Security Associates will reimburse its
 16 client up to \$100,000 towards fines or damages
 17 incurred in any action caused by failure of U.S.A.
 18 to fulfill the screening policies of criminal record
 19 checks or employment eligibility as defined by the
 20 Immigration Reform and Control Act." And then it
 21 has this Past-Positive Applicant Background
 22 Verification System, do you see that?
 23 A I do see it
 24 Q Says, "Field Office Candidate Application", do you
 25 see that?"

1 A I'm guessing yes Yes
 2 Q Okay Now going to the next page I am looking at
 3 the very bottom of this, last full paragraph
 4 A Okay
 5 Q It says, "Prospective employees who test positive
 6 for alcohol or drugs are removed from consideration
 7 for employment" do you see that?
 8 A I do
 9 Q You were not removed from consideration for
 10 employment, were you?
 11 A No
 12 Q Going to Tab 33 and this is the security services
 13 master agreement that -- that Wal Mart had with U.S.
 14 Security I know you were not part of this I know
 15 that I'm just going to ask you some questions
 16 about some things that are in here
 17 A Okay
 18 Q I know you were not part of the process, and if you
 19 don't know just tell me you don't know
 20 A Okay
 21 Q This, basically, is a service master agreement
 22 This just tells them what they can and can't do and
 23 all kinds of stuff with the contract between them
 24 A Okay
 25 Q But there was an attachment to it, and it -- it says

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1 A Uh-huh
 2 Q And then it has an arrow on it, says "Check SSN,
 3 criminal records, license refs", do you see that?
 4 A I do
 5 Q You don't know if they did a criminal record check
 6 other than what you provided them, right?
 7 A No, sir
 8 Q And you don't know if they checked your references,
 9 right?
 10 A No, sir
 11 Q And if they had checked your criminal record and
 12 knew that your license was going to be suspended,
 13 you wouldn't have been eligible to drive, right?
 14 A Right
 15 Q If they had retrieved or -- do you see where it
 16 says, "Retrieve response"?
 17 A Yes
 18 Q And then it has two arrows It says, "If not clear,
 19 terminate employment process," right?
 20 A Yep
 21 Q And it says "If clear, continue employment
 22 process"
 23 A Correct
 24 Q If this had worked right it would've been "not
 25 clear, terminate employment process" right?

1 "addendum" And it's at their -- their -- their
 2 page is WM2007 --
 3 A -- sever? I gotcha
 4 Q -- dash 53547C
 5 A Yes I gotcha
 6 Q It would -- it says "addendum" at the top
 7 A Right "Addendum and waiver"
 8 Q No No It's -- it's on --
 9 A Uh-oh
 10 Q -- on --
 11 A Uh-oh
 12 Q -- past that
 13 A Uh-oh Uh-oh I thought I had you
 14 Q It's 786, the bottom
 15 A 786
 16 Q Yes
 17 A Okay Okay
 18 Q Okay Do --
 19 A Okay
 20 Q Okay Do you see that?
 21 A Yes
 22 Q This just says, "This addendum reflects the
 23 following addition of new facility for service for
 24 security services between Wal-Mart and U.S. Security
 25 Associates dated October 26, 2004 Facility 1030

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1 Original start date February 25th 2006 at
 2 4 p.m. do you see that?
 3 A Uh-huh
 4 Q And then under "Scope of work" it says "The
 5 contractor shall provide security services for the
 6 following Wal-Mart facility No. 1030 located at
 7 805 Highway 9 Bypass West, Lancaster South Carolina
 8 29720", do --
 9 A Uh-huh
 10 Q you see that?
 11 A I do
 12 Q And that's the Wal-Mart that you were patrolling
 13 their parking lot, right?
 14 A Correct
 15 Q Now at the bottom of this when you go under Roman
 16 numeral H and D, the very last sentence says,
 17 "Security guards shall never use choke-holds to
 18 detain a customer and shall never chase a customer
 19 off Wal-Mart property on foot or in a vehicle", do
 20 you see that?
 21 A I do
 22 Q Now, this was actually -- this addendum was
 23 something that was in your vehicle, right?
 24 A I'm not sure about that because I -- far I remember,
 25 only thing I had in my vehicle at the time was the

1 A Okay
 2 Q Do you see No. 14?
 3 A Yes
 4 Q Okay Could you read that for us?
 5 A It says "The patrol vehicle should not leave Wal-
 6 Mart property except for gas or maintenance."
 7 Q And when you left it, you were not going for gas or
 8 maintenance, right?
 9 A No sir
 10 Q Number 22 Do you see that?
 11 A Yes, sir
 12 Q Could you read that for us?
 13 A "Security contractors are not a policing" -- or
 14 "policing force and should not be used as one. It's
 15 Wal-Mart management's responsibility to enforce Wal-
 16 Mart policies and procedures."
 17 Q Okay But it's -- I think you testified and it's
 18 your testimony today that you thought that Wal-Mart
 19 wanted you to get the tag, right?
 20 A Yes they did
 21 Q So in essence you were just doing Wal-Mart's job?
 22 A I was just basically --
 23 MR MORGAN Object to form
 24 A -- doing what they told me to do
 25 Q Okay Number 26 Do you see that?

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1 log -- the daily log sheets, incident reports We
 2 kept them all in -- in the folder -- same folder so
 3 I don't -- I don't remember that being in the
 4 folder. Then again, I'm not that sure if it was in
 5 the folder but like I said I don't -- I don't --
 6 Q Whether it was in --
 7 A -- far as my memory goes, I don't know if it was in
 8 the folder or not
 9 Q Well, whether it was in the folder or not, you knew
 10 you weren't supposed to chase them off premises?
 11 A Yes
 12 Q Okay
 13 A Yes Yes
 14 Q Now going to 792 on the bottom
 15 A Okay
 16 Q This is "Guidelines for Private Security
 17 Contractors" This appears also to be attached to
 18 that master services agreement Have you ever seen
 19 this sheet before?
 20 A No
 21 Q Okay You see right in the middle of the page where
 22 it says, "The following Wal-Mart guidelines will
 23 apply entirely or in part to either duty station"
 24 A I see that
 25 Q Go to the next page

1 A Yes, sir
 2 Q Could you read that for us?
 3 A "In the event of a shoplifting situation, the
 4 security contractor should act as a witness and only
 5 assess -- only assist when directed to by a member
 6 of Wal-Mart management or loss prevention or when
 7 you see the Wal-Mart associate in trouble or
 8 danger."
 9 Q And did you follow that in this case?
 10 A I'm going to have to say, no, I was not just a
 11 witness I was a witness, but I was more than a
 12 witness, pretty much, I mean due to the fact of
 13 what they told me to do
 14 Q Right
 15 A So I -- I was -- I was -- I had become more than a
 16 witness, you know?
 17 Q And did you only assist when you were directed by a
 18 member of Wal-Mart management or loss prevention?
 19 A Yes I was -- I -- on time I you know, took
 20 further actions when they told me, "Look You need
 21 to get that license plate tag."
 22 Q So in that part of it, you were following this
 23 policy, weren't you?
 24 A I --
 25 MR MORGAN Object to form

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1 A I was I was I was trying to
 2 Q Now, Number 29, do you see where it says -- what it
 3 says for 29?
 4 A It say -- yes sir. It say "Think safety first"
 5 (Sotto voce discussion between
 6 Mr McKinnon and Mr Stewart)
 7 Q Okay (can you keep reading that please?)
 8 A It says "Always remember to protect yourself, and
 9 if possible, assist others before attempting to
 10 protect property. Remember Security contractors
 11 are precluded from searching or pursuing suspect
 12 etc."
 13 (Sotto voce discussion between
 14 Mr McKinnon and Mr Hood)
 15 Q Okay If -- if if you had been thinking, did
 16 Wal-Mart telling you to get that tag cause you not
 17 to think safety first?
 18 A I would say, yes, the -- the -- the urgency -- the --
 19 the importance of me getting his license plate tag,
 20 it just kind of like, you -- you not even thinking
 21 really. You know, at the time of -- of the incident
 22 taking place, it just -- it -- it happened so
 23 fast, man. You not -- you not thinking clearly
 24 You know what I'm saying? And --
 25 Q Sure

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1 A -- when they're telling you "Look, man. You got to
 2 get that license plate tag. You -- get that license
 3 plate tag."
 4 And I'm telling them "Well, they leaving the
 5 parking lot" --
 6 "Well, get that license plate tag number." And
 7 that's all I'm hearing. It's -- so, no.
 8 Q Okay
 9 (Sotto voce discussion between
 10 Mr McKinnon and Mr Hood)
 11 MR HOOD (To Mr McKinnon) Okay
 12 Q Now, how much were you getting paid an hour by U.S.
 13 Security?
 14 (Sotto voce discussion between
 15 Mr McKinnon and Mr Hood)
 16 MR HOOD (To McKinnon) I know
 17 A Wow. Been about two years ago three years ago
 18 That had to be -- I want to say like, somewhere
 19 around eight-somewhere.
 20 Q About eight bucks an hour?
 21 A Somewhere around there
 22 Q Okay And do you know how much U.S. Security was
 23 getting paid for -- for providing the security
 24 services?
 25 A No

1 Q Okay
 2 (A cell phone rings)
 3 MR HOOD (To the deponent) That's okay
 4 THE DEPONENT I'm sorry
 5 MR HOOD Oh, that's -- (To the videographer)
 6 What -- how much time we got left on this tape?
 7 THE VIDEOGRAPHER Fifteen
 8 MR HOOD Okay
 9 THE DEPONENT I do apologize
 10 Q Okay That's 48, 49, 53 Okay Now I'm going to
 11 go all the way back --
 12 A Okay
 13 Q -- and I apologize
 14 A No problem
 15 Q Okay
 16 A The very front or --
 17 Q We're -- we're going to go to, I think, No. 8
 18 A Number 8 Okay
 19 Q And these are your -- your answers to your
 20 plaintiff's first set of interrogatories, okay? Now
 21 this says "Give the names and addresses of persons
 22 known to parties or counsel have knowledge of the
 23 facts of the case and indicate whether or not
 24 written or recorded statements."
 25 Travis Roddey is our client, so I know who that

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1 is
 2 A Okay
 3 Q Archie Bryant's the general manager. Bill Thompson
 4 is Bill Thompson. Richard Hucks is Richard Hucks.
 5 Hope Rollings, she was at -- at Wal-Mart. Sarah
 6 McManus was at Wal-Mart. Shawn Cox was a Wal-Mart
 7 Trooper Howard we know what he did. Trooper
 8 Burgess the M.A.I. team. We know Phyllis Wright,
 9 Charles Campbell and Chris Tipton, Patrolman
 10 Campbell. Paul Smith. Sam Plyler, Henrietta Lizard,
 11 Sam Huey. Frank Long, we know.
 12 Now, what I'm wondering now is under (v) it
 13 says "Teresa Hunter."
 14 A Uh-huh.
 15 Q Do you know who Teresa Hunter is?
 16 A Unh unh.
 17 Q Do you know what she would know about this
 18 particular case?
 19 A No -- no sir.
 20 Q Have you ever spoke to anybody other than Ms. Lizard
 21 that may be a potential witness to this case?
 22 A No, sir.
 23 Q Okay If you go over to the next page, it says --
 24 A Teresa Hunter?
 25 Q -- W. Kenneth Coleman

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1 A Okay
 2 Q Do you know who Mr. Kenric Coleman is?
 3 A No sir
 4 Q Do you know what he may know about this case?
 5 A No sir
 6 Q Okay. Under No. 5 it said, "Please state the name
 7 and present business of each and every individual
 8 whose supplied information used to answer these
 9 interrogatories, and identify his or her legal
 10 capacity, position, employer." And it has you down
 11 here. Do you see that? Where it says "a" --
 12 A Number 5?
 13 Q -- "Derrick Jones. No. Under No. 5. Be page 11.
 14 He the next page.
 15 A Okay. And it has me where?
 16 Q At the -- at -- under "c".
 17 A Okay. "Mr. Marshall is general counsel for U.S.
 18 Security Associates, Inc."
 19 Q And then it has "c, Derrick Jones", do you see that?
 20 A Uh-huh.
 21 Q Did you participate in answering these
 22 interrogatories?
 23 A Would that been -- had been over the phone by my
 24 lawyer?
 25 Q Now, I don't want to know what you talked on

1 so I want to say either way or may -- I don't
 2 remember if I had my glasses that day.
 3 Q Okay.
 4 A I had just come --
 5 Q Because you came straight from the airport's right
 6 to --
 7 A Right. I --
 8 Q -- Wal-Mart?
 9 A -- had just come from -- I had just come from New
 10 York. You know what I'm saying? So I -- I'm -- I'm
 11 not really sure if I had my glasses at the time.
 12 Q Okay. And did you normally use your glasses to
 13 drive?
 14 A Yes.
 15 Q Okay. But it's -- is it fair to say that you don't
 16 recall whether you had your glasses on or not at the
 17 time of the incident?
 18 A Yes.
 19 Q Okay.
 20 A It is fair.
 21 Q And if you had your glasses on, would you have been
 22 able to get the license plate in a -- in an easier
 23 manner? Been able to see farther away to get the
 24 license plate?
 25 A I'm going to say no because of you know, the way

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1 anything
 2 A Right. Right. Yes.
 3 Q Okay.
 4 A Yes. We talked on --
 5 Q Okay.
 6 A -- the phone.
 7 Q It says under (f), "Do you wear prescription lenses",
 8 do you see that?
 9 A Yes.
 10 Q Do you wear prescription lenses?
 11 A Yes.
 12 Q Now, are you short-sighted or far-sighted?
 13 A Far-sighted, I think. Whenever -- I can't see far
 14 away.
 15 Q Okay.
 16 A -- so I guess that'd be near-sighted.
 17 Q Near-sighted. Near-sighted.
 18 A Right. Right.
 19 Q Okay. Do you wear glasses to drive?
 20 A Yes.
 21 Q Okay.
 22 A I do wear glasses to drive.
 23 Q Now, were you wear -- wearing glasses on the night
 24 that this occurred?
 25 A Yes. I -- let me think. I just came from New York

1 the situation went down. Far as the speeding and
 2 stuff like that, I -- I still probably wouldn't have
 3 been able to get the license plate whether I had my
 4 glasses on or not, because, I mean, if -- if I'm
 5 behind you and we riding like that. I -- I can't
 6 really tell. You ain't got no light over your
 7 license plate tag.
 8 Q Sure.
 9 A You know what I'm saying?
 10 Q Sure. Now were you -- are you required by law to
 11 wear glasses when you drive?
 12 A Yes.
 13 Q Okay. And were you in 2006?
 14 A Was I required by law?
 15 Q Yes.
 16 A Yes.
 17 Q Okay.
 18 A Yes. Yes.
 19 MR. HOOD (To the videographer) We got ten
 20 minutes left on this tape? (To counsel) Why
 21 don't we take a break now because I think we'll
 22 be through within the next tape and I've got
 23 -- I want to show him just, like, two minutes
 24 of this video and stuff and we can get it all
 25 set up.

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1 MS J LYNN Okay 2 (Off the record from 2:24 p.m. until 3 2:47 p.m.) 4 THE EXAMINATION BY MR. HOOD CONTINUES 5 MR. HOOD Okay. This is a tape of Ms. -- I 6 mean Ms. Beckham as she came out of the Wal 7 Mart and had the first interaction with Mr 8 Jones, and at the top, it says, "Tuesday, June 9 20th, 2006 10:04:47 - 10:04:47 10 p.m." I'm assuming that's 10:04 with 47 11 seconds. 12 MR. MCKINNON (To Mr. Morgan) Doc, the first 13 clip is marked "Parking lot GM" is the way it 14 was produced to us. 15 MR. MORGAN Okay. 16 MR. HOOD (To Mr. McKinnon) 441-4 This has 17 gone, like, a minute now and it doesn't show -- 18 MR. MCKINNON It'll go forever. 19 MR. STEWART But it's get -- 20 MR. HOOD No. But I'm saying is it past 21 where we need to be? Okay. Then, how do I get 22 to the second one? That was just the first 23 clip where you turned around, Mr. Jones. 24 MR. MCKINNON Can we go off the record for a 25 second?	1 the interaction or conversations that you would've 2 had with her? 3 A With her directly? When I pulled up I say, "How 4 you doing tonight, ma'am?" Can I talk to you for a 5 moment?" 6 And she said, "Oh, yeah. Just let me go put my 7 bag in the car, and I'll -- you know I'll be right 8 back." 9 I said, "Well, there's no need for that. It'll 10 only take a second for me to talk to you." And 11 that's when she started running. 12 Q Okay. 13 A Just like that. 14 Q And then that kind of took us into that second clip. 15 A Correct. 16 Q And did you -- did you have a visual on her as she 17 is running to the car and when she gets into the 18 car? 19 A Yes. 20 Q Okay. And what did you do once she began running? 21 A I just kind of followed her so I can see what car 22 she was going to so I can get the license plate tag 23 number. 24 Q Okay. And -- and the clip seems to show you pulling 25 in front of her car. Did you see that?
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1 MR. HOOD We don't have to go off the record. 2 MR. MCKINNON Okay. 3 MR. HOOD Just tell me how to do it. 4 MR. MCKINNON Okay. It would be easier if I 5 just do it. 6 MR. HOOD Okay. 7 MR. MCKINNON Yeah. Excuse me. Okay. It's 8 ready to -- there. 9 MR. HOOD Okay. 10 THE EXAMINATION BY MR. HOOD CONTINUES 11 Q And this is -- this is the second clip, and this is 12 it's 10:04:56 so it's about nine seconds after 13 the last clip again, okay? 14 A Uh-huh. 15 Q And you can see there's Ms. Beckham. And at about 16 10:05:45 is when it stops, okay? Okay. And then 17 I'm going to ask you some questions about that. 18 A Okay. 19 Q We -- we've had an opportunity to look at two 20 different little video clips about what -- what 21 occurred in this particular case, and the first one 22 was where she came out and then you -- you drove 23 forward and then took your truck and you went -- 24 took a left into the parking lot. Can you tell me, 25 from the time that she came from the store, all of	1 A Yes. 2 Q And then it's -- appears that she's backing up, and 3 you're following her as she's backing up. 4 A Right. At that time I'm on -- on the walkie-talkie 5 talking to the people in Wal-Mart, telling them, 6 "Well, what do you want me to do?" Basically, I 7 mean you -- you didn't never -- they never really 8 gave me any distinctive instructions on what I'm -- 9 was supposed to do when she came out the store. So 10 I just looked at it -- I just took the approach of, 11 I can't detain her. I can't arrest her. So I'm just 12 trying to slow her up, just trying to, you know, 13 stall for time until they can come and get her. But 14 that didn't happen that way. 15 When she ran to the car, I followed behind her. 16 They was trying -- she jumped in the car. They was 17 trying to leave the parking lot, so that's when I 18 pulled in front of them. At that time that's when 19 they backed out and we -- that's when you see we 20 going up the other side. 21 Q Okay. 22 A At that time I'm on the walkie-talkie and we're 23 telling them, "Well, they're -- they're -- they're 24 trying to exit the parking lot. I'm behind them 25 trying to get the license plate tag number."

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1 And they're telling me then "You need to get
2 that license plate tag number."
3 Q Okay. Were they aware at the time that - that --
4 that they told you that, that she was leaving the
5 parking lot?
6 MR. MORGAN: Object to --
7 A Yes.
8 MR. MORGAN: -- form.
9 A Yes.
10 Q Okay. And how would they have known that?
11 A I'm figuring they would've come out. I know Hope
12 said she seen it the whole time. She was -- she
13 came out and basically they -- they would've seen
14 it. Not -- not only just for video surveillance
15 but they were outside as well. By the time I'm on
16 the walkie-talkie to them and they -- and we getting
17 ready to leave the parking lot, they would've seen
18 that. You know what I'm saying?
19 Q And Hope, who -- who gave the statement saying that
20 she saw it, she was also one of the persons that
21 requested you get the license tag?
22 A Correct.
23 Q Okay.
24 A Correct.
25 Q And did you also report to them that they were

1 Q Even though they were leaving the parking lot?
2 A Right.
3 Q Okay. I'm looking at this -- the thing that we were
4 looking at before, which is Exhibit 7.
5 A Exhibit 7? Okay. Right here.
6 MR. MCKINNON: Eight.
7 A Okay.
8 MR. MCKINNON: Light, I think. Randy.
9 Q Excuse me. Light. It's my fault. Going to number
10 -- okay.
11 Going to No. 12.
12 A Uh-huh.
13 Q Now it says, "No. 12" and under A it has -- says,
14 "Tell us the -- where you've worked for the last ten
15 years." And it'd be page 14.
16 And the first one is Zaxby's from April 4th,
17 2007, to present. Do you see that?
18 A Yes.
19 Q Now you don't work there anymore, right?
20 A No, sir.
21 Q How long did -- you worked there from April 2007 to
22 when?
23 A Till, I want to say, March 2008.
24 Q Okay.
25 A Uh-huh.

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1 backing up and attempting to leave the parking lot?
2 A Yes.
3 Q And --
4 A Yes.
5 Q And --
6 A And at that point they told me to, "Make sure you
7 get that license plate tag." That's when -- really,
8 when the license plate tag number was the main
9 objective.
10 Q When did that occur?
11 A The -- I mean, when the -- when the situation
12 hypenened [sic], far as, you know, she running to the
13 car and they backing up trying to leave, when I'm
14 telling them that they like, "Okay. Well, just
15 make sure you get that license plate tag number."
16 Make sure you get the license plate tag number.
17 I'm like, "Okay. Well, they're leaving the
18 parking lot now."
19 "Okay. Well, you need to -- you need to get
20 that license plate tag number." It's not "Oh,
21 okay. Well, then, stop. Don't worry about it.
22 We'll just try to catch them on the -- on the" -- it
23 was none of that. It was never no, "Stop. Don't
24 worry about it." It was always, "Well, you need to
25 get that license plate tag number."

1 Q And then prior to that you had worked at U.S.
2 Security Associates from May to June 2006, right?
3 A Uh-huh.
4 Q Okay. Now, where did you work from June 2006 to
5 April 2007?
6 A I really don't recall even having a job.
7 Q Okay. And -- and --
8 A Tell you honestly.
9 Q How were you -- where were you living at that time?
10 A At that time I was down at my mom's house back down
11 there in Camden.
12 Q What were you doing for money?
13 A Just in and out jobs. I started -- I was trying to
14 apply for unemployment, but I -- I don't -- I didn't
15 ever get it at that time.
16 Q Is it -- is it fair to say that you were unemployed
17 from June 2006 to April 4th, 2007?
18 A Yes.
19 Q And you were not receiving unemployment at that
20 time?
21 A None.
22 Q And is it fair to say that you don't recall
23 A I was receiving food stamps --
24 Q Okay.
25 A -- at that time and that's on record.

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1 Q Okay. But -- but you don't recall how you were
2 making money during that time.
3 A No. I -- I really wasn't making any money. That's
4 the whole problem.
5 Q Okay.
6 A Yeah.
7 Q Now under "c" if you go to the next page, which is
8 15, it has "Wal-Mart, 3/06 to 5/06." Do you see
9 that?
10 A Uh-huh.
11 Q That was when you did the -- the -- the
12 A -- the remodel before --
13 Q -- remodel?
14 A -- I started at -- at the Wal-Mart in Lancaster.
15 Q Okay. And before that is "d, Longevity
16 Entertainment" --
17 A Uh-huh.
18 Q -- right?
19 A Uh-huh.
20 Q Now, you were -- it says, "Studio engineer
21 Performer, part-time." This was basically a part
22 time job, right?
23 A Pretty much. You know what I'm saying? Like I say,
24 we -- we would be there, you know, maybe three times
25 a week, far as the recording and being the studio

1 A Susan Drive.
2 Q Now before that it says, "Southeast Staffing
3 Company, approximately January to March 2006." Do
4 you see that?
5 A Uh-huh.
6 Q And then "(f), Late 2004 to mid-2005, Ventura
7 Staffing."
8 A Uh-huh.
9 Q Then "C, Eckerd's (part-time), Providence Road
10 Charlotte, North Carolina, photo lab."
11 A Uh-huh --
12 Q Now, how long did you work full -- part-time at
13 Eckerd's?
14 A Wow. It wasn't very long at all.
15 Q Couple months?
16 A Yeah. Couple months.
17 Q Okay. And then under "(h)" it says, "Guard One,
18 Charlotte, North Carolina, approximately two to
19 three months."
20 A Uh-huh.
21 Q And then it had, "(i), Mint Museum, head security
22 approximately 2000, six to seven months." Do you
23 see that?
24 A Uh-huh.
25 Q And it says, "Employment terminated."

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1 engineer. Far as me actually doing my own recording
2 and performing, that was whenever I could get in
3 there, far as me being a -- instead of me being the
4 studio engineer and being the performer, that was
5 just basically any time I could get in there to --
6 to record myself. But other than that, far as being
7 the studio engineer, yes, I probably was there
8 two/three times a week.
9 Q Okay. And who would be the person that we would
10 talk to at Longevity Entertainment to see, you know,
11 what you were working and that kind of thing?
12 A His name is Juan Benton. I don't currently have a
13 phone number for him. They've closed Longevity --
14 far as from the last time I heard them, they've
15 closed Longevity Entertainment down, so
16 Q But it was Juan Benton?
17 A Juan Benton.
18 Q Okay. Do you know how old he is or anything?
19 A He goes to be in his late 30s.
20 Q Okay.
21 A Somewhere around in there.
22 Q Was 5732 -- was that his house or was that a --
23 A That was the actual studio. That was where --
24 that's the studio address.
25 Q Okay.

1 A Uh-huh.
2 Q Why was it terminated?
3 A I missed too many days.
4 Q Okay. Why did you miss too many days?
5 A I was having -- me and my girl, was having problems.
6 Q Okay.
7 A You know what I'm saying? And the result of that
8 constantly moving in and out of my house --
9 Q Okay.
10 A -- or constantly moving closer and further away from
11 my job. So, you know, it was -- it was tough and go
12 at that time.
13 Q Okay. Now up at the top under "d" -- excuse me --
14 it has, "Wal-Mart, terminated from employment." Why
15 were you terminated from employment there?
16 A No. I wasn't terminated. It shouldn't have
17 "terminated from employment." I finished the whole
18 remodeling thing.
19 Q So -- so it was just -- the job finished?
20 A Yeah. The job was finished.
21 Q Okay.
22 A We -- we finished --
23 Q And that -- that may be what the "terminated" means.
24 A Okay.
25 Q Now it says on the next page -- this is where you

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1 had returned from Bu Tao to Charlotte Douglas
2 International Airport
3 A Uh-huh
4 Q Who did you know in Buffalo, New York?
5 A My sister live up there, my sister husband, and all
6 my nieces
7 Q Okay
8 A Well four of my nieces live up there
9 Q Sure
10 A Family, cousins, friends
11 Q Okay
12 A I'm originally from Buffalo, New York
13 Q Okay I'm going to go to 21 -- page 21
14 A Okay
15 Q And it says, "Identify all applications submitted to
16 any South Carolina or North Carolina state agency to
17 receive any security guard certification and
18 indicate whether the application was denied and
19 why." Do you see that?
20 A Yes
21 Q The second full sentence says -- or third full
22 sentence says "Please refer to the employment file
23 maintained by U S A A for Derrick Jones the non
24 privileged portions of which are being produced
25 herewith." Do you see that?

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1 A Uh-huh
2 Q What are the privileged portions that you're aware
3 of?
4 A I have no idea
5 Q Okay
6 A Maybe --
7 MS FLYNN Object to the form And we've
8 provided a privilege log I mean --
9 MR HOOD Okay Okay (To Mr McKinnon) Do
10 we have that privilege log?
11 MR MCKINNON We do To the best of my
12 recollection, there was nothing on the
13 privilege log from the employment file There
14 was --
15 MS FLYNN They were in -- that was from the
16 employment file Everything on the privilege
17 log was --
18 MR MCKINNON -- was the
19 MS FLYNN -- from the employment file
20 MR MCKINNON We have that
21 MR HOOD: Okay
22 (Sotto voce discussion between Mr
23 Hood and Mr McKinnon)
24 MR HOOD: (To Mr McKinnon) Okay Can you
25 get -- get Bobbie to get that for me?

1 MR MCKINNON Sure thing
2 MR HOOD Okay
3 (Mr McKinnon exits the deposition at
4 3:01 p m)
5 Q Going to page 23 -- okay I don't need that
6 We've gone over that
7 Going to page 23 It's actually 22 and then
8 I'll go over to page 23
9 A Okay
10 Q Twenty-three just is basically the -- "Identify the
11 employees who -- who contacted" you in regard to
12 what we outlined in the complaint And you refer to
13 a Hope Rollings When you've used the -- when
14 you've -- you've talked about Ms Cox, and -- and
15 that's Shawn Cox When you say "Hope" you're
16 talking about Ms Rollings, right?
17 A Yes
18 Q Okay
19 A Yes, sir
20 Q Okay
21 MR MORGAN What number was that, Randy
22 please?
23 MR HOOD That was -- that was page 23, but
24 it's No 27 on page 22 and 23
25 Q And then No 28, it -- it asks for other other

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1 people that were there
2 A Okay
3 Q And -- and Mr Jones -- Sammy Jones is your dad,
4 right?
5 A Yes, sir
6 Q Who is Ferlin Childers?
7 A I have no idea
8 Q Okay Have you ever met Mr Childers?
9 A No
10 Q Okay
11 A Not that I could say, no Not from Gastonia, North
12 Carolina, no, sir
13 Q Okay
14 (Mr McKinnon enters the deposition
15 at 3:04 p m)
16 Q Mr Jones, just some -- just some general background
17 questions
18 A Okay
19 Q You currently live in where?
20 A Camden, South Carolina
21 Q Okay And your dad lives in Lancaster, South
22 Carolina?
23 A Yes, sir
24 Q Do you have any other relatives that live in
25 Lancaster, South Carolina?

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1 A Yes. My dad's whole side of his family his
2 sisters, brothers. Yeah.
3 Q Okay. Other than the last name of Jones, what is
4 the name that -- that -- of other kinfolk in
5 Lancaster County?
6 A His sisters -- his twin sisters is McAlewines.
7 Q Okay.
8 A That's about all I got for you. Jones and
9 McAlewines.
10 Q Okay.
11 A -- pretty much is the main core of people that I
12 know --
13 Q Now --
14 A -- far as his side goes.
15 Q As far as the -- the other -- do you have -- other
16 than family, do you have any close, personal friends
17 that live over in Lancaster County?
18 A No.
19 Q Okay. Do you know if your daddy goes to a church
20 over there?
21 A Yes. Their church is -- it's called "Centennial" --
22 Q Okay.
23 A -- I want to say "A.M.E. Zion".
24 Q Okay.
25 A Uh-huh.

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1 Q Do you know where any of the McAlewines go to church
2 at? Is there any other church over there --
3 A That's the family church.
4 Q That's the family church?
5 A Yes.
6 Q Okay.
7 A Yes, sir.
8 Q Now, on the day that this occurred, how would you
9 describe the weather? What was the weather like?
10 A It was nice like any other regular summer day. Not
11 too hot, not too -- it was --
12 Q But there wasn't -- it wasn't --
13 A It was --
14 Q -- rainy or foggy or anything like that?
15 A No. Not that I can remember.
16 Q But there was -- there wasn't anything that you can
17 recall impeding your visibility?
18 A No. No.
19 Q Okay. Now, where this actual -- where you came up
20 on this accident, if -- if you could -- how many
21 times had you been in that specific area or that
22 specific location where it actually occurred?
23 A Where the accident happened?
24 Q Yeah.
25 A I have never been over there.

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1 Q Okay.
2 A Never.
3 Q Was that the first time?
4 A That was the first time I ever seen on that road.
5 Q Okay. I want you to do me one favor and it's almost
6 -- almost in a narrative form, but if you could,
7 kind of just take me through when you took a right
8 out of that Wal-Mart parking lot and just kind of
9 give me a summary of everything that you did that
10 you can recall until you stopped at that -- that
11 location. If you could just give me a summary.
12 A After leaving the parking lot like I said, I was
13 following behind. They -- they were speeding off
14 they sped through a red light. They almost had an
15 accident. I slowed up because that car was still in
16 the -- in the road, so I went around that car.
17 Q Did you run the red light?
18 A Pretty much so, yes.
19 Q Okay.
20 A Pretty much so.
21 Q So --
22 A I mean --
23 Q -- you ran that red light, even with the car in the
24 road?
25 A Pretty much so. You could say that because --

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1 Q Okay.
2 A -- I mean, I'm not that far behind them at that
3 point --
4 Q Okay.
5 A -- until they almost hit that car.
6 Q Okay.
7 A Once they got around that car I'm still right there
8 in front of that car. I got around -- I got around
9 it too, you know what I'm saying? But it probably --
10 -- not -- not too much of a delay.
11 Q Okay.
12 A So --
13 Q Are you -- you've still got them in your sight?
14 A Yeah. They're still -- they're still in my sight,
15 still going down the road.
16 Q Are you going down 9?
17 A No. This is 521.
18 Q Okay.
19 A This is the road right there in front of Wal-Mart
20 coming through that light.
21 Q Okay.
22 A So this is 521. We didn't get to 9, I guess that's
23 what they call it, that ramp, and when we got down --
24 -- further down 521, which is not that far from --
25 Q Yeah.

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1 A -- the Wal-Mart, we goes -
 2 Q And 9 is where -
 3 A -- up that way
 4 Q -- the McDonald's is right?
 5 A Right. Well, no -- it's -- yeah. Right before you
 6 get to the McDonald's. Right in that --
 7 Q Okay
 8 A -- area. Right in that --
 9 Q Okay
 10 A -- same area. And we're going up that ramp. They
 11 almost hit a car going up the ramp. I mean, they
 12 was almost on three-wheel motion. That's how fast
 13 they were going.
 14 (Sotto voice discussion between Mr
 15 Stewart and Mr. McKinnon)
 16 A Once they -- they maneuvered to the left in order
 17 for them not to hit the car. Once they maneuvered
 18 to the left, that car was dead in front of me. So I
 19 couldn't move until she moved. It was a lady -- it
 20 was a older lady driving it. I would say a -- it
 21 looked like -- it looked to be, like a champagne-
 22 colored Buick or something like that.
 23 Q Okay
 24 A Maybe a Regal
 25 (Sotto voice discussion between Mr

1 stuck behind that car
 2 Q Okay
 3 A Then that's when we got on the highway -- the Monroe
 4 Highway road.
 5 Q Okay. And so you then get on the Monroe Highway
 6 road?
 7 A Yes sir.
 8 Q Okay. And when you got on the Monroe highway road
 9 what did you do?
 10 A That's when I came upon -- it's a -- I want to say
 11 it's a apartment complex there off to your right.
 12 Q How -- about far from Wal-Mart?
 13 A This is -- this is a good ways from Wal-Mart now.
 14 This is -- I want to say, from the Wal-Mart to that
 15 area going on -- on Monroe road, maybe -- I don't
 16 know maybe, like, three minutes for minutes --
 17 Q Okay
 18 A -- away, if that long.
 19 Q Okay
 20 A Depending on how fast you going.
 21 Q Okay
 22 A Uh-huh.
 23 Q Okay. And -- and -- and how fast --
 24 A And far as --
 25 Q How fast were you traveling going on that Monroe

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1 Stewart and Ms. Cooper)
 2 A I don't really -- I'm not really sure. I know it
 3 looked -- it looked like a older car like a Buick or
 4 something like that. By this time she's dead in my
 5 way, so pretty much the following or the chasing,
 6 like y'all want to say, is over. You know what I'm
 7 -- they -- they -- they done moseyed on down the
 8 highway. I -- they done -- that's where they lost
 9 me at, coming up that ramp. I'm -- I'm stuck behind
 10 that car --
 11 Q Okay
 12 A -- that they maneuvered and missed. They done hit
 13 that left and got on Monroe Highway, and they went
 14 down that way. I -- I -- I didn't see them until
 15 after I done went down there, searched the area,
 16 turned around, and that's when I see the lights.
 17 That's when I backs up, and then that's when I
 18 notice that's -- that's them in the accident.
 19 Q Now -- now, when you -- you were on the ramp, were
 20 you going to merge onto 9?
 21 A I really don't -- merge onto 9. Like I said, when
 22 we got to the ramp, we -- we -- we -- they merged to
 23 the left, I'm thinking. Either to the left or the
 24 right, one of the two. I know they merged, and when
 25 they -- when they missed that car, that's when I was

1 road?
 2 A I was traveling kind of fast but not that fast. I
 3 mean, I wasn't --
 4 Q Were -- were you --
 5 A You know, they were on three wheels.
 6 Q Were you going the speed limit?
 7 A I kind of -- I might've kind of exceeded the speed
 8 limit maybe five miles, if that.
 9 Q Okay
 10 A Probably a little bit more. Maybe five to ten
 11 miles. I don't necessarily think that -- I don't
 12 think nobody was doing the speed limit. Tell you the
 13 honest truth.
 14 Q Well, why would -- why would you -- when you took
 15 the right and you saw them go through a red light,
 16 why didn't you just --
 17 A -- just stop then?
 18 Q -- stop then?
 19 A Exactly. My mistake then because I'm hearing, "Man,
 20 you've got to get that license plate tag number."
 21 And I made a -- I made a decision.
 22 Q Okay
 23 A And then it -- it -- it wasn't the best decision
 24 but I -- I definitely made one.
 25 Q Okay

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1 A And I'm hearing "You need to get that license plate
2 tag number. That's what I need to go --"
3 Q Okay.
4 A -- was getting the license plate tag number
5 Q Now, when you -- when you were on the -- the Monroe
6 Highway and you -- you go and you get to that
7 apartment complex --
8 A Right.
9 Q -- that's on the right --
10 A Right.
11 Q Now, what did you do once you got to that apartment
12 complex?
13 A Well, I seen people in the parking lot getting out
14 of a car. That's why I went down into the complex.
15 But I wasn't them. It wasn't the car that -- it --
16 it didn't look like it was the car, didn't look like
17 it wasn't them. It came out to not be them. Once I
18 got out -- out -- I came out of the parking lot from
19 the apartments, I made another right going down the
20 highway still.
21 At this point I'm just like -- kind of like,
22 Hey, I'm about to get off pretty soon. I -- hey,
23 I'm going to kill some time. So I walk -- I ran --
24 ran down -- you know, I went down the road. I'm
25 thinking, Maybe they -- they don't see the light on --

1 Wal-Mart --
2 A Uh-huh.
3 Q -- then they would be pointing away from Wal-Mart,
4 right?
5 A Right.
6 Q I mean, they're going up --
7 A They'll be -- they'll be going back towards --
8 towards McDonald's and all that.
9 Q Right.
10 A Uh-huh.
11 Q And so they would've been pointing away from Wal-
12 Mart?
13 A Right.
14 Q But if they were pointing away from Wal-Mart, were
15 they on the -- off the left side or the right side
16 of the road?
17 A I'm really not sure which side of the road we was
18 on.
19 Q Okay.
20 A Far as -- if we -- if we -- if you're coming to Wal-
21 Mart, you're on the right side. If you leaving Wal-
22 Mart, I'm thinking you on the -- coming to Wal-Mart
23 you'll be on -- to enter the Wal-Mart, you'll be on
24 the left side. You'll be -- you'll -- you'll make a
25 left to enter the Wal-Mart at that light --

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1 no more. Maybe they'll turn around because maybe
2 this is not the direction that they really wanted to
3 go, but they seen me following them, so they just
4 had to do what they, you know, had to do. So I'm
5 thinking, Well, I ain't got my light on. I'm trying
6 to kill time. You know, maybe they'll turn around
7 and come back or something like that, far as to
8 where I can get their license plate tag number, you
9 know what I mean?
10 But that wasn't the case. I went down a little
11 bit further. I turned the -- I turned the truck
12 around and said, "Hey, I'm packing it in and I'm
13 going back to Wal-Mart." Once I packed it in and --
14 and made that decision to turn around to go back to
15 Wal-Mart, that's when I seen them in my rearview
16 mirror. That's when I backed the truck up.
17 Q Okay.
18 A Uh-huh.
19 Q And -- and when you backed the truck up, when you
20 were -- when you were coming back to Wal-Mart, had
21 they -- were they going away from Wal-Mart and they
22 crossed the center line and went off the wrong side
23 of the road?
24 A From Wal-Mart?
25 Q Yeah. Like if they're -- if they're going away from

1 Q Okay.
2 A So if you're leaving Wal-Mart, you'll be making a
3 right leaving --
4 Q Sure.
5 A -- you'll be on the right side.
6 Q But -- but where you saw them --
7 A Uh-huh.
8 Q -- and if they were leaving Wal-Mart, if they were
9 trying to get away from Wal-Mart --
10 A Uh-huh.
11 Q -- if they were driving that way, did they have to
12 cross the center line and go off the road, or did
13 they run off the right side of the road?
14 A No. They was on the right side of the road to get
15 off -- to bear off going up that ramp.
16 Q Okay.
17 A You know what I'm saying?
18 Q Okay. So -- so they ran off the passenger side of
19 the road?
20 A Right. I would have to say that --
21 MS FLYNN: I think y'all are talking about
22 different things. Not to -- but you're talking
23 about the accident site.
24 MR HOOD: I'm talking about the accident site.
25 MS FLYNN: You're not --

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1 THE DEPOENT Oh I didn't see --
 2 MS. FLYNN -- talking about the --
 3 THE DEPOENT -- the -- I didn't see --
 4 MS. FLYNN -- accident site
 5 THE DEPOENT -- the accident I'm talking
 6 about --
 7 Q I'm talking about where you found the car though
 8 When you found the car
 9 A When I found the car that would be on the left side
 10 of the road
 11 Q Okay
 12 A If you're pointing in this direction, it would've
 13 been on the left side of the road When I backed
 14 up they'd have been on my right side
 15 Q Okay Where -- were -- did they go off on the
 16 passenger side or the driver --
 17 A Driver side
 18 Q Okay
 19 A Uh-huh
 20 Q Okay If they went off the driver's side, that
 21 means they would've had to have crossed the center
 22 line and gone off the side of the road --
 23 A I wouldn't --
 24 Q -- right?
 25 A -- know because I didn't see the accident

1 Q Okay Okay
 2 A I'm speculating anyway
 3 Q Sure
 4 A I don't --
 5 Q Sure
 6 A -- know Like I say I --
 7 Q And I -- I know you --
 8 A -- didn't see the accident
 9 Q -- you didn't see it And -- and but now if you
 10 could describe when you -- when you got up onto the
 11 scene --
 12 A Uh-huh
 13 Q -- when you got out, how would you describe the car
 14 -- I mean, the crash impact and -- and how it hit
 15 the tree?
 16 A It looked like they went directly into the tree,
 17 just dead smack in it Like they came off that
 18 incline and they ended up on that tree
 19 Q Do you recall -- did you see any -- any skid marks,
 20 or did you do any kind of inspection of the roadway?
 21 A No, I didn't I didn't because, man, I kept said I
 22 want to say her name is Ms. Beckham was -- was
 23 screaming crazy So I'm -- I'm not thinking about
 24 doing a road investigation or nothing like that
 25 I'm just thinking about getting her to safety or

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1 Q Okay Well, I mean, if they were -- anytime if you
 2 go off the passenger's side of the road, you have to
 3 cross the center line right?
 4 A Okay I -- I -- like I said, I -- I don't know how
 5 that happened I didn't see the accident
 6 Q Okay But I mean, if you're driving on this street
 7 out here and you take a right, the passenger side --
 8 you've got the other side of the road on the --
 9 beside you, right? I mean, the -- the driver's
 10 side Let me withdraw all this We'll do --
 11 withdraw it all
 12 Were they on the -- you said they were on the
 13 passenger side or the driver side?
 14 A Far as at the scene of the accident?
 15 Q Yes
 16 A It would've -- it would've had to appear that they
 17 went off on the driver's side. When I backed --
 18 when I -- when I went down and I turned around and I
 19 backed up and I -- when I seen them lights and I
 20 backed up, I would've been like this backing up So
 21 they'd have been over my right shoulder You
 22 understand?
 23 Q Right
 24 A Okay So if your car is in that direction, you
 25 would've had to come off on the driver side

1 seeing what's -- what I could do you know what I'm
 2 saying, at that point
 3 (Sotto voce discussion between Mr
 4 Hood and Mr. McKinnon)
 5 MR. HOOD Okay
 6 Q Now, on the flight from New York to Charlotte, you
 7 would've gotten into Charlotte and then you would've
 8 then come directly from the airport to Wal-Mart,
 9 right?
 10 A Right
 11 Q Do --
 12 A Right
 13 Q -- you know what time the flight was from Buffalo to
 14 Charlotte that day?
 15 A It had to be -- not really I know I was supposed
 16 to be on clock at four
 17 Q Okay
 18 A You know, so I got there in enough time to get from
 19 Charlotte to get to my job
 20 Q Okay Do you recall, when you were -- when you took
 21 the right and -- and you were following them, then
 22 you went through the red light --
 23 (Mr. McKinnon exits the deposition
 24 3:18 p.m.)
 25 Q -- do you recall flashing your lights at them?

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1 A Yes. My light was on.
 2 Q Okay.
 3 A You talking about the light on top of the truck?
 4 Q The light on top of the truck, but what about just
 5 your -- your -- your lights in your car? Do you
 6 remember flashing your lights at them?
 7 A No. Only light I remember having on is the light on
 8 the top of the truck.
 9 Q Okay. Would you have -- would you have had your --
 10 your regular lights lit up since it was at night?
 11 A Yes. They would've been on. The truck --
 12 Q The --
 13 A -- regular truck headlights?
 14 Q Right.
 15 A Yes. They would've been on.
 16 Q And you know you can turn those lights on, you can
 17 turn those lights off, right?
 18 A Right.
 19 Q And if you go back and forth, it'll --
 20 A They flicking and flag -- yeah.
 21 Q -- they'll -- they'll flicker back and forth.
 22 A I don't recall flicking the -- my lights back and
 23 forth. Only light I recall having on -- far -- was my
 24 -- my -- my light on the top of the truck and the
 25 regular headlights. I don't remember flicking and

the off and on there.
 2 Q Okay. Do you know -- I believe you've already
 3 answered this out -- but other than the one call
 4 where the guy -- you thought his name was Boykin --
 5 A Right.
 6 Q How many calls did you have with him?
 7 A I just remember that one call.
 8 Q All right. And do you -- I believe you've said that
 9 you don't think he tape-recorded your conversation?
 10 A I'm not sure.
 11 Q Okay. He -- did he -- do you recall him telling you
 12 he was going to tape record the conversation?
 13 A Not to my knowledge, no.
 14 Q Okay.
 15 MR HOOD: That's all I have. That's it.
 16 MR MORGAN: Mr. Jones, I've got a few
 17 questions for you.
 18 THE DEPENDENT: Yes, sir?
 19 EXAMINATION
 20 BY MR. MORGAN
 21 Q And now as I understand it, during this entire time
 22 period, you were employed by U.S. Securities, is
 23 that correct?
 24 A Yes, sir.
 25 Q All right. And you were hired by U.S. Security?

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1 flagging no. No.
 2 Q Okay.
 3 A I wouldn't have flicked my lights like that.
 4 Q Okay. Is it -- do you remember not doing it, or you
 5 don't recall whether you did or you didn't do it?
 6 A I remember not doing it. I don't remember -- no. I
 7 wouldn't have been playing with the light switch.
 8 Q Okay.
 9 MR HOOD: Okay. Give me about two minutes.
 10 I'm almost through.
 11 THE DEPENDENT: Okay.
 12 (Off the record from 3:19 p.m. until
 13 3:29 p.m.)
 14 THE EXAMINATION BY MR. HOOD CONTINUES
 15 (Mr. McKinnon is present when the
 16 deposition resumes.)
 17 Q Mr. Jones, there is a privilege log I just wanted to
 18 go over with you. And I don't think you know
 19 anything about this, but I just wanted to find out.
 20 They said there was an e-mail from John Marshall to
 21 Archie Bryant with a letter from me dated July 7th
 22 2006. You don't know John Marshall, do you?
 23 A No.
 24 Q Do you know Archie Bryant?
 25 A Archie Bryant? I'm thinking so. I think he be's in

1 A Yes, sir.
 2 Q And eventually fired by U.S. Security?
 3 A Yes, sir.
 4 Q All right. When you were hired by U.S. Security
 5 you filled out an application, is that correct?
 6 A Yes, sir.
 7 Q And that application was from U.S. Security?
 8 A Yes, sir.
 9 Q Had "U.S. Security" up at the top?
 10 A Yes, sir.
 11 Q As I understand, you interviewed with U.S. Security?
 12 A Yes, sir.
 13 Q All right. And only people from U.S. Security were
 14 involved in that interview?
 15 A Yes, sir.
 16 Q And was that Mr. Thompson, that I believe, that you
 17 mentioned?
 18 A Yes, sir.
 19 Q Mr. Bill Thompson who's employed with U.S. Security?
 20 A Yes, sir.
 21 Q And you interviewed with him solely, is that right?
 22 Or anybody --
 23 A Yes, sir.
 24 Q -- else?
 25 A Yes, sir.

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1 Q Anybody else?
 2 A No.
 3 Q Okay. And the application was filled out at --
 4 U.S. Security's direction?
 5 A Yes, sir.
 6 Q And you filled that application out and you gave it
 7 back to U.S. Security?
 8 A Yes, sir.
 9 Q All right. And there was a process, as I
 10 understand, that you had an application, you had an
 11 interview, and then you had some training, is that
 12 right?
 13 A Yes.
 14 Q All right. And the application, as you've stated,
 15 was prepared by U.S. Security?
 16 A Yes, sir.
 17 Q And the interview was conducted by U.S. Security?
 18 A Yes, sir.
 19 Q And then the training was conducted by U.S.
 20 Security, is that right?
 21 A Yes, sir.
 22 Q And U.S. Security was only involved in -- were the
 23 only ones involved in any of those things, is that
 24 correct?
 25 A Yes, sir.

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1 Q All right. And were you specifically hired by Mr.
 2 Thompson and fired by Mr. Thompson?
 3 A Yes, sir.
 4 Q Was there anybody else involved with the hiring or
 5 the firing of you?
 6 A No, sir.
 7 Q And as I understand it, you were fired really a few
 8 days after this incident when the SLED report came
 9 back?
 10 A Yes, sir.
 11 Q All right. Speaking of the SLED report, the SLED
 12 report was requested by U.S. Security, is that
 13 correct?
 14 A Yes, sir.
 15 Q The SLED report was given to U.S. Security once the
 16 report came back, is that correct?
 17 A Yes, sir.
 18 Q And we've gone through these policies and manuals
 19 and guidelines, and those were U.S. Security
 20 guidelines, is that right?
 21 A Yes, sir.
 22 Q Those were U.S. Security policies, is that right?
 23 A Yes, sir.
 24 Q Those were U.S. Security procedures, correct?
 25 A Correct.

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1 Q All right. And is part of your application and
 2 interview process, you -- I understand you also took
 3 some tests, is that --
 4 A Yeah.
 5 Q -- right?
 6 A Yes, sir.
 7 Q Were these -- and I believe we went through them --
 8 a few of them here today, and they were -- it was a
 9 written exam or test or something, is that right?
 10 A Yeah. It was -- it was kind of like -- like I
 11 would see open-booklet type thing. You know, asked
 12 -- they asked the question, you answered true or
 13 false. You just circled the answer, stuff like
 14 that.
 15 Q Were you given any material to prepare for?
 16 A Nothing other than the guy training us from Georgia,
 17 you know.
 18 Q And that's --
 19 A And then --
 20 Q -- who you think may've been John Nance or somebody
 21 else?
 22 A I can't -- I can't recall his name.
 23 Q All right. But this individual from Georgia was
 24 from U.S. Security, is that correct?
 25 A I would -- I would suspect so. I -- I'm not sure.

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1 I know he was the training -- he was the train-out
 2 He -- he's the one that gave us the training. He
 3 was ours -- at -- at the time we received our
 4 training, like I said it before, they were training
 5 another class as well, and I'm thinking it's in
 6 Greensboro.
 7 Q And when you say "they" were training another class
 8 that was U.S. Security?
 9 A Yes. The guy that I'm talking about from Georgia.
 10 He was training our class in Charlotte and the class
 11 in Greensboro at the same time.
 12 Q All right. And the class that you had in Charlotte
 13 was composed of some other individuals that were
 14 applying for with --
 15 A Yes, sir.
 16 Q -- for a job with U.S. Securities?
 17 A Yes, sir.
 18 Q All right. And that's the only job you all were
 19 applying for was with U.S. Security?
 20 A Yes, sir.
 21 Q And the tests that were in -- during that process
 22 were scheduled by U.S. Security?
 23 A Yes, sir.
 24 Q And U.S. Security administered those tests, is that
 25 correct?

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1 A Yes sir
 2 Q And you were in the room taking the tests with some
 3 other individuals and everybody was there to apply
 4 for U.S. Security is that correct?
 5 A Yes sir
 6 Q And were these applicants applying for the jobs with
 7 U.S. Security over different places to your
 8 knowledge?
 9 A Yes sir I want -- yes
 10 Q As I understand, U.S. Security provides security to
 11 a number of companies, places, locations, even
 12 countries is that your understanding as well?
 13 A Yes
 14 Q All right And Wal-Mart this particular Wal-Mart
 15 here in Lancaster is just one of those clients
 16 brought -- for U.S. Security, is that right?
 17 A Yes sir
 18 Q All right And the test that you performed -- or
 19 took, which was administered by U.S. Security, I
 20 assume it was graded by U.S. Security personnel?
 21 A Yes sir
 22 Q All right They were the only ones in the room
 23 involved with the training -- I mean with the tests
 24 is that right?
 25 A Yes sir

1 A We did the three day training far as in the
 2 classroom in Charlotte Then I did well the
 3 first day I came over there I want to say -- what's
 4 his name? -- he Hucks guy, basically --
 5 Q Richard Hucks?
 6 A Right He basically just kind of came -- came down
 7 and you know to keep about post-orders and stuff
 8 like that
 9 Q All right And Richard Hucks is an employee of U.S.
 10 Security?
 11 A Yes sir
 12 Q All right And he came down to the Charlotte
 13 training to talk to you all about post-orders?
 14 A No He came to Lancaster
 15 Q Oh, he came to Lancaster?
 16 A Yes sir
 17 Q Okay And as I understand, at the time that you
 18 applied for the job at U.S. Security, your father
 19 was working for U.S. Security?
 20 A Yes sir
 21 Q And he was actually a security guard at the Wal-Mart
 22 there in Lancaster?
 23 A Yes sir
 24 Q All right And Richard Hucks from U.S. Security met
 25 you all or took you down to Lancaster to the store or

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1 Q All right And as far as the training, I understand
 2 U.S. Security was -- personnel were the only ones
 3 involved in your training, is that right?
 4 A Correct
 5 Q And this training occurred in Charlotte, North
 6 Carolina, is that correct?
 7 A Yes sir
 8 Q Was it at a U.S. Security's facility?
 9 A Yes sir
 10 Q And were there any other applicants there applying
 11 for any other jobs with any other company?
 12 A No Not that I -- not -- not that I know of
 13 Q All right
 14 A No
 15 Q And the -- you did -- passed your test, I believe,
 16 is that right?
 17 A Yes sir
 18 Q And the -- I assume the personnel at -- at U.S.
 19 Security informed you that you had passed the test;
 20 is that --
 21 A Yes sir
 22 Q All right Now the -- the training that was
 23 involved in your application-interview-employment
 24 process, was conducted at Charlotte solely, or was
 25 it conducted anywhere else?

1 what?
 2 A No I was already there I -- I met them
 3 there
 4 Q All right So you all were supposed to meet there at
 5 the store?
 6 A Yes sir
 7 Q All right And that -- that direction or
 8 instruction to meet there at the store was made by
 9 U.S. Security personnel?
 10 A Yes sir
 11 Q It was Mr. Hucks of U.S. Security?
 12 A Yes sir I would say that
 13 Q And he directed you all to go to the store there?
 14 A I want to say -- I want to say it was told by Mr.
 15 Thompson that, you know, "You will meet up with Mr.
 16 Hucks when you -- when you report to duty, and you
 17 will go over certain things, far as your post-orders
 18 and stuff like that"
 19 Q All right So Mr. Thompson of U.S. Security told
 20 you to meet Mr. Hucks of U.S. Security at the Wal-
 21 Mart there in Lancaster?
 22 A Yes sir
 23 Q All right And when you got there to the Wal-Mart
 24 on this particular day, Mr. Hucks met you there, is
 25 that correct?

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1 A Yes sir
 2 Q And did you meet with him during that time period --
 3 during that day?
 4 A Yes, sir
 5 Q And how long did y'all meet?
 6 A Not too long. Not a -- not -- not -- not that
 7 long. I want to say maybe a hour, couple hours
 8 maybe
 9 Q All right. And what did y'all go over?
 10 A Basically he tell me you know, "We had a officer
 11 out here already that thought he was police, and you
 12 -- you're not supposed to detain or, you know, try
 13 to you know, arrest anybody." We went over
 14 speeding procedures in the parking lot. We went
 15 over --
 16 Q You said, "speeding procedures"?
 17 A Yes. Far as like, you know, it's a parking lot
 18 Basic common sense, you know, not in speed
 19 Q So he's --
 20 A Stuff like that
 21 Q -- directing you and telling you, you know "You
 22 don't -- you don't need to speed?"
 23 A Right. I mean, basically, what we -- you know, far
 24 as the actions we was supposed to take out -- you
 25 know, carry out while on duty far as just in and

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1 out of the -- in and out of the parking lots and,
 2 you know, making sure ain't no cars being vandalized
 3 or any stuff like that. You know --
 4 Q Okay. And his --
 5 A -- what I'm saying?
 6 Q -- is coming from Mr. Hucks, is that correct?
 7 A Yes
 8 Q Is it just the two of y'all there meeting that day?
 9 A My father was up there for -- for a while then he
 10 left
 11 Q All right
 12 A Yes
 13 Q So other than your father anybody else other than
 14 you and Mr. Hucks?
 15 A No
 16 Q All right
 17 A No
 18 Q So Mr. Hucks is there at the store, and y'all are
 19 out there in the parking lot, is that right?
 20 A Yes
 21 Q He's telling you, you know, "You need to make sure
 22 that you don't speed in the parking lot."
 23 A Right
 24 Q He's telling you, I'm sure, that you don't need to
 25 drive recklessly in the parking lot, is that

1 correct?
 2 A Yes
 3 Q All right. He's directing you to make sure there's
 4 no vandalism or anything like that in the parking
 5 lot?
 6 A Yes
 7 Q He's basically directing you and -- and telling you
 8 what you need to do, is that correct?
 9 A Far as post orders, yes
 10 Q All right. And other than Mr. Hucks, is there
 11 anybody out there directing you or telling you what
 12 you need to do?
 13 A No, sir
 14 Q All right. And tell me a little bit about these
 15 post-orders. Those are your directions from U.S.
 16 Security, is that correct?
 17 A Yes. It's -- it's basically the -- what you
 18 supposed to do while you're on that shift, while
 19 you're on that post
 20 Q All right. And Mr. Hucks is the one going over
 21 these post-orders?
 22 A Yes
 23 Q And Mr. Hucks is the one that's telling you this is
 24 what you're supposed to do?
 25 A Yes

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1 Q Mr. Hucks is the one that's telling you you're
 2 supposed to do this during the day or any time that
 3 you're employed there, is that correct?
 4 A Yes
 5 Q All right. Any time that you're working there at
 6 the Lancaster store, these are the things you're
 7 supposed to do, according to Mr. Hucks of U.S.
 8 Security, is that correct?
 9 A According to that and the -- and the post-orders
 10 Q Okay. And the post-orders, those are basically just
 11 -- as I understand, just instructions for what y'all
 12 are supposed to do?
 13 A While we're there on shift
 14 Q All right
 15 A Exactly
 16 Q And when I say "y'all," I mean employees of U.S.
 17 Security working security there at the Lancaster
 18 store, correct?
 19 A Yes, sir
 20 Q All right. And are they written down anywhere?
 21 A Yeah. Post-orders are -- we have them all in -- in
 22 the truck. Post-orders --
 23 Q You got them in your truck?
 24 A -- daily logs, and incident reports
 25 Q All right. So we've got post orders, daily logs,

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1 and incident reports and those are in your truck.
 2 is that right?
 3 A Yes, sir.
 4 Q And your truck is a U S Security truck is that
 5 correct?
 6 A Yes, sir.
 7 Q And the truck that -- that you were driving and
 8 using during your employment at U S Security was
 9 one that had a name on it is that right?
 10 A Yes, sir.
 11 Q And the name had "U S Security"
 12 A Yes, sir.
 13 Q Was it a placard, or was it painted on the -- on the
 14 truck?
 15 A I really can't tell. I know it was on side of the
 16 door, though. On the --
 17 Q All right.
 18 A -- driver's side of the door. I want to say it was
 19 on the passenger's side as well.
 20 Q Passenger side too?
 21 A Yeah.
 22 Q Okay. And that truck, to the best of your
 23 knowledge, was owned by U S Security, is that
 24 right?
 25 A Yes, sir.

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1 Q And U S Security supplied you that truck for your
 2 job is that correct?
 3 A Yes, sir.
 4 Q Did you also wear a uniform?
 5 A Yes, sir.
 6 Q And was that uniform supplied by U S Security?
 7 A Yes, sir.
 8 Q Bought and paid for by U S Security?
 9 A Yes, sir.
 10 Q And were you instructed to wear that uniform at all
 11 times while on the job?
 12 A Yes, sir.
 13 Q And that job being the Wal-Mart store in Lancaster?
 14 A Yes, sir.
 15 Q And at all times when you were there at the
 16 Lancaster store, you were either in the truck or
 17 outside the truck and you had your uniform on is
 18 that correct?
 19 A Yes, sir.
 20 Q All right. Getting back to the post orders, the
 21 incident report, and the daily logs those were kept
 22 in your truck, is that right?
 23 A Yes, sir.
 24 (Sotto voce discussion between Mr
 25 Stewart and Mr McKinnon)

1 Q And again we talked about the truck being one of
 2 U S Security.
 3 A Yes, sir.
 4 Q And is that where you were instructed to keep all of
 5 these documents?
 6 A Yes, sir.
 7 Q And you were instructed by someone at U S Security?
 8 A Yes, sir.
 9 Q Would that be Mr. Hucks or Mr. Nance or somebody?
 10 A I want to say Bill Mr. Hucks. I's -- I mean
 11 yeah. You -- my father. You know, that's where we
 12 -- that was where I was told that we keep all the
 13 documents in the truck in the glove compartment.
 14 Q Okay. And Mr. -- strike that.
 15 Your -- your father was the only kind of
 16 supervisor or --
 17 A No.
 18 Q -- like --
 19 A He was just an officer as well.
 20 Q Both of y'all were both officers --
 21 A Yes, sir.
 22 Q -- for U S Security?
 23 A Yes, sir.
 24 Q How long did your father work there?
 25 A I have no clue.

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1 Q Been there for a while or any idea?
 2 A I want to say maybe -- yeah, he had been there for a
 3 couple months maybe before I came on or -- I don't --
 4 -- I really have -- I really don't know how long he
 5 had been there before I came on.
 6 Q Okay. And the -- the post-orders the daily log
 7 and the incident reports, were they kept in any
 8 particular folder or file or anything like that?
 9 A In the folder.
 10 Q In the folder?
 11 A Uh-huh.
 12 Q And the folder was kept in your truck?
 13 A Uh-huh.
 14 Q All right. The incident reports what kind of
 15 incident reports are these? Just a -- a -- a --
 16 A It's like --
 17 Q -- form -- bunch of forms?
 18 A Yeah. It looks like the one that's -- that was
 19 presented earlier today that was in this book today.
 20 Q All right.
 21 A It looked just like that.
 22 Q And that was supplied by someone at U S Security?
 23 A Yes, sir.
 24 Q All right. And the daily logs, was that supplied by
 25 U S Security as well?

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1 A Yes sir
 2 Q And the -- the method -- in -- in preparing or
 3 filling out these logs, incident reports, etc. were
 4 based on the instructions from U.S. Security?
 5 A Yes sir
 6 Q And -- and again, those documents were all U.S.
 7 Security property, is that right?
 8 A Yes sir
 9 Q All right. And again, getting back to the day that
 10 you were out there with Mr. Hucks, y'all were out
 11 there for about an hour, is that right?
 12 A Yeah. I want to say that's -- yeah. Keeping --
 13 yeah.
 14 Q And y'all were going over the post orders. Were you
 15 going over the forms or the daily logs or anything
 16 like that?
 17 A Not too much in detail, basically. He was -- he was
 18 like, you know, "These -- this is -- this is your
 19 incident report. This is your daily log. You know
 20 this is how you do your daily log." He showed me
 21 the incident report. I don't necessarily remember
 22 him going into great detail, far as on how to, you
 23 know, write an incident report. I already kind of
 24 knew how to write an incident report, so I don't
 25 really remember him going into great detail on how

1 Q All right. Was that your first day on the job?
 2 A I want to achieve -- yes, I think it was the first
 3 day. Either the first day or the second day.
 4 Q Okay.
 5 A One of the -- one of the two. I know it was very
 6 early on when I started first working there. So I
 7 -- I'm -- I'm trying to remember whether it was the
 8 first day he came out there or the second day. I'm
 9 really not too sure on that, but it -- it was in
 10 between the first two -- the first or second day
 11 that I worked.
 12 Q All right. Mr. Hood asked you some questions. Went
 13 -- went -- went through, in pretty good detail,
 14 these policies and procedures from U.S. Security.
 15 Do you --
 16 A Yes, sir.
 17 Q Was there any place that those were kept? Did you
 18 keep those in the truck?
 19 A Policies and procedures --
 20 Q You know, the handbook.
 21 A The handbook, yeah. Yeah. We was told, you know,
 22 "You have to have your handbook on you as a
 23 reference," you know, stuff like that. So yeah, I
 24 just kept mine in the truck.
 25 Q Kept it in the truck?

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1 to do that. But, you know, he showed me how --
 2 where it was at and, you know, just -- and where to
 3 keep it at, where to put it at, and all that kind of
 4 stuff.
 5 Q All right. And as I understand from your testimony
 6 just a few minutes ago, Mr. Hucks was out there
 7 instructing you on speeding and -- and how to drive
 8 and -- and where to drive and things like that, is
 9 that correct?
 10 A Yes.
 11 Q And he's the only one that was instructing you to do
 12 that?
 13 A Yes, sir.
 14 Q I mean, nobody from Wal-Mart was out there directing
 15 you and --
 16 A No, sir. No.
 17 Q -- telling you how to act or drive or do anything
 18 like that?
 19 A No, sir.
 20 Q All right. You were out there for about an hour,
 21 and then did you stay on the job that day or were
 22 y'all --
 23 A Yes.
 24 Q -- through?
 25 A Yeah. I worked that day.

1 A Yes, sir.
 2 Q Okay. And this was the handbook from U.S. Security?
 3 A Yes, sir.
 4 Q And U.S. Security instructed you to keep that on
 5 hand at all times?
 6 A Yes, sir.
 7 Q All right. And I assume the handbook discussed sort
 8 of your post-orders and things like that, is that
 9 correct?
 10 A Policies and procedures. They -- they wrote out --
 11 I'm -- I'm going to say -- I'm going to assume that
 12 U.S. Security wrote the post orders, far as you
 13 know, what was to go on while you were on duty at
 14 that post.
 15 Q Okay.
 16 A You know. I'm not going to necessarily say that
 17 them post-orders for that post at Wal-Mart was in
 18 the handbook. No. I -- I can't so much say that.
 19 I don't think so.
 20 Q I -- I understand a little -- from a little while
 21 ago, you -- you said that you were paid hourly
 22 wages, is that correct?
 23 A Yes, sir.
 24 Q And how much were you paid?
 25 A Somewhere around 8 -- maybe 8.25 to 8.50. Nothing --

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1 nothing greater than that
 2 Q All right And that was how you were paid by U.S.
 3 Security, correct?
 4 A Yes, sir
 5 Q And you received a check from U.S. Security?
 6 A Yes, sir
 7 Q And you had a set number of hours you worked on the
 8 job each day?
 9 A Yes, sir
 10 Q Okay And --
 11 A Yes
 12 Q -- you would clock in at a certain time and then
 13 clock out, correct?
 14 A Yes, sir Unless I was scheduled to work overtime
 15 far as -- for -- for -- for a little minute before I
 16 was hired and before I actually got to that site,
 17 you know, my father used to work second and third
 18 shift so some -- one -- some of them nights I would
 19 work second and third shift as well
 20 Q Okay When you were hired by U.S. Security, did you
 21 -- were you given any benefits or vacation? anything
 22 like that?
 23 A Not that I can remember, far
 24 Q Any medical insurance -- health --
 25 A I -- I --

1 A Yes, sir
 2 Q And you reported to Mr. Thompson?
 3 A Yes
 4 Q And he was your immediate boss?
 5 A Yes That's -- that's what I was under the
 6 impression Yes That's the only one -- that's the
 7 only person I dealt with far as --
 8 Q He's the only one you dealt with?
 9 A -- hired --
 10 Q Okay
 11 A -- fired, far as you know, supervising the site or
 12 whatever My father was not a supervisor
 13 Q All right
 14 A He was a regular security officer just like me
 15 Q So Mr. Thompson was the one that supervised you
 16 there at the site?
 17 A Pretty much so
 18 Q He's the one who trained you there, at least at the
 19 site -- we I actually, it was Mr. Hucks I guess --
 20 A Mr. Hucks --
 21 Q -- that trained you --
 22 A -- yes
 23 Q -- at the site And I believe you have said Mr.
 24 Hucks was a U.S. Security employee?
 25 A Yes

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1 Q -- insurance?
 2 A I -- I want to think so I want to think so I
 3 want to think so
 4 Q And those would've been supplied by U.S. Security
 5 is that correct?
 6 A Yes, sir
 7 Q All right When you would come in and -- and, I
 8 guess, your daily log -- is it a "daily log-in
 9 sheet"? Is that --
 10 A Uh-huh
 11 Q -- what it's called?
 12 A Yes, sir
 13 Q All right And was -- that was in your truck as I
 14 understand?
 15 A Yes, sir
 16 Q And then, based on U.S. Security's instructions, you
 17 would fill it in each day on when you worked there?
 18 A Yes, sir
 19 Q And then you would supply that to U.S. Security?
 20 A Yes, sir
 21 Q All right And didn't supply it to anybody else,
 22 did you?
 23 A No, sir
 24 Q Okay Your -- your entire job there as far as the
 25 chain of command, was U.S. Security, is that right?

1 Q All right Did you have any particular exit
 2 interview after U.S. Security fired you?
 3 A No
 4 Q How did --
 5 A I don't --
 6 Q How did you
 7 A I don't want to --
 8 Q -- find out that you were terminated?
 9 A Oh I talked to Mr. Bill Thompson on the phone, and
 10 that's when he was telling me the reason why I was
 11 fired is because they got the SLED background check
 12 saying my license was suspended and all kind of
 13 stuff on the -- on the report -- on the background
 14 So he was like, "That's -- that's why you're being
 15 fired"
 16 Q Okay Now, we talked a little bit a while ago about
 17 the tag, and as I understand what you're saying is
 18 that somebody inside Wal-Mart that night asked you
 19 to get the tag is that correct?
 20 A Yes
 21 Q Okay And --
 22 A Ms. Hope Rollings and Ms. Cox, both
 23 Q All right And at what time did either one of them
 24 ask you to do that?
 25 A I got the call right -- right -- I would say within

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1 a couple of minutes before she walked out the door
 2 Q All right. Did you see her?
 3 A Did I see her when?
 4 Q When you --
 5 A Walking --
 6 Q When you --
 7 A -- out the door?
 8 Q Yes.
 9 A After I got the call they -- they explained to me
 10 what she had on what kind of bag she was carrying
 11 Yes, I did see her
 12 Q Okay. And who was this that was describing her to
 13 you?
 14 A I want to -- I want to say Hope Rollings
 15 Q Are you positive though?
 16 A I'm not too, too positive, but it was either between
 17 Hope Rollings or Ms. Cox
 18 Q Okay. And tell me then, what you recall them
 19 telling you
 20 A Basically I got a call over the -- the walkie-
 21 talkie telling me, "Wal-Mart security to parking lot
 22 security. We have a shoplifter coming out the GM
 23 side. I need you to stop her." And so I'm already
 24 knowing. Now, I can't detain her because I'm -- I'm
 25 not a cop, but I did try to delay her, I'd somewhat

1 think she had on blue jogging pants. She had like,
 2 a leopard-print-type purse thing. You know, and
 3 that's -- kind of, just stood out. So you know
 4 and pretty much she kind of a most just, like
 5 walked directly to the truck. I mean like when
 6 she seen me pulling up she -- she -- she -- "Oh
 7 hey. Hey. How you doing?"
 8 I'm like "Hey" -- I'm, like, whatever -- "Hey
 9 now you doing? Can I talk to you for a minute
 10 ma'am?"
 11 And she like "Oh, well, yeah. Let me put my
 12 bag in the car."
 13 I said, "Well, it ain't going to take that
 14 long. I just need to talk to you ask you a couple
 15 questions." And when I said that, that's when she
 16 ran.
 17 Q And she ran at that point?
 18 A Yes, sir.
 19 Q Is that right?
 20 A Yes, sir.
 21 Q She didn't walk to her car?
 22 A No, she didn't walk.
 23 Q She took off running?
 24 A Yeah. She ran.
 25 Q All right. And where did -- did you see where she

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1 saw, try to stall until they could come out and
 2 further handle the situation. But it didn't -- it
 3 just didn't play that way.
 4 Q Did anybody at Wal-Mart tell you to delay
 5 her?
 6 A Yes. Yes.
 7 Q Was that the words that they used?
 8 A Yes. "I need you to stop the suspect. I need you
 9 to -- to delay her." Yes. That came out they
 10 mouth.
 11 Q Okay. And who -- and who told you that?
 12 A I want to say Ms. Hope -- Ms. Hope Rollings.
 13 Q But are you positive?
 14 A On a scale of 1 to 10 I'll say a 7.
 15 Q Okay. Okay. And where was -- where was Ms. Beckham
 16 at the time that -- that they first asked you to --
 17 to delay or stop her? Had you seen Ms. Beckham yet?
 18 A No. They was coming over -- when she was coming out
 19 of the -- they was already over the walkie-talkie
 20 before she even walked out the door.
 21 Q All right. So they had talked to you before she
 22 walked out?
 23 A As she walking out, that's when they're talking to
 24 me, telling me, "We have a -- we have a shoplifter
 25 coming out GM side right now. She's wearing" -- I

1 ran to?
 2 A She was running to a vehicle.
 3 Q Okay. And we just looked at a video a little while
 4 ago that it looks like she ran to the vehicle. Is
 5 that correct?
 6 A Yes, sir.
 7 Q Was she running at pretty good speed?
 8 A Yeah. I want to say a good speed, yeah. Nice --
 9 nice speed for her -- for her, yeah.
 10 Q Okay.
 11 A Uh-huh.
 12 Q And as she approached this car, did you see her get
 13 in the car?
 14 A Yeah. She did get in the car.
 15 Q Okay. And how did she get in the car -- front?
 16 back? door? window? What?
 17 A I want to say she came through the back door. She
 18 was on the same side as the driver. I'm thinking
 19 that's the way she entered. The same side as the
 20 driver.
 21 Q Did she enter through the window or open the door?
 22 A New. She opened the door. She went --
 23 Q Okay. And went through the door --
 24 -- went through the --
 25 Q -- and went through the back?

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1 A She ain't gone through no window
 2 Q All right
 3 A No No sir
 4 Q So she ran up to the car got in the back seat is
 5 that right?
 6 A Yes sir I want to think so yes
 7 Q And as we now know, there were only two people in
 8 the vehicle, as I understand Is that your
 9 understanding?
 10 A That's my understanding, yes, sir
 11 Q That was Ms. Hancock and Ms. Beckham is that right?
 12 A Yes, sir
 13 Q All right So Ms. Hancock is --
 14 A -- the driver
 15 Q -- the driver of the vehicle?
 16 A Yes, sir
 17 Q So Ms. Beckham comes -- runs from where you are and
 18 -- and then gets in the -- in the back of the -- the
 19 vehicle; is that right?
 20 A Yes, sir
 21 Q Now, are you having any communication with anybody
 22 at Wal-Mart at that time?
 23 A Yes I'm telling them, "Look, they're fleeing the
 24 scene What do you want me to do?"
 25 "Get that license plate tag number" is all I

1 you -- you breaking up now You know what I'm
 2 saying? You -- you chopping up at this time
 3 Q Hold on just a second
 4 MR MORGAN (to the videographer) You want me
 5 to stop him?
 6 THE VIDEOGRAPHER (Nods head up and down)
 7 MR MORGAN I don't have much longer but it
 8 may go past three minutes It may go, like,
 9 five minutes I'll just keep going and then --
 10 THE VIDEOGRAPHER Okay
 11 MR MORGAN -- stop!
 12 Q So when -- when -- where were you when you had the
 13 last communication with somebody from Wal-Mart?
 14 A I was going up the ramp
 15 Q What ramp?
 16 A That's the ramp -- I want to say that's the ramp we
 17 was entering where they almost hit the second
 18 vehicle -- when they almost had the second accident
 19 going towards the -- the highway -- the Monroe Road
 20 Highway, whatever it's called
 21 Q So you -- you come out of the Wal-Mart parking lot
 22 and you take a right, is that right?
 23 A Yes
 24 Q All right And then where is this ramp?
 25 A I would say not even a mile away from the Wal-Mart.

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1 heard
 2 Q All right All --
 3 A "Okay Well, they" --
 4 Q -- you heard was --
 5 A -- "backing up now They're leaving the parking
 6 lot What do you want me to" --
 7 "Get the license plate tag" is all I heard
 8 "Okay Well, look here, we getting ready to
 9 run through the stop sign and enter on the road"
 10 "Get that license plate tag" is all I heard
 11 Q So it's your testimony that they were telling you --
 12 you were telling them these things?
 13 A Yes
 14 Q And that they were --
 15 A Yes
 16 Q -- continuing -- continuing to tell you to get --
 17 A "Get that license" --
 18 Q -- the license tag?
 19 A -- "plate tag" is all I heard
 20 Q Uh-huh And then how far -- how far along did you
 21 go to have communication with them on the walkie-
 22 talkie?
 23 A I know I was trying to walkie-talkie them when we
 24 got towards the -- the Monroe Highway By that time
 25 we were -- we were -- we were -- you can hear, but

1 Q Okay And -- and it's a ramp to where?
 2 A It's like you -- you -- you going up a ramp -- like
 3 a curve you know what I'm saying? It's a Burger
 4 King there and everything You know what I'm
 5 saying? To get to the highway, if I'm -- if my
 6 memory serves me correctly
 7 Q All right And so you're at that ramp and you --
 8 it is your testimony that you're having
 9 communications with people at Wal-Mart?
 10 A We -- it's my testimony that I'm saying that we were
 11 -- started breaking up then
 12 Q All right
 13 A That's when the --
 14 Q When did you have your last clear conversation with
 15 them?
 16 A While I'm coming down the road --
 17 Q What road?
 18 A -- following behind them 521 When -- when we
 19 leave the parking lot
 20 Q So you were --
 21 A Once we're leaving the parking lot
 22 Q -- leaving the parking lot?
 23 A Yes
 24 Q And did you say -- and you're on 521, and you say
 25 that you're still communicating with Wal-Mart?

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1 A Yes
 2 Q And who are you communicating with?
 3 A I want to say either Hope or Ms Cox
 4 Q Can you say who?
 5 A I - not at this -- no I don't --
 6 Q Okay
 7 A -- really remember which one it was
 8 Q As? --
 9 A I do know it was a female And I do know I was
 10 being told "Look, you need to get that license
 11 plate tag number"
 12 Q Uh-huh And that -- that's what they were telling
 13 you But they didn't tell you to leave the parking
 14 lot did they?
 15 A No They never said -- they never say "Well, go
 16 ahead and leave the parking lot and the license
 17 plate tag number," but they did stress that I needed
 18 to get the license plate tag number after I told
 19 them, "Well look, we're -- we're leaving the
 20 parking lot now"
 21 "You -- well, you -- you need to get that
 22 license plate tag number"
 23 Q Oh, so you told them that you -- you were leaving
 24 the -- the parking lot and --
 25 A Yes We were -- I mean, yeah

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1 Q And you're saying that oh, Wal-Mart's just having
 2 this ongoing dialogue with you?
 3 A Yes
 4 Q Uh-huh
 5 A By that time
 6 Q And so they told you to get the part -- the -- the --
 7 -- they told you to get the license tag?
 8 A Uh-huh
 9 Q And that's what you were doing?
 10 A Uh-huh
 11 Q All right Then at some point you lost contact with
 12 them?
 13 A Uh-huh
 14 Q And you say it was when you were on 521 getting on
 15 the ramp?
 16 A Uh-huh Something like --
 17 Q And you had no --
 18 A -- that
 19 Q -- more communications with them at all?
 20 A No Not on the walkie-talkie
 21 Q Uh-huh But you -- did you have any other
 22 communications with them?
 23 A When I came back to the store, yes
 24 MR MORGAN, Stop
 25 (Off the record from 3:57 p.m. until

1 4:02 p.m.
 2 THE EXAMINATION BY MR MORGAN CONTINUES
 3 Q Mr Jones now as I understand you you at some
 4 point do you lose communication with them at that
 5 ramp? Is that right?
 6 A Yes sir
 7 Q All right And you had no more communications with
 8 them after that, is that right?
 9 A Not until I came back to the store
 10 Q All right And how long was that?
 11 A I have no idea really far as the time span
 12 Q All right How -- how far was it from the time that
 13 you lost communication with Wal-Mart until you came
 14 upon this accident scene?
 15 A I really don't know, honestly I'm going to say
 16 about -- from the time I lost contact to the time I
 17 ran up on the accident, maybe five minutes/maybe six
 18 minutes I'm really not sure You know what I'm
 19 saying?
 20 Q All right When did you lose sight of them --
 21 A At the -- at that ramp When they almost hit that
 22 second car going onto the highway onto Monroe
 23 road, that's when they lost me right then and there
 24 Q Had you already lost contact with Wal-Mart at that
 25 time?

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1 A Right there Right then --
 2 Q Right --
 3 A -- and there
 4 Q -- there?
 5 A Yes, sir
 6 Q So you lost them at that point, is that correct?
 7 A Yes
 8 Q And at the same time that you lost contact with Wal
 9 Mart, you lost this vehicle?
 10 A Yes
 11 Q All right And you never saw them again until you
 12 came upon the scene --
 13 A -- of, he --
 14 Q -- five --
 15 A -- accident
 16 Q -- or six minutes --
 17 A Correct
 18 Q -- whenever?
 19 A Correct
 20 Q All right And you had no more communications with
 21 Wal-Mart once you lost contact until you got back to
 22 the store after the accident correct?
 23 A Exactly
 24 Q All right Now, you worked for Wal-Mart back in
 25 2006 for a couple of months or at least worked on a

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1 Wal-Mart site, is that right?
 2 A Yes sir Wal-Mart in Camden They had a - we
 3 were hired for the remodeling crew They were doing
 4 remodeling --
 5 Q And what --
 6 A -- at the Wal-Mart
 7 Q -- did you do?
 8 A We worked in -- they rented out a warehouse called
 9 "Star" -- "Starlight" - star-something and that's
 10 basically where we was at And we worked in the
 11 warehouse pretty much taking old clothes, stuff like
 12 that, fixing up shelves and stuff like that in the
 13 warehouse to put -- re-spray painting shelves and
 14 stuff like that basically to -- to put back in the
 15 Wal-Mart
 16 Q And what was your job specifically?
 17 (Sotto voce discussion between Mr.
 18 McKinnon and Mr Hood)
 19 A I -- I -- I operated a forklift, carrying things
 20 from one spot to the next spot I also helped with,
 21 you know, fixing up on shelves -- the shelves that
 22 they -- they felt like they want to fix up and bring
 23 back to the store, stuff like that
 24 Q And you worked there for about two months?
 25 A Yeah Something where around that, around that

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1 line
 2 Q And where was the store located?
 3 A This is in Camden South Carolina Wal-Mart in
 4 Camden, South Carolina
 5 Q All right And the only two people that you talked
 6 to on the walkie-talkie were either Ms Rollings or
 7 Ms Cox, is that right?
 8 A Yes
 9 Q And --
 10 A Yes
 11 Q -- the only thing they were telling you is, "Just
 12 get the tag?"
 13 A Yes
 14 Q All right
 15 MR MORGAN That's all I have Thank you
 16 THE DEPONENT Thank you
 17 MR HOOD I've just got two little things
 18 REEXAMINATION
 19 BY MR HOOD
 20 Q One In regard to Mr Morgan's questions to you, he
 21 -- he asked you about this testing that you did, and
 22 I believe you used the term "open book tests"
 23 A It was -- it was kind of like that It was, like,
 24 we had questions from the Georgia dude that was
 25 training us, you know, stuff that -- going over

1 stuff basically -- he was training us on It was
 2 also, like, pamphlets if I can remember Like --
 3 something like -- not necessarily a book, but you
 4 know stuff that we can reference to questions that
 5 we were reading off and then we just had to answer
 6 Q When you -- when you would read off those questions
 7 did they allow you to have those books or those
 8 pamphlets to be able to answer the questions?
 9 A I want to say yeah
 10 Q Okay
 11 A Yeah
 12 Q Now in regard to -- lastly Mr Morgan asked you a
 13 bunch of questions about U S Security
 14 A Yes
 15 Q Now, you were employed by U S Security, right?
 16 A Yes, sir
 17 Q You were trained by U S Security?
 18 A Yes, sir
 19 Q You were hired and fired by U S Security?
 20 A Yes, sir
 21 Q Now, what was your understanding of what would
 22 happen if you didn't get the license plate?
 23 A To my understanding I'm feeling like my job was at
 24 jeopardy if I didn't get the license plate
 25 Q And who were you trying to get the license plate --

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1 for?
 2 A For Wal-Mart
 3 Q And who was going to put your job in jeopardy if you
 4 didn't get it?
 5 A Wal-Mart
 6 Q Okay
 7 MR HOOD That's all I have
 8 THE DEPONENT Uh-huh
 9 REEXAMINATION
 10 BY MR MORGAN
 11 Q Did anybody tell you that?
 12 A No They didn't tell me that, but the way --
 13 Q That's what you thought?
 14 A That's what I gathered, yes
 15 Q That's what you --
 16 A I -- I --
 17 Q -- gathered?
 18 A I'm not going to necessarily so much say, "I thought
 19 it" because it wasn't a thought It was, "Look, you
 20 need to get this license plate tag" --
 21 Q But you --
 22 A -- "or else" You know, that was --
 23 Q But they didn't say that?
 24 A No I can't say that they did say "or else," but I
 25 mean, that was the attitude It was -- it was --

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1 no. I can't say that they said it but yeah it
 2 was, he at the store
 3 Q The question -- or the statement they made was, "Get
 4 the license tag?"
 5 A Uh-huh
 6 Q And they never did tell you that if you didn't
 7 there would be problems did they?
 8 A No. They never said that. No. They never -- no
 9 They never said --
 10 Q The why thing they --
 11 A -- there would be problem.
 12 Q -- said was "Get the license tag."
 13 A "Get that license plate tag."
 14 Q All right. And you had said a little while ago that
 15 -- that you had gotten a license tag before -- maybe
 16 like on the first day you were there, is that right?
 17 A Yeah. The first day I got there, I'm talking about
 18 not even, shoot, minutes after I got there, you know,
 19 we were told "Look, man. I got a car coming around
 20 that side on automotive. Come close to automotive
 21 side of the Wal-Mart. I need you to get the license
 22 plate tag."
 23 Q Okay.
 24 A Like I --
 25 Q Who told you that?

1 out we were right there next to the Wal-Mart
 2 Q And is all -- and as I understand it's all sort of
 3 one big piece of property there?
 4 A Yes. Yes.
 5 Q All right. And so did you go up there and -- and
 6 get that license tag?
 7 A Yes, sir.
 8 Q All right. And were you by yourself when you did
 9 that?
 10 A Yes, sir.
 11 Q And where exactly was the vehicle when you actually
 12 did get --
 13 A When I got the --
 14 Q -- license tag?
 15 A -- license plate tag number? The vehicle, I could
 16 say it was probably in front of the Taco Bell
 17 Q In front of the Taco Bell?
 18 A Yeah. In front of the Taco Bell, in front of the --
 19 the Jack in the Box, but we were on the road,
 20 though. You see what I'm saying? We were on the
 21 road. We wasn't --
 22 Q You didn't stay in your vehicle?
 23 A Yes. Yes.
 24 Q You didn't have to get out?
 25 A No. No.

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1 A It's a -- it was a tall, white guy. I don't know
 2 his name, but I know he was with loss prevention for
 3 Wal-Mart.
 4 Q All right. And --
 5 A And --
 6 Q -- were you talking to him in person?
 7 A First off, over the walkie talkie. Then I seen him
 8 in person. Yes.
 9 Q All right. And he said he wanted to get you to get
 10 a license tag of a vehicle?
 11 A Yes. Yes.
 12 Q Did he say why?
 13 A No. He didn't -- he never stressed why to get the
 14 license plate tag. I can't recall at that time, but
 15 it -- I know he did tell me to get the license plate
 16 tag.
 17 Q All right. And -- and where was this vehicle that
 18 you had to get the license tag on?
 19 A Like I said, it was -- it was coming off the
 20 automotive side of -- off Wal-Mart, and if you're on
 21 that side, if you go down a little bit there's --
 22 it's a -- like a -- a drive-through, kind of like
 23 where you can go to the Taco Bell. The Jack in the
 24 Box -- all of that is right there in that same area.
 25 So, no, we wasn't necessarily on Wal-Mart premises,

1 Q All right. And then did you go back and report that
 2 to --
 3 A Yes.
 4 Q -- whenever?
 5 A Yes.
 6 Q And you don't remember who this guy was?
 7 A I know he worked in loss prevention. I can't really
 8 recall his name.
 9 Q All right.
 10 A Sorry about that.
 11 Q And since that time, have you ever been told why you
 12 had to get that license tag?
 13 A No.
 14 Q And that was the only time you ever had to do it --
 15 A Uh-huh.
 16 Q -- other than this time?
 17 A Yes, sir.
 18 MR MORGAN: That's all. Thank you.
 19 MR HOOD: Just one quick question.
 20 THE DEPONENT: Yes, sir?
 21 REEXAMINATION
 22 BY MR HOOD:
 23 Q Do you know what happened to the person who you got
 24 the license tag -- I mean, when you got that license
 25 tag, do you know what they did with it?

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1 A I- I do not I reported it over the walkie-
2 talkie I asked them did they get it They told
3 me "Yes 10-4," and that was the last I heard of
4 that.

5 Q Okay

6 MS FLYNN Okay

7 MR HOOD Okay

8 MS FLYNN No questions

9 (Whereupon, there being no further
10 questions, the deposition was
11 adjourned at 4 11 p m)

12 Signing waived

13 FURTHER DEPONENT SAITH NOT

14 (Certificate accompanies sealed original only)

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EXHIBIT E

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Travis A. Roddey, Individually and as
the Personal Representative of the Estate
of Alice Monique Beckham Hancock,
deceased,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No.: 2007-CP-29-0593

NOTICE OF MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER, ALTER,
AND AMEND ORDER GRANTING
DIRECTED VERDICT TO WAL-MART

PURSUANT TO RULE 59(e)

ORAL ARGUMENT REQUESTED

TO: HOWARD BOYD AND STEPHANIE FLYNN, ATTORNEYS FOR DEFENDANTS
U.S. SECURITY ASSOCIATES, INC., DERRICK L. JONES, AND WAL-MART STORES
EAST, LP AND THEIR CLIENTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59, S.C.R.C.P., Plaintiff
Travis A. Roddey, by and through undersigned counsel, will move at a date and time to be set by
the Court, for a Rule 59 Order altering, amending, or reconsidering the April 9, 2010 oral
Order granting a directed verdict to defendant Wal-Mart Stores East, LP. The grounds for
this motion are more fully set forth in the included memorandum in support, below:

INTRODUCTION

Less than one month ago, our Court of Appeals held: "The trial court must deny a
directed verdict motion when the evidence yields more than one inference or its inference is in

doubt." *Burnett v. Family Kingdom, Inc.*, 2010 WL 915814 (S.C. Ct. App. March 11, 2010). Despite this incredibly high standard, and despite Jones' testimony that Wal-Mart employees told him to continue the pursuit even after warning them he was leaving the parking lot, and despite expert Gross' testimony that Wal-Mart was negligent and their actions contributed to the crash, Defendant Wal-Mart Stores East LP's motion for directed verdict was orally granted on Friday. Under any conceivable reading of the evidence, the motion should have been denied, and Plaintiff Roddey moves for reconsideration of that ruling.

LEGAL STANDARD

The legal standard for a directed verdict is one of the highest known in our system. "In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." *Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (S.C. 1999) (added). "The trial court must deny the motions [for directed verdict] when the evidence yields more than one inference or its inference is in doubt." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (S.C. Ct. App. 2000) (emphasis added). "When considering a directed verdict motion, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Burnett v. Family Kingdom, Inc.*, 2010 WL 915814 (S.C. Ct. App. March 11, 2010) (emphasis added). Directed verdict motions are "not favored" and "if there is even a scintilla of evidence tending to prove the allegations of the complaints," the directed verdict motion must be denied. *Jamison v. The Pantry, Inc.*, 301 S.C. 443, 444, 392 S.E.2d 474, 475 (S.C. Ct. App. 1990) (emphasis added and internal quotation omitted).

When the issue is proximate cause, the standard is heightened even further because proximate cause is an issue for the jury. "Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence . . . Only when the evidence is susceptible to only one inference does it become a matter of law for the court." *Small v. Pioneer Machinery, Inc* , 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997). Plaintiff does not have to demonstrate Defendants' actions are the sole cause of the accident, only that they are a contributing cause. "The defendant's conduct can be a proximate cause if it was at least one of the direct, concurring causes of the injury." *Id.*

It is axiomatic in this State that issues of negligence and proximate cause may be resolved by direct or circumstantial evidence. Negligence is a relative term to be decided upon the facts of each particular case and because its existence turns on the facts it is normally a question left to the jury; before it can be determined as a matter of law that one has not committed a negligent act the truth of all the credible evidence tending to sustain the claim of negligence must be assumed and all favorable inferences of fact fairly deducible therefrom tending to establish negligence drawn.

Mahaffey v. Ahl, 264 S.C. 241, 247-248, 214 S.E.2d 119, 122 (1975) (emphasis added).

Finally, Plaintiff is entitled to an inference that Derrick Jones, had he been present at trial, would have offered testimony negative to his position. ["If a party knows of the existence of an available witness on a material issue and such witness is within his control and if without satisfactory explanation he fails to call him, the jury may draw the inference that the testimony of the witness would not have been favorable to such party." *Duckworth v. First Nat. Bank*, 176 S.E.2d 297, 304 (S.C. 1970).

RELEVANT EVIDENCE IN THE RECORD

First Piece of Evidence: Jones testified the entire incident began with an instruction to him by Wal-Mart employees to "delay" Beckham and Hancock, after he specifically asked Wal-Mart what he should do.

35

18 Q What do you recall about what you were told by Wal-

19 Mart to do in regard to this specific incident?

20 A I know it was around 10 --10:15ish, somewhere around

21 there. I got the call over the walkie-talkie,

22 telling me that there was a shoplifter coming out of

23 the GM side. At that time I asked them, "Well, what

24 do you want me to do because I am a security

25 officer; I'm not a -- I'm not a police officer. I

36

1 cannot detain, so what do you want me to do?"

2 They told me, "Well, just try to kind of like

3 delay -- you know, try to delay her. Try to talk to

4 her until we can get out there.

Second Piece of Evidence: Jones testified he responded to Wal-Mart's instructions to "delay" -- the first communication which started the whole incident -- by pulling up to Beckham and then blocking Hancock's vehicle with his truck [NB: This testimony is a direct continuation of the quote above, with Jones explaining how he reacted to the original "delay" instruction given by Wal-Mart.]

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2 They told me, "Well, just try to kind of like
3 delay -- you know, try to delay her. Try to talk to
4 her until we can get out there "
5 When she came out, it kind of appeared to me
6 that she walked right up to my truck. When I rolled
7 the window down, I say, "Hey, how you doing?"
8 She say, "Hey, how you doing?"
9 I say, "Can I talk to you for a minute, ma'am?"
10 She say, "Well, let me just throw my bag in the
11 car, and I'll be right back."
12 I say, "Well, you know, no need for all that.
13 It'll -- it'll just take a minute."
14 Once I said "It'll just take a minute," that's
15 when she took out running She got in the car. At
16 that time they were trying to -- they were -- they
17 were trying to leave, but my truck was blocking the
18 exit, far as, like, you know how you come down the
19 aisle? And my truck was blocking that exit, so they
20 backed up.

Third Piece of Evidence: Jones testified that the "whole time," Wal-Mart employees kept urging him on to get the license tag.

36

25 A Because I was trying to get the license plate tag

37

1 because the whole time all I'm hearing from Wal-Mart

2 was, "You've got to get that license plate tag. We

3 need that license plate tag number."

Fourth Piece of Evidence: Jones testified that both Wal-Mart CSMs, Ms. Cox and Ms. Rollings, repeatedly told him to get the license plate.

37

22 Q Okay. And did you recognize the voice that came

23 over that walkie-talkie?

24 A Actually, it was more than one voice. At first I

25 was talking to Hope. Then I was talking to Ms. Cox.

38

1 And it was kind of going back and forth. I would --

2 I would want to say Ms. Cox more than Ms. Hope.

3 But, yeah. It was kind of back and forth.

4 Q So they were both asking you to get the tag number?

5 A Yes. Yes, sir.

Fifth Piece of Evidence: Jones testified that the way Wal-Mart's employees "came across" to him was that he had to get the tag, whether that involved pursuit out of the parking lot or not.

40

5 A That's the way they made -- that's the way they came

6 across.

7 MR. MORGAN: Object to the --

8 A It --

9 MR. MORGAN: -- form.

10 A -- was like, "We don't -- we can care less whether
11 you can leave the parking lot or not. You need to
12 get that license plate tag number "

Sixth Piece of Evidence: Jones testified that Wal-Mart employees told him urgently he had to get the license tag, even after he had warned them he would have to leave the parking lot to do so.

38

6 Q Okay. And when they both asked you to get the tag
7 number, did you feel like you had to get it at all
8 costs?

9 A Not necessarily at all costs. I want to say -- when
10 you say "all costs," it's -- it's -- it kind of come
11 across like, "by any means necessary." Now, I'm not
12 going to say necessarily by any means necessary. I
13 -- I did feel a sense of urgency in the -- in the
14 sense of I had to get this license plate tag.

41

22 But seeing
23 that I felt like that it was real urgent that I got
24 this license plate tag and that's how they was
25 coming across like, "You -- look, man, you need to

1 get this license plate tag "

2 And I'm on the walkie-talkie, telling them, "I
3 can't see this license plate tag number, and they're
4 about to leave the parking lot."

5 "Man, well, you got to do what you got to do.
6 You need to get that license plate tag number."

Seventh Piece of Evidence: Jones testified he would not have left the parking lot, except for the
"urgency" in the communication from Wal-Mart employees.

3 Q Okay And -- and you did that because you felt that

4 Wal-Mart -- you had to get that for Wal-Mart?

5 MR. MORGAN: Object to --

6 A Yes --

7 MR. MORGAN: -- form.

8 A -- sir.

9 Q If -- if you had not felt that urgency, you wouldn't

10 have followed them out of the parking lot, would

11 you?

12 MR. MORGAN: Object to --

13 A No, sir.

Eighth Piece of Evidence: Jones testified he was told "numerous" times by Wal-Mart
employees to get the license plate.

25 Stressed the fact that you wanted me to get this

1 license plate tag number. 'You need to get this
2 license plate tag number' is what I heard numerous
3 times."

Ninth Piece of Evidence: Jones testified Wal-Mart employees had previously told him to leave the property to get a license tag.

12 A Well, actually, that's a -- that's a real good
13 question, because my very first day that I worked at
14 Wal-Mart, I was told to go obtain a license plate
15 tag number, and they told me, "You got to get that
16 license plate." The same way they told me that
17 night. The same way my very first day I had to go
18 get a license plate tag number off the premises.

19 Q Off the premises?

20 A Off the premises.

21 Q And --

22 A The very first day of my job

Tenth Piece of Evidence: Jones testified, a second time, that Wal-Mart employees ordered him to get the license tag even after he specifically warned them over the radio he would have to leave the parking lot.

1 A -- when they're telling you "Look, man. You got to
2 get that license plate tag. Yo -- get that license
3 plate tag."

4 And I'm telling them, "Well, they leaving the
5 parking lot" --
6 "Well, get that license plate tag number." And
7 that's all I'm hearing. It's -- so, no.

Eleventh Piece of Evidence: Jones testified Beckham did not start to flee until he made contact with her.

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3 When I pulled up, I say, "How
4 you doing tonight, ma'am? Can I talk to you for a
5 moment?"
6 And she said, "Oh, yeah. Just let me go put my
7 bag in the car, and I'll -- you know, I'll be right
8 back."
9 I said, "Well, there's no need for that. It'll
10 only take a second for me to talk to you," and
11 that's when she started running

Twelfth Piece of Evidence: Expert Alpert testified the pursuit began in the parking lot.

[p. 106]

11 Q Okay. And so is it your opinion that the pursuit
12 started in the parking lot and continued until the crash?
13 A Yes, sir. There is testimony where the officer
14 security guard said he lost track at some point but the
15 civilian witnesses according to what I read put him at the
16 seen rather quickly so I would say it continued until the

17 crash.

Thirteenth Piece of Evidence: Expert Alpert testified it was his opinion that the crash would not have occurred if Jones had not left the parking lot.

[p. 111]

16 Q What is that opinion?

17 A In the sense that had he done what he should have
18 done, stayed in the parking lot, not gone after her it is
19 highly unlikely that that crash would have taken place.

Fourteenth Piece of Evidence: Expert Alpert testified it was his opinion that if Beckham was correct (and her testimony must be credited for the purpose of this motion), Jones' actions contributed to the crash.

[p. 122]

20 Q And if just as Mr. Boyd asked you if they believed
21 Derrick Jones if they believe Donna Beckham that he was on
22 her bumper flashing his headlights object and off and
23 going over 50 miles an hour you would agree that that
24 contributed to this crash?
25 A Absolutely sir.

Fifteenth Piece of Evidence: Expert Gross testified Wal-Mart violated its own safety rules by instructing Jones to pursue.

[p. 39]

22 Q Now look at number 29 this Wal-Mart policy it says

23 think safety first?

24 A Yes.

25 Q Always remember to protect yourself in possible
40

1 assist others before attempting to protect property

2 remember security contractors are permitted from searching

3 or pursuing contracts?

4 A Yes.

5 Q Do you see that?

6 A Yes.

7 Q Was that violated?

8 A Yes they pursued the suspects.

9 Q Who violated that safety rule?

10 A Well Derrick Jones, the security officer did but it
11 was secondary to a request to Wal-Mart to go get the plate

12 number.

13 Q They both violated that policy.

14 A Yeah.

Sixteenth Piece of Evidence: Expert Gross testified Wal-Mart's negligence contributed to the
crash -- specifically, their negligence in not calling Jones back.

[p. 51]

12 Q And do you have an opinion to a reasonable degree --

13 do you have an opinion to a reasonable degree of certainty

14 about whether Wal-Mart not asking him to stop this chase
15 was a breach of safety rules?
16 A It increased the risks dramatically he doesn't go
17 after him they don't speed away if he doesn't follow them
18 they don't keep going so the headquarters of this as I
19 look at this of a series of events the SRED head water -S
20 start with them not following their own policies in not
21 only hiring him having him there but asking him to do
22 something that Wal-Mart specifically says they don't do
23 themselves they don't want their contractors to do. So
24 that is the head waters, that's where it starts.

Seventeenth Piece of Evidence: Expert Gross testified Wal-Mart breached their own safety policies and thereby escalated the situation.

[p. 53]

21 Q Do you have an opinion about whether Wal-Mart
22 violated their own internal policies by he's KHRAEUT go
23 this STWAEUBGSZ [escalating this situation]?
24 A They caused it to he's KHRAEUT [escalate] they caused it to he's
25 KHRAEUT by telling him to do something their policy says

54

1 you don't do they won't allow your own people to do this
2 but they instructed him to do it

3 Q PWR they creating a scape goal?

4 A They were creating an tune to say that somebody did

5 something they wouldn't do.

Eighteenth Piece of Evidence: Expert Gross testified Wal-Mart breached safety rules by instructing Jones to do things their policies did not allow their own employees to do.

[p. 90]

22 Q Do you have an opinion about whether that is his

23 actions violated his training?

24 A Well his is, yeah, certainly and by connection

25 Wal-Mart -S is because again Wal-Mart had him do what

91

1 specifically they can't do by their own policies.

Nineteenth Piece of Evidence: Expert Gross testified Wal-Mart should have instructed Jones to break off the chase, and did not.

[p. 50]

19 A Yeah if you see the continue WAEUBGSZ [continuation] of first video

20 you see a whole group of staff members in the outside into

21 that foyer area where you could see them yes.

22 Q Judge didn't they tell him to brake off the KHIAEULS?

23 A I don't know the depositions of the .C.S.M she

24 acknowledged she saw him go I don't know why they didn't I

25 know they should have but I don't know why they didn't.

Twentieth Piece of Evidence: Expert Gross testified Wal-Mart knew what the results would be (it was foreseeable) if they escalated a shoplifting situation in violation of their policy.

[p. 53]

12 Q Now does Wal-Mart as a major retail HR-R do you have
13 an opinion about whether they knew about what could happen
14 if something he's KHRAEUTD [escalated]?
15 A When I read their policies about not TKHAEUFG
16 specifically about the area merchandise not being worth an
17 employee being injured over clearly I would have to say
18 they do they've identified the results of doing certain
19 things to the point they don't want to you do it and they
20 are pretty specific about it.

Twenty-First Piece of Evidence: Expert Gross testified that according to Wal-Mart policy, the entire incident should have ended when Beckham dropped the bag.

[p. 41]

Q And from your witness of the video do you have an
7 opinion about whether she met the Wal-Mart policy of being
8 a shop list err?
9 A Up to the point that she puts the bag down, yes one
10 she puts the bag down and the contents wasn't even
11 confirmed at that point then I would say no at that point

12 there was no defined loss it was over with according to

13 their policy.

14 Q And their own manager said it was over with at that

15 time didn't he?

16 A Yes and even at that their policy says if they're

17 going to go outside the store after STWUPB not to go more

18 than 10 feet.

Twenty-Second Piece of Evidence: Donna Beckham testified Jones was right behind them, flashing his high-beams, up until they crashed.

[p. 11]

11 Q Okay And during that 2 miles can you describe the

12 location of Derrick Jones in regard to your car?

13 A He was on our bumper

14 Q And now do you recall right before the crash?

15 A Right before the crash I heard and felt a bump and

16 then we shot off the road to the left and then I just woke

17 up to this laid holding my head.

18 Q Now right before you shot off to the left do you

19 recall popping up?

20 A Yeah right before.

21 Q Okay what happened when you popped up?

22 A I asked my sister said he is it still on our as and

23 the high beam was still flashing that's way felt the bump

24 and we shot off that way.

25 Q Now when your sister stayed he's still on our tail is
12

1 that why you popped up?

2 A Yeah.

3 Q That was right before this crash?

4 A Right before it.

Twenty-Third Piece of Evidence: Beckham testified she did not begin to run until after she encountered Jones.

[p. 33]

22 Q Obviously from the videotape the jury just watched

23 you broke into a Sprint or a full run after you in KOUPB

24 TERD Mr. Jones didn't you?

25 A I would say a jog, yes.

Twenty-Fourth Piece of Evidence: Beckham again testified that right before the crash, Jones was on their "butt."

[p.48]

15 I just remember her last words that he is still -- he is

16 still on our as was her last words that was on

17 Highway 200.

18 Q Where does this crash owe KOER?

19 A On Highway 200.

20 Q When you heard those last words how soon was that

21 before the crash?

22 A Seconds.

23 Q Did you pop up at that time?

24 A Yeah and then I braced just SKROUFPD down.

25 Q When you looked up and you popped up at that
49

1 particular time when she said those words where was

2 Derrick Jones?

3 A On our butt.

ARGUMENT

To sum up the law in South Carolina, Plaintiff must only present a scintilla of evidence or an inference from any evidence to survive a motion for directed verdict, and the trial court may not weigh evidence or make credibility determinations. With regard to proximate causation in particular, the "scintilla" may be direct or circumstantial, and must only show the moving party's actions contributed to the event for the motion to be denied. With this in mind, the following evidence was presented in Plaintiff's case:

- 1) The pursuit began in the parking lot only after Jones first encountered Beckham (see Pieces of Evidence Nos. 11, 12, 23).
- 2) Jones encountered Beckham on the express instructions of Wal-Mart employees (see Pieces of Evidence Nos. 1, 2).
- 3) Wal-Mart instructed Jones to "delay" Beckham and Hancock, not just get the license plate (Piece of Evidence No. 1).

- 4) Jones blocked Hancock's car on the instructions of Wal-Mart to "delay" her (Piece of Evidence No. 2).
- 5) Multiple Wal-Mart employees instructed Jones to get the license tag (Pieces of Evidence Nos. 3, 4, 8)
- 6) Wal-Mart employees continued to urge Jones to get the license plate tag, even after he specifically cautioned them over the radio he would have to pursue the car off the property to do so (Pieces of Evidence Nos. 5, 6 10).
- 7) Wal-Mart employees had previously ordered Jones to pursue someone off the property to get a license tag (Piece of Evidence No. 9).
- 8) Jones would not have left the parking lot were it not for the instructions from Wal-Mart employees ((Piece of Evidence No. 7).
- 9) Jones followed Beckham and Hancock, riding their bumper and flashing his headlights, all the way to the crash site (Pieces of Evidence Nos. 22, 24).

That evidence is more than sufficient, even without expert testimony. In fact, the very first piece of evidence referenced, that Jones' testified the incident began with Wal-Mart's instruction to "delay" Beckham and Hancock (not just get the license tag, as Wal-Mart employees testified), is much more than a "scintilla" and on its own suffices to present Plaintiff's case to the jury.

However, there is extensive expert evidence in the record as well:

- 1) Jones was acting on Wal-Mart's instructions, which violated their own policies (Piece of Evidence No. 15).
- 2) Wal-Mart's negligence contributed to the crash (Piece of Evidence No. 16).
- 3) Wal-Mart's actions escalated the situation (Piece of Evidence No. 17).

The two grounds given by the Court for its ruling were a) Wal-Mart was not negligent (i.e., no breach), and even if there was negligence, it was not the proximate cause of the crash. This ruling disregards all of the evidence set forth above, evidence which clearly meets the "scintilla" standard.

I. Wal-Mart's Negligence/Breach

There is much more than a scintilla of evidence that Wal-Mart breached its duties that night. To begin with, Jones testified that he was instructed to "delay" Beckham and Hancock in the very first communication with Wal-Mart employees. That instruction was a breach of Wal-Mart's shoplifting policy (AP-09, which is in evidence) and the "Guidelines for Private Security Contractors" published by Wal-Mart (also in evidence). Jones also testified that he was instructed multiple times to get the license tag even after warning Wal-Mart employees he would have to leave the property to do so. Wal-Mart has self-servingly characterized the repeated instructions to "get the license tag" as equivalent to "stop chasing, just get the tag." But that is not what Jones testified. Jones testified on multiple occasions that he told Wal-Mart employees over the radio he was going to have to leave the property to get the tag, and Wal-Mart employees responded by urging him to do so. The Court may not resolve this credibility issue in favor of Wal-Mart – Jones' testimony gets plaintiff to the jury. "When considering a directed verdict motion, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Burnett v Family Kingdom, Inc.*, 2010 WL 915814 (S.C. Ct. App. March 11, 2010).

Additionally, there is considerable expert testimony from Mr. Gross opining that Wal-Mart was negligent. That simply ends the analysis. Gross is a qualified expert. He testified both that a) Wal-Mart was negligent in not attempting to call Jones back (Pieces of Evidence 16,19); b) Wal-

Mart breached their own policies and instructed Jones to do things their own employees could not, for safety reasons (Pieces of Evidence 18), and c) negligently escalated the situation (Pieces of Evidence 17). Expert witness testimony is not required to establish a breach, but certainly may be used to do so. *See, e.g. Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (S.C. 2008). Here, Mr. Gross opined that Wal-Mart was negligent, and that simply ends the inquiry as far as a directed verdict motion.

II. Proximate Cause

As stated above, to survive a directed verdict motion on proximate cause, Plaintiff must only present a scintilla of evidence, or an inference, even just a circumstantial inference on causation. Proximate cause included "but-for" causation (causation in fact) and foreseeability (legal cause). *See, e.g., McKnight v. South Carolina Dept of Corrections*, 385 S.C. 380, 386-387, 684 S.E.2d 566, 569 (S.C. Ct. App. 2009). Here, Jones testified quite plainly that he would not have left the parking lot but for urgency in the radio commands of Wal-Mart employees (Piece of Evidence No. 7). As to foreseeability, to argue that is not foreseeable that when you instruct a guard to use his vehicle to "delay" someone (Piece of Evidence No. 1), an accident might occur, or that it is not foreseeable that an accident might occur when the guard is instructed to pursue into the road to get a license tag (Piece of Evidence Nos. 6 and 10), is simply ludicrous given the "scintilla" standard.

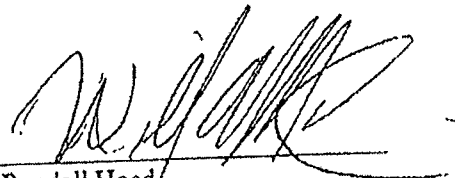
Once again, there is expert testimony on this issue, as well. Expert Gross testified Wal-Mart knew what the results would be (it was foreseeable) if they escalated a shoplifting situation in violation of their policy (Piece of Evidence No. 20). Expert Gross also testified Wal-Mart's negligence in not calling Jones back contributed to the (Piece of Evidence No. 17). Expert testimony is not necessary, but can be used to prove proximate cause. *See, e.g., O'Leary-Payne v.*

R.R. Hilton Head, II, Inc., 371 S.C. 340, 349, 638 S.E.2d 96, 101 (S.C. Ct. App 2006) ("Expert testimony is not required to prove proximate cause if the common knowledge or experience of a layperson is extensive enough"). Here though, since there is expert testimony, that settles the issue for the purpose of a directed verdict motion.

CONCLUSION

Directed verdict motions are disfavored. *Jamison v The Pantry, Inc.*, 301 S.C. 443, 444, 392 S.E.2d 474, 475 (S.C. Ct App 1990), and are an invasion of the province of the jury. For that reason, a mere scintilla or inference is sufficient to defeat one. Much more than a scintilla was presented by Plaintiff Roddey regarding Defendant Wal-Mart - the grant of directed verdict must be reversed and the issue submitted to the jury.

The Plaintiff requests oral argument on this motion.



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EXHIBIT F

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

TRAVIS RODDEY, Individually and as
the Personal Representative of the Estate
of Alice Monique Beckham Hancock,
Deceased,)

Plaintiffs,)

vs.)

WAL-MART STORES EAST, L.P., U.S.
SECURITY ASSOCIATES, INC., AND
DERRICK L. JONES,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 07-CP-29-593

VERDICT FORM

200 APR 15 A 12:50

1. As to the Plaintiffs' claim against the Defendants for negligence relating to Derrick Jones's actions, do you find that the Defendants were negligent?

☒ YES: GO TO QUESTION 2

☐ NO: STOP AND DELIBERATE NO FURTHER

2. Do you find that the Defendants' negligence proximately caused the Plaintiffs' injury?

☒ YES: GO TO QUESTION 3

☐ NO: STOP AND DELIBERATE NO FURTHER

3. Do you find that the Decedent Alice Monique Beckham Hancock was negligent?

☒ YES: GO TO QUESTION 4

☐ NO: GO TO QUESTION 6

4. Do you find that the Decedent Alice Monique Beckham Hancock's negligence proximately caused the Plaintiffs' injury?

☒ YES: GO TO QUESTION 5

☐ NO: GO TO QUESTION 6

- 5 If your answers to questions 1, 2, 3, and 4 are all YES, then answer this question

Taking the combined negligence that proximately caused the parties' injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Defendants and what percentage is attributable to the Decedent, Alice Monique Beckham Hancock?

Defendants.

35 %

Decedent, Alice Monique Beckham Hancock

65 %

Total

100%

If Defendants' percentage of negligence is 0% STOP AND DELIBERATE NO FURTHER.

If Defendants' percentage of negligence is 1% or greater CONTINUE TO QUESTION 6

6. As to the Plaintiffs' claim against the Defendant U.S. Security Associates, Inc. for negligent hiring, negligent training, negligent supervision and negligent retention, do you find that the Defendant was negligent?

☒ YES

GO TO QUESTION 7

☐ NO

- 7 Do you find that the Defendant U.S. Security Associates, Inc. is negligent hiring, negligent training, negligent supervision and negligent retention proximately caused the Plaintiffs injury?

☒ YES:

☒ NO:

If the Decedent, Alice Monique Beckham Hancock's percentage of negligence as allocated in Question 5 is greater than 50%, AND the answers to either Questions 6 or 7 are NO, then STOP AND DELIBERATE NO FURTHER.

If the Decedent, Alice Monique Beckham Hancock's percentage of negligence is 50% or less, OR the answers to Questions 6 and 7 are both YES then GO TO QUESTION 8

- 8 Please state the total amount of actual damages, if any, sustained by the Plaintiffs

_____ DOLLARS actual damages

(\$ _____ 00) actual damages

If you find that the Plaintiff is entitled to actual damages, you may then consider the issue of whether the Plaintiff is entitled to punitive damages. Please state the total amount of punitive damages, if any, awarded to the Plaintiff.

_____ DOLLARS punitive damages
(\$ _____ .00). punitive damages.

Nathan M. Zimmerman
FOR PERSON

LANCASTER COUNTY, SOUTH CAROLINA
April 13, 2010

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Travis A. Roddey, Individually, and as
the Personal Representative of the Estate
of Alice Monique Beckham Hancock,
deceased,

Plaintiff,

v

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

Defendants.

IN THE COURT OF COMMON PLEAS
THE SIXTH JUDICIAL CIRCUIT

Civil Action No. 07-CP-29-0593

**PLAINTIFF'S MOTION TO
ALTER OR AMEND THE JUDGMENT
AND FOR A NEW TRIAL**

Pursuant to Rule 59 of the South Carolina Rules of Procedure and South Carolina's "Thirteenth Juror Doctrine," Plaintiff Travis A. Roddey respectfully requests that this Court order a new trial absolute in this case. The grounds for the Rule 59 motion are that the trial court erred (1) in allowing the introduction of Defendant Derrick Jones' discovery deposition testimony at trial; (2) in directing a verdict in favor of Defendant Wal-Mart Stores East; (3) in allowing the introduction of inflammatory evidence related to "prior bad acts" of the decedent and her family, including the irrelevant criminal record of the decedent; (4) in failing to charge the jury that it could draw a negative inference from Derrick Jones' absence at trial; and (5) in submitting an incomplete and defective verdict form to the jury. The grounds for the motion under the Thirteenth Juror Doctrine are that the evidence does not justify the jury's verdict that the decedent was more at fault in causing her death than Defendants U.S. Security and Derrick Jones.

Plaintiff's Rule 59 Motion

Each of these five alleged errors was explored in detail at trial, and the Plaintiff incorporates by reference his arguments made at trial as bases for reconsideration and for granting a new trial absolute. In addition to those arguments, the Plaintiff respectfully offers the following arguments to support this motion.

- 1. The Trial Court Erred in Allowing the Introduction of Defendant Derrick Jones' Testimony and Further Erred in Failing to Charge the Jury That it Could Draw a Negative Inference from Derrick Jones' Absence at Trial.**

Two of the trial court's errors are closely related. First, the trial court erroneously permitted Defendant Derrick Jones' discovery deposition to be played at trial. This was despite Jones' failure to appear at trial while under subpoena, despite Jones' failure to offer any explanation or excuse for his absence, and despite Jones' disregard of the subpoena. The trial court then compounded this error by failing to give the Plaintiff's requested negative inference charge regarding Jones' absence.

The trial court's dual errors in this regard allowed Jones, a named party defendant who was under trial subpoena, to intentionally fail to appear for trial but yet offer his testimony via a discovery deposition. This is a procedure not contemplated by the South Carolina Rules of Civil Procedure. Had Jones been deceased, see Rule 32(a)(3)(A), SCRPC, or in prison, see Rule 32(a)(3)(C), then the Rules make allowance for his deposition to be used. However, no provision of the Rules allows a party to simply unilaterally decide that he is happy with his deposition testimony and to determine not to appear at trial; relying on recorded testimony instead. At a minimum, Jones should have been required to show "exceptional circumstances" under Rule 32(a)(2)(E). Not only was no such showing made, counsel for Jones did not even explain what the "circumstances" explaining his absence were, much less demonstrate that those circumstances were "exceptional." In the absence of

a formal finding by the court that one of the Rule 32(a) exceptions applied, a deposition *must* be excluded. See, e.g., *Archie Bell Const. Co., Inc. v Norman*, 311 S.C. 84, 86-87, 427 S.E.2d 689, 691 (Ct. App. 1993) (trial court properly denied request to use absent expert's deposition at trial when party proffering deposition failed to make necessary factual showing).

That another defendant, in this case, U.S. Security, might be prejudiced does not provide grounds for allowing the deposition to be used either. On the cause of action for vicarious liability – the only cause of action for which Jones is a defendant – U.S. Security was defending the claim from Jones' perspective and standing in his shoes. On this claim, U.S. Security and Jones are effectively the same party. Further, as was the case with Defendant Jones, U.S. Security did not make any showing of exceptional circumstances – or any circumstances whatsoever – which might justify the use of Jones' deposition.

If the trial court determined that fundamental fairness required the deposition testimony to be admitted, the court should have given a special instruction to the jury to compensate for the Plaintiff's lost ability to have the allegedly negligent actor testify at trial. Refusing to give the negative inference charge compounded the error; allowing Jones to flaunt the Court's authority and subpoena power without any consequence whatsoever. The instruction should have stated that where Jones' deposition testimony contradicted testimony offered in support of the Plaintiff's case, the jury could draw a negative inference from Jones' absence. The instruction also should have stated that the jury could draw a negative inference as to Jones' credibility generally based on his absence from trial. This is a fundamental fairness argument. These rulings gave Jones the benefit of not having to testify at trial and subjected him to no consequences for that decision.

The trial court should not have admitted Derrick Jones' deposition testimony and at the same

time denied the Plaintiff's request for a negative inference based on Jones' absence. The court should accordingly order a new trial.

2. The Trial Court Erred in Directing a Verdict in Favor of Wal-Mart.

The trial court granted Wal-Mart's motion for a directed verdict at the conclusion of the Plaintiff's case in chief. This decision was in error and this error requires a new trial.

There is no general duty in South Carolina to control the conduct of another person or to warn a third person or potential victim of danger. *Faile v S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). There are five exceptions to this rule. There is a duty to control the conduct of a third party (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant. *Id.* at 334, 566 S.E.2d at 546.

As the Plaintiff described in the Rule 59 motion he made following the trial court's ruling, there was evidence in this case that Wal-Mart employees instructed Derrick Jones to "delay" the decedent and her sister. (Plaintiff's Rule 59 Motion from Trial p 4) Jones did this by getting in his security vehicle, blocking the vehicle in which the decedent and her sister were traveling, and then beginning a vehicular pursuit. (Plaintiff's Rule 59 Motion from Trial p.4). There was evidence in the case that Wal-Mart employees then instructed Jones to follow the women outside of the parking lot and to get the license plate of the car the women were driving. (Plaintiff's Rule 59 Motion from Trial pp.5-10). Jones viewed this request, which Wal-Mart employees had made of him in the past, as "urgent." (Plaintiff's Rule 59 Motion from Trial pp.7, 9). Jones continued to follow the women at the encouraging of Wal-Mart employees, see (Plaintiff's Rule 59 Motion from Trial p 6); driving

"on the bumper" of the decedent's car and flashing his high beams until the women ultimately crashed. (Plaintiff's Rule 59 Motion from Trial pp.16-17).

Wal-Mart instructed and encouraged a security guard to delay the women using his truck and then engage in a vehicular pursuit of a suspected shoplifter for the purpose of getting the vehicle's license tag. This is evidence that Wal-Mart negligently or intentionally created the risk that Derrick Jones would cause the Plaintiff injury. Wal-Mart's instructions were not only unreasonable as a matter of common sense, they were unreasonable as a matter of Wal-Mart's own internal policy. Wal-Mart policy prohibits security contractors from pursuing shoplifters and emphasizes the protection of personal safety over the protection of store property. (Plaintiff's Rule 59 Motion from Trial pp 11-12).

A directed verdict cannot be granted unless a case "presents only questions of law." Rule 50(a), SCRPC. The two grounds given by the trial court for its ruling on the directed verdict motion were that Wal-Mart was not negligent and that if Wal-Mart was negligent, that negligence was not the proximate cause of the decedent's car accident.

The breach of a duty of care and whether that breach proximately caused the Plaintiff's injuries were factual questions for the jury to resolve. The Plaintiff's theory of the case was that the car accident was due less to the decedent's actions and more to (1) Wal-Mart's decision to encourage Derrick Jones to chase the decedent by vehicle, and (2) Jones' actions during the chase - flashing his lights and driving on the decedent's bumper. Wal-Mart understandably had a different theory of the case, but the trial court should not have decided these factual questions in Wal-Mart's favor. See *McVey v. Wittington*, 248 S.C. 447, 454-55, 151 S.E.2d 92, 96 (1966) (the question of whether a duty of care was breached is generally a question of fact which is reserved for a jury's determination), see

also *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 147, 638 S.E.2d 650, 662-63 (2006) ("The jury must determine whether [the plaintiff's] damages would have occurred 'but for' [the defendant's] alleged negligence, as well as whether such damages were foreseeable").

This error requires a new trial *as to all of the defendants*. A comparative negligence charge asks the jury to compare the negligence of the plaintiff against the negligence of all of the parties on the other side of the lawsuit. The decedent's negligence might have been 65% when compared only to Derrick Jones, but this allocation may have been different had the jury been asked to determine the fault of Wal-Mart – the party who told Jones to pursue the decedent. If U.S. Security was in fact 35% at-fault in causing this incident and Wal-Mart's fault was 16%, the verdict would have been for the Plaintiff. The jury is entitled to the chance to allocate liability as to everyone.

3. The Trial Court Abused its Discretion in Allowing the Introduction of Inflammatory Evidence of "Prior Bad Acts" of the Decedent and Her Family.

The trial court allowed numerous pieces of "prior bad acts" evidence to be introduced in this case as evidence of the value of the decedent's life and the value of her companionship to her family. This evidence included the decedent's criminal convictions and family court records indicating a threat of harm to her children. This was error under Rules 403, 404, 608, and 609 of the South Carolina Rules of Evidence.

On the value of the decedent's life, the rules of evidence provide no purpose which would have allowed the introduction of prior bad acts of the decedent. Character evidence is not admissible to prove action in conformity therewith. Rule 404(a), SCRE. There could accordingly be no proper argument that because the decedent had engaged in bad conduct in the past, she would have engaged in bad conduct in the future had she survived this accident. Neither the decedent's fraudulent check

convictions, nor her prescription fraud conviction, nor the family court records had any relevance to what happened on the night of the decedent's car accident. Rule 404(b)'s "motive, identity, mistake, and common scheme or plan" exception was not in play. The decedent was also not a witness in this case. Rules 608 and 609, which govern the use of impeachment evidence, were thus not applicable.

The members of the decedent's family who offered testimony as to the value of the decedent's companionship were certainly subject to impeachment, but only as to *their own credibility*. Furthermore, the rules allowing impeachment evidence are subject to Rule 403 which provides that relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice" and the family members may only be impeached as to *their own* prior bad acts. They may not be "impeached" with extrinsic evidence of the decedent's prior bad acts. There is a reasonable possibility that this evidence colored the jury's perception of the decedent and influenced their allocation of liability. The Court should accordingly order a new trial absolute.

4. There Is a Reasonable Possibility That the Verdict Form Was Misleading and Defective.

As the parties discussed at trial, the verdict form in this case was incomplete and defective. The printed instructions on the verdict form led to a "dead end" which required bringing the jury out of deliberation and providing a new jury form. There is a reasonable possibility that the form may have misled or confused the jury. The court should accordingly order a new trial absolute.

Plaintiff's Motion Under the "Thirteenth Juror Doctrine"

South Carolina's Thirteenth Juror Doctrine entitles the trial judge to sit as the thirteenth juror when the court finds that the evidence does not justify the verdict and to grant a new trial "based solely upon the facts." *Norton v. Norfolk S. Ry.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).

The facts in this case do not support the jury's comparative negligence verdict. The undisputed evidence was that Donna Beckham (the decedent's sister), not the decedent, attempted to shoplift merchandise from Wal-Mart on the night of this incident. It was also undisputed that Donna Beckham did not leave the store with the merchandise. Assuming for the sake of argument that Donna Beckham had committed the South Carolina crime of shoplifting by concealing merchandise within Wal-Mart, that "crime" was complete and over when she dropped the bag and left the store. Despite defense counsel's repeated characterizations of the decedent as a "getaway driver," it was perfectly lawful for Alice Hancock to drive her sister Donna Beckham from the Wal-Mart. Wal-Mart did not contact the police and there was no-law enforcement involvement in this incident until after the vehicle crash that claimed the decedent's life. No one – not even Jones – ever claimed that he was trying to perform some sort of citizen's arrest on Beckham. The decedent was acting both lawfully and reasonably in driving her sister away from the Wal-Mart.

The only evidence of any misconduct on the part of the decedent was that she ran one stop sign and one traffic light while Derrick Jones chased the women in his vehicle, and Jones did the same thing. The parties stipulated that the decedent was driving the speed limit when she crashed and that her car was in good working order. In comparison to the decedent, there was testimony that Jones (1) violated the law by following too closely behind the decedent; (2) violated the law by flashing his headlights at the decedent; (3) engaged in a vehicular pursuit without legal authority to do so; (4) violated the law by driving a vehicle *while his driver's license was suspended*; (5) violated numerous Wal-Mart and U.S. Security safety policies; and (6) was working in violating of the South Carolina security guard statute.

The facts do not support the jury's verdict that the decedent was more at fault in causing this

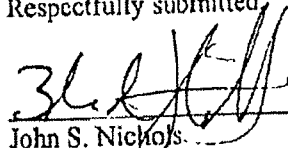
accident than the Defendants. This Court should exercise its discretion under the Thirteenth Juror Doctrine and order a new trial on the facts.

Conclusion

For the foregoing reasons, the Plaintiff respectfully requests that this Court order a new trial absolute in this case.

April 23, 2010

Respectfully submitted,


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EXHIBIT H

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2007-CP-29-593

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

v

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

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the Trial Court Erred When it Granted a Directed Verdict in this Negligence Action in Favor of Wal-Mart.

STATEMENT OF THE CASE

This is a direct appeal in a personal injury case that arose out of a traffic accident in Lancaster County, South Carolina. Alice Hancock died when the vehicle she was driving ran off of the road and crashed into a tree following a vehicular pursuit by a private security guard stationed at a local Wal-Mart. The appellant in this case is Travis Roddey, the personal representative of Ms. Hancock's estate.

The incident that led to Ms. Hancock's death began at a Wal-Mart store located not far from the site of the crash. On the night of June 20, 2006, Ms. Hancock drove to this Wal-Mart with her sister, Donna Beckham. Ms. Hancock and Ms. Beckham entered the Wal-Mart together, but Ms. Hancock left the store before her sister and returned to her vehicle in the parking lot. (Trial Tr., p.232, line 22-p.233, line 7) (from Ms. Beckham's trial testimony). According to Ms. Beckham, Ms. Hancock went out to the car because she was not feeling well. (Trial Tr., p.232, line 24-p.233, line 3). While Ms. Hancock was outside of the store, Ms. Beckham attempted to shoplift some pairs of blue jeans and a denim skirt. *Id.*; (Trial Tr., p.252, line 13-p.253, line 7).

Wal-Mart employees watched this incident unfold. The customer service manager on duty watched as Ms. Beckham took empty bags from an un-manned cash register and placed the merchandise into those bags. (Trial Tr., p.492, line 2-p.493, line 2). This employee then alerted the other customer service representative on duty, see *id.* at 494, lines

12-13, the "greeters" at the front of the store, *id.* at 495, lines 1-2, and Derrick Jones, a security guard employed by U.S. Security Associates. *Id.* at 496, line 20-p 497, line 7. Although there are many disputes about some of the things that happened on this evening, it is undisputed that (1) as Ms. Beckham neared the store exit, a Wal-Mart "greeter" asked to see Ms. Beckham's receipt, (2) Ms. Beckham then claimed – falsely – that her sister was in the car with the receipt; and (3) Ms. Beckham set the bags of merchandise down on the Wal-Mart floor and then walked out into the parking lot. See (Trial Tr., p.233, line 3-p.234, line 4) (Ms. Beckham's description of the incident); *Id.* at 523, line 16-p 524, line 20 (testimony of Shaun Cox, a Wal-Mart employee).

Ms. Beckham was in the parking lot when she first encountered Jones. As a security guard, it was Jones's job to patrol the Wal-Mart parking lot. (Dep. of Derrick Jones, p.114, lines 9-18) (Jones's deposition testimony, played at trial via video). For this job, Jones drove a white truck that had "U.S. Security" on the side and a light on top. *Id.* at 274, lines 4-25 (Jones's deposition testimony); (Trial Tr., p.133, lines 12-18) (testimony of Jeff Gross, an expert for the plaintiff, describing the video of the encounter).

The testimony at trial generally established that Jones said something to Ms. Beckham from his vehicle as she exited the Wal-Mart store. Ms. Beckham said that Jones "screamed" at her as she walked to her sister's car (Trial Tr., p 234, line 3-p.235, line 12). Jones said that the two had a short and casual conversation. (Dep. of Derrick Jones, p.36, lines 5-20). It is undisputed that Ms. Beckham then broke into a jog or run towards her sister's car, and that Jones moved his truck to block the women's vehicle. (Trial Tr., p.132, line 19-p.135, line 25) (testimony of Jeff Gross, an expert for the plaintiff, describing video

of the encounter); (Dep. of Derrick Jones, p.36, lines 17-20) ("my truck was blocking that exit, so they backed up."). At this point, Jones's truck and Ms. Hancock's car were facing one another, nose to nose. (Trial Tr., p.135, lines 12-18). Ms. Beckham climbed into the back seat of her sister's car, and Ms Hancock backed her car up and drove rapidly out of the parking lot (Trial Tr., p 235, line 20-p.236, line 12); (Dep. of Derrick Jones, p.39, lines 5-25). Jones followed behind. *Id.*

After the initial encounter in the parking lot, the versions of the story get dramatically different. Ms. Beckham testified that she crouched down in the back seat of the car as her sister drove away from Wal-Mart, and that when she periodically "popped up" to look behind the women, Jones was flashing his high beams and driving very close behind them. (Trial Tr., p.238, lines 8-25). Ms. Beckham testified that she could see the flashing high beams from Jones's vehicle coming through the window of her sister's car as she crouched in the back seat. (Trial Tr , p.239, lines1-10). According to Ms. Beckham, this continued for about two miles with Jones driving "on [their] bumper." *Id.* at 239, lines 21-25. Ms. Beckham testified that she heard her sister say "he's still on our ass," heard and felt a bump, and that the vehicle shot off the road to the left and crashed. (Trial Tr., p.240, lines 1-16) Although Ms. Beckham testified that she felt and heard a bump before the accident, there was no physical evidence at trial of any contact between the vehicles. (Trial Tr., p.311, line 20-p.312, line 1) (testimony of Trooper Howard, the officer investigating the accident).

For his part, Jones said that he followed the women out of the Wal-Mart parking lot but claimed that he lost them shortly thereafter. (Dep of Derrick Jones, p 39, line 5-p 41, line 2) (followed them out of the lot); (*Id.* at p.44, line 15-p.45, line 5) (lost them shortly

thereafter) Jones's version of events was that after he lost the women, he drove down the road looking for them and at one point pulled into the parking lot of an apartment building to check and see if the people he observed getting out of a car in that lot were the individuals he was following. *Id.* at 45, lines 3-25. When he supposedly saw that the people in the parking lot were not Ms. Beckham and Ms. Hancock, Jones said he turned his truck around and took a right out of the parking lot; driving further away from Wal-Mart. *Id.* at 46, lines 1-2. Concluding that he had lost the women, Jones said he turned his truck back towards Wal-Mart, and then saw the flashing lights from Ms. Hancock's vehicle off the side of the road. *Id.* at 46, lines 1-12; see also (Pl's Ex. 48 & 49) (Jones's written statements). According to Jones, he stopped his truck, attempted to assist the women, conversed with passers by who dialed 911, and left after EMS had arrived and extracted the women from the vehicle. *Id.* at 46, line 14-p.52, line 11; p.57, line 5-p.59, line 21; (Pl's Ex. 48 & 49).

Ms. Hancock's personal representative commenced this action on May 9, 2007, bringing claims for simple negligence and negligent hiring, training, and supervision. The complaint alleged (1) that Wal-Mart and U.S. Security were vicariously liable for the actions of Jones, an alleged agent or employee; (2) that Wal-Mart employees had improperly advised or instructed Jones to follow Ms. Hancock's vehicle and obtain her license tag number; and (3) that Wal-Mart and U.S. Security had failed to properly supervise Jones. The negligent hiring claim was based on the fact that certain aspects of Jones's past should have disqualified him from being hired as a security guard. See, e.g., (Trial Tr.p.106, lines 7-9) (describing a guilty plea to drug possession); and *id.* at 108, line 20-p.109, line 6 (describing that this should have precluded Jones's employment).

All of the defendants answered and alleged, among other things, that Ms. Hancock's negligence exceeded any negligence of their own and that the negligent hiring of Jones did not proximately cause Ms. Hancock's automobile accident.

The parties tried the case in front of a jury for six days – the 6th, 7th, 8th, 9th, 12th, and 13th – in April of 2010. Though he was under subpoena, Jones did not show up for trial. On the fourth day of trial, and after the plaintiff rested his case, the trial court granted Wal-Mart's motion for a directed verdict. (Trial Tr., p.603, lines 15-22). The trial court ruled that there was "insufficient evidence that Wal-Mart was negligent, or even if they were[,] there is a lack of proximate cause that the events were not foreseeable." *Id.*

The case proceeded against both U.S. Security and Jones, and at the end of the case, the jury returned a verdict that resulted in these defendants having no liability for Ms. Hancock's death. See (Verdict Form) (the verdict form). Although the jury found that U.S. Security and Jones (the verdict form referred to them as "the defendants") were negligent in relation to Jones's actions, and also that their negligence was a proximate cause of Ms. Hancock's injury, the jury additionally found that Ms. Hancock's actions were a contributing factor. *Id.* The jury apportioned 65% of the fault to Ms. Hancock and 35% to U.S. Security and Jones. *Id.* On the negligent hiring claim, the jury found that U.S. Security negligently hired Jones, but that this negligence did not proximately cause Ms. Hancock's accident. *Id.*

On April 23 – ten days after the verdict – Mr. Roddey served a motion to alter or amend the judgment or for a new trial. (Motion). The trial judge denied this motion in a written order signed June 4 and filed June 8. (Or. Denying Mot. to Recons.). Mr. Roddey served notice of this appeal on June 11.

ARGUMENTS

The Trial Judge Erred in Granting a Directed Verdict to Wal-Mart When There Was Evidence That Wal-Mart Violated its Duty of Care and a Reasonable Jury Could Determine That Instructing a Security Guard to Confront and Pursue a Suspected Shoplifter Could Cause Injury to the Shoplifter, the Security Guard, or Others.

The trial of this case centered on several disputes of fact. As one example, the plaintiff vigorously disputed whether Jones's version of the events involved in the car chase was believable. See, e.g., (Trial Tr., p.57, line 6-p.58, line 12) (from the plaintiff's opening argument). One aspect of the argument went that there was no way Jones could have lost the women during the car chase, drove around for the length of time he described, and then been at the scene of the accident in time for the first-responders to see him when they did. See *Id.* at 454, line 19-p.456, line 12; p.463, lines 1-22.

As another example, the parties disputed whether Ms. Hancock knew that her sister was attempting to shoplift merchandise from Wal-Mart. See, e.g., *Id.* at 63, lines 19-22 (from the defendants' opening). The defendants' theory of the case was that Ms. Hancock was the "get away" driver in the shoplifting scheme and that her allegedly reckless decision to drive her car away from Wal-Mart was the largest factor in causing her death. *Id.*

This appeal is about the circumstances under which a directed verdict is appropriate. The Appellant presented evidence that Wal-Mart employees instructed Derrick Jones to delay Ms. Beckham and to obtain the license tag number to Ms. Hancock's vehicle. This was in direct contravention of Wal-Mart policy. Wal-Mart disputed some of this evidence, but the point is that there was evidence that Wal-Mart's actions constituted negligence. It was up to the jury to determine whether Ms. Hancock's accident was a foreseeable consequence.

A. Proximate Cause Is the Touchstone for Liability in Negligence and Requires a Breach of the Standard of Care, "But For" Causation, and Foreseeability.

In South Carolina, proximate cause is the linchpin for a defendant's liability in negligence. *Bramlette v Charter-Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). Proximate cause requires that a defendant's actions be both the *cause in fact* of the plaintiff's injury, as well as the *legal cause* of the plaintiff's injury. *Oliver v. South Carolina Dep't of Highways & Pub. Transp*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992). Cause in fact is commonly known as "but for" causation, which tests whether the injury would not have occurred "but for" the defendant's negligence. *Id.* at 316, 422 S.E.2d at 130. Legal cause is proved by establishing foreseeability. *Id.* at 316-17, 422 S.E.2d at 131. The allegedly at-fault party need not foresee the precise or particular injury to the injured party who became the plaintiff. *Young v Tide Craft*, 270 S.C. 453, 463, 242 S.E.2d 671, 675-76 (1978). Instead, it generally is enough that *some* injury be the natural and probable consequence of the at-fault party's negligence. *Id.* at 463, 242 S.E.2d at 676

B. This Court Reviews a Directed Verdict under the Same Standard as the Trial Court, Which Requires Viewing the Evidence and its Inferences in the Appellant's Favor.

In reviewing the trial court's decision to direct a verdict in favor of Wal-Mart, this Court will perform the same analysis as was required of the trial court. *Burnett v Family Kingdom, Inc*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010). A judge cannot grant a directed verdict unless the case presents only questions of law. Rule 50(a), SCRPC. Also, when considering a motion for a directed verdict, the trial court must view all of the evidence and the inferences that reasonably can be drawn therefrom in the light most

favorable to the non-moving party *Strange v South Carolina Dep't of Highways & Pub Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994).

C. Applying These Principles to this Case Compels Reversal of the Trial Judge's Decision That There Was "Insufficient Evidence" of Wal-Mart's Negligence, and That If Wal-Mart Was Negligent, Ms. Hancock's Injury Was Not Foreseeable.

A faithful application of this analysis requires reversal of the trial judge's decision. There was evidence that Wal-Mart employees were negligent in bringing Jones into this encounter and in instructing him to delay Ms. Hancock and Ms. Beckham and get their license tag. There was even evidence that these employees instructed Jones to do so after Jones warned them that the women were leaving the parking lot. A reasonable jury could take this evidence and find that this accident would not have occurred if Wal-Mart had not given Jones these instructions, and the jury could also find that a serious injury was a very foreseeable consequence of asking an untrained security guard to engage in police work.

i. The Violations of Wal-Mart Policy Support a Finding That Wal-Mart Deviated from the Standard of Care.

By the time Wal-Mart made its motion for a directed verdict, the plaintiff had played several portions of the video recording from Jones's discovery deposition. See (Trial Tr., p.592-94) (Wal-Mart's motion for a directed verdict); *Id.* at 184 (noting the playing of Jones's deposition). Jones's testimony had to be supplied by way of his deposition because Jones did not attend the trial. In that deposition, Jones testified that a Wal-Mart employee called him over his walkie-talkie and told him that there was a shoplifter exiting the Wal-Mart. (Dep of Derrick Jones, p.35, lines 18-23). According to Jones, he responded by

asking "Well, what do you want me to do because I am a security officer; I'm not a -- I'm not a police officer." *Id.* at 35, lines 23-25. Jones said that Wal-Mart employees told him to "kind of like delay" Ms. Beckham until they (the Wal-Mart employees) could get out to the parking lot. *Id.* at 36, lines 2-4. Jones then testified that he used his vehicle to block Ms. Hancock's car because he "was trying to get the license plate tag." *Id.* at 36, line 21-p.37, line 3. According to Jones, "the whole time all [he was] hearing from Wal-Mart was 'You've got to get that license plate tag[] [w]e need that license plate tag number.'" *Id.* at 36, line 21-p.37, line 3. A Wal-Mart employee admitted giving this instruction. (Trial Tr., 527)

Jones also gave evidence that Wal-Mart employees told him to continue to get the vehicle's tag number even though it meant a vehicular pursuit on a public street. Jones testified that he was communicating with Wal-Mart employees via his walkie-talkie during this encounter, and that he was "telling them 'I can't see this license plate tag number, and they're about to leave the parking lot.'" (Dep. of Derrick Jones, p.41, line 15-p.42, line 6). Jones said "they're telling you 'Look, man. You got to get that license plate tag.' And I'm telling them, 'Well, they leaving the parking lot' -- 'Well, get that license plate tag number.' And that's all I'm hearing." *Id.* at 219, lines 1-7.

If Wal-Mart directed Jones to engage in these actions, those actions were in direct contravention of Wal-Mart policy. Wal-Mart has a detailed policy on investigating and detaining shoplifters. For example, this policy instructs that only certain types of Wal-Mart employees are authorized to investigate and detain suspected shoplifters. See (Pl's Ex. 11, p.1) (Guide to Wal-Mart's Policy AP-09). The policy instructs that one of these specific employees may approach a shoplifting suspect in order to investigate an unlawful taking of

Wal-Mart property, but only if another Wal-Mart employee is present as a witness. *Id.* p 3. Only these specific employees – referred to in the Wal-Mart policy as “Authorized Associates” – may detain a suspected shoplifter. *Id.* at 3. This same policy instructs that Wal-Mart employees should never (1) pursue a fleeing shoplifter for more than 10 feet from where the employee is standing, (2) pursue a suspect if the suspect is in a moving vehicle, or (3) use a moving vehicle to pursue a suspect. *Id.* The policy instructs that a pursuit is to be terminated if a suspected shoplifter begins to enter a vehicle. *Id.* The policy gives the reason why. It says “[p]rotecting the physical well-being of Suspects, Customers and Wal-Mart Associates is [an employee’s] first priority.” (Pl’s Ex. 11) (Section 100-Investigating & Detaining Shoplifters, pp.16-17). Recovering merchandise is second priority. *Id.*

Guidelines Wal-Mart issued to its security contractors specify that the primary function of security guards is to “provide [Wal-Mart] customers with a safe shopping experience ” (Pl’s Exhibit 9, p.1). These guidelines divide this function into two parts. The first is a deterrent; keeping a visual presence in the parking lot to discourage law-breaking. *Id.* The second is communication; specifically, that the security guard “be a source of information to Wal-Mart management.” *Id.* These guidelines do not envision an active role for a security guard in a shoplifting situation. They instead instruct the security guard to act as a witness and assist only when directed to do so or when observing a Wal-Mart employee in danger. See *Id.* at 2. At trial, the store manager for Wal-Mart made the point himself. He said that the security guards really were not supposed to be “doing very much,” and certainly were not supposed to be policing the parking lot. (Trial Tr., p.552, line 22-p 553, line 5).

If Wal-Mart employees directed Jones to confront a suspected shoplifter, delay that person, and pursue that person, there is no other way to put it than to say that this directly violated Wal-Mart's policy with respect to who can delay shoplifters, who can pursue them, and what that pursuit can entail. Jones was not a Wal-Mart employee and should never have confronted Ms. Beckham; both because he was not an "Authorized Associate" and because there was no witness present. Ms. Beckham also dropped the merchandise inside the Wal-Mart store, *in full view of two Wal-Mart employees*: (1) the Wal-Mart greeter, and (2) the Wal-Mart employee that had been walking several feet behind Ms. Beckham and observing her as she walked towards the store exit. (Trial Tr., p.524, lines 3-20). Once Ms. Beckham began to enter her vehicle, Wal-Mart policy required any pursuit of Ms. Beckham to stop — immediately, but this encounter continued. At trial, the Wal-Mart employee who had been following Ms. Beckham played both sides. On one hand, he said that he did not pursue Ms. Beckham after she put her bag down. At the same time, he said that he walked toward the Wal-Mart door after Ms. Beckham left the store because he wanted "to see what was going to happen next." Compare (Trial Tr., p.524, lines 19-24) with *Id.* at 526, lines 21-25). If this employee had stopped any pursuit, why he should have expected *anything* to happen next is anybody's guess. He testified that when he walked out of the store, he saw the chase begin and told Jones to "get her tag number." *Id.* at 527, lines 2-15.

Both this Court and the Supreme Court have recognized that violations of internal policies and procedures are admissible in these types of cases because they are relevant to proving whether the defendant exercised due care. *Peterson v Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005); see also *Caldwell v. K-Mart*, 306 S.C. 27,

31-32, 410 S.E.2d 21, 24 (Ct. App. 1991) (citations omitted) (using K-Mart's loss prevention manual to judge the reasonableness of interactions with a suspected shoplifter). Wal-Mart may dispute this version of events and may even do so vigorously, but on a directed verdict motion, that cannot count. When considering a directed verdict motion, the trial court and appellate court do not have the authority to decide issues about credibility or to resolve conflicts in the testimony. *Erickson v. Jones Street Publishers*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). Those questions are the exclusive province of the jury.

Because there was evidence that Wal-Mart employees did not comply with Wal-Mart's policies, there was evidence that Wal-Mart breached its duty of care. There accordingly is evidence supporting the allegations of negligence that were offered against Wal-Mart at trial, and the trial court's finding to the contrary should be reversed.

ii. Because a Reasonable Jury Could Determine That Jones Would Never Have Entered this Situation Without Wal-Mart's Instructions to Do So, There Is Evidence That Wal-Mart's Conduct Was a "But For" Cause of Ms. Hancock's Injury.

The "but for" cause test asks a simple question: whether the plaintiff's injury would have occurred "but for" the defendant's negligence. *Oliver*, 309 S.C. at 316-17, 422 S.E.2d at 131.

A reasonable jury could find that Jones would never have pursued Ms. Beckham and Ms. Hancock without Wal-Mart's instruction and encouraging. According to his deposition testimony, Jones was fully aware of the fact that he was not a police officer. (Dep. of Derrick Jones, p 35). Jones testified that he knew he should not have followed Ms. Hancock's vehicle, see *id.* at 41, lines 15-22, but that two Wal-Mart employees were asking him to get

the vehicle's license tag. *Id.* at 37, line 22-p.38, line 5 Jones also gave evidence that Wal-Mart employees told him to continue to get the vehicle's tag number even though it meant a vehicular pursuit on a public street. (Dep. of Derrick Jones, p.41, line 15-p.42, line 6; 219, lines 1-7). Jones made the point himself – he admitted he knew he was not supposed to go off the parking lot, but as he was talking to Wal-Mart, all they would say was “get the tag.”

Viewing this evidence in the light most favorable to the Appellant, “but for” Wal-Mart's decision to engage Jones in this incident, Jones does not begin a vehicular chase of Ms. Hancock and Ms. Beckham, Jones does not flash his lights for two miles while traveling behind the women, and this wreck does not occur. Again, these facts were not conclusively *proved* to the jury, but there was evidence from which a reasonable jury could have made these findings. Jones testified that he had clear communication with Wal-Mart employees for some distance off of Wal-Mart's property, (Dep. of Derrick Jones, p.292, line 21-p.294, line 11), and there is no indication that he would not have stopped had he been given that order. In fact, there was evidence that Jones followed Wal-Mart's order to the end. Sam Plyler, a part-time firefighter who was at the scene of the accident very quickly, testified that he saw Jones standing behind Ms. Hancock's vehicle and writing down the tag number. (Trial Tr., p.218, line 3-p.223, line 9).

Because a reasonable jury could determine that Ms. Hancock's injury would not have occurred without Wal-Mart instructing Derrick Jones to interact with these women and pursue them, Wal-Mart's actions – for the purposes of Wal-Mart's directed verdict motion – are a “but for” cause of Ms. Hancock's injury.

iii. **Wal-Mart Should Have Reasonably Foreseen That Instructing a Parking Lot Security Guard to Engage in Dangerous Police Work Would Result in Injury to a Suspected Shoplifter or to a Customer.**

In South Carolina, the law uses foreseeability to determine whether a defendant's negligence is the legal cause of a plaintiff's injury. *Oliver*, 309 S.C. at 316-17, 422 S.E.2d at 131; see also *Young*, 270 S.C. at 462, 242 S.E.2d at 675 ("the touchstone of proximate cause in South Carolina is foreseeability."). Even though a negligent actor might not contemplate or anticipate the particular injury that occurs, an injury can still be legally foreseeable if it is the "natural" or "probable" consequence of the defendant's negligence. *Young*, 270 S.C. at 463, 242 S.E.2d at 675-76. The defendant's negligence also need not be the sole cause of an injury, because an injury can have multiple proximate causes. *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 89, 502 S.E.2d 78, 83 (1998). All that is required for liability is that the defendant's negligence be "at least one of the proximate causes of the injury." *Id.* at 89, 502 S.E.2d at 83.

The backstop beyond which there is no liability is that a negligent actor cannot be charged and held liable for things that are unpredictable or could not be expected to happen. *Id.* at 463, 242 S.E.2d at 676. For example, the law generally provides that a defendant who commits ordinary negligence is not charged with liability where a contributing cause in the plaintiff's injury is the willful, malicious, and criminal act of a third party actor. See *Stone v. Bethea*, 251 S.C. 157, 161-62, 161 S.E.2d 171, 173-74 (1968) (cited in *Young* at 270 S.C. at 463, 242 S.E.2d at 676). A negligent defendant can only be charged with that which is reasonably foreseeable. In *Stone*, for example, the Supreme Court held that the person who

accidentally left his keys in his car was not liable after a thief stole the car and wrecked into someone. 251 S.C. at 164, 161 S.E.2d at 174-75. But even this example has come under criticism. See *Accordini v. Sec. Cent., Inc.*, 283 S.C. 16, 320 S.E.2d 713 (Ct. App. 1984).

The *Young* case provides some guidance that may be helpful to the court in determining whether a particular consequence is a natural and probable consequence of an actor's negligence. *Young* describes that "[w]here there is no contention that the intervening actions of a third person broke the causal chain, the probable consequences test consists simply of determining whether the wrongdoer's actions were such that they 'would probably cause injury to something or someone.'" 270 S.C. at 463, 242 S.E.2d at 676 (quoting *Childers v. Gas Lines, Inc.*, 248 S.C. 316, 325, 149 S.E.2d 761, 765 (1966)). Where there is a contention that an intervening act interrupted the chain of events, *Young* sets out a test that looks at two things: the injury complained of and the intervening acts. "If the acts of the intervening agency are a probable consequence of the primary wrongdoer's actions, the primary wrongdoer is liable." *Young*, 270 S.C. at 463, 242 S.E.2d at 676. If the intervening acts are not foreseeable, the primary wrongdoer will nevertheless still be liable "if his actions alone 'would have caused the loss in natural course.'" *Young*, 270 S.C. at 463, 242 S.E.2d at 676 (quoting *Benford v. Berkeley Heating Co.*, 258 S.C. 357, 365, 188 S.E.2d 841, 844 (1972)).

Applying these principles to Ms. Hancock's injury, several things lend support to the notion that this injury was a foreseeable consequence of Wal-Mart's actions. The first is the nature of Wal-Mart's negligence. Viewing the evidence in the light most favorable to Ms. Hancock's case, Wal-Mart employees disregarded Wal-Mart policy and engaged Jones in this

situation, instructed Jones to follow the women and get their tag number, and even continued to do so when Jones warned Wal-Mart that the pursuit was leaving the parking lot. This is not a situation of a third party engaging in conduct that broke the causal chain – Wal-Mart brought Jones off of the sideline and into the action. Unlike the negligent defendant who accidentally left his keys in his car, Wal-Mart waved the car thief over and held the door. This takes the case out of the “independent act by a third party” rubric. It was perfectly foreseeable that Wal-Mart’s actions “would probably cause injury to something or someone.” *Young*, 270 S.C. at 463, 242 S.E.2d at 676 (quoting *Childers*, 248 S.C. at 325, 149 S.E.2d 765). Jones’s job was to continuously drive a vehicle through the parking lot. It was foreseeable that Jones would use his vehicle to accomplish the instructions that Wal-Mart gave him and that this type of conduct – a vehicular pursuit chasing after a license tag number – would lead to serious injury. Never mind the evidence that Jones was telling Wal-Mart employees they were leaving the parking lot and no one called Jones down.

The second thing lending support to the foreseeability of this injury (or *an* injury) is Wal-Mart’s policy on investigating and detaining shoplifters. The policy is written very restrictively. Only authorized employees are allowed to make the decision to begin surveillance of a suspected shoplifter, there are detailed limitations on detaining a suspected shoplifter, and there are explicit limitations on the pursuit of a suspected shoplifter. (Pl’s Ex. 11, pp.1, 5). Part of the purpose of the policy is to recover merchandise and to minimize dangers to customers or associates. (Pl’s Ex. 11, Section 100-Investigating and Detaining Shoplifters, p.11). The policy instructs to “let the suspect go, rather than continue a pursuit that is likely to injure or cause harm to someone,” because “protecting the physical well-

being of Suspects, Customers and Wal-Mart Associates is your first priority." *Id.* at 16-17. One of this policy's instructions: "NEVER attempt to remove a Suspect from a vehicle *or block a vehicle that is exiting*" *Id.* at 17 (emphasis on section supplied). The words of this policy specifically contemplate that violations carry with them an increased risk of injury, either to Wal-Mart employees, customers, or suspected shoplifters.

The Appellant presented three witnesses at trial who were qualified as experts, and the testimony from two of those witnesses should be useful here because that testimony helps to make the point that injury was a very foreseeable consequence of violating Wal-Mart policy and engaging Jones in this situation.

The Appellant's expert in parking lot security, guard force management, and loss prevention very candidly testified that Wal-Mart had "very good" loss prevention policies. (Trial Tr., p.99, lines 16-p.100, line 4) (Jeff Gross qualified as expert in these areas); *Id.* at 143, lines 4-9; 177, line 24-p.178, line 3 (Wal-Mart's policy is very good). This expert opined that Wal-Mart's policy is written the way it is because "pursuits are dangerous" and Wal-Mart has "tried to engineer out" the risks of dealing with shoplifters. *Id.* at 129, lines 6-18. This expert opined that the "headwaters" of the problem in this case were Wal-Mart's asking Jones to do something that its own policy specifically forbids. *Id.* at 138, lines 15-24. Everyone at trial agreed that under Wal-Mart policy, once Ms. Beckham dropped her bags, *she was not a shoplifter*. *Id.* at 142, lines 6-16. This expert opined – twice – that Wal-Mart escalated the situation by telling Jones to do something that Wal-Mart policy expressly tells Wal-Mart employees not to do. *Id.* at 140, line 24-p.141, line 5; p.181, lines 14-18.

Wal-Mart's answer to this was that there is nothing inherently dangerous with trying

to get someone's license tag number, but according to the Appellant's expert, the particulars of the situation are what matters. *Id.* at 150, line 18-p 151, line 6. In fleeing after Jones's initial contact, Ms. Beckham was running through the parking lot. Wal-Mart's instructions to Jones caused Jones to drive through the Wal-Mart parking lot, for 30 or 40 seconds, after someone who was running and getting into a moving vehicle. *Id.* at 151, line 23-p.152, line 9. Wal-Mart employees saw this unfold, instructed Jones to interact with the women, and failed to tell him to stop. *Id.* at 152, line 14-p.153, line 18. And again, there was evidence that Wal-Mart told Jones to continue to get the vehicle's tag number even though it meant a vehicular pursuit on a public street. (Dep. of Derrick Jones, p.41, line 15-p.42, line 6; p.219, lines 1-7). The expert opined that when policies like this are violated, "you can expect to experience what the policies were trying to guard against": injury. (Trial Tr. p. 178, lines 4-10). This was police work -- using a moving vehicle to get information from another moving vehicle -- and the danger in it should have been obvious.

The Appellant's expert on pursuit and the behavior of people being pursued offered similar testimony. See (Trial Tr., p.192, lines 11-17) (Jeffrey Albert qualified as an expert in these fields). He testified that Jones's actions raised the risks to everyone in the Wal-Mart parking lot. *Id.* at 202, line 19-p.203, line 7.

This is common sense. There is nothing inherently dangerous about trying to get someone's license tag if the situation permits doing so safely. One of Appellant's experts gave the example of taking down a tag as a car drives by. *Id.* at 150, line 22-p.151, line 2. Yet there is evidence that Wal-Mart employees directed a security guard, whose job was to continuously drive through the Wal-Mart parking lot, to pursue a suspected shoplifter -- who

was really no longer a shoplifter – when that suspect was on foot and heading towards a vehicle. There was a command to “go,” but over the 30 or 40 seconds of perfectly foreseeable and dangerous action in the parking lot, there was never a command to “stop.” It was perfectly foreseeable for Jones to have continued to follow Wal-Mart’s instructions – instructions which Wal-Mart may have repeated over and over as Jones neared the parking lot exit – and it was perfectly foreseeable for an injury to be the natural and probable result of Wal-Mart’s negligence in asking Jones, a hall-monitor with a truck and no pursuit training whatsoever, to turn his truck around and capture the license tag of a moving vehicle.

The issue of proximate cause *can* be taken from the jury and decided as a matter of law, but only where “the evidence is of such a character that reasonable men in impartial exercise of judgment might not reach different conclusions.” *Williams v. Kinney*, 267 S.C. 163, 165, 226 S.E.2d 555, 556-57 (1976). Put differently, the issue must go to the jury unless it would be unreasonable for someone to conclude that the defendant’s negligence was a proximate cause of the injury. If the facts and inferences are “doubtful” or “tend to show both parties guilty of negligence or willfulness,” and if “there may be a fair difference of opinion as to whose act or acts produced or contributed to the injury,” then “questions of negligence, proximate cause and contributory negligence should be submitted to the jury.” *Kennedy v. Custom Ice Equip. Co.*, 271 S.C. 171, 175, 246 S.E.2d 176, 178 (1978).

A reasonable juror could have concluded that a serious injury was a foreseeable result of Wal-Mart’s instructions to Jones. The jury could thus have concluded that Wal-Mart’s negligence was a proximate cause of Ms. Hancock’s injury. For this reason, the trial court erred in directing a verdict in favor of Wal-Mart.

**D. This Error Requires a New Trial to as to All the Respondents
Because Comparative Negligence Requires That a Plaintiff's
Negligence Be Compared to the Negligence of All Defendants.**

The law of comparative negligence has been the law in South Carolina since the Supreme Court's decision in *Nelson v. Concrete Supply Co.* declared that comparative negligence would apply to all causes of action arising on or after July 1, 1991. 303 S.C. 243, 244, 399 S.E.2d 783, 784 (1991). Under South Carolina's form of comparative negligence, "a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant," and "[t]he amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence." *Id.* at 245, 399 S.E.2d at 784. *Nelson* and the cases that have followed instruct that "[i]f there is more than one defendant, the plaintiff's negligence shall be compared to the combined negligence of all defendants." *Id.* at 245, 399 S.E.2d at 784; see also *Creech v. South Carolina Wildlife & Marine Res. Dep't*, 328 S.C. 24, 33 n.1, 491 S.E.2d 571, 575 n.1 (1997).

In this case, the jury had the opportunity to compare only the negligence of Ms. Hancock and the negligence of U.S. Security and Jones, referred to collectively as "the defendants." See (Verdict Form). If a jury determined that Wal-Mart was negligent, and if a jury determined that this negligence was a proximate cause of Ms. Hancock's injury, all that would be needed for liability to attach would be a finding that the combined negligence of Wal-Mart and Jones (with U.S. Security standing in Jones's shoes) was 51%.

A reasonable jury could make this determination. Ms. Hancock's wreck was not caused by reckless driving on her part. The parties stipulated at trial that Ms. Hancock was driving the speed limit at the time of the accident. See (Trial Tr. p.297, lines 8-9) (speed

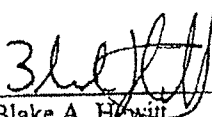
limit was 55), *id.* at 302, lines 3-16 (stipulation). Furthermore, "[c]omparison of a plaintiff's negligence with that of the defendant is a question of fact for the jury to decide" *Creech*, 328 S.C. at 32, 491 S.E.2d at 575. Just as the jury should have determined whether Wal-Mart was negligent and whether that negligence was a proximate cause of Ms. Hancock's injury, the jury should determine whether any negligence on Ms. Hancock's part is greater than, equal to, or less than the negligence of *all* the defendants.

CONCLUSION

Because there was evidence that Wal-Mart employees did not comply with Wal-Mart's policies, there was evidence that Wal-Mart breached its duty of care. A reasonable jury could find that Wal-Mart's negligence was a "but for" cause of Alice Hancock's injury, and a reasonable jury could also conclude that a serious injury was a foreseeable result of Wal-Mart's instructions to Jones and the failure to tell Jones to stop. This Court should accordingly reverse the grant of a directed verdict to Wal-Mart and remand this case for a new trial as to all of the defendants.

Respectfully submitted,

February 22, 2011



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Exhibit I:

Roddey v. Wal-Mart Stores East., LP,
415 S.C. 580, 784 S.E.2d 670 (2016) Opinion

See R. 17

EXHIBIT J

9/16/2008

Charles Campbell

State of South Carolina	)	
	)	
County of Lancaster	)	
	)	2007-CP-29-0593
Travis A. Roddey,	)	
Individually and as the	)	
Personal Representative of	)	
the Estate of Alice	)	Video Deposition
Monique Beckman Hancock,	)	
deceased,	)	of
	)	
Plaintiff,	)	Charles Campbell
	)	
vs.	)	
	)	
Wal-Mart Stores East, LP,	)	
U.S. Security Associates,	)	
Inc., and Derrick L.	)	
Jones,	)	
	)	
Defendants.	)	

Video deposition of Charles Campbell, taken before Stephen K. Tackett, a notary public in and for the State of South Carolina, commencing at the hour of 10:20 a.m., Tuesday, September 16, 2008, at the office of McGowan, Hood & Felder, L.L.C., 1539 Health Care Drive, Rock Hill, South Carolina.

Reported by
Stephen K. Tackett

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Also present:

Brooks Oswald, Videographer

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EXHIBITS

Plaintiff's Exhibit No. 1, Three-ring binder notebook of
Tabs 1 through 41.

1 anything that's relevant that we haven't talked
2 about?

3 A No.

4 Q Then, let's go off the record for a second and let
5 Brent and I talk.

6 (Off the record from 11:22 a.m.
7 until 11:24 a.m.)

8 MR. MCKINNON: Thank you very much,
9 Mr. Campbell. I don't have anything further.

10 THE DEPCNENT: Okay.

11 EXAMINATION

12 BY MS. FLYNN:

13 Q Only one quick question.

14 A Okay.

15 Q Sorry.

16 A All right.

17 Q You were asked a few questions earlier regarding if
18 U.S. -- if in the event that a security guard with
19 U.S. Security says he has -- did something wrong,
20 who would be the person with Wal-Mart to -- to
21 raise that issue with U.S. Security over the guard,
22 and I believe that you said that you would either
23 talk to the guard or call his supervisor?

24 A Uh-huh.

25 Q Is that correct?

1 A Yes.

2 Q In Mr. Jones's case, did you ever have to speak to
3 Mr. Jones regarding anything that ever came to your
4 knowledge that he did wrong?

5 A No.

6 Q Okay. Did you ever go to Mr. Jones's supervisor
7 for any reason?

8 A No.

9 Q Okay.

10 MS. FLYNN: No further questions.

11 MR. MORGAN: I don't have any questions.

12 FURTHER DEPONENT SAITH NOT.

13 .Signing waived.

14 (Whereupon, there being no further
15 questions, the deposition was
16 concluded at 11:25 a.m.)

17 (*This transcript may contain quoted material.
18 Such material is reproduced as read or quoted
19 by the speaker.)

20 (**Certificate accompanies sealed original only.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT

Travis Roddey, Individually and as the	)	C A No.. 2007-CP-29-593
Personal Representative of the Estate of	)	
Alice Monique Beckham Hancock,	)	
Deceased,	)	
	)	PLAINTIFF'S MEMORANDUM OF LAW
	)	IN OPPOSITION TO
Plaintiff,	)	DEFENDANTS' MOTION TO EXCLUDE
	)	PLAINTIFF'S NEGLIGENT HIRING,
vs.	)	TRAINING, SUPERVISION, AND
	)	ENTRUSTMENT CAUSE OF ACTION
Wal-Mart Stores East, L.P., U.S. Security	)	AND/OR IN THE ALTERNATIVE
Associates, Inc., and Derrick L. Jones.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Defendants.	)	
	)	

INTRODUCTION

Plaintiff Travis Roddey, individually and as the appointed personal representative of the Estate of Alice Monique Beckham Hancock, through his attorneys, respectfully submits Plaintiff's Memorandum of Law in Opposition to Defendants Wal-Mart Stores East, L.P., U S Security Associates, Inc., and Derrick L. Jones's Motion to Exclude the Negligent Hiring, Training, Supervision and/or Entrustment Cause of Action (hereinafter "negligent hiring and supervision") and in the Alternative Motion for Summary Judgment. As explained herein, the South Carolina Supreme Court reversed and remanded this case to the circuit court for a new trial. In reaction to this awarded relief, Defendants now suggest that the negligent hiring and supervision cause of action is not rightfully before this Court. They attempt to base this assertion on issue preservation grounds, appealability, and res judicata. Defendants' motion, however, confuses the procedural bar of issue preservation with determining the scope of relief granted by the Supreme Court. This reasoning is misplaced. Any issue Defendants have with the Supreme Court's ruling or the parameters of its ruling should have been addressed through a petition for

rehearing. In fact, Defendants made such a filing asserting preservation grounds, amongst other arguments, and their petition for rehearing was denied. Therefore, upon the issuance of the remittitur, this argument became moot and the Supreme Court's granting of a new trial is now the law of the case.

In the alternative, Defendants contend summary judgment should be granted on the basis that Jones's actions were not foreseeable. As more fully explained herein, sufficient evidence exists to support Plaintiff's claim that Defendants were negligent in hiring and supervising and that Jones's actions were foreseeable. Because of this, this Court should deny Defendants' motion and rule that a new trial be held on all causes of actions included in Plaintiff's Amended Complaint.

FACTUAL/PROCEDURAL HISTORY

On June 20, 2006, Derrick Jones was working as a security guard in the parking lot of the Wal-Mart store in Lancaster. **Exhibit A**, November 28, 2008 Deposition of Derrick Jones, *passim*. Jones was employed by U.S. Security Associates, Inc. ("U.S. Security"), a company hired by Wal-Mart to patrol the store's parking lot. *Id.* On June 20, 2006, the night of the incident in question Jones was driving a company vehicle despite the fact that his driver's license was suspended. **Exhibit A**, Deposition of Derrick Jones at 10. Jones also tested positive for THC (the active chemical in marijuana) at his pre-employment drug screening. Furthermore, Jones was statutorily ineligible for employment as a security guard in South Carolina because of a drug conviction and a pending charge of strong-arm robbery. **Exhibit A**, Deposition of Derrick Jones at 14-15 and 71. Jones, who was hired on May 22, 2006, was also working as a security guard in violation of S.C. Code Ann. § 40-18-80(A)(2) because Jones worked more than

twenty days without a valid SI ED-issued registration certificate on the night of the crash
Exhibit B, Deposition Archie Bryant p. 45

Two Customer Service Managers were working at Wal-Mart that night: Shawn Cox and Hope Rollings. **Exhibit C**, September 16, 2008, Deposition of Hope Rollings at p. 7 Together with Chuck Campbell, they were the three ranking managers in the store. *Id.* All three managers were in radio contact with each other and with Jones **Exhibit C**, Deposition of Hope Rollings at p. 13 Sisters Alice Hancock and Donna Beckham were shopping in the Wal-Mart that night. At approximately 10 – 10:15 p.m., Jones was contacted via two-way radio by Wal-Mart Customer Service Manager Shawn Cox, and was instructed to “delay” a possible shoplifter, who turned out to be Beckham, decedent’s sister. Beckham left the store and entered a car driven by her sister, decedent who had gone to sit in the car because she was not feeling well. At or around the same time, Jones was instructed by Cox to get the license plate number of decedent’s car. **Exhibit A**, Jones Deposition p. 35-37

Doing as Cox commanded, Jones followed Beckham to her car and blocked her exit from the parking lot. **Exhibit A**, Jones Deposition p. 36. Hancock reversed her car and left the parking lot while Jones remained in hot pursuit. **Exhibit A**, Jones Deposition p. 37-38. At this time, Jones was in contact with Cox and fellow Wal-Mart Customer Service Manager Hope Rollings via two-way radio. **Exhibit A**, Jones Deposition p. 37-38. As Jones pursued Hancock’s car, Wal-Mart employees emphatically and urgently instructed Jones to obtain the license plate number of Ms. Hancock’s vehicle **Exhibit A**, Jones Deposition p. 231. Hancock, with Jones in pursuit, disregarded several traffic signals leaving the Wal-Mart parking lot and entering the highway. **Exhibit A**, Jones Deposition p. 40. As the vehicles exited the parking lot, Wal-Mart employees continued to direct Jones to obtain the license plate number of Hancock’s

vehicle. **Exhibit A**, Jones Deposition p. 291. The two-way radios continued to work even after the vehicles exited the parking lot **Exhibit D**, July 23, 2008, Deposition of Shawn Cox, p. 28-29. Wal-Mart employees continued to encourage Jones to obtain the license plate number and never instructed Jones to discontinue his pursuit **Exhibit A**, Jones Deposition p. 64. Jones' testimony regarding his instructions by Cox and Rollings was corroborated by both, though they differ in exactly what was said **Exhibit C**, Rollings Deposition at p. 13-14, **Exhibit D**, Cox Deposition at p. 16-21

Jones continued to pursue Hancock's car at a high speed and in a reckless manner. **Exhibit A**, Jones Deposition p. 249. The pursuit ended several miles from Wal-Mart after Jones's reckless pursuit caused Hancock to lose control of her vehicle, swerve off the roadway, and hit a tree. Hancock was killed in the accident and Beckham suffered serious bodily injury. As a result of those events, Plaintiff alleged three causes of action against Defendants: (1) negligence-respondent superior, (2) negligent hiring and supervision-wrongful death, and (3) negligent hiring and supervision-respondent superior-survivorship. **Exhibit E**, Amended Complaint.

This matter was originally tried from April 6, 2010 through April 13, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case-in-chief, Wal-Mart moved for a directed verdict on three grounds arguing: (1) Plaintiff presented no evidence that Wal-Mart breached its duty of care; (2) Wal-Mart's actions were not the proximate cause of Hancock's death as a matter of law; and (3) Hancock's fault in causing her own death was more than fifty percent as a matter of law. The trial court granted the motion on Wal-Mart's first two grounds. The trial court explained that in its opinion there was insufficient evidence that Wal-Mart was negligent, and even if Wal-Mart was negligent, there was a lack of proximate cause because the

events were not foreseeable. The trial court noted at the time of the ruling that it could not find Hancock more than fifty percent negligent as a matter of law. Ultimately, the jury found that Hancock was sixty-five percent at fault, and USSA and Jones were collectively thirty-five percent at fault.

Plaintiff appealed arguing the trial court erred in granting a directed verdict in favor of Wal-Mart. In a split decision by the Court of Appeals, the directed verdict was upheld. Plaintiff then appealed to the Supreme Court, which found that the trial court erred in granting a directed verdict. **Exhibit F**, *Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 22). Accordingly, the Supreme Court reversed and remanded for a new trial on all issues. In reaching its decision, the Court explained that the only remedy to address the circumstances of this case was to grant a new trial. Defendants filed a petition for rehearing, which the Supreme Court denied. **Exhibit G**, Defendants' Petition for Rehearing—April 14, 2016; **Exhibit H**, Order Denying Defendant's Petition for Rehearing; **Exhibit I**, May 5, 2016 Remittitur.

ARGUMENTS

I. Supreme Court Granted a New Trial on All Causes of Action

Defendants' Motion to Exclude Plaintiff's Negligent Hiring and Supervision Cause of Action should be denied. The Supreme Court clearly intended for this matter to be given a new trial with no limitations. Restricting the scope of the new trial would ignore the plain reading of the Supreme Court's opinion.

A review of the opinion demonstrates the Supreme Court's explicit decision to grant a new trial on all causes of action. Writing for the majority, Acting Justice Toal explained:

In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, *[Plaintiff] also alleged that Wal-*

Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault. In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.

(emphasis added). **Exhibit F.** Opinion at p. 10. Notably, the majority not only acknowledges the negligent hiring cause of action, it also cements the fact that the Supreme Court believed the only proper remedy was a new trial outright.¹ **Exhibit F.** Opinion at p. 10. This reading of the opinion is further supported by Chief Justice Pleicones's dissent in which he states:

Moreover, I am not convinced that even if [Plaintiff] were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. . . . Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike Williams' innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury and the possibility of liability.

(emphasis added) **Exhibit F,** Opinion at p. 11-12.

Significantly, if the Supreme Court intended to limit the causes of action to be tried in this matter the Supreme Court would have specifically stated such restriction and provided instructions to this Court. For example, in the same term of court this matter was heard, the Supreme Court on multiple occasions remanded cases for new trials or proceedings with limiting instructions to the lower tribunal. *See Allegro, Inc v Scully*, No. 2014-002055, 2016 WL 4474336, at *6 (S.C. Aug. 24, 2016) (limiting the causes of action to be addressed by the circuit court following a remand); *Hilton v Flakeboard Am. Ltd.*, No. 2015-000493, 2016 WL 5930126, at *1 (S.C. Oct. 12, 2016) (instructing the Workers' Compensation Commission that their

¹ Practically, this outcome is not surprising as such rulings are common place even when one issue is in dispute on appeal. *See e.g., Riley v Ford Motor Co.*, 414 S.C. 185, 198, 777 S.E.2d 824, 831 (2015) (ordering a new trial as the result of an error in the calculation of damages)

consideration of the issue will be limited). Therefore all indications are if the Supreme Court intended to limit the parameters of its relief, it would have instructed both this Court and the parties accordingly. The Supreme Court's silence as to limiting instructions demonstrates its intent to grant Plaintiff a new trial on all causes of action

Moreover, the issues and concerns now raised by Defendants to this Court should have been addressed to the Supreme Court in their petition for rehearing. See Rule 221, SCACR. While Defendants filed a petition for rehearing raising issues of preservation and appellate review, Defendants did not seek clarification or suggest error in the grant of a new trial. **Exhibit G**, Petition for Rehearing. The proper forum to address concerns with the relief, and/or the scope of relief, was with the Supreme Court prior to the remitting of this case. *Stogsdill v. S.C. Dept of Health & Human Servs.*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) (noting the sending of the remitter ends appellate jurisdiction); see also **Exhibit I**, May 5, 2016 Remittitur. Thus, the ruling by the Supreme Court that a new trial be granted is the law of the case. See *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."). see also *Ross v. Med Univ of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case.") To allow Defendants to revisit their appellate arguments and re-litigate matters ruled on by the Supreme Court would be inequitable. Accordingly, Defendants' motion should be denied.

II. Summary Judgment Should Be Denied

Defendants' Motion for Summary Judgment on the negligent hiring and supervision cause of action should also be denied. Specifically, Defendants contend that Jones's actions were not foreseeable. This argument must fail because there is far beyond a mere scintilla of evidence to demonstrate that Defendants were negligent in their hiring and supervision of Jones. Moreover, the question of foreseeability belongs to the jury.

To grant a motion for summary judgment, the circuit court must find that "there is no genuine issue as to any material fact." Rule 56(c), SCRPC. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). For claims where the preponderance of evidence burden applies, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

"In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring . . . the employee . . ." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). Negligent hiring cases turn on the knowledge of the employer and the foreseeability of harm to third parties. *Doe v. ATC*, 367 S.C. 199, 207, 624 S.E.2d 447, 451 (Ct. App. 2005). Ordinarily, foreseeability is a question of fact to be decided by

the jury.” *Steel v. Rogers*, 306 S.C. 546, 551, 413 S.E.2d 329, 332 (Ct. App. 1992). “Only when the evidence is susceptible to only one inference does it become a matter of law for the court.” *Oliver v. South Carolina Dept. of Highways & Public Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992).

Evidence in the record supports Plaintiff’s assertions that Defendants were negligent in hiring, training, supervising, and entrusting Jones. First and foremost, U.S. Security failed to take the necessary steps in hiring Jones by failing to meet the minimal standards statutorily required for a person to be a security officer in South Carolina. *See* S.C. Code Ann. 40-18-80. The statute requires any person performing the duties of a security officer to obtain a valid security officer registration certificate. Neither U.S. Security nor Jones acquired this certificate. This is significant because in order to obtain a security officer certificate the person must meet the following qualifications:

...
(d) has not been convicted of a felony or crime involving moral turpitude;

(e) is of good moral character;

(f) does not unlawfully use drugs,
...

(h) has passed a SLED-approved pre-employment drug test;

S.C. Code Ann. § 40-18-80(A)(4)

Jones was not eligible to be a security officer because he used marijuana and he failed a drug screening. The Legislature was clear that a person should not be employed as a security guard if he uses drugs or fails drug screenings. Jones did both. He never should have been hired, period. Defendants could and should have been aware of Jones’s shortcomings and lack

of qualifications for the tasks he was hired to perform. They failed to meet their statutory requirement along with Jones, and it is their very negligence that allowed him to be hired. If Jones had not been employed on that night none of the horrible events of that evening would have transpired. To argue that it is not foreseeable that a security guard hired and retained in violation of state law would commit dangerous acts is misplaced. Our Legislature mandates statutory safeguards for this very reason and to prevent what happened here.

Moreover, Jones's driver's license was suspended when he was hired. Jones's duties as a security guard required him to use a vehicle. Confirming he possessed a valid license was a necessary inquiry. A reasonable jury could conclude that Jones's driving with a suspended driver's license was dangerous and that because of that it was foreseeable that he might engage in other dangerous activities.

Additionally, Defendants violated their own policies and failed to supervise Jones when he was instructed on multiple occasions, including but not limited to, June 20, 2006, to get a license tag number from a customer. Jones testified that the incident involving Hancock was not the first time he had pursued a customer off of Wal-Mart property in violation of his written instructions. He explained:

Well, actually, that's a -- that's a real good question, because my very first day that I worked at Wal-Mart, I was told to go obtain a license plate tag number, and they told me, 'You got to get that license plate.' The same way they told me that night *The same way my very first day I had to go get a license plate tag number off the premises.*

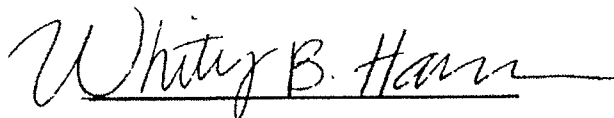
Exhibit A, Jones Deposition at p. 115 (emphasis added). One month prior to this incident, Jones pursued another vehicle off Wal-Mart property in his truck—the very same activity that led to Hancock's death. However, Defendants retained him on the payroll. In fact, when Jones sought clarification with his manager about whether he should violate the policies at the instruction of

Wal-Mart he was told "you got to do what you got to do" Exhibit A, Jones Deposition at p 119-20. It was well understood that Jones should follow the instructions he was given by Wal-Mart employees, which included violating Wal-Mart's policies that were written for the safety of all individuals involved. A reasonable jury could find that it was foreseeable that Jones would continue to take the same action despite the harmful ramifications that were likely to result

CONCLUSION

Based on the foregoing reasons, Defendants' Motion to Exclude the Negligent Hiring, Training, Supervision, and Entrustment Cause of Action and/or in the Alternative Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff

October 20, 2016
Columbia, SC

CERTIFICATE OF SERVICE

This is to certify that on this 20th day of October 2016, a copy of the foregoing Plaintiff's Memorandum in Opposition to Defendants' Motion to Exclude the Negligent Hiring, Training, Supervision, and Entrustment Cause of Action and/or in the Alternative Motion for Summary Judgment, has been served upon the following counsel of record, via first class mail, addressed as follows:

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

Exhibit A:
Deposition of Derrick Jones

See R. 169

Exhibit B

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- 1 days of the time that the registration application
2 is submitted to SLED.
3 Q But not in this case?
4 A Not in this particular case.
5 Q Because in -- in this case, I -- I understand, it
6 took more than a month, correct?
7 A I don't recall the time frame.
8 Q Well, what date did Mr. Jones apply in your office?
9 A The PFSB registration application is dated 5/22.
10 Q Uh-huh. And the SLED, I believe, that you provided
11 is in -- is in another place -- the SLED
12 application. Let's see where that is. That's the
13 preceding tab, Mr. Bryant, the -- the SLED --
14 A Tab 13?
15 Q Yes, sir.
16 A "Date of employment: 5/22."
17 Q And what's the date on the SLED letter?
18 A June 30th.
19 Q Okay. So five weeks, roughly?
20 A Between those two dates, yes.
21 Q Okay. So for those -- that five-week time, you
22 were willing to let someone work as a security
23 guard and only run a criminal-records check on --
24 on a single county?
25 A In this specific instance, Mr. Jones was not

Exhibit C

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1 A I had spoken with them, but not socially.
2 Q I understand. But when you said spoken with
3 him, you mean Derrick Jones?
4 A No.
5 Q Oh, I'm sorry. Okay. Who do you mean?
6 A Not him. Them.
7 Q Them. Okay. Had you ever spoken with Derrick
8 Jones?
9 A Not that I recall.
10 Q Tell me starting with, I guess, first the radio
11 call you got from Hope, everything you remember
12 about what happened that night starting with
13 Hope's radio call
14 MS. BRADLEY: Object to form
15 BY MR. MCKINNON:
16 Q You can answer.
17 A I remember her calling me to come to the front
18 Q Okay.
19 A When I did come to the front and meet with her,
20 that's when she pointed out the -- I'm sorry,
21 what was her name?
22 Q Ms. Beckham.
23 A Ms. Beckham. That she had observed Ms. Beckham
24 putting items in a bag. She went to notify the
25 door greeters to stop her and ask for a receipt.

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1 I continued to walk to Ms. Beckham. I watched her
2 walk from the registers to the front of the
3 books and she looked as if she was heading
4 towards the grocery side of the store. I went
5 to find Hope, notified her that she was headed
6 the other direction. I went back in, again saw
7 Ms. Hancock (sic) with the same shopping cart,
8 the same bag, in the bottom of the cart and her
9 large pocketbook was still on her shoulder. She
10 then went to one register, picked up the bag out
11 of the cart and started to walk toward the GM
12 door. And that is when I notified Sarah by --

13 Q Can I stop you for a second?

14 A Yeah.

15 Q What -- when you said the GM door, what does
16 that mean?

17 A General merchandise door.

18 Q That means like as opposed to the grocery door?

19 A There's a door that is towards the food side
20 which we call the grocery door, and then the
21 other door is called the general merchandise
22 door because it's -- when you enter it's, again,
23 merchandise on that side of the store.

24 Q Okay.

25 A When I saw her going towards the GM side of the

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store, I motioned to Sarah, the door greater,
that that was her so that she would know to stop
her. And I observed Sarah talk with her. And
Ms. Beckham had put the bag in front of the ice
machine, and Sarah continued to have a few words
with her. And then Ms. Beckham started to exit
the door and I followed her, radioed security
she was leaving the GM door, and I described her
clothing, and that's when I exited the store.

Q Okay. Go on.

A I exited the store and looked to the left.
Security, Mr. Jones, turned up the same parking,
what do you call them, lane.

Q Sure. Aisle.

A At that point the car was in reverse and was at
a high rate of speed, went over at least the one
curb that was in the center of the parking lot.
She went to flip around because the back end of
her car -- if you're driving, the back end of
her car went to the right. He was still in
front of her. They were nose to nose. She
flipped her car around and started to proceed in
the forward fashion, and that is when I told him
to get her tag number.

From that point, they went to the end of the

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1 parking lot, turned right up towards Highway 9
2 bypass, went through the stop sign and
3 proceeded --
4 Q Can I stop you just one second?
5 A Uh-huh
6 Q when you're saying they went right Highway 9 and
7 went through the stop sign, are you still seeing
8 them do this or are you --
9 A Yes.
10 Q -- relaying what other people told you?
11 A No, I saw all of it.
12 Q Okay. So can you -- when you -- as you go on
13 with the story, will you tell me the point where
14 you -- where you lost sight of them?
15 A When they went past the actual building of
16 Wal-Mart
17 Q Okay. So keep -- I apologize for interrupting
18 you.
19 A Okay. They went through the stop sign. At that
20 point she maybe was two car lengths ahead of
21 him. He also went through the stop sign. And
22 then they proceeded to go through -- run the red
23 light nearly missing one vehicle that swerved
24 out of the way. And that's where I lost sight
25 of them, is when they went past the actual

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1 building of Wal-Mart.
2 Q Okay. So as far as what they were doing in
3 traffic, you saw them, you say, run a stop sign
4 meaning they didn't stop for a stop sign?
5 A No, they did not.
6 Q And they went through a red light?
7 A Yes.
8 Q Okay. And did Mr. Jones do the same thing?
9 A Yes.
10 Q So Mr. Jones ran the red light and then he also
11 ran through the stop sign?
12 A Yes.
13 Q Okay. Did you see whether he was flashing his
14 lights at them?
15 A No, I did not.
16 Q Okay. Let's go back to the parking lot for a
17 second. Did you -- I don't remember you saying
18 Mr. -- you saw Mr. Jones have any kind of
19 conversation with them?
20 A He did not.
21 Q Mr. Jones never said anything?
22 A I did not see him.
23 Q Okay. So tell me, so you walk out -- I'm sorry.
24 Let's jump back. The first thing you do is you
25 -- you radio Mr. Jones, you give him her

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1 description
2 vs BRADLEY Object to form.
3 BY MR. MCKINNON.
4 Q You can answer
5 A Yes, I did.
6 Q And then later on you tell him to get their
7 license tag; is that correct?
8 A Yes.
9 Q Okay. And that second instruction, is that over
10 the radio also or was that face to face?
11 A Over the radio.
12 Q Okay. And of the time you were out -- and you
13 followed her outside of the front of the store?
14 A Yes.
15 Q Okay. And you never saw Mr. Jores have any kind
16 of conversation with her?
17 A No.
18 Q Okay. And so you -- you said first he parked
19 the security truck, you said nose to nose?
20 A He was not parked
21 Q Stopped, is that fair?
22 A Not stopped.
23 Q Okay. What am I getting wrong there?
24 A They were both in motion.
25 Q Oh. So when you said they were -- they were

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1 Q No, she was not on duty. Okay.
2 When you saw -- okay. Let's turn back a second.
3 You said you asked him to get the license plate
4 because you wanted what was going on in the
5 parking lot to stop. By that you meant
6 Mr. Jones chasing, or whatever you want to call
7 it, Ms. Becknam and Ms. Hancock?

8 A Uh-huh.

9 MS. BRADLEY: Object to the form

10 BY MR. MCKINNON:

11 Q You did. Okay. Why were you -- why did you
12 want him to stop?

13 A Because of the reckless driving that was going
14 on.

15 Q You were concerned someone might be hurt?

16 A Exactly.

17 Q Okay. And you said you communicated with
18 Mr. Jones by radio. Was this kind of like a
19 walkie-talkie like the police have or how were
20 you talking to him?

21 A Yeah, it's a black radio.

22 Q Like a handheld like you see like police in
23 movies?

24 A Yeah.

25 Q And do you have any idea how long a range that

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1 was?

2 A No.

3 Q Do you think you could have still talked to
4 Mr. Jones when he was driving on Highway 9
5 before you lost sight of him?

6 A Yes.

7 Q Okay. Did you --

8 A I didn't know the range, though.

9 Q Right. You do think maybe it would have been a
10 good idea to tell him to stop when he was
11 chasing her through red lights and stop signs?

12 A I was in shock that he had even done it. I know
13 that I actually said over the radio his actions
14 at that point.

15 Q Okay. Okay. Let's turn back a second. Who
16 else had radios that were able to hear these
17 conversations?

18 A Management and CSMs

19 Q Okay. So that night that would have been
20 Mr. Jones and you and Hope, the other CSM, and
21 Chuck, the assistant manager?

22 A Yes.

23 Q Those were the four people who heard that
24 conversation?

25 A Yes.

Exhibit D

9/16/2008

Page 7

- 1 Q -- about five months ago? Okay
- 2 Why did you leave Wal-Mart?
- 3 A I had another job opportunity.
- 4 Q At Peebles?
- 5 A No. Real estate
- 6 Q Okay. And that didn't work out?
- 7 A Well, it's slow right now, so I got me a part-time
- 8 job
- 9 Q Okay. And you said -- what -- what were -- your
- 10 job on the 20th was what at Wal-Mart?
- 11 A Customer service manager
- 12 Q Okay. And what does that mean?
- 13 A Just take care of the customers, and we had to,
- 14 like, run money to the cashiers and count their
- 15 tills and stuff.
- 16 Q Okay. Were you the only CSM working that night?
- 17 A No, sir.
- 18 Q Who else was working?
- 19 A CSM Shawn.
- 20 Q Okay. That's Shawn Cox?
- 21 A Uh-huh. Yes, sir.
- 22 Q Okay. And then above you and Ms. Cox -- who -- who
- 23 was higher above you in the store that night?
- 24 A Chuck.
- 25 Q Chuck Campbell that we just spoke with?

9/16/2008

Page 13

- 1 her name?
- 2 Q Ms. Hancock was the one who was in the store and --
- 3 I'm sorry Ms. -- Ms. Hancock was the one in the
- 4 car. Ms. Beckham was the one in the store.
- 5 A Okay. It was Ms. Beckham --
- 6 Q Uh-huh.
- 7 A -- that I came -- I walked up on her, and she was
- 8 putting stuff in bags.
- 9 Q Uh-huh.
- 10 A And that's when I radioed Shawn -- CSM Shawn and
- 11 let her know what was going on so she could watch
- 12 her while I went and told the door greeters, you
- 13 know, to stop and ask for a receipt.
- 14 Q Uh-huh. Keep going.
- 15 A After I got to the door greeters and let them know,
- 16 we radioed parking-lot patrol, which he was sitting
- 17 right in front of the grocery door. And I went out
- 18 to tell him that I seen a girl putting stuff in the
- 19 bags.
- 20 Q Okay. Just let me stop for a -- stop you for a
- 21 second. You -- you told them face-to-face, or you
- 22 told them on the radio?
- 23 A I told him face-to-face because he was --
- 24 Q Okay.
- 25 A -- sitting right there at the grocery door --

9/16/2008

Page 14

1 Q Okay

2 A -- that there was a lady putting stuff in bags.
3 And before I could even get all of that out, Shawn
4 come over the radio and said, "She's going out the
5 GM door "

6 Q Uh-huh.

7 A So he took off, and I went back in the building and
8 walked around to the GM door.

9 Q And -- and you went out to tell -- what -- what was
10 you reasoning for going out to talk to him
11 face-to-face?

12 A I thought that's what we supposed to do.

13 Q Okay And you mentioned you had a radio?

14 A I do.

15 Q Who else had radios that night?

16 A Me, Shawn, and Chuck.

17 Q And Chuck? Okay. And the security guard --

18 A Uh-huh.

19 Q -- Mr. Jones?

20 A (Nods head up and down)

21 Q Okay Alice Hancock -- you -- the sister who was
22 -- the one who was killed who was out in the car,
23 did you see her do anything that night?

24 A No, sir.

25 Q Did you have any reason to suspect her of

Exhibit E:
Amended Complaint

See R. 106

Exhibit F:

Opinion

Roddey v. Wal-Mart Stores East, LP, 415 S.C. 580, 784 S.E.2d 670 (2016)

See R. 17

Exhibit G:

Respondent's Petition for Rehearing in

Roddey v. Wal-Mart Stores East, LP, 415 S.C. 580, 784 S.E.2d 670 (2016) ✓

See R. 91

Exhibit H:

Order Denying Respondent's Petition for Rehearing in
Roddey v Wal-Mart Stores East , LP, 415 S.C. 580, 784 S.E.2d 670 (2016)

See R. 103

Exhibit I:

May 5, 2016 Remittitur Letter

Roddey v. Wal-Mart Stores East, LP, 415 S.C. 580, 784 S.E.2d 670 (2016)

See R. 105

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT

Travis Roddey, Individually and as the	)	C A: No. 2007-CP-29-593
Personal Representative of the Estate of	)	
Alice Monique Beckham Hancock,	)	
Deceased,	)	

Plaintiff,

vs

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

Defendants.

**MOTION
TO ALTER OR AMEND AND
FOR RECONSIDERATION**

**TO: WAL-MART STORES EAST, L.P., U.S. SECURITY ASSOCIATES, INC., AND
DERRICK L. JONES AND THEIR ATTORNEYS:**

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004) (“it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.”) Plaintiff received electronic notice of the entry of the Court’s judgment on November 2, 2016.

Plaintiff Travis Roddey, individually and as the personal representative of the Estate of Alice Monique Beckham Hancock, respectfully submits that the Court may have overlooked or misapprehended the following points in reaching its decision.

I. The Order is Based on a Motion to Exclude (or to Strike) Not a Motion in Limine on Evidence

The Court's order misapprehends the posture of the motion. Defendants' motion arose from a motion to exclude¹ not a motion in limine. Specifically, Defendants filed a *motion to exclude* the negligent hiring and supervision *cause of action* (or in the alternative a motion for summary judgment) and that matter was heard on October 25, 2016 (**Exhibit 1**, Defendants Motion and Memorandum of Support²). All arguments briefed and presented at the hearing addressed the *exclusion* of the *cause of action*, not evidence relating to the cause of action (**Exhibit 2**, Plaintiff's Memorandum in Opposition to Motion to Exclude³; **Exhibit 3**, October 17, 2016 letter to clerk's office, motion cover sheet, and October 17, 2016 email serving Motion to Exclude). However, Defendants' proposed order, as signed by the Court, changed what was a motion to exclude (or to strike) into a motion in limine. (**Exhibit 4**, Defendants' proposed order and Plaintiff's proposed order for comparison). Defendants' motion was not a motion in limine. Motions in limine concerning evidence do not usually include a request for summary judgment, nor do they typically address res judicata arguments.

Respectfully, the only purpose of Defendants' motion was to have the Court rule whether the negligent hiring and supervision cause of action would be tried on November 14, 2016, *as to all Defendants*, as pled in the Second Amended Complaint. While Defendants had a separate motion in limine concerning matters of evidence (correlating to the negligent hiring and supervision cause of action, along with the negligence cause of action) that motion was not the subject of this ruling (**Exhibit 5**, Defendants' Motion in Limine to Preclude Introduction of Evidence at Trial and Motion Coversheet). At the October 25, 2016 hearing, Defense counsel

¹ Significantly, Defendants' motion to exclude is the equivalent of a motion to strike and/or a motion to dismiss.

² Defendants' Exhibits to their Motion and Memorandum have been excluded from this filing due to their volume, but are incorporated by reference.

³ Plaintiff's Exhibits to their Motion and Memorandum have been excluded from this filing due to their volume, but are incorporated by reference.

summarily addressed the evidentiary motion in limine and admitted it should not be ruled on until the motion to exclude the cause of action was decided. Clarification was sought on the need for proposed orders for the motion in limine by counsel for both parties, and the Court informed counsel that motions in limine would be taken up at the time of trial (Exhibit 6, October 28, 2016 email correspondence between counsel and law clerk)

As the Order stands, the Court has ruled on evidentiary matters on grounds of res judicata that were not raised. Plaintiff respectfully believes this ruling is in error and as such, requests the Court to reconsider the ruling on the original basis sought by Defendants.

II. Defendants' Motion to Exclude Should be Denied

Despite the captioning of the Order, it effectively excludes (or strikes/ or dismisses) the negligent hiring and supervision cause of action. Plaintiff requests the Court reconsider its ruling in *excluding this cause of action as to all Defendants*, and the evidence included therein⁴. As explained herein, the South Carolina Supreme Court's opinion granted a new trial with no expressed limitation as to the causes of action to be tried. Defendants' motion to exclude was based on issue preservation grounds, appealability, and res judicata. Any issue Defendants had with the Supreme Court's ruling or the parameters of its ruling should have been addressed through a petition for rehearing. In fact, Defendants made such a filing asserting preservation

⁴ If this Court agrees the Order should be ruling on the Motion to Exclude as *to all Defendants*, Plaintiff's 59(c) addresses the effect of excluding the cause of action (regardless of caption—relying on substance over form) as to one or all Defendants from this second trial for preservation purposes. See *Fields v Reg'l Med Ctr Orangeburg*, 363 S.C. 19, 27–28, 609 S.E.2d 506, 510 (2005) (treating a motion based on its substance and effect as opposed to how it was captioned by a party). Plaintiff has not waived or conceded any argument by addressing the merits as to all Defendants. See *Elam*, 361 S.C. at 18, 602 S.E.2d at 777 (holding a successive 59(c) motion which raises the same issues and arguments made on a previous Rule 59(c) motion is not required); see also *Pye v Estate of Fox*, 369 S.C. 555, 565–66, 633 S.E.2d 505, 510–11 (2006) (explaining once a 59(c) motion has been properly raised and the issue preserved, a second motion is not required).

grounds, amongst other arguments, and their petition for rehearing was denied. Therefore, upon the issuance of the remittitur, this argument became moot and the Supreme Court's granting of a new trial is now the law of the case.

A review of the opinion demonstrates the Supreme Court's explicit decision to grant a new trial outright. Writing for the majority, Acting Justice Toal explained.

In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, *[Plaintiff] also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault. In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.*

Roddey v Wal-Mart Stores East, LP, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 31) (emphasis added). Notably, the majority not only acknowledges the negligent hiring and supervision cause of action, it also cements the fact that the Supreme Court believed the only proper remedy was a new trial outright.⁵ This reading of the opinion is further supported by Chief Justice Pleicones's dissent in which he states.

Moreover, I am not convinced that even if [Plaintiff] were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. . . . Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike Williams' innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury and the possibility of liability.

⁵ Practically, this outcome is not surprising as such rulings are common place even when one issue is in dispute on appeal. See e.g., *Riley v Ford Motor Co.*, 414 S.C. 185, 198, 777 S.E.2d 824, 831 (2015) (ordering a new trial as the result of an error in the calculation of damages).

Rodley v Wal-Mart Stores East LP, Op No 7615 (Shearouse Adv Sh No 13, p 33-34) (emphasis added) Even though the dissent disagreed with the majority's reasoning, they did agree that the effect of this opinion was a new trial Thus, regardless of the side one takes be it with the majority or dissent, the outcome is a new trial with no expressed limitations on the causes of action to be tried.

Significantly, if the Supreme Court intended to limit the causes of action to be tried the Supreme Court would have specifically stated such restriction and provided instructions to this Court. For example, in the same term of court this matter was heard, the Supreme Court on multiple occasions remanded cases for new trials or proceedings with limiting instructions to the lower tribunal *See Allegro, Inc v Scully*, No. 2014-002055, 2016 WL 4474336, at *6 (S C. Aug. 24, 2016) (limiting the causes of action to be addressed by the circuit court following a remand), *Hilton v Flakeboard Am Ltd*, No 2015-000493, 2016 WL 5930126, at *1 (S.C. Oct 12, 2016) (instructing the Workers' Compensation Commission that their consideration of the issue will be limited) Therefore all indications are if the Supreme Court intended to limit the parameters of its relief, it would have instructed both this Court and the parties accordingly. The Supreme Court's silence as to limiting instructions demonstrates its intent to grant Plaintiff a new trial on all causes of action.

Moreover, the issues and concerns now raised by Defendants to this Court should have been addressed to the Supreme Court in their petition for rehearing. *See* Rule 221. SCACR. Under a fair reading of Defendants' petition for rehearing, Defendants either (1) made this exact argument suggesting that the other defendants should not be involved in a second trial on preservation and appellate grounds or (2) they did not seek clarification or suggest error in the grant of a new trial and the scope of such relief. (**Exhibit 7**, Petition for Rehearing) On page 10

of Defendant's petition for rehearing they argued. "The Court's majority opinion misapprehends or overlooks the fact that [Plaintiff] failed to preserve for appellate review the argument that the Court could procedurally grant a new trial as against defendants who received a non-erroneous verdict, favorable to them, which was not otherwise challenged in any respect." To the extent this is the argument Defendants made, the Supreme Court has rejected this argument in a 3 to 2 denial of the petition for rehearing. As such, Defendants' motion requested this Court to override the Supreme Court's ruling. Alternatively, if they sought clarification of the relief granted the proper forum to address concerns with the relief, and/or the scope of relief, was with the Supreme Court prior to the remitting of this case. *Stogsdill v SC Dept of Health & Human Servs*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) (noting the sending of the remitter ends appellate jurisdiction) Their failure to assert such an argument is waiver. Thus, the ruling by the Supreme Court that a new trial be granted is the law of the case under either reading. See *Judy v Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court"); see also *Ross v Med Univ of SC*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case"). To allow Defendants to revisit their appellate arguments and re-litigate matters ruled on by the Supreme Court would be an error of law.

This Court's decisions are largely based on its interpretation on the directed verdict motion and its perceived framing of the appeal to reach the decision of res judicata. This Court's decisions overlook the manner in which the directed verdict was made, Judge Goldsmith's

ruling, and Plaintiff's position that based on the scope of the motion and the ruling the appeal encompassed the negligent hiring and supervision cause of action. Furthermore, the Court failed to consider that res judicata is not ironclad.

Turning first to the directed verdict motion before Judge Goldsmith, Wal-Mart moved for "a directed verdict in their favor on all causes of action in the complaint." (**Exhibit 8**, Tr. p. 592). Defendants stated only two allegations had been made against Wal-Mart, which were the instructions given to Jones to obtain a license tag and the failure of Wal-Mart employees to instruct/supervise Jones to cease and desist or come back to the store. (**Exhibit 8**, Tr. p. 593). Defendants argued the allegations were not wrongful and that neither was the proximate cause or foreseeable. Further, Defendants stated "Obviously Wal-Mart does not employ Jones, has no respondeat superior liability for his conduct." (**Exhibit 8**, Tr. p. 593). Following arguments from Plaintiff's counsel, Judge Goldsmith found there was insufficient evidence that Wal-Mart was negligent, or even if Wal-Mart was negligent there was a lack of proximate cause that the events were not foreseeable. As such, Judge Goldsmith dismissed "as to Wal-Mart on all of the grounds argued." (**Exhibit 8**, Tr. p. 603). Plaintiff's counsel sought clarification from Judge Goldsmith on three separate occasions. (**Exhibit 8**, Tr. p. 603-04). Each time Judge Goldsmith stopped Plaintiff's counsel and informed him that he had already ruled. *Id*

The allegations discussed by Wal-Mart during the directed verdict motion encompassed both causes of action. Specifically, Plaintiff pled as to *all defendants*: (1) negligence and (2) negligent hiring and supervision for both wrongful death and survivorship. (**Exhibit 9**, Second Amended Complaint—filed October 3, 2007)⁶ The facts discussed by Wal-Mart—instructing Jones to get the license plate and the failure of Wal-Mart to instruct/supervise Jones to stop—

⁶ Notably, these causes of action were *pled as to all Defendants* in the Complaint, signed May 9, 2007, and the Amended Complaint filed July 31, 2007.

along with legal argument of respondent superior go to both causes of action. While Defendants now take issue with ability of Plaintiff's success of those actions (as discussed during the November 4, 2016 conference call and through email correspondence with the judge⁷), that is not the inquiry at issue. The inquiry is the scope of the directed verdict motion made by Defendants before Judge Goldsmith. It is undisputed that Wal-Mart sought a directed verdict on all causes of action, which was granted. *Connolly v People's Life Ins. Co. of South Carolina*, 299 S.C. 348, 384 S.E.2d 738 (1989) (explaining a party must state a specific ground for a directed verdict).

A review of the transcript, demonstrates that Wal-Mart wanted to be dismissed from all causes of action against it, which it achieved from summarily addressing both causes of action. Plaintiff sought clarification, equivalent to an objection, on the trial court's ruling three times following Judge Goldsmith's grant of a directed verdict as to Wal-Mart; therefore Plaintiff sufficiently preserved the argument for appeal. *See State v. Douglas*, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004) (explaining a party is not required to harass the trial court by making objections after the trial court has ruled on an issue). Significantly, Plaintiff was only entitled to appeal from the grounds of Judge Goldsmith's ruling, which was the grant of a directed verdict as to the negligent pursuit cause of action despite the fact it encompassed all the causes of action Wal-Mart was subject to. As such, the only relief, as explained by the Supreme Court, to address the error in the grant of the directed verdict was to grant a new trial outright. Said more simply, when the directed verdict erroneously knocked Wal-Mart out it changed the remainder of trial.

The Court should reconsider its finding that the appeal did not encompass the negligent hiring and supervision cause of action. The argument throughout both appeals was that Wal-

⁷ Exhibit 10, email correspondence between counsel and the Court from November 2-4, 2016.

Mart's removal by a directed verdict was an error that permeated the entire trial and the only recourse to address such an error was a new trial. Plaintiff properly appealed the trial court's decision to remove Wal-Mart, which affected both causes of action. Defendants were aware of this ramification and in fact raised concerns of appealability and the role of the negligent hiring and supervision cause of action to the Supreme Court. Specifically, Defendants argued that "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." Included within this argument, Defendants stated in a footnote:

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 claim.

The Supreme Court was aware of Defendants' concerns and the implication of granting a new trial without stating any limitation based on Defendants' footnote. If the Supreme Court wished to address this matter they would have. Again, this concern should have been addressed in Defendant's petition for rehearing.

Finally, res judicata does not apply in this matter. In order for res judicata to bar this cause of action, the following elements need to be proven: (1) the identity of the parties, (2) the identity of the subject matter; and the (3) adjudication of the issue in the former suit. *Judy v. Judy*, 393 S.C. 160, 167–68, 712 S.E.2d 408, 412 (2011). South Carolina appellate courts, however, have found that the doctrine of res judicata is not an "ironclad" bar to a later lawsuit. *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). The *Restatement (Second) of Judgments* has recognized exceptions to the application of this doctrine.

See *Restatement (Second) of Judgments* § 26 (1982 & Supp 2011), *id.* (noting in commentary that section 26 “presents a set of exceptional cases in which, after judgment that would otherwise extinguish the claim under the rules of merger or bar . . . the plaintiff is nevertheless free to maintain a second action on the same claim or part of it”). As cited in part in *Judy*, Section 26 of the Restatement (Second) of Judgments provides in relevant part:

(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

(b) The court in the first action has expressly reserved the plaintiff's right to maintain the second action; or

(c) *The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.*

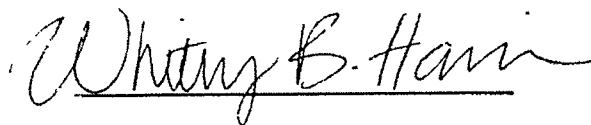
(f) It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield a coherent disposition of the controversy.

Restatement (Second) of Judgments § 26 (1982) (emphasis added) The facts of this case rise to the level of Section 26 circumstances that allow this cause of action to be tried again. Specifically, the Supreme Court's opinion granting a new trial with no expressed limitation qualifies under subsection (b), and that the Supreme Court's reasoning as to why the only relief is a new trial given the error in granting a directed verdict satisfies subsections (c) and (f).

Conclusion

Based on the foregoing, Plaintiff respectfully requests the Court to reconsider its ruling and find that the negligent hiring and supervision cause of action *as to all Defendants* is included within this trial pursuant to the Supreme Court's grant of a new trial

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff

November 5, 2016
Columbia, SC

Exhibit 1:

Defendants' Motion and Memorandum to Exclude the Negligent Hiring and Supervision Cause of Action and In the Alternative, Motion for Summary Judgment

See R. 130

Exhibit 2:

Plaintiff's Memorandum in Opposition to Defendants' Motion and
Memorandum to Exclude the Negligent Hiring and Supervision Cause of
Action and In the Alternative, Motion for Summary Judgment

See R. 319

Exhibit 3

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Travis A. Roddey, et al

☐ Plaintiff

v.

Wal-Mart Stores, Inc., Et Al

☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.

2007-CP-29-0593

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney
S. Randall Hood, Esq., Bar No. 65360
Address
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Defendant's Attorney
Stephanie G. Flynn, Bar No. 16653
Address:
Gallivan, White & Boyd, P A
P.O. Box 10589, Greenville, SC 29603
phone: 864-271-5426 fax: 864-271-7502
e-mail: sflynn@gwblawfirm.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

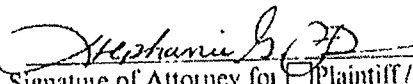
SECTION I: Hearing Information

Nature of Motion Defendants' Motion for an Order Excluding Plaintiff's Cause of Action for Negligent Hiring, Training, Supervision and/or Entrustment or, in the Alternative, for Summary Judgment
Estimated Time Needed: 20 minutes Court Reporter Needed ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

October 17, 2016

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT. (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter.
☐ Other

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

JUDGE

CODE

Date

CLERK'S VERIFICATION

Date Filed.

Collected by: _____

☐ MOTION FEE COLLECTED

☐ CONTESTED - AMOUNT DUE: _____

Whitney Harrison

From: Stephanie Flynn <SFlynn@gwblawfirm.com>
Sent: Monday, October 17, 2016 5:56 PM
To: gcooperj@sccourts.org, gcooperlc@sccourts.org
Cc: Howard Boyd, Randy Hood, Whitney Harrison, Shawn B. Deery, Jessica Cooksey
Subject: Roddey v. Wal-Mart Stores East, LP, et al (Trial Date 11/14/2016), C.A. 2007-CP-29-0593 Motion to Exclude Plaintiff's Negligent Hiring Cause of Action
Attachments: Memo in Support of Mtn to Exclude Negligent Hiring doc, Motion to Exclude Negligent Hiring, Training, Supe doc, Motion to Exclude Negl Hiring EXH A-J pdf

Dear Judge Cooper and George,

Attached to this e-mail is Defendants' Motion to Exclude Plaintiff's Cause of Action for Negligent Hiring, Training, Supervision and Entrustment and/or in the alternative, for Summary Judgment, along with our supporting Memorandum of Law (both of which are in Word format at your request). If you prefer another format, please let us know. Also attached is a scanned copy of the supporting exhibits to the Motion. We have forwarded the Motion and supporting Memorandum of Law to the Lancaster County Clerk of Court today for filing.

We understand the hearing on this motion, as well as other pre-trial motions, has been set for 1:00 p.m. on Tuesday, October 25th, in Winnsboro, SC. Should you have any questions or require anything further from us in advance of the hearing, please do not hesitate to contact us.

Best regards,
Stephanie



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

Stephanie G. Flynn
Partner
sflynn@GWBlawfirm.com

Gallivan, White & Boyd P.A.
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This message is from the law firm Gallivan, White & Boyd, P.A. and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

Exhibit 4

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Hancock's vehicle. Approximately two miles from the store, Hancock lost control of her vehicle, left the roadway, and collided into a tree, resulting in her death.

Defendant Derrick Jones, a security officer employed by U.S. Security Associates ("USSA"), followed the women for some distance off of the Wal-Mart property in his USSA truck. Plaintiff has admitted Jones was not an employee of Wal-Mart. USSA officers were independent contractors, and Wal-Mart had no role in the hiring, training, and supervision of Jones, nor ownership interest in the USSA truck. USSA security officers were tasked only with serving as a source of information to Wal-Mart regarding activity in the parking lot, recording useful information, and assisting if requested by Wal-Mart.

The trial of this case commenced in the Lancaster County Court of Common Pleas on April 6, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case, Wal-Mart moved for a directed verdict on the grounds that (1) there was no negligence on the part of Wal-Mart, (2) no evidence that any negligent acts or omissions on the part of Wal-Mart were a proximate cause of the accident, and (3) even if any negligence on the part of 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. The only acts of alleged negligence on the part of Wal-Mart addressed at the directed verdict stage were those of Wal-Mart's employees in requesting Jones's assistance (by allegedly asking Jones to delay and/or speak to Beckham as she left the store and obtain Hancock's license tag number) and failing to tell Jones to stop pursuing Hancock when they saw what was occurring. Plaintiff made no claim Wal-Mart had liability for negligent hiring, training, supervision and/or entrustment, did not contest that Jones was not an employee of Wal-Mart, and set forth no other grounds in opposition to Wal-Mart's dismissal from the case. The trial court

granted Wal-Mart's motion for directed verdict, holding (1) there was no evidence of negligence on the part of Wal-Mart and (2) alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident. Oral requests and a written motion for reconsideration were restricted to evidence establishing the elements of breach of duty and proximate causation against Wal-Mart and no elements of Plaintiff's other cause of action for negligent hiring, supervision, training and/or entrustment. The only other motion presented at the directed verdict stage was USSA's motion for a directed verdict on the negligent hiring cause of action, which was denied. The trial continued against USSA and Jones.

At the conclusion of trial on April 13, 2010, the case was submitted to the jury. On Plaintiff's negligence claim, the jury found Hancock was 65% negligent and Jones/USSA were 35% negligent in causing the accident. On Plaintiff's negligent hiring cause of action against USSA, the jury found USSA was negligent in hiring Jones, but such negligence was not a proximate cause of the accident.

Following the verdict, Plaintiff filed a Motion to Alter or Amend the Judgment and for a New Trial based, in part, on the trial court's alleged error in directing a verdict in favor of Wal-Mart. Plaintiff alleged no error with regard to the jury's verdict in favor of USSA on negligent hiring. As to Wal-Mart, Plaintiff's argument was restricted to breach of duty and proximate causation, elements establishing negligence. Plaintiff contended the error required a new trial "as to all of the defendants" because "[a] comparative negligence charge asks the jury to compare the negligence of the plaintiff against the negligence of all of the parties on the other side of the lawsuit." Comparative fault, however, is only an issue with respect to the negligence action since there was no apportionment of fault on the negligent hiring claim.

Plaintiff's post-trial motions were denied, and Plaintiff subsequently filed a Notice of Appeal. In Appellant's Initial Brief to the South Carolina Court of Appeals, Appellant framed the only issue on appeal as "[w]hether the trial court erred when it granted a directed verdict in this negligence action in favor of Wal-Mart." Plaintiff did not appeal the jury's verdict in favor of USSA on the negligent/supervision hiring claim. Plaintiff's arguments were limited to Wal-Mart's alleged acts establishing the elements of his negligence cause of action—breach of duty and proximate causation. Plaintiff reasoned a new trial was required as to "all Defendants" because the law of comparative negligence, a defense raised to Plaintiff's negligence cause of action, requires the jury to compare the negligence of Plaintiff against the combined negligence of all Defendants.

The Court of Appeals affirmed the directed verdict for Wal-Mart in a split decision (1-1-1). The Court, in three separate opinions, only addressed evidence of Wal-Mart's negligence, foreseeability and Hancock's comparative negligence. Justice Few found there was evidence of negligence and the events were foreseeable to Wal-Mart, but voted to affirm because he believed Hancock was more than 50% at fault. Justice Short voted to affirm because he believed there was a lack of proximate causation. Justice Huff dissented and would have reversed the directed verdict in favor of Wal-Mart and remanded for a new trial against Wal-Mart alone. While Justice Huff acknowledged Plaintiff requested a new trial as to all Defendants, he found Plaintiff waived that argument by not including it in the statement of issues on appeal, stating that "[t]hough [Plaintiff] cites law concerning the effect of a jury finding of comparative negligence on a plaintiff's ultimate ability to collect damages, he provides no supporting authority for his assertion that a court may require a new trial against defendants against whom a verdict has

already been found and who are not then held responsible for damages based upon the jury's finding as to the relative percentages of negligence assigned to the various parties."

Plaintiff's Petition for Rehearing was denied, and Plaintiff filed a Petition for a Writ of Certiorari to the Supreme Court. In the opinion issued by the Supreme Court, Acting Justice Foal stated at the outset, "[Plaintiff] appeals the court of appeals' decision affirming the trial court's grant of Wal-Mart's motion for a directed verdict on [Plaintiff's] negligence claim." The Supreme Court analyzed Wal-Mart's breach of its duty of care, proximate cause, and apportionment of fault under the comparative negligence framework. The Court ultimately ruled the trial court should have submitted to the jury the issues of Wal-Mart's negligence and proximate cause, and remanded the negligence cause of action for a new trial as to all defendants. The Court rationalized that the jury could find the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent. The Supreme Court did not order that the retrial revived any cause of action not before it on appeal and did not address or mention the negligent hiring action.

This matter is now before this Court for a retrial of the case. In connection with the retrial, Plaintiff has notified Defendants of his intent to seek the introduction of evidence supporting Plaintiff's former cause of action for negligent hiring, training, supervision and entrustment against USSA. Defendants oppose the admission of any evidence regarding Plaintiff's former negligent hiring cause of action on the grounds that the cause of action was previously determined by a jury, was not appealed and is barred by operation of law under principles of res judicata. This Court makes the following findings and conclusions

FINDINGS AND CONCLUSIONS

Causes of action for negligence and for "negligent hiring, training and supervision" are "separate and distinct requiring different kinds and quantities of proof" See Longshore v. Saber Sec. Servs., 365 S.C. 554, 563 (Ct. App. 2005) (emphasis added). Negligence cases turn on proof of duty, breach, causation and damages, while negligent hiring cases turn on knowledge of the employer and foreseeability of harm to third parties, which is analyzed by examination of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. See Doe v. AIC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005). Negligent supervision cases impose a duty on an employer, under certain circumstances, to exercise reasonable care to control an employee acting outside the scope of his employment and likewise require knowledge of the employer and foreseeability of harm to third parties in establishing the employer knows or should know of the necessity and opportunity for exercising control. See Lemon v. Sheriff of Sumter County, F.Supp.2d, 2012 U.S. Dist. LEXIS 22196 (D.S.C. Feb. 22, 2012), see also Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) (an employer may be liable for negligent supervision if the employee intentionally harms another when: (1) the employee is present on the premises of the employer or is using a chattel of the employer and (2) the employer knows or has reason to know he has the ability to control his employee and knows or should know of the necessity and opportunity for exercising control). Accordingly, in the Longshore case, it was error for the trial court to have applied a jury's apportionment of fault in the negligence action to an award of actual damages in the negligent hiring, training and supervision action. See Longshore, 365 S.C. at 562-63.

Plaintiff's two causes of action in this case were not only subject to separate proofs, but were also treated separately on the verdict form submitted to the jury at trial. On appeal,

however, Plaintiff only challenged the directed verdict in favor of Wal-Mart, which was limited to issues of Wal-Mart's breach of duty and proximate causation, elements establishing negligence. While Plaintiff contended a reversal of the directed verdict would require a new trial as to all defendants so that the jury had the opportunity to apportion fault between Plaintiff and all Defendants in the negligence action, Plaintiff did not appeal the jury's verdict rendered separately on Plaintiff's negligent hiring, training, supervision and entrustment cause of action against USSA. Nor does the rationale offered for remand of the negligence action as to all Defendants—so that the jury could apportion fault under the comparative negligence framework as between Plaintiff and all Defendants—apply to the cause of action for negligent hiring/supervision, where the jury was not asked to apportion fault between the Plaintiff and any party as to that cause of action.

An appellate court can only speak to the issue(s) before it on appeal. See Austin v. Specialty Transp. Servs., 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004) (a portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case); State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000) (it is error for an appellate court to consider issues not raised to it), Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995) (an issue not preserved for review should not be addressed by an appellate court). Accordingly, if Plaintiff believed the directed verdict in favor of Wal-Mart on Plaintiff's negligence cause of action infected the entire jury's verdict not only on Plaintiff's negligence cause of action, but also on the separately plead negligent hiring/supervision cause of action, Plaintiff should have appealed the jury's verdict rendered on the negligent hiring/supervision claim in addition to Wal-Mart's directed verdict for negligence. However, because Plaintiff did not appeal the jury verdict on Plaintiff's cause of action for

negligent hiring, training, supervision and/or entrustment, it was never before the appellate courts and is res judicata. Holding otherwise would require this Court to unduly conflate the two separate causes of action in order to revive the negligent hiring/supervision cause of action.

“Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.” James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996). The doctrine of res judicata “had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.” First Nat’l Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated. See Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992), Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

To establish res judicata, the defendant must prove three elements: (1) identity of the parties, (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993). There is no question but that the elements of res judicata have been met. Plaintiff’s separate cause of action for negligent hiring, training, supervision and/or entrustment as to USSA was already tried to a jury verdict in this case.

For the foregoing reasons, the Court hereby grants Defendants Motion *in limine* to bar evidence pertaining to Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment on grounds of res judicata, and Orders that the trial of this case will proceed against all Defendants on Plaintiff's cause of action for negligence

AND IT IS SO ORDERED.

October __, 2016

G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

Travis Roddey, Individually and as the)
Personal Representative of the Estate of)
Alice Monique Beckham Hancock,)
Deceased,)

C A. No : 2007-CP-29-593

ORDER

Plaintiff,)

vs.)

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

Defendants.)

**Denying Defendants' Motion to Exclude
Plaintiff's Negligent Hiring, Training,
Supervision, and Entrustment Cause of
Action and/or in the Alternative Motion for
Summary Judgment**

This matter came before me on October 25, 2016, upon motion by Defendants Wal-Mart Stores East, L.P., U.S Security Associates, Inc., and Derrick L. Jones's to Exclude the Negligent Hiring, Training, Supervision and/or Entrustment Cause of Action (hereinafter "negligent hiring and supervision") and in the Alternative a Motion for Summary Judgment.¹ Based on the considerable record presented and the arguments of counsel I make the following findings and conclusions.

FACTUAL & PROCEDURAL HISTORY

On June 20, 2006, Derrick Jones was working as a security guard in the parking lot of the Wal-Mart store in Lancaster. Jones was employed by U.S Security Associates, Inc ("U.S. Security"), a company hired by Wal-Mart to patrol the store's parking lot. *Id.* On June 20, 2006, the night of the incident in question Jones was driving a company vehicle despite the fact that his driver's license was suspended. Jones also tested positive for THC (the active chemical in

¹ Although Defendants have captioned this motion as a motion to exclude, I find substantively this a motion to strike.

marijuana) at his pre-employment drug screening. Furthermore, Jones was statutorily ineligible for employment as a security guard in South Carolina because of a drug conviction and a pending charge of strong-arm robbery. Jones, who was hired on May 22, 2006, was also working as a security guard in violation of S.C. Code Ann. § 40-18-80(A)(2) because Jones worked more than twenty days without a valid SLED-issued registration certificate on the night of the crash.

Two Customer Service Managers were working at Wal-Mart that night: Shawn Cox and Hope Rollings. Together with Chuck Campbell, they were the three ranking managers in the store. All three managers were in radio contact with each other and with Jones. Sisters Alice Hancock and Donna Beckham were shopping in the Wal-Mart that night. At approximately 10 – 10:15 p.m., Jones was contacted via two-way radio by Wal-Mart Customer Service Manager Shawn Cox, and was instructed to “delay” a possible shoplifter, who turned out to be Beckham, Hancock’s sister. Beckham left the store and entered a car driven by Hancock, who had gone to sit in the car because she was not feeling well. At or around the same time, Jones was instructed by Cox to get the license plate number of decedent’s car.

Doing as Cox commanded, Jones followed Beckham to her car and blocked her exit from the parking lot. Hancock reversed her car and left the parking lot while Jones remained in hot pursuit. At this time, Jones was in contact with Cox and fellow Wal-Mart Customer Service Manager Hope Rollings via two-way radio. As Jones pursued Hancock’s car, Wal-Mart employees emphatically and urgently instructed Jones to obtain the license plate number of Ms. Hancock’s vehicle. Hancock, with Jones in pursuit, disregarded several traffic signals leaving the Wal-Mart parking lot and entering the highway. As the vehicles exited the parking lot, Wal-Mart employees continued to direct Jones to obtain the license plate number of Hancock’s

vehicle. The two-way radios continued to work even after the vehicles exited the parking lot. Wal-Mart employees continued to encourage Jones to obtain the license plate number and never instructed Jones to discontinue his pursuit. Jones' testimony regarding his instructions by Cox and Rollings was corroborated by both, though they differ in exactly what was said.

Jones continued to pursue Hancock's car at a high speed and in a reckless manner. The pursuit ended several miles from Wal-Mart after Jones's reckless pursuit caused Hancock to lose control of her vehicle, swerve off the roadway, and hit a tree. Hancock was killed in the accident and Beckham suffered serious bodily injury. As a result of those events, Plaintiff alleged three causes of action against Defendants: (1) negligence-respondent superior, (2) negligent hiring and supervision-wrongful death, and (3) negligent hiring and supervision-respondent superior-survivorship.

This matter was originally tried from April 6, 2010 through April 13, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case-in-chief, Wal-Mart moved for a directed verdict on three grounds arguing: (1) Plaintiff presented no evidence that Wal-Mart breached its duty of care; (2) Wal-Mart's actions were not the proximate cause of Hancock's death as a matter of law; and (3) Hancock's fault in causing her own death was more than fifty percent as a matter of law. The trial court granted the motion on Wal-Mart's first two grounds. The trial court explained that in its opinion there was insufficient evidence that Wal-Mart was negligent, and even if Wal-Mart was negligent, there was a lack of proximate cause because the events were not foreseeable. The trial court noted at the time of the ruling that it could not find Hancock more than fifty percent negligent as a matter of law. Ultimately, the jury found that Hancock was sixty-five percent at fault, and USSA and Jones were collectively thirty-five percent at fault.

Plaintiff appealed arguing the trial court erred in granting a directed verdict in favor of Wal-Mart. In a split decision by the Court of Appeals, the directed verdict was upheld. Plaintiff then appealed to the Supreme Court, which found that the trial court erred in granting a directed verdict. *Roddey v Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 22). Accordingly, the Supreme Court reversed and remanded for a new trial on all issues. In reaching its decision, the Court explained that the only remedy to address the circumstances of this case was to grant a new trial. Defendants filed a petition for rehearing, which the Supreme Court denied.

DISCUSSION

I. Supreme Court's Grant of a New Trial

The first ground Defendants' motion is based on is a theory of issue preservation and res judicata. Specifically Defendants contend the negligent hiring and supervision cause of action went to the jury and the matter was not appealed to the Supreme Court, and thus, the issue is barred by issue preservation and res judicata. However, in opposition to the motion, Plaintiff asserts a plain reading of the opinion provides for a new trial as to all defendants with no limitation as to the causes of action to be tried. Further, Plaintiff argues that any question arising from the scope of relief granted by the Supreme Court should have been addressed through a petition for rehearing prior to the remitting of this matter to the circuit court, therefore, the new trial on all causes of action is the law of the case.

A review of the opinion demonstrates the Supreme Court's explicit decision to grant a new trial outright. Writing for the majority, Acting Justice Toal explained:

In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, [Plaintiff] also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's

improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault. *In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.*

Roddey v Wal-Mart Stores East, LP, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 31).

(Emphasis added). Notably, the majority not only acknowledges the negligent hiring cause of action, it also cements the fact that the Supreme Court believed the only proper remedy was a new trial outright.² This reading of the opinion is further supported by Chief Justice Pleicones's dissent in which he states:

Moreover, I am not convinced that even if [Plaintiff] were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. . . . Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike Williams' innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury and the possibility of liability

Roddey v. Wal-Mart Stores East, LP, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 33-34)

(emphasis added). Even though the dissent disagreed with the majority's reasoning, they did agree that the effect of this opinion was a new trial.

Significantly, if the Supreme Court intended to limit the causes of action to be tried in this matter the Supreme Court would have specifically stated such restriction and provided instructions to this Court. For example, in the same term of court this matter was heard, the Supreme Court on multiple occasions remanded cases for new trials or proceedings with limiting instructions to the lower tribunal. *See Allegro, Inc v Scully*, No. 2014-002055, 2016 WL

² Practically, this outcome is not surprising as such rulings are common place even when one issue is in dispute on appeal. *See e.g., Riley v Ford Motor Co*, 414 S.C. 185, 198, 777 S.F.2d 824, 831 (2015) (ordering a new trial as the result of an error in the calculation of damages).

4474336, at *6 (S C. Aug 24, 2016) (limiting the causes of action to be addressed by the circuit court following a remand). *Hilton v Flakeboard Am Ltd*, No 2015-000493, 2016 WL 5930126, at *1 (S C Oct 12, 2016) (instructing the Workers' Compensation Commission that their consideration of the issue will be limited). Therefore all indications are if the Supreme Court intended to limit the parameters of its relief, it would have instructed both this Court and the parties accordingly. The Supreme Court's silence as to limiting instructions demonstrates its intent to grant Plaintiff a new trial on all causes of action.

I also base my ruling on my extensive review of the directed verdict motion, the appellate briefs submitted to the Supreme Court, and a review of jurisprudence on res judicata.

Turning first to the directed verdict motion before Judge Goldsmith, Wal-Mart moved for "a directed verdict in their favor on all causes of action in the complaint" (Tr. p. 592). Defendants stated only two allegations had been made against Wal-Mart, which were the instructions given to Jones to obtain a license tag and the failure of Wal-Mart employees to instruct Jones to cease and desist or come back to the store. (Tr. p. 593). Defendants argued that neither allegations were wrongful and that neither was the proximate cause or foreseeable. Further, Defendants stated "Obviously Wal-Mart does not employ Jones, has no respondeat superior liability for his conduction" (Tr. p. 593). Following arguments from Plaintiff's counsel, Judge Goldsmith found there was insufficient evidence that Wal-Mart was negligent, or even if Wal-Mart was negligent there was a lack of proximate cause that the events were not foreseeable. As such, Judge Goldsmith dismissed "as to Wal-Mart on all of the grounds argued." (Tr. p. 603). Plaintiff's counsel sought clarification from Judge Goldsmith on three separate occasions. Each time Judge Goldsmith stopped Plaintiff's counsel and informed him that he had already ruled.

I find the allegations discussed by Wal-Mart during the directed verdict motion encompassed both causes of action. It is undisputed that Wal-Mart sought a directed verdict on all causes of action, which was granted. However, it is less than clear if Wal-Mart believed it was subject to the negligent hiring and supervision cause of action despite its reference to respondent superior and the pleadings. See *Connolly v People's Life Ins. Co. of South Carolina*, 299 S.C. 348, 384 S.E.2d 738 (1989) (explaining a party must state a specific ground for a directed verdict). To the extent Wal-Mart's directed verdict was limited only to the negligent pursuit cause of action, it undoubtedly effected the negligent hiring and supervision cause of action based on the facts discussed by Defendants and the references to the failure to instruct Jones to stop and respondeant superior. Plaintiff sought clarification, equivalent to an objection, on the trial court's ruling three times; therefore Plaintiff sufficiently preserved the argument for appeal. See *State v Douglas*, 359 S.C. 187, 597 S.E.2d 1 (Cl. App. 2004) (explaining a party is not required to harass the trial court by making objections after the trial court has ruled on an issue). Significantly, Plaintiff was only entitled to appeal from the grounds of Judge Goldsmith's ruling, which was on the grant of a directed verdict as to the negligent pursuit cause of action despite the fact it encompassed all the causes of action Wal-Mart was subject to. As such, the only relief, as explained by the Supreme Court, to address the error in the grant of the directed verdict was to grant a new trial outright.

Turning to the parties' appellate briefs, I believe Defendants' appellate concerns regarding appealability and the role of the negligent hiring and supervision cause of action were raised to the Supreme Court. Specifically, Defendants argued that "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. Included within this argument.

Defendants stated in a footnote:

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 claim.

I find the Supreme Court was aware of Defendants' concerns and the implication of granting a new trial without stating any limitation based on Defendants' footnote. If the Supreme Court wished to address this matter they would have.

Moreover, regardless of my interpretation on preservation and the issue appealed to the Supreme Court, I agree with Plaintiff that the issues and concerns now raised by Defendants to this Court should have been addressed to the Supreme Court in their petition for rehearing. See Rule 221, SCACR.

Under a fair reading of Defendants' petition for rehearing, Defendants either made this exact argument suggesting that the other defendants should not be involved in a second trial on preservation and appellate grounds or they did not seek clarification or suggest error in the grant of a new trial and the scope of such relief. If they did make this exact argument they are requesting this Court to override the Supreme Court's denial of the petition for rehearing, which would be an error of law. Alternatively, to the extent they are seeking clarification of the relief granted the proper forum to address concerns with the relief, and/or the scope of relief, was with the Supreme Court prior to the remitting of this case. *Stogsdill v' S C Dept of Health & Human Servs*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) (noting the sending of the remitter ends appellate jurisdiction). Their failure to assert such an argument is waiver. Thus, the ruling by

the Supreme Court that a new trial be granted is the law of the case. See *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."), see also *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case."). To allow Defendants to revisit their appellate arguments and re-litigate matters ruled on by the Supreme Court would be inequitable.

Finally, I find that res judicata does not apply in this matter. In order for res judicata to bar Plaintiff's lawsuit, the following elements need to be proven: (1) the identity of the parties; (2) the identity of the subject matter; and the (3) adjudication of the issue in the former suit. *Judy v. Judy*, 393 S.C. 160, 167–68, 712 S.E.2d 408, 412 (2011). South Carolina appellate courts, however, have found that the doctrine of res judicata is not an "ironclad" bar to a later lawsuit. *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). The *Restatement (Second) of Judgments* has recognized exceptions to the application of this doctrine. See *Restatement (Second) of Judgments* § 26 (1982 & Supp.2011); *id.* (noting in commentary that section 26 "presents a set of exceptional cases in which, after judgment that would otherwise extinguish the claim under the rules of merger or bar . . . the plaintiff is nevertheless free to maintain a second action on the same claim or part of it."). As cited in part in *Judy*, Section 26 of the *Restatement (Second) of Judgments* provides in relevant part:

(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

(b) The court in the first action has expressly reserved the plaintiff's right to maintain the second action, or

(c) The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.

...

(f) It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield a coherent disposition of the controversy.

Restatement (Second) of Judgments § 26 (1982). I find that the circumstances of this case rise to the level of Section 26 circumstances that allow this cause of action to be tried again. Specifically, I find that the Supreme Court's opinion granting a new trial with no expressed limitation qualifies under subsection (b), and that the Supreme Court's reasoning as to why the only relief is a new trial given the error in granting a directed verdict satisfies subsections (c) and (f). Accordingly, Defendants' motion is denied.

II. Summary Judgment

The second ground of Defendants' Motion is for Summary Judgment based on a lack of proximate cause as a result of foreseeability. Specifically, Defendants assert the only reasonable inference to be drawn from the evidence is that there is no proximal nexus between Jones and his action following Hancock out of the Wal-Mart premises because in their view it was not foreseeable. Plaintiff contends that there is a far beyond a mere scintilla of evidence to demonstrate that Defendants were negligent in their hiring and supervision of Jones, and the question of foreseeability belongs to jury.

To grant a motion for summary judgment, the circuit court must find "there is no genuine issue as to any material fact" Rule 56(c), SCRPC. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). For claims where the preponderance of evidence burden applies, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

"In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring . . . the employee . . ." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). Negligent hiring cases turn on the knowledge of the employer and the foreseeability of harm to third parties. *Doe v. ATC*, 367 S.C. 199, 207, 624 S.E.2d 447, 451 (Ct. App. 2005). Ordinarily, foreseeability is a question of fact to be decided by the jury." *Steel v. Rogers*, 306 S.C. 546, 551, 413 S.E.2d 329, 332 (Ct. App. 1992). "Only when the evidence is susceptible to only one inference does it become a matter of law for the court." *Oliver v. South Carolina Dept. of Highways & Public Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992).

I find Plaintiff has met his burden of demonstrating a mere scintilla as required under South Carolina law. Evidence in the record supports Plaintiff's assertion that Defendants were negligent in hiring, training, supervising, and entrusting Jones. Plaintiff has put forth enough evidence to demonstrate that U.S. Security failed to take the necessary steps in hiring Jones by failing to meet the minimal standards statutorily required for a person to be a security officer in South Carolina because they have evidence to suggest he used marijuana and failed a drug screening. See S.C. Code Ann. 40-18-80.

Moreover, Plaintiffs have presented evidence that Jones's driver's license was suspended when he was hired. Jones's duties as a security guard required him to use a vehicle. Confirming he possessed a valid license was a necessary inquiry. I find a reasonable jury could conclude that Jones's driving with a suspended driver's license was dangerous and that because of that it was foreseeable that he might engage in other dangerous activities.

Additionally, Plaintiffs have put forth evidence that Defendants violated their own policies and failed to supervise Jones when he was instructed on multiple occasions, including but not limited to, June 20, 2006, to get a license tag number from a customer. Jones testified that the incident involving Hancock was not the first time he had pursued a customer off of Wal-Mart property in violation of his written instructions. Plaintiff has put forth evidence that one month prior to this incident, Jones pursued another vehicle off Wal-Mart property in his truck—the very same activity that led to Hancock's death. I find a reasonable jury could find that it was foreseeable that Jones would continue to take the same action despite the harmful ramifications that were likely to result.

ORDER

Based on the foregoing discussion, it is ordered as follows:

- (1) Defendants' Motion to Exclude is denied
- (2) Defendants' Motion for Summary Judgment based on foreseeability is denied.

And it is so ordered

The Honorable G. Thomas Cooper, Jr.
Sixth Circuit
Circuit Court Judge

Exhibit 5

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testimony, is largely within the trial judge's sound discretion. See South Carolina Dept. of Highways and Public Transp. v. Galbreath, 315 S.C. 82, 85-86, 431 S.E.2d 625, 628 (S.C. App. 1993).

MOTIONS IN LIMINE

1. **Motion *in Limine* to preclude evidence that Jones' pre-employment drug screen was positive for the presence of THC, as it does not reflect impairment on the date of the incident. Therefore, it would be irrelevant and overly prejudicial.**

When Jones applied for a job as a security officer with USSA, he was administered a drug screen on May 16, 2006 (See Ex. A), more than 30 days prior to the accident of June 20, 2006. The USSA supervisor reading the results of the drug screen erroneously believed the results were negative, when in fact the results were positive for THC. Jones was never made aware that the drug screen indicated a positive result for any substance and therefore believed he had passed the test. (Jones Depo., 14:2-15:12, Ex. B) There is no evidence in the record to suggest that Jones ever appeared to have been impaired at any time while on the job working for USSA, including the date of the incident. USSA never received any complaints or notice that Jones was impaired on the job, and those who observed Jones on the night of the accident, including investigating officers, did not suspect that he was under the influence of any alcohol, drugs or intoxicants (Trial Transcript, 314 15-315:1; 546:12-24; 633:4-634.8, Ex. C).

Because the positive test result on the initial drug screen is not probative of whether Jones was impaired in any way on the date of the accident, which occurred more than 30 days after the test, evidence regarding the positive test result is irrelevant and should be excluded. 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 or less probable or less probable than it would be without the evidence."), Rule 402, SCRE ("Evidence which is not relevant is not admissible.") Here, such evidence does not tend to establish whether

or not Jones would comply with instructions, policies and/or procedures applicable to his job duties as a security officer. Accordingly, this evidence has no tendency to make the existence of any fact of consequence to the determination of this action more or less probable.

Moreover, any probative value that such evidence could even possibly have is substantially outweighed by the danger of misleading the jury, unfair prejudice and confusion of the issues, justifying its exclusion under Rule 403, SCRE. See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.") There is a very real danger that the jury could improperly infer from the admission of such evidence that Jones was high on marijuana at the time of the accident, despite the complete lack of any testimony or evidence whatsoever in the record that he was impaired. Accordingly, allowing such evidence to be presented to the jury would serve no purpose other than to give the jury a reason to speculate regarding Jones's use of marijuana on the date of the incident and to develop additional bias against Jones. As there is no evidence in the record to establish that the positive drug screen for THC more than 30 days earlier had any bearing on the accident at the heart of this litigation, does not establish impairment on June 20th, and would be unfairly prejudicial to Defendants, this Court should exclude the evidence under Rules 401, 402 and 403, SCRE.

2. Motion *in Limine* to preclude evidence that Jones's driver's license was suspended effective three days prior to the date of the accident.

a. That Jones's license was suspended just three days prior to the accident has no bearing on his ability to operate a vehicle and is, therefore, not relevant to facts of consequence at issue in this litigation.

The fact of consequence to be examined in this case is whether the manner in which Jones operated his vehicle on the date of the incident was a proximate cause of the accident. Here, Jones's status as a licensed or unlicensed driver on the date of the accident would not tend

to prove or disprove that fact. His license was not revoked due to any inability to drive, nor does it constitute evidence that Jones was incapable of driving his vehicle safely. He had previously been operating under a valid driver's license for multiple years. Rather, the suspension, effective three days prior to the accident, was the result of his prior misdemeanor conviction of marijuana possession, which by statute resulted in the automatic suspension of his license. See S.C. Code § 56-1-745.

While Jones's failure to be driving with a valid license on the date of the incident constitutes a statutory violation, a plaintiff must still prove the violation proximately caused the injury complained of by the injured party. See *Pinellas v. S.C. DOT*, 348 S.C. 125, 134, 558 S.E.2d 271, 275 (Ct. App. 2001). Here, there is no evidence that Jones's suspended license, not based on any inability to drive or prior history of reckless or aggressive driving, had any causal connection with the accident. Accordingly, this evidence has no tendency to make the existence of any fact of consequence to the determination of this action more or less probable and, therefore, does not constitute relevant evidence under Rule 401, SCRE, and should be excluded on that basis. See also, *Rentschler v. Lewis*, 33 S.W.3d 518, 519 (Ky. 2000) (plaintiff was not entitled to introduce evidence of the defendant's suspended driver's license because it was irrelevant to fault in the case). Any failure of Jones to have a valid license simply plays no part in the determination of liability. Even to the extent Jones's suspended license has any relevance at all, the danger of unfair prejudice, confusion of the issues, and misleading of the jury so substantially outweighs any probative value so as to make introduction of such evidence improper under Rule 403, SCRE.

- b. The suspension of Jones's license is also not admissible to establish that Jones had some sort of motive to lie about the events occurring on the date of the accident.

Plaintiff also seeks to introduce evidence that Jones's driver's license was suspended at the time of the accident to suggest that Jones had some sort of incentive to lie to police regarding his knowledge of the accident. Specifically, Plaintiff has theorized and argued that Jones told investigating officers that he lost Hancock and Beckham during the pursuit and was not present when they were involved in their single-car accident so that the officers would not learn of his suspended license and arrest him. To this end, Plaintiff also elicited general testimony from Trooper Howard that people who are afraid of being arrested lie to him fairly often (Trial Transcript, 292:12-17, Ex. C), improperly suggesting to the jury that Jones must be lying.

As an initial matter, Jones was not even aware that his license had been or would be suspended as a result of his misdemeanor conviction of marijuana possession, nor had he received notice of the suspension prior to the accident on June 20, 2006. (Jones Depo, 11:24-13:20, Ex. B). Rather, the letter from the South Carolina Department of Motor Vehicles to Jones regarding suspension of his license was sent to Jones's former address, which he failed to update with the Department of Motor Vehicles. (See Address provided by Jones on his SLED Application and USSA employment application versus address history listed on Jones's 10-year driver record with the DMV, Ex. D). Accordingly, there is no evidence establishing that Jones was aware he was not operating under a valid driver's license. Moreover, Officer Howard had no concerns from Jones's demeanor that Jones was trying to hide or withhold any information (Trial Transcript, 314:11-18, Ex. C). Jones's lack of a valid driver's license is nothing more than a collateral issue designed to confuse the issues and mislead the jury, allowing them to improperly speculate and develop further bias against Jones, which is improper under Rule 403.

SCRE Evidence regarding Jones's suspended license should therefore be excluded for any purpose

3. Motion *in Limine* to preclude evidence or testimony that there was any contact between the vehicles and/or other speculation as to the cause of the accident, unsupported by the facts.

Causation of Hancock's single-car accident is the critical issue in this case, but there are no fact witnesses who have been able to testify as to what caused Hancock to lose control of her vehicle and leave the roadway. Jones claims not to have witnessed the accident, and Beckham, who was the only passenger in Hancock's car at the time of the accident, cannot testify as to what caused Hancock to leave the roadway. She has only been able to state that she felt a bump before Hancock's vehicle left the roadway, but she admittedly did not know what it was. (Trial Transcript 268:17-19, Ex. C, Beckham Depo. 53:1-8, Ex. E). She further admitted it could have been caused when the vehicle left the road. (See *id.*) Beckham was otherwise lying down in the back seat the whole time and would only occasionally "pop" up, but never saw Jones closer than one car length. (Beckham Depo. 54:24-55.4, 122:5-14, Ex. E, Trial Transcript 268:9-19, Ex. C). After the accident, investigating officers inspected Jones's truck and looked for evidence of contact, but found none. (Trial Transcript, 311:20-312:9, Ex. C).

In addition to the above, all of the experts in this case conceded there was no physical evidence, including any paint transfer, to show that Jones's vehicle ever made contact with Hancock's vehicle. Without any evidence showing that Jones made contact with Hancock's vehicle, causing it to leave the roadway, any testimony of witnesses, specifically including Beckham, regarding the cause of any bump she felt or of the accident, or argument of counsel to the contrary is entirely speculative, without any basis in fact, unduly prejudicial, and should be prohibited pursuant to Rule 403, SCRE.

4. Motion in Limine to preclude evidence that USSA did not perform a drug screen on Jones, which was negative, until 6 days post-accident.

There is no evidence or testimony to establish that Jones's vehicle was involved in the accident in this case, as outlined hereinabove in the previous section (See also Trial Transcript, 634.17-19, Ex. C) Rather, the only vehicle involved in the accident and which was damaged in any way was Hancock's. Moreover, Jones was fully cooperative with investigating officers, who interviewed Jones after the accident. (Trial Transcript, 313:25-314:10, Ex. C). Officer Richard Howard did not believe Jones was under the influence of any alcohol, drugs or intoxicants. (Trial Transcript, 314.15-315.1, Ex. C) Nor is there evidence or testimony from anyone else that Jones appeared to be under the influence of any alcohol, drugs or intoxicants. (Trial Transcript, 633.4-634.8, Ex. C).

There is no relevance in the delay to perform a drug screen on Jones until six days following the incident other than to cause unfair prejudice, confuse the issues, and/or inflame and mislead the jury to base their decision on improper grounds. Plaintiff would otherwise use the evidence to insinuate that Jones was impaired at the time of the accident, which is not warranted by the evidence, and would invite the jury to speculate. Because the evidence does not tend to make the existence of any fact that is of consequence to the determination of this case more or less probable than it would be without the evidence, it is not relevant and should be excluded pursuant to Rule 403, SCRE.

5. Motion in Limine to preclude evidence, testimony or references to Jones's prior arrests and/or misdemeanor conviction to attack his credibility.

At the time of the accident, Jones's criminal record included charges for common law robbery/strong arm robbery and misdemeanor possession of less than one gram of meth or cocaine base. Both of those charges were dismissed within less than three months after the accident in this case. Another charge for misdemeanor possession of drug paraphernalia had been

dismissed prior to the accident. The only charge of which Jones has ever been convicted was misdemeanor possession of marijuana on May 10, 2006. Nonetheless, Plaintiff has sought to offer testimony and/or evidence of both the charges that were later dismissed and the misdemeanor marijuana conviction, particularly on the issue of negligent hiring. However, for the reasons set forth herein below, the admission of such evidence even on the negligent hiring cause of action (should the Court determine that cause of action is properly in the case on retrial) would be unduly prejudicial to the Defendants and would be confusing and misleading to the jury, requiring its exclusion under Rule 403, SCRE.

Specifically, Plaintiff has offered as evidence an un-redacted copy of a letter of June 30, 2006, from the South Carolina Law Enforcement Division to Jones, denying his application for registration as a security officer, based not only on his failure to disclose his conviction of misdemeanor possession of marijuana, but also on his failure to disclose arrests and pending charges of common law robbery/strong arm robbery and possession of less than 1 gram of meth or cocaine base, first offense (See SLED Letter to Jones, Ex. F). While Jones's single conviction and additional arrests (but subsequent non-convictions) constitute the basis for denial of Jones's registration as a licensed security officer in South Carolina, it is not the charges themselves that form the basis of the denial. Rather, as evident from the letter, SLED policy requires a denial where false information is furnished on an application form. Accordingly, the Defendants respectfully request that, to the extent the letter or any other testimony or evidence is offered regarding the basis for denial of Jones's security officer registration, such evidence be limited to the furnishment of false information on his application form. Specific details, particularly of the charges that were later dismissed, should be redacted. Otherwise, evidence of such charges could only incite and inflame the jury to speculate and believe that Jones has an extensive and/or

potentially violent criminal history, despite that Jones's sole conviction has been for misdemeanor possession of marijuana. This opens the door for the jury to decide this case on an improper basis.

Not only is any probative value of any such evidence substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury, but neither the charges, nor Jones's marijuana conviction, are admissible for purposes of impeachment of Jones or to prove the character of Jones in order to show action in conformity therewith. Under Rule 609(a)(1), SCRE, for purposes of impeachment, "evidence that a witness . . . has been *convicted* of a crime shall be admitted, subject to Rule 403, *if* the crime was punishable by . . . imprisonment in excess of one year under the law under which the witness was convicted . . . " In addition, subsection (2) provides that "evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment." It is without question that Jones's only conviction, for misdemeanor possession of marijuana, does not qualify as a crime involving dishonesty or false statement. Nor does the statute under which Jones was charged, S.C. Code Ann. § 44-53-370(d)(4), provide for imprisonment in excess of one year. Hence, Jones's misdemeanor marijuana possession is not admissible for purposes of attacking his credibility under Rule 609(a)(1), SCRE.

Finally, Jones's criminal charges and single misdemeanor conviction are inadmissible pursuant to Rule 404(b), SCRE, which does not allow evidence of other crimes, wrongs, or acts to prove the character of a person in order to show action in conformity therewith. Other crimes, wrongs or acts are admissible only under certain *very limited* circumstances, *i.e.*, to show motive, identity, existence of a common scheme or plan, the absence of mistake or accident, or intent. See Rule 404(b). See also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (limiting use of

evidence of other crimes, wrongs or acts to those specifically enumerated and allowing testimony pertaining to acts of the defendant where it tended to show extraneous crimes were committed within a few town blocks and within a few minutes as to the time of the crime charged and, hence, seemed to be part of a general scheme and expedition), Citizens Bank of Darlington v McDonald, 202 S C 244, 24 S.E.2d 369 (1943) (applying Lyle in civil cases and allowing proof of acts other than the one charged which are so related in character, time, and place of commission as to tend to support the conclusion that they were part of a plan or system). As stated by the Supreme Court in Lyle,

The acid test is its logical relevancy to the particular excepted purpose or purposes for which it is sought to be introduced. If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime. But the dangerous tendency and misleading probative force of this class of evidence require that its admission should be subjected by the Courts to rigid scrutiny. Whether the requisite degree of relevancy exists is a judicial question to be resolved in the light of the consideration that the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors. Hence, if the Court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.

125 S.C., at 417, 118 S.E., at 807. The circumstances of this case are far removed from those existing in Lyle or McDonald. The criminal charges and single conviction of Jones for simple possession of marijuana are wholly unrelated to his conduct in pursuing a shoplifter in his vehicle and, therefore, do not tend to establish any sort of conduct consistent with his actions under scrutiny in this case. Accordingly, Rule 404(b), SCRE, does not somehow offer an exception to Rule 609, SCRE, to allow evidence of Jones's prior alleged "bad acts," but non-convictions

Based on the foregoing, Defendants request that Jones's charges and single conviction be excluded for all purposes or appropriately limited and redacted so as to avoid undue prejudice to the Defendants.

6. Motion in Limine to exclude any evidence or testimony that Jones failed to report income received from Longevity Entertainment or any other employer to the government and/or failed to file income tax returns.

Derrick Jones attested to working for Longevity Entertainment as a deejay and studio engineer from September 2001 to March 2006. During that time, he recalled being paid approximately \$20 per hour for studio recording work, which was paid to him in cash and which was admittedly not reported to the government on income tax returns. (See Jones Depo, 136:11-138:6, Ex. B). Testimony and evidence regarding any failure to report such income should be excluded for multiple reasons:

As an initial matter, there is no evidence that Jones was even making the minimum income required to file a tax return or whether he was tax exempt. Hence, submission of testimony that he did not file taxes, without evidence that he was making enough money so that he was required to do so, would be misleading. In addition, such evidence has no tendency to make the existence of any fact of consequence to the determination of this action more or less probable and, therefore, does not constitute relevant evidence under Rule 401, SCRE, and should be excluded on that basis. Finally, the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury. It has no purpose other than to further inflame or incite the jury against Jones.

7. Motion in Limine to exclude any reference to Donna Beckham's injuries or condition following the accident, from Beckham, Trooper Howard, and/or any other witness.

It is undisputed that Donna Beckham sustained injuries in the accident at issue in this case, which injuries and alleged damages are the subject of her own lawsuit, also filed in the

Lancaster County Court of Common Pleas under C A. No. 2009-CP-29-00881 Nonetheless, in opening statements, Plaintiff's counsel graphically described Beckham's injuries, stating that she shattered both of her thigh bones, has rods in both of her thighs, and sprayed her shin open, adding that she was hospitalized for ten to twelve days, incurring hundreds of thousands of dollars in medical bills. (Trial Transcript, 55.21-56.5, Ex. C) Plaintiff further sought to elicit testimony from Ms. Beckham during the first trial of this action regarding the specific injuries she sustained in the accident and further requested to show the jury her scars, all of which should be excluded. Evidence and testimony pertaining to Beckham's injuries, specifically including any demonstration to the jury of Beckham's scarring from those injuries, while appropriate to her own litigation, are not relevant to the injuries and damages sustained by the Decedent in this case. Since they do not tend to make the existence of any fact that is of consequence to the determination of the action more or less probably than it would be without the evidence, such testimony and/or demonstrations should be excluded under Rules 401 and 402, SCRE.

To the extent Plaintiff would proffer such evidence to show the seriousness of the accident, the jury will have full opportunity to assess the magnitude of the accident through the multiple photographs of the vehicle and scene, as well as the fact that it resulted in Hancock's death. Hence, evidence and testimony of Beckham's injuries would only amount to needless presentation of cumulative evidence, would be confusing and misleading to the jury, and would be unfairly prejudicial. Accordingly, such testimony and evidence should be excluded, even if relevant, pursuant to Rule 403, SCRE.

8. Motion *in Limine* to preclude any comments of counsel regarding the motive of Jones in not appearing at the trial of the case.

Derrick Jones's employment with USSA was terminated within a few days following the accident, and Jones moved out of state sometime in 2009 and/or 2010, prior to the first trial of

this case. He has not been in communication with the other Defendants or counsel since that time. There is no evidence to suggest, however, that Jones moved out of state in order to avoid the trial or for any other reason associated with this case. While the undersigned counsel has again made efforts to try to locate Jones to notify him of the trial in this case and procure his attendance, if possible, those efforts have not been successful, and there is no indication Jones is even aware of the retrial. Therefore, allowing repetitive comments and/or arguments of counsel directed to Jones's absence from trial, and particularly any underlying motives for his absence, would be both improper and unfairly prejudicial to the Defendants pursuant to Rule 403, SCRE. See, e.g., Trial Transcript, 41:13-42:1 (Jones is a coward and does not have the gumption to stand in the courtroom); 56:1-5; 57:6-17, 837.22-838-1, 858 9-20 (Jones is safer in Buffalo than in South Carolina and fears he could be extradited if he comes to court and it is revealed that he covered everything up because he was scared of being arrested for a suspended license and causing the death of a woman in a traffic accident because he had a suspended license); 859:7-860:20 (imploing the jury to ask why Jones is not at trial and arguing that Jones fears he will be arrested and prosecuted after the trial), Ex. C. Such comments would serve no purpose other than to inflame and incite the jury against Jones and mislead them to decide this case on an improper basis. Accordingly, Defendants request that such comments and/or arguments be prohibited.

9. Motion *in Limine* to preclude evidence and testimony pertaining to the compensation of Executives of Wal-Mart and/or USSA.

Plaintiff identified Oliver G. Wood, Jr., Ph.D. to opine regarding several matters in this case, including the financial condition and ability to pay of both Wal-Mart and USSA for punitive damages purposes. (Trial Transcript, 376.5-10, Ex. C). However, Dr. Wood not only intends to offer testimony and evidence as to the net worth of the companies, but also testimony

and evidence regarding executive salaries specifically including the presentation of charts reflecting such salaries. Because the admission of testimony and evidence regarding the salaries and compensation of the corporate executives of Wal-Mart and USSA introduces an arbitrary factor in the jury's consideration and assessment of punitive damages, the admission of such testimony and evidence is highly prejudicial and should be excluded. See Branham v. Ford Motor Co., 390 S.C. 203, 240, 701 S.E.2d 5, 25 (2010) (expressly holding that admission of evidence of Ford's senior management compensation was error and highly prejudicial and would not be admissible during retrial of the case).

While Wal-Mart and USSA concede that, in assessing punitive damages, the wealth of a defendant is a relevant factor, a defendant's ability to pay is not without boundaries. See id., 390 S.C. at 239, 701 S.E.2d at 24. "Punitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." Id., 390 S.C. at 239, 701 S.E.2d at 60 (quoting Honda Motor Co. v. Oberg, 512 U.S. 415, 432, 114 S.Ct. 2331, 129 L.Ed. 2d 336 (1994)). See also State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 427, 123 S.Ct. 1513, 155 L.Ed. 2d 585 (2003) ("The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.") Accordingly, "only evidence of net worth and extrapolations from net worth may be introduced on the issue." Sulton v. Healthsouth Corp., 400 S.C. 412, 419, 734 S.E.2d 641, 645 (2012) (quoting Branham, 390 S.C. at 239-40, 701 S.E.2d at 24-25) (emphasis added). The fact that "[r]eference to [the defendant's] assets . . . ha[s] little to do with the actual harm sustained by the [plaintiff] militates

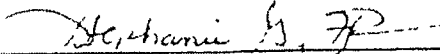
against venturing beyond net worth and extrapolations from net worth." Campbell, 538 U.S. at 427.

In Branham, the plaintiff not only presented evidence of Ford Motor Company's net worth, income, revenues and cash flow, but also evidence regarding the salaries and compensation of Ford's corporate officers. The court commented that, "[w]hile the United States Supreme Court's foray into punitive damages law is, to be sure, confusing, there can be no serious doubt concerning financial evidence of the salaries and compensation of a defendant corporation's officers. Such evidence introduces an arbitrary factor in a jury's consideration and assessment of punitive damages." 390 S.C. at 240, 701 S.E.2d at 25. Accordingly, the Branham court held that the plaintiff went "far beyond the pale" in presenting evidence which included that "[i]n 2005, the Ford Chairman and Chief Executive Officer was compensated by stock options worth \$5,300,000; the Ford President and Chief Operating Officer received a salary [of] \$1,458,000 in 2005; the Ford Executive Vice President received a salary of \$972,000 in 2005; the Ford Chief Financial Officer received a salary of \$916,000 in 2005; [and] a former Ford chairman received \$880,000 in 2005." The court further found fault in testimony regarding bonuses to such corporate officers, including stock and other compensation, to present a picture of Ford's financial condition. Based on the error in admitting the above-described evidence, the Branham court held that the \$15 million punitive damages award against Ford could not withstand constitutional scrutiny.

In light of the foregoing, Defendants request that any testimony or evidence to be offered by Dr. Wood regarding the compensation of any corporate officers or executives of Wal-Mart and USSA be excluded during the trial of this case.

These motions will be based on the pleadings and pre-trial discovery in this matter, the South Carolina Rules of Evidence, the South Carolina Rules of Civil Procedure, and on applicable common and statutory law. Defendants reserve the right to make additional motions *in limine* prior to, or during the trial of this case

October 17, 2016


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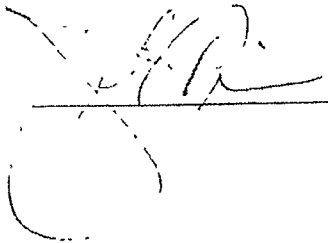
Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that on this 17th day of October 2016, a copy of the foregoing Defendants' Motion *in Limine* to Preclude Introduction of Evidence at Trial that is not Relevant and which would be Unduly Prejudicial to Defendants, has been served upon the following counsel of record, via first class mail, addressed as follows:

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Travis A. Roddey, et al

☐ Plaintiff

v

Wal-Mart Stores, Inc., Et Al

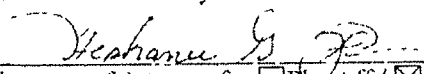
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO

2007-CP-29-0593

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney S. Randall Hood, Esq., Bar No. 65360 Address 1539 Health Care Drive Rock Hill, SC 29732 phone 803-327-7800 fax 803-328-5656 e-mail: rhood@megowanhood.com other	Defendant's Attorney Stephanie G. Flynn, Bar No. 16653 Address Gallivan, White & Boyd, P.A. P.O. Box 10589, Greenville, SC 29603 phone 864-271-5426 fax 864-271-7502 e-mail: sflynn@gwblawfirm.com other
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Defendants' Motion in Limine to Prohibit Improper Cross-Examination and Conduct Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant October 17, 2016  Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT (check reason): ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court, or reduced to writing from motion made in open court per judge's instructions Name of Court Reporter ☐ Other	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other	CODL Date
CLERK'S VERIFICATION	
Date Filed	
Collected by _____	
☐ MOTION FEE COLLECTED _____	
☐ CONTESTED - AMOUNT DUE _____	

SCCA233 (11-03)

Exhibit 6

Whitney Harrison

From: Cooper, G Thomas Law Clerk (George C James, III) <GCooperLC@sccourts.org>
Sent: Friday, October 28, 2016 3 23 PM
To: Stephanie Flynn
Cc: Whitney Harrison
Subject: Re Roddey v Walmart- Question concerning Defendants' Motion in Limine to Exclude on Evidentiary Issues
Attachments: image002.jpg

Counsel,

Judge Cooper said that he would take up those motions in limine in the document referenced at the time of trial.

Thank you,
George James

On Oct 28, 2016, at 1 00 PM, Stephanie Flynn <SFlynn@gwblawfirm.com<<mailto:SFlynn@gwblawfirm.com>>> wrote

Thank you, George I think we would prefer to at least have everything before him that he needs (whether as a memo or proposed Order) so that he is able to make any decisions that he deems appropriate before the start of trial. We appreciate your assistance.

<image002.jpg>

Stephanie G Flynn

Partner

sflynn@GWBlawfirm.com<<mailto:sflynn@GWBlawfirm.com>>

Gallivan, White & Boyd P A.

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vCard<https://urldefense.proofpoint.com/v2/url?u=http-3A_www.gwblawfirm.com_mydocuments_sflynn_vcf&d=DgMF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=SOPbkoIU-zptspzEPyvD7QHOb61tr92y6M6VBPNTQ&m=POxkW6e_CxxMxnx73JoUvJ_BQmgW_O6Uzki2PmDlezo&s=DidLAB9qVYBUMZMh6tNRKRyJaUpnBu9TjDRSbv2SdMc&e=> | BioURL<https://urldefense.proofpoint.com/v2/url?u=http-3A_www.gwblawfirm.com_attorney_stephanie-2Dflynn_&d=DgMF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=SOPbkoIU-zptspzEPyvD7QHOb61tr92y6M6VBPNTQ&m=POxkW6e_CxxMxnx73JoUvJ_BQmgW_O6Uzki2PmDlezo&s=caTq3jOH063JrqdVN1wgKEcwotDMIKCSaR0hXVn0D20&e=> | Website<https://urldefense.proofpoint.com/v2/url?u=http-3A_www.gwblawfirm.com_mydocuments_sflynn_vcf&d=DgMF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=SOPbkoIU-zptspzEPyvD7QHOb61tr92y6M6VBPNTQ&m=POxkW6e_CxxMxnx73JoUvJ_BQmgW_O6Uzki2PmDlezo&s=DidLAB9qVYBUMZMh6tNRKRyJaUpnBu9TjDRSbv2SdMc&e=>>

3A www.gwblawfirm.com&d=DgMF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=SOPbkolU-zptsppzEPyvD7QHOb61tr92y6M6VBPNVtQ&m=POxkW6e_CxxMxnx73joUvJ_BQmgW_O6Uzki2PmDlezo&s=zAgS9BPgonHyZalg5nLkcU1tf0robn7WwQ29pGp5J9Q&e=>

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From: Cooper, G. Thomas Law Clerk (George C. James, III) [<mailto:GCooperLC@sccourts.org>]
Sent: Friday, October 28, 2016 12:51 PM
To: Whitney Harrison, Stephanie Flynn
Subject: RE: Roddey v. Walmart- Question concerning Defendants' Motion in Limine to Exclude on Evidentiary Issues

I have forwarded this to Judge Cooper as he is in Camden today, and I am in Columbia. I will be sure to let you know what he says when I speak to him. As for now, I would treat anything Judge Cooper did not specifically address on Tuesday as under advisement. This would mean he would like to receive proposed orders, but again, I will let you know when I hear from him.

From: Whitney Harrison [<mailto:wharrison@mcgowanhood.com>]
Sent: Friday, October 28, 2016 12:00 PM
To: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org<<mailto:GCooperLC@sccourts.org>>>; SFlynn@gwblawfirm.com<<mailto:SFlynn@gwblawfirm.com>>
Subject: Roddey v. Walmart- Question concerning Defendants' Motion in Limine to Exclude on Evidentiary Issues

George,

Hope you're doing well. Stephanie and I have been working together this week to make sure we have all of our documents in line to turn in to you and Judge Cooper on Monday. Through the course of our conversations, we have one item we need clarification on. How would Judge Cooper like us to address Defendants' Motion in Limine re: Evidentiary Issues? While Mr. Boyd generally addressed this motion, Judge Cooper did not rule on each item listed in the motion. We were unsure if Judge Cooper wanted a memorandum addressing each matter, proposed orders, or if this was something he preferred to address at the start of trial.

Thanks for your help with this

Whitney

Whitney B. Harrison
Associate
McGowan, Hood & Felder, LLC
803 779 0100

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**Exhibit 7:**

**Respondent's Petition for Rehearing in**

*Roddey v. Wal-Mart Stores East, LP*, 415 S.C. 580, 784 S.E.2d 670 (2016)

See R. 91

**Exhibit 8:**

Trial Transcript of Directed Verdict  
(p. 592-602)

See R. 562-575

**Exhibit 9:**

**Second Amended Complaint**

See R. 119

# Exhibit 10

## Whitney Harrison

---

**From:** Whitney Harrison  
**Sent:** Wednesday, November 02, 2016 5:55 PM  
**To:** 'Cooper, G. Thomas Law Clerk (George C. James, III)', Stephanie Flynn, Cooper, G. Thomas  
**Cc:** Randy Hood, Shawn B. Deery, Howard Boyd, Jessica Cooksey  
**Subject:** RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Judge Cooper and George,

Thank you for letting us know your ruling. After much discussion today, our firm has decided to appeal this issue. As you can imagine, this is an important case to our firm. To ensure all of our arguments are preserved for appellate review, we will be filing a 59(e) motion. To prevent any further inconvenience to you, Howard, and Stephanie, and to free up the Court's roster for the week of November 14<sup>th</sup>, we wanted to let you all know as soon as possible. If you have any questions or concerns, please let us know.

Whitney

**From:** Cooper, G. Thomas Law Clerk (George C. James, III) [<mailto:GCooperLC@sccourts.org>]  
**Sent:** Wednesday, November 02, 2016 11:59 AM  
**To:** Stephanie Flynn; Cooper, G. Thomas  
**Cc:** Randy Hood; Whitney Harrison; Shawn B. Deery; Howard Boyd; Jessica Cooksey  
**Subject:** Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Counsel,

Attached, please find a scanned copy of the signed Order Barring the Evidence of Plaintiff's Negligent Hiring Cause of Action on Grounds of Res Judicata that will be sent to Lancaster County for filing today.

Thank you,

George James  
Law Clerk to the Honorable G. Thomas Cooper, Jr.  
Circuit Court of South Carolina, Fifth Circuit  
1701 Main St., Room 320  
P.O. Box 192  
Columbia, SC 29201  
Phone: (803) 576-1783  
Fax: (803) 576-1741

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Whitney Harrison

From: Stephanie Flynn <SFlynn@gwblawfirm.com>
Sent: Friday, November 04, 2016 12:45 PM
To: Cooper, G Thomas, Howard Boyd
Cc: Randy Hood, Whitney Harrison; Cooper, G Thomas Law Clerk (George C James, III), Mitch Norrell, Norrell, Ilc Norrell & powers, Brent Stewart, Shawn B Deery, Jessica Cooksey
Subject: RE Roddey v Wal-Mart, C A No 2007-CP-29-593

For the conference call at 4:00, please use the following call-in numbers.

1-803-724-1812 passcode 13579# ext 1812

Stephanie G. Flynn
Partner
sflynn@GWBlawfirm.com

Gallivan, White & Boyd P.A.
Office: 55 Beattie Place | Suite 1200 | Greenville SC 29601
864 271 5426 Direct | 864 271 9580 Main | 864 271 7502 Fax
Mailing Post Office Box 10589 | Greenville SC 29603 Bio URL: <http://www.gwblawfirm.com/attorney/stephanie-flynn/> |
Website: <http://www.gwblawfirm.com>

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From: Cooper, G Thomas [mailto:GCooperJ@sccourts.org]
Sent: Friday, November 4, 2016 12:30 PM
To: Howard Boyd
Cc: Randy Hood; Stephanie Flynn, Whitney Harrison; Cooper, G Thomas Law Clerk (George C James, III), Mitch Norrell; Norrell, Ilc Norrell & powers; Brent Stewart; Shawn B Deery; Jessica Cooksey
Subject: Re Roddey v Wal-Mart, C.A No 2007-CP-29-593

Please arrange the conference call.

Sent from my iPhone

> On Nov 4, 2016, at 12:02 PM, Howard Boyd <Hboyd@gwblawfirm.com> wrote
>
> We will call you then. Thanks.
>
> Regards, Howard
>
> W. Howard Boyd, Jr
> Shareholder
> hboyd@GWBlawfirm.com
>
> Gallivan, White & Boyd P.A.

> Office 55 Beattie Place | Suite 1200 | Greenville SC 29601
 > 864 271 5343 Direct | 864 271 9580 Main | 864 271 7502 Fax
 > Mailing Post Office Box 10589 | Greenville SC 29603 Bio URL.
 > https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com
 > _attorney_howard-2Dboyd_&d=DgIF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=8clY6kWGigz0ruc29PIJoXzyS7NcSiTmSWdSMYLY9Pw&m=3vBwl2bns5LB5nZJp5evLzf4VGE09-Tv_9wV1qNKlzs&s=t_q-KuFM5ANbYJRtaQ7IL3mmHF8oPrvn5INdD65sPeA&e= |
 > Website.
 > https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com
 > &d=DgIF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=8clY6kWGigz0ruc29PIJoXzyS7NcSiTmSWdSMYLY9Pw&m=3vBwl2bns5LB5nZJp5evLzf4VGE09-Tv_9wV1qNKlzs&s=EozTMN5xyHU
 > kZHbtwk4UHQhXAOzWV6V5Be-X-h1U378&e=

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 > be a confidential and privileged legal communication to the named
 > recipient(s). If you receive this message in error or are not the
 > named recipient(s), please notify the sender and delete this email
 > Thank you -----Original Message-----
 > From: Cooper, G Thomas [mailto:GCooperJ@sccourts.org]
 > Sent: Friday, November 04, 2016 11:46 AM
 > To: Randy Hood
 > Cc: Stephanie Flynn; Whitney Harrison, Cooper, G. Thomas Law Clerk
 > (George C. James, III); Mitch Norrell, Norrell, LLC Norrell & powers;
 > Brent Stewart, Howard Boyd; Shawn B. Deery; Jessica Cooksey
 > Subject: Re: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>
 > In my opinion, a reading of Rule 241(a) as suggested by Ms. Flynn, would allow the trial to go forward on "matters not affected by the appeal". I am available by phone after 4:00 at this cell 803-243-0063

>
 > Sent from my iPhone

>
 >> On Nov 4, 2016, at 10:56 AM, Randy Hood <rhoo@mccgowanhood.com> wrote

>>
 >> Judge Cooper

>>
 >> Obviously we disagree with the position of Defendants. We can brief this entire matter pursuant to 59e and submit to your honor. We agree with Ms. Flynn that it would be due by November 14, 2016. We are cognizant, however, of your honor's travel out of country and necessity to try and resolve this issue. We can discuss today whether your honor wants to take this matter up on Sunday with a full briefing by us (we expect our brief to 15-20 pages without attachments) or to simply fully brief by November 14, 2016, let the Defendants have time to respond (if they wish). Given our position that it is immediately appealable, we do not want the court to be left without cases to try the week of November 14, 2016.

>>
 >> What is a good time for all to try and get on the phone today?

>>
 >> Have a great day. Blessings.

>>
 >> Randy

>>
 >> S. Randall Hood
 >> McGowan, Hood & Felder, LLC
 >> 1539 Health Care Drive

>> Rock Hill, SC 29732
>> 803-327-7800 (MHF Phone)
>> 803-327-7828 (Randy Hood Direct Dial)
>> 877-327-3800 (Toll Free)
>> rhood@mcgowanhood.com (Email)
>> www.mcgowanhood.com (Website)
>>
>> Other McGowan, Hood & Felder, LLC office locations
>>
>> Columbia, SC Anderson, SC Charlotte, NC Georgetown, SC
>> Sumter, SC
>>
>> LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM
>>
>> Amos 5:24
>> Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)
>>
>> POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY
>>
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OF THE NUMBERS INDICATED ABOVE
>>
>> -----Original Message-----
>> From: Stephanie Flynn [mailto:SFlynn@gwblawfirm.com]
>> Sent: Friday, November 4, 2016 10:07 AM
>> To: Randy Hood <rhood@mcgowanhood.com>, Cooper, G. Thomas
>> <GCooperJ@sccourts.org>
>> Cc: Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G. Thomas
>> Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Mitch
>> Norrell <mnorrell@comporium.net>, Norrell, LLC Norrell & powers
>> <resipsa@comporium.net>; Brent Stewart <brent@stewartlawoffices.net>,
>> Howard Boyd <Hboyd@gwblawfirm.com>, Shawn B. Deery
>> <sdeery@mcgowanhood.com>; Jessica Cooksey <jessica@mcgowanhood.com>
>> Subject: RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593
>>
>> Judge Cooper and George,
>>
>> Our position is and always has been that the negligent hiring cause of action is dead by operation of law on grounds
of res judicata. As we knew Plaintiff intended to proceed as if that cause of action still existed, our motion was borne
out of a need to make clear that the negligent hiring cause of action had already been determined by a jury, was never
appealed, and was no longer viable and, therefore, Plaintiff should not be allowed to try to re-litigate it or offer evidence
and testimony regarding that issue during re-trial
>>
>> Our motion, regardless of how it was initially couched or titled, took the position we outline above and was fully
briefed, contrary to what was represented to the Court by Plaintiff. Nonetheless, we further addressed and clarified the
proper procedural posture of the motion in our letter reply that was submitted to the Court with the proposed Order.
There was no need to strike or dismiss the negligent hiring action because it does not exist. The Order, which properly

frames the issue as an evidentiary matter, acknowledges that the cause of action has been determined by a jury, was never appealed and is res judicata

>>

>> Plaintiff cannot appeal from Defendants' motion or now use the motion to try to re-characterize this Court's Order. It is the Order on which the appeal will be taken, and the Order is clearly interlocutory and not immediately appealable. Any appeal from this Order would be frivolous. It does not end the case or prevent a final judgment from which Plaintiff may seek appellate review. Furthermore, in addition to being interlocutory and not immediately appealable, the appeal has no merit. This is the clearest example of res judicata there could possibly be. If the Plaintiff appeals, we will move for sanctions on the ground the appeal is frivolous and without a good basis on law or fact.

>>

>> Mr. Hood improperly suggests that the Court has not ruled. Obviously, the Court has signed an Order excluding any evidence of negligent hiring on the re-trial of the case. The Plaintiff just needs to file a Rule 59 motion for reconsideration of that Order. There is no procedural basis for rearguing the motion once the Court has decided. It does not matter how the Defendants couched the motion initially. After further consideration of the motion, we realized our motion was mischaracterized and should be characterized as a motion in limine to exclude evidence relating to a cause of action that had already been determined by a jury. That is what the Court ruled.

>>

>> Even if the Order were immediately appealable, it is our position that an appeal of the Order has no effect on and will not require a continuance of the case on the negligence cause of action. Under Rule 241(a), SCACR, generally once a notice of appeal is filed, that automatically stays the matter decided in the Order. The lower court retains jurisdiction over matters not affected by the appeal. The negligence action for the pursuit, which is subject to different kinds and quantities of proof than that for negligent hiring, can proceed independently and unaffected by the appeal. This is a wrongful death wreck case.

>>

>> Obviously, if the Court adheres to its position that the appeal will divest the Court of jurisdiction, we cannot proceed with the trial on November 14. However, for all of the reasons outlined above, and the fact that this case is now 10 years old, we would respectfully request that the Court reconsider the jurisdictional issue and allow this case to proceed on November 14 on the only cause of action that remains.

>>

>> As always, we appreciate your consideration of these issues.

>>

>> Howard Boyd

>> Stephanie Flynn

>>

>>

>> Stephanie G. Flynn

>> Partner

>> sflynn@GWBlawfirm.com

>>

>> Gallivan, White & Boyd P.A.

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>> Mailing: Post Office Box 10589 | Greenville SC 29603 Bio URL

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>> m

>> _attorney_stephanie-2Dflynn_&d=DgIFAw&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=8clY

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>> WdSMYLY9Pw&m=8cGdHSldgWglUgblwLPiOQUikaR_qsqkI0Qk-r9LcA&s=YZ05oJQd_b
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>>
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>> Thank you -----Original Message-----
>> From: Randy Hood [mailto:rhoor@mcgowanhood com]
>> Sent: Thursday, November 3, 2016 11 00 PM
>> To: Cooper, G Thomas
>> Cc: Whitney Harrison, Stephanie Flynn; Cooper, G Thomas Law Clerk
>> (George C James, III); Mitch Norrell, Norrell, llc Norrell & powers;
>> Brent Stewart; Howard Boyd; Shawn B Deery; Jessica Cooksey
>> Subject. Re Roddey v Wal-Mart, C.A. No 2007-CP-29-593
>>
>> Judge Cooper
>>
>> We are available tomorrow at your convenience to try and determine whether the motion to dismiss/strike the
negligent hiring, training, supervision issue will be decided in defense or plaintiffs favor. It is my belief that if the cause of
action is stricken/dismissed, then Plaintiffs plan to appeal the issue. Thank you in advance.
>>
>> Blessings.
>>
>> Randy Hood
>>
>> S. Randall Hood
>> McGowan, Hood and Felder, LLC
>> Rock Hill, South Carolina
>> 803-327-7800 (general)
>> 803-327-7828 (direct dial)
>> rhoor@mcgowanhood com
>> www.mcgowanhood com
>>
>> Additional offices located in
>>
>> Columbia, SC Anderson, SC .
>> Sumter, SC Georgetown, SC
>>
>>
>>
>> This email is being sent from my iPhone with auto-correct feature If there are mis-spellings or other language
anomalies, please ignore them I apologize for any inaccuracies in spelling and/or grammar in this email
>>
>>> On Nov 3, 2016, at 7 36 PM, Cooper, G Thomas <GCooperJ@sccourts.org> wrote
>>>
>>> Counsel: I leave for an overseas vacation at 11 00 am Monday the 7th. Anything that needs to be done by me, needs
to be done by then I am available to you this weekend by email or phone @ 803-432-5455 or my cell @ 803-243-0063 I
would like to resolve the trial issue (as would the Lancaster C of C) as soon as possible.

>>>

>>> Sent from my iPad

>>>

>>> On Nov 3, 2016, at 3.49 PM, Randy Hood <rhood@mcgowanhood.com<mailto:rhood@mcgowanhood.com>> wrote

>>>

>>> Judge Cooper and George.

>>>

>>> First, I apologize for any additional stress our position may cause. I know the Defendants may disagree, but there are certain issues that need to be addressed which concern judicial economy and both law firms' resources - financially, time spent, etc.

>>> At the October 25th hearing, I spoke with Defense counsel regarding our intent to appeal if we were unsuccessful retaining the negligent hiring claim. At that time, I hope I adequately expressed that my concerns were borne out of potentially wasted resources and effort by all parties. I certainly think I can speak for us all when I say we do not want to try this case a third time under any circumstances

>>>

>>> As Whitney mentioned in her previous email, Defendants' motion was to strike the negligent hiring cause of action. Yet despite not being the issue briefed or argued, the Order prohibits the introduction of evidence for that cause of action. Under Defendants' theory if we cannot present evidence on that issue, Defense counsel will simply stand up at the end of our case and move for a DV since we were prevented from introducing evidence to support it. While at first glance a ruling on a motion in limine versus a motion to exclude presents the same outcome, they are significantly different from an appealability standpoint. Defendants' motion was one to strike not to limit evidence, as such it is appealable.

>>>

>>> One of the problems for us is we are spending firm resources on experts (out-of-state) on issues relating to the negligent hiring claim. Because of that, this ruling directly affects our mode of trial and in turn affects a substantial right of the Plaintiff. We were planning on expending much more resources over the next 1 ½ weeks but it depends on the mode of trial. I am not only concerned with costs, but am concerned that everyone spends the next 1 ½ weeks preparing, having experts at trial, serving subpoenas, having witnesses at the courthouse, etc., only for us to file our anticipated appeal that would give the appellate court's jurisdiction in the eleventh hour.

>>>

>>> Again, I apologize for any inconvenience, but my concern is doing what is best for our client. I know you are going on vacation next week and am loathe to send this at all.

>>>

>>> Have a great day. Blessings.

>>>

>>> Randy

>>>

>>> S. Randall Hood

>>> McGowan, Hood & Felder, LLC

>>> 1539 Health Care Drive

>>> Rock Hill, SC 29732

>>> 803-327-7800 (MHF Phone)

>>> 803-327-7828 (Randy Hood Direct Dial)

>>> 877-327-3800 (Toll Free)

>>> rhood@mcgowanhood.com<mailto:rhood@mcgowanhood.com> (Email)

>>> www.mcgowanhood.com<https://urldefense.proofpoint.com/v2/url?u=http-

>>> 3>> A>

>>> __www.mcgowanhood.com_&d=DgMFAw&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=8clY6kWGj

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<Xuqg0am0&s=B2eBn9keVGjGBKXqPbaQ4Qlx5Jhf1Q6zYzS-mU4pjy0&e=>

>>> (Website)

>>>

>>> Other McGowan, Hood & Felder, LLC office locations

>>>

>>> Columbia, SC . Anderson, SC Charlotte, NC Georgetown, SC

>>> Sumter, SC

>>>

>>> LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM

>>>

>>> Amos 5:24

>>> Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)

>>>

>>> POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY

>>>

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>>>

>>> From: Whitney Harrison

>>> Sent: Thursday, November 03, 2016 12:11 PM

>>> To: Stephanie Flynn; Cooper, G. Thomas; Cooper, G. Thomas Law Clerk

>>> (George C. James, III)

>>> Cc: Howard Boyd; Randy Hood; Shawn B. Deery; Jessica Cooksey

>>> Subject: RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>>>

>>> Judge Cooper and George,

>>>

>>> We agree with Defense counsel that the Rule 59(e) motion would be due on or before November 14. However, as you might imagine, we disagree with the substance of their email. While it is our intent to fully address everything in the coming 59(e) motion, in light of Defense counsel's email, a brief statement of our position follows:

>>>

>>> First, this issue is immediately appealable. Defendants filed a motion to exclude the negligent hiring and supervision cause of action (or in the alternative for summary judgment) and that matter was heard on October 25th. All arguments presented at the hearing addressed the exclusion of the cause of action, not evidence relating to the cause of action. However, Defendants' proposed order, changed what was a motion to exclude (or to strike) into a motion in limine. Defendants' motion was not a motion in limine. Motions in limine concerning evidence do not usually include a request for summary judgment, nor do they typically address res judicata arguments.

>>>

>>> It has always been Plaintiff's position that the negligent hiring and supervision cause of action never went away because of the Supreme Court's grant of a new trial (as we argued at the hearing). So there would have been no need for Plaintiff to file a motion to revive it. Defendants' motion was to exclude or strike because we were saying it still existed. Now, it appears Defendants are arguing the exact opposite.

>>>

>>> In addition, we believe the filing of a notice of appeal would provide the appellate courts with jurisdiction and stay the action in this Court. The two claims (as even acknowledged by Defense counsel) are intertwined. For this reason, the Order (and its implications) affects a substantial right of Plaintiff and therefore, is immediately appealable. As such, we believe this case cannot proceed until an appellate court rules on the appeal.

>>>

>>>

>>> Whitney

>>>

>>>

>>> From Stephanie Flynn [mailto:SFlynn@gwblawfirm.com]

>>> Sent Thursday, November 03, 2016 11:00 AM

>>> To Cooper, G. Thomas, Cooper, G. Thomas Law Clerk (George C. James,

>>> III)

>>> Cc. Howard Boyd; Randy Hood, Shawn B. Deery; Jessica Cooksey,

>>> Whitney Harrison

>>> Subject: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>>>

>>> Dear Judge Cooper and George

>>>

>>> We received the email from Whitney Harrison late yesterday, advising that Plaintiff intends to file a Rule 59 motion for reconsideration and will appeal the Court's decision granting our motion to exclude evidence of negligent hiring in the re-trial of the negligence cause of action. We disagree that this requires that the trial of this case be continued, and are writing to provide the Court with our position that this case should proceed as scheduled on Monday, November 14.

>>>

>>> First, the Court's Order as to the exclusion of evidence as to negligent hiring is interlocutory and not immediately appealable. The order excludes evidence of negligent hiring because Plaintiff's action for negligent hiring is now barred under principles of res judicata. Plaintiff has made no motion to revive that cause of action, nor could they do so. It simply doesn't exist any longer since Plaintiff failed to appeal the jury verdict from the first trial on the negligent hiring cause of action.

>>>

>>> Second, even if the plaintiff took an appeal from the court's denial of its Rule 59 motion for reconsideration, that would not stay further proceedings in the trial court. The Order does not end the case or prevent a final judgment from which Plaintiff may seek appellate review. Moreover, the resolution of the negligent hiring cause of action may render the negligent hiring cause of action moot if the defendants prevail on that cause of action. Without an underlying tort to support it, the negligent hiring of Jones could not be the proximate cause of Ms. Hancock's death.

>>>

>>> We would respectfully request that the Court summarily deny the Plaintiff's Rule 59 motion, which will be required to be filed on or before November 14, prior to the start of trial and that we proceed with the trial of the negligent hiring cause of action.

>>>

>>> As always, we appreciate the court's consideration of our position in regard to this issue.

>>>

>>> With kind regards,

>>>

>>> Howard

>>> Stephanie

>>>

>>>

>>>

>>> <image001.jpg>

>>>

>>> Stephanie G. Flynn

>>>

>>> Partner

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>>> sflynn@GWBlawfirm.com<mailto:sflynn@GWBlawfirm.com>

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