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Exhibit 1

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.

e. 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. Sensor
Print Name: Kenneth H. Sensor
Title: Vice President, Global Security
Date: 10-26-04
Wal-Mart Stores, Inc.



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
Signature

Alton Harvey
Print Name

Vice President, National Accounts
Title

Date:

2/10/2006

WAL-MART STORES, INC.

By:

Kenneth H. Senger
Signature

Print Name

Kenneth H. Senger
Senior Vice President

Title

Global Security, Aviation and Travel
Wal-Mart Stores, Inc.

Date:

2/17/06

Exhibit 2

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 3

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 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.

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 I want to say -- well, kind -- it's kind of like
2 behind the Wal-Mart, but it's another exit, like,
3 say, from automotive 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 Jack 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

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? All 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

1 rock and a hard place," what 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?

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.

Exhibit 4

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

SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

FILED
OFFICE OF CLERK
OF COURT
2007 OCT -3 P 4:39
LANCASTER, SC

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. Derrick 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 it's 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 it's 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 it's 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 WME 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 its 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.

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 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.

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.

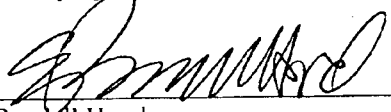
FOR A THIRD CAUSE OF ACTION

**(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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Rock Hill, South Carolina

September 26, 2007

Exhibit 5

**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, PA, 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.

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

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 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.

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

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 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.

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."

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. Ravoirra*, 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.

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)).

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.

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 (Ct.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 (Ct. 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.

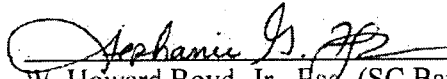
Exhibit 6

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

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


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

)
) **DEFENDANTS' MEMORANDUM OF**
) **LAW IN SUPPORT OF THEIR**
) **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**

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 Pltf'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*." Roddey 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. Servs., 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 Doe 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 Cosala 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 Dep't 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

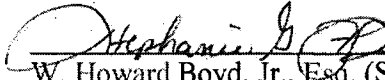
engaged in any inappropriate behavior on the job, nor did he ever have to go to Jones' supervisor for any reason. (Campbell Dep. 60:17-61:9, Ex. J).

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); Comer 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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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 and supporting Memorandum of Law for an Order Excluding Plaintiff's Cause of Action for Negligent Hiring, Training, Supervision and/or Entrustment or, in the Alternative, for Summary Judgment, has been served upon the following counsel of record, via first class mail, addressed as follows:

S. Randall Hood, Esq.
Shawn B. Deery, Esq.
Whitney B. Harrison, Esq.
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Rock Hill, SC 29732

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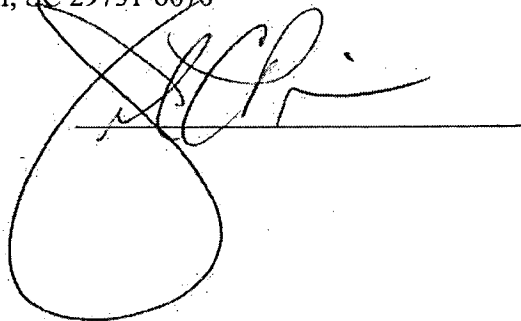


EXHIBIT A

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.

e. 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. Sasser
Print Name: Kenneth H. Sasser
Title: Vice President, Global Security
Date: 10-26-04
Wal-Mart Stores, Inc.



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.

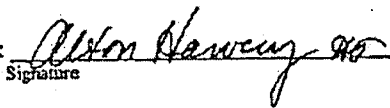
Facility# 1030

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
Print Name

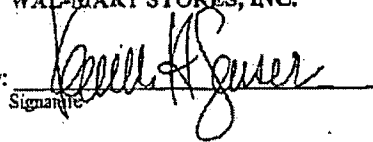
Vice President, National Accounts
Title

Date:

2/10/2006

WAL-MART STORES, INC.

By:



Print Name

Kenneth H. Senger
Senior Vice President

Title

Global Security, Aviation and Travel
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

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LANCASTER
2007-CP-29-0593

TRAVIS RODDY, et als.

VS.

WAL-MART STORES EAST, U. S. SECURITY, ET ALS.

LANCASTER, SOUTH CAROLINA

APRIL 6-13, 2010

BEFORE THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES

FOR THE PLAINTIFFS: HOOD, MCKINNON, STEWART

FOR THE DEFENDANTS: BOYD, FLYNN

REPORTED BY: MICHAEL C. WATKINS

OFFICIAL COURT REPORTER

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TESTIMONY OF JEFF GROSS

1 the store and she's walking in the driveway just in front
2 of the store where the doors are. The security vehicle
3 comes up to her, and, of course, I can't hear anything but
4 obviously there's some type of exchange. The vehicle
5 stops and she's in the driver's side of the vehicle and at
6 that point she picks up her pace and starts running out
7 into the parking lot and the security vehicle has a little
8 trouble, he's trying to backup and turn around, did a
9 U-turn in the driveway, and she's now getting out into the
10 parking lot area and here comes the truck behind her. She
11 gets into the vehicle out there in the parking lot and the
12 truck cuts them off and they have to get themselves out of
13 being blocked in, and I think he actually tries to block
14 them the second time. And eventually you will see -- what
15 I see as they go off the property with the security truck
16 behind them.

17 MR. HOOD: Take one second Your Honor.

18 (Break in proceedings.)

19 MR. HOOD: Your Honor, at this time I would like to
20 show them the videos that Mr. Gross has been describing.
21 We may have to dim the lights. Your Honor, while we're
22 waiting for the lights, would it be okay for Mr. Gross if
23 he goes up close to this and he's able to point things out
24 that he sees?

25 THE COURT: Certainly.

TESTIMONY OF JEFF GROSS

1 Q Donna Beckham?

2 A Yes.

3 Q Keep going, please.

4 (The video was played.)

5 Q Okay. Stop. From the time she left that store until
6 she meets the truck, how would you describe how she was
7 walking?

8 A She's walking not slow, she's certainly not running,
9 she's just walking at a steady pace.

10 Q And now can we go -- now, from the rest of that clip,
11 what happened once she was engaged by Mr. Jones?

12 A Well, the pace picks up, she starts to run. She
13 starts to run out toward the parking lot after she had
14 some type of communication with him. It appears to be a
15 confrontation, I can't hear anything but an assumption and
16 also -- not an assumption, but in his deposition he says
17 that he told her that he had needed to talk to her.

18 Q Prior to his engagement, was she running?

19 A No.

20 Q If you could go to the next clip, please. And is
21 that Donna Beckham going across the parking lot?

22 A Yes.

23 Q And that's Alice Hancock's car with the headlights on
24 it.

25 A Yes.

TESTIMONY OF JEFF GROSS

1 Q And so you don't know what that video shows?

2 A No, sir.

3 Q Would you agree with me that if she would have been
4 parked close to the store three spaces, I think, from the
5 driveway entrance in an area where pedestrians were likely
6 to be and an area where there was likely to be more
7 congestion, then it would have been more difficult for her
8 to be the getaway car driver then if she were parked in an
9 open area some distance away?

10 A Possibly.

11 Q Now, you are familiar with the testimony in the case
12 that Donna Beckham jumped into the back seat of the car as
13 it was rolling toward her and told Ms. Hancock, "Get them
14 the hell out of here?"

15 A Yes.

16 Q You don't have any problem with anything Wal-Mart did
17 within the store that evening, do you?

18 A Not at all.

19 Q They followed the Wal-Mart policies appropriately and
20 to the letter within the store, did they not?

21 A Yes, they did.

22 Q And you don't have a problem with the greeter
23 confronting Ms. Beckham as she left and asking for a
24 receipt.

25 A Not at all.

TESTIMONY OF JEFFREY ALBERT

1 her.

2 A Well, according to his testimony, yes, that's true.

3 But we do know from the video that she did scoot a little
4 faster to the car and jump in the back seat.

5 Q And you call that walking. She was actually running
6 pretty fast from the scene, wasn't she?

7 A I can't tell you if she was -- I'll use the word
8 going along a little faster than a walk and not quite a
9 sprint.

10 Q And before Derrick Jones had pursued anyone,
11 Ms. Beckham began to run across the parking lot, correct?

12 A Well, I don't want to argue semantics about running.
13 But yes, I will agree with you that she went quickly.

14 Q Ad she was trying to get away from him.

15 A It certainly seemed that way, yes, sir.

16 Q And there is no question that Ms. Hancock was trying
17 to help Ms. Beckham get out of there quickly.

18 A I would agree with that, it seemed that way by
19 looking at the video, yes, sir.

20 Q And there is no question that they were trying to get
21 away because Ms. Beckham had been shoplifting. You agree
22 with that, don't you?

23 A Well, I can't get in the head of what either woman
24 was thinking or doing, but certainly they were trying to
25 get out of there quickly, I would agree with that.

TESTIMONY OF DONNA BECKHAM

1 Brett, and we stopped by Wal-Mart. We went into Wal-Mart
2 to browse around, my sister wasn't feeling well so she
3 went to the car. I then went and got a bag and went to
4 put some pants into the bag I shouldn't have done it.
5 Then when I went to leave Wal-Mart the lady at the door
6 asked me for a receipt, I told her I didn't have it, I sat
7 the bag down and I went to leave.

8 Q And you told her you didn't have a receipt. Did you
9 tell her anything else? Did you tell her where the
10 receipt was?

11 A I told her that my sister had it but that was a lie.

12 Q Now, once you sat the bag down -- hold on one second,
13 I apologize. I want to show you the video from Wal-Mart
14 with where you actually met the greeter and then I want to
15 ask you some questions about that. Okay?

16 A Yes, sir.

17 Q Now, is this you in the white shirt approaching the
18 greeter?

19 A Yes, sir.

20 Q Okay. Stop. Now, is that where you put the bag
21 down?

22 A Yes, sir.

23 Q If you could kind of go forward, and stop. What were
24 you doing there?

25 A I was showing her my purse.

TESTIMONY OF HOPE RAWLINGS

1 Q Did you notify both door greeters?

2 A I did.

3 Q What did you tell them to do?

4 A To stop her and ask her for a receipt.

5 Q Is that part of the normal job description or job
6 duties of a door greeter, to ask customers for a receipt?

7 A Sometimes.

8 Q Would it be out of the ordinary for a door greeter to
9 ask for a receipt?

10 A No.

11 Q Do door greeters sometimes ask to see receipts for
12 other customers leaving the Wal-Mart even if they are not
13 suspected of shoplifting?

14 A Yes.

15 Q Did you describe Donna Beckham to the door greeter?

16 A I did.

17 Q And how did you describe her?

18 A The thing that came to me first was the big
19 pocketbook so that's what I told them.

20 Q After notifying the door greeters, what did you do
21 next?

22 A When I got to the grocery door and told her I could
23 see security was sitting right in front of the grocery
24 door so I walked out there and told him, and while I was
25 telling him Shaun came over the radio and said she's going

TESTIMONY OF HOPE RAWLINGS

1 out the GM door. So I went back in the grocery door and
2 he went down towards the GM door.

3 Q You're referring to security, and was that Derrick
4 Jones?

5 A It was.

6 Q Who is Derrick Jones employed by?

7 A I have no idea.

8 Q Was he employed by Wal-Mart?

9 A No.

10 Q Did you have any responsibility over him?

11 A No.

12 Q Did you have any authority over him?

13 A No.

14 Q Did you walk outside just because you saw his truck
15 as you were talking to the door greeter?

16 A I did.

17 Q What would be the purpose in telling Mr. Jones about
18 the shoplifter?

19 A Just to give us some kind of security I guess for the
20 door greeters when they stop this person until management
21 gets up there.

22 Q Did you intend for him to do anything in particular?

23 A No.

24 Q Exactly what did you tell him before Shaun came over
25 the radio?

TESTIMONY OF HOPE RAWLINGS

1 A I just said we had a shoplifter and I seen her
2 putting stuff in bags.

3 Q Did you have any other conversations before you heard
4 Shaun?

5 A No.

6 Q Were you intending to try to stop Donna Beckham or
7 detain her in any way that night?

8 A No.

9 Q Were you intending for Derrick Jones to do that?

10 A No.

11 Q Did you ask him to approach her?

12 A No.

13 Q Did you ask him to delay her?

14 A No.

15 Q Did you ask him to even talk to Donna Beckham at all?

16 A No.

17 Q Were you intending at all to try to make him do
18 something that you could not do under the rules?

19 A No.

20 Q Were you trying to make him out to be a scape goat in
21 any way?

22 A No.

23 Q And I believe after you said Shaun Cox came over the
24 radio, where did Mr. Jones go?

25 A He went down to the GM door.

TESTIMONY OF HOPE RAWLINGS

1 of shoplifting and were going to leave the exit at general
2 merchandise."

3 A I never told him that I thought she was going to
4 leave from the GM exit.

5 Q And U. S. Security says that Ms. Rawlings asked
6 Mr. Jones to stop or delay the suspected shoplifter.

7 A I did not say that.

8 Q Was U. S. Security wrong?

9 A I guess.

10 Q And they said Mr. Cox and I think they're talking
11 about Ms. Cox.

12 A Right.

13 Q And she was the person that was there that night as
14 well, right?

15 A Right.

16 Q And it says, "Ms. Cox notified Mr. Jones of a
17 suspected shoplifter and told Mr. Jones to obtain the
18 license plate number for Ms. Hancock's car."

19 A I remember her saying, "Just get the tag number."

20 Q The thing is Ms. Cox -- okay. Y'all have a Wal-Mart
21 shoplifting policy, right?

22 A Right.

23 Q And this Wal-Mart shoplifting policy, it has four
24 different elements, right?

25 A Right.

TESTIMONY OF SHAUN COX

1 Q When you got to the doorway what exactly did you see?

2 A When I walked outside of the door directly to my left

3 I saw Derrick Jones pulled left into the aisle, Ms.

4 Beckham's car had come out in reverse and that's when the

5 start of the chase pursued, she hit the median in the

6 parking lot, went backwards then she flipped her car

7 around to face the correct direction and then they went

8 out of the parking lot up by Chic-Fil-A.

9 Q At any point during that process did you come over
10 the video -- radio?

11 A When she started exiting the store I just got a
12 description that she was leaving the door and what she was
13 wearing, when I got outside and saw as soon as her car
14 went to turn around to go to the other direction is when I
15 said, "Get her tag number."

16 Q At any point when Derrick Jones was in front of car
17 did you ever tell him to get the tag when he was in front
18 of the car?

19 A No.

20 Q Was it after she turned around?

21 A Yes.

22 Q Did you tell him once or more than once?

23 A Once.

24 Q Why did you do that?

25 A I didn't know why he was chasing her, if he could get

TESTIMONY OF SHAUN COX

1 the tag number when they left it could be handled at a
2 different time. I didn't know what happened in the
3 parking lot beforehand.

4 Q Did you think that he would stop in the parking lot?

5 A I didn't think he would leave the parking lot.

6 Q When he left the parking lot, were you surprised?

7 A Very.

8 Q Is it Wal-Mart's policy to pursue shoplifters out of
9 the parking lot?

10 A No.

11 Q Did anybody at Wal-Mart do that that night?

12 A No.

13 Q Who employees Mr. Jones?

14 A U. S. Security.

15 Q What is his basic job?

16 A I don't know all of the details of the parking lot
17 security, but I know what they've done for immediate
18 customers is to escort people to their cars and control
19 the parking lot.

20 Q Is there any prohibition to you talking to the U. S.
21 Security guard?

22 A No.

23 Q Is there any rule or prohibition against writing down
24 a license plate?

25 A No.

DIRECTED VERDICT MOTION

1 failed to establish the elements of their causes of action.
2 Let me start with Wal-Mart if I may, Your Honor. I think
3 the only two allegations that have been made against
4 Wal-Mart of any alleged wrongdoing are the instructions
5 given by Shane (sic) Cox to Mr. Jones to obtain the license
6 tag, and the failure of any of the Wal-Mart employees in
7 the parking lot, or at the front door actually, or within
8 the building to instruct Mr. Jones to stop and cease and
9 desist or come back to the store. We would submit to the
10 Court, number one, that neither of those are wrongful acts
11 in and of themselves. There certainly is absolutely
12 nothing wrong with Ms. Cox asking Mr. Jones to get the
13 license tag, and that obviously in our view was not a
14 proximate cause of anything, certainly not a proximate
15 cause of the accident. The accident was caused either by
16 the negligence and recklessness of Ms. Hancock alone or the
17 negligence and recklessness of Ms. Hancock and Mr. Jones in
18 combination. I don't think there would be a possible
19 reasonable inference in this case that the accident was
20 caused by any conduct, certainly not anything remotely
21 approaching recklessness on the part of Wal-Mart, we don't
22 think Wal-Mart's conduct was the proximate cause of the
23 accident. Obviously Wal-Mart does not employ Jones, has no
24 respondeat superior liability for his conduct. This event
25 I would submit to the Court is about as classically

DIRECTED VERDICT MOTION

1 unforeseeable as any event in the history of the law and
2 there was simply no way for anyone to foresee that Derrick
3 Jones would pursue Ms. Hancock off of the premises of
4 Wal-Mart in a high speed pursuit just because he was asked
5 to get a license tag on the premises. So on the grounds
6 that no negligence on the part of Wal-Mart, secondly on the
7 ground that no negligence of Wal-Mart was the proximate
8 cause, we would ask that the Court grant our motion for
9 directed verdict as to Wal-Mart and dismiss them from the
10 lawsuit. Alternatively if Wal-Mart is not dismissed
11 entirely, we would ask that the Court direct a verdict on
12 the punitive damages claim against Wal-Mart. This case
13 does not come within a million miles of what is required to
14 be shown to establish liability for punitive damages.
15 Wal-Mart's negligence was simple negligence at best. It is
16 nowhere near the reprehensibility requirement for the
17 constitutional application of punitive damages, and we
18 believe any liability for Wal-Mart could have in this case
19 would be only for compensatory damages even if our motion
20 for directed verdict is not granted.

21 THE COURT: Let's do these one at a time if you don't
22 mind. What about it, Mr. Hood or Mr. McKinnon, somebody?

23 MR. HOOD: Sure, I've got it, Your Honor. One, we had
24 Mr. Gross, and Mr. Gross was the security expert.
25 Mr. Gross said one -- you know, we don't know what to

DIRECTED VERDICT MOTION

1 have here, I will be the first to admit that there is --
2 Mr. Boyd is put in a terrible position because he's put in
3 this horrible untenable position of arguing for and against
4 Derrick Jones, but they're stuck with Derrick Jones'
5 testimony, now it's up to the jury to decide whether it's
6 credible or not. In one sense they want to say it's true
7 because he wasn't following them, but in everything else
8 they want to say, no, he wasn't true, it was a lie and so
9 unfortunately you're stuck with it. And when you have all
10 of these factors and all of these things that they did
11 wrong and our own security expert saying, yeah, they did
12 wrong, did wrong, yes, they violated Wal-Mart policy over
13 and over again, it all rises to the level where that would
14 be something that would require a submission to the jury
15 for their decision. The jury can decide whether there's no
16 punitive damages or not, and we've got to prove by clear
17 and convincing evidence, it's not even we've got to prove
18 by preponderance of the evidence, we've got to prove by
19 clear and convincing evidence that there's a reason to
20 submit these punitive damages, Your Honor. And it is only
21 after we show and meet that burden that they can come back
22 with something and if they say we haven't, then we haven't
23 met that burden, but it is worthy of a submission to this
24 jury for the punitive damages and to allow the jury to
25 decide that issue. Thank you.

DIRECTED VERDICT MOTION

1 MR. BOYD: Your Honor, if I may briefly reply. And
2 first, I left out one ground and I would like to supplement
3 my motion with, we would also move for a directed verdict
4 on the ground that the only reasonable inference to be
5 drawn from the evidence in this case is Ms. Hancock's own
6 negligence and recklessness was a greater than 50 percent
7 cause of the accident, even if Mr. Jones was involved and I
8 think that is -- there's simply no way the jury could
9 conclude anything else. She's the one that ran off the
10 road and crashed into the tree. He didn't lose control of
11 his car, she had to be more negligent and reckless than he
12 was as a matter of law. But let me go back for a moment
13 and talk about the grounds that I argued the first time and
14 I want to supplement a couple of things and respond to what
15 Mr. Hood argued. The plaintiff's own expert, Mr. Gross,
16 testified there was nothing with Derrick Jones speaking to
17 Ms. Beckham in the parking lot or asking if he could speak
18 to her, I do not believe the plaintiff's have presented any
19 expert testimony that that was a wrongful act. So even if
20 Mr. Jones was asked to go speak with Ms. Beckham by
21 Ms. Rawlings, that is just not a wrongful act. We're
22 talking here about very remote causes and not the
23 foreseeable proximate cause of this accident. There has
24 been no evidence of any violation of Wal-Mart's policy by a
25 Wal-Mart employee asking Mr. Jones to get the tag in the

DIRECTED VERDICT MOTION

1 that Wal-Mart should be dismissed from the case, and
2 certainly the motion -- the punitive damages claim should
3 be stricken. The plaintiff's have got to make a showing by
4 clear and convincing evidence in their case in chief that
5 they are entitled to punitive damages. They haven't made a
6 clear and convincing showing, they haven't shown the
7 reprehensibility or reckless conscience indifference to
8 safety by Wal-Mart and Wal-Mart shouldn't be in the case
9 and it certainly shouldn't be in the case for punitive
10 damages.

11 MR. HOOD: Your Honor, it's just elementary. We've
12 had expert testimony saying they've breached standards and
13 they've breached policies and broken safety rules. As far
14 as negligence goes, simple negligence, I think that's
15 just -- Wal-Mart is in this thing. In regard to the
16 punitive damages, in regard to what Mr. Boyd said, now once
17 again they're stuck with the testimony of Mr. Jones and I
18 want to put this on the record, and this is what he
19 testifies before this jury: "And then it appears she's
20 backing up and you're following her as she's backing up.
21 Right. At that time on the walkie-talkie talking to the
22 people in Wal-Mart telling them, 'Well, what do you want me
23 to do?' Basically, I mean, you didn't never -- they never
24 really gave me any distinctive instructions of what I'm
25 supposed to do when she came out of the store so I just

DIRECTED VERDICT MOTION

1 looked at it -- I just took the approach of I can't detain
2 her, I can't arrest her so I'm just trying to slow her up,
3 just trying to stall for time until they come and get her,
4 but that didn't happen that way. When she ran to the car I
5 followed behind her. They was trying -- she jumped in the
6 car, they were trying to leave the parking lot so that's
7 when I pulled in front of them. At that time that's when
8 we backed out and we see. That's when we're going up the
9 other side." Okay. And this is where he says, "At that
10 time I'm on the walkie-talkie and we're telling them --
11 they're trying to exit the parking lot, I'm behind them
12 trying to get the license plate number and they're telling
13 me, 'You need to get that license tag number.' Were they
14 aware that at the time that they told you that that she was
15 leaving the parking lot" and he said "yes." They all said
16 they saw him leaving the parking lot, they're stuck with
17 Mr. Jones' testimony, Your Honor, they can't get away from
18 that. And because they're stuck with Mr. Jones' testimony
19 and what you said -- now, the jury may say it's not
20 credible and just like Mr. Boyd is kind of stuck with both
21 of them I am too. So me saying certain things, we both
22 have to kind of like say, well, you believe him here, you
23 don't believe him there, but the bottom line is that's
24 something for the jury to decide. And it was reckless and
25 it was reckless for him to leave this parking lot,

DIRECTED VERDICT MOTION

1 everybody has said that. Alpert has said this, Gross has
2 said this, and to instruct him -- Mr. Boyd says that you
3 can't -- he said the beginning of the pursuit was the
4 beginning of the negligent conduct by Mr. Jones, but there
5 can be concurrent causes. There's a specific jury
6 instruction about concurrent causes, and in this particular
7 case if they do something that escalates this particular
8 situation that escalates that is recklessness or evidence
9 of recklessness, then that is something that should be
10 submitted to this jury, and that's if you take Wal-Mart's
11 position. If you take Mr. Jones' position he says, "I was
12 told to get the license tag number before I ever talked to
13 her," and everything was then put into motion by Wal-Mart
14 and they never called him off. Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Hood. Okay. On the issue
16 of Wal-Mart, I do not find that the Court is able to find
17 as a matter of law that Hancock was more than 50 percent
18 negligent. However, I do find that there is insufficient
19 evidence that Wal-Mart was negligent, or even if they were
20 there is lack of proximate cause that the events were not
21 foreseeable and I grant the motion to dismiss as to
22 Wal-Mart on all of the grounds argued. Next motion.

23 MR. HOOD: Your Honor, I want just a clarification
24 Your Honor. When our expert witness says --

25 THE COURT: I've already ruled.

DIRECTED VERDICT MOTION

1 MR. HOOD: But when our expert witness said --

2 THE COURT: I've already ruled.

3 MR. HOOD: I understand that, but I'm just trying to
4 get a clarification. When our expert witness says that it
5 is a breach in Wal-Mart and then we have proximate cause
6 testified to by both Gross and Alpert, how does that not
7 meet the definition --

8 THE COURT: Mr. Hood, I've already ruled.

9 MR. HOOD: Thank you, Your Honor.

10 MR. BOYD: Your Honor, the only remaining motion we
11 have, and I will not trouble the Court to make a motion for
12 directed verdict on behalf of U. S. Security Associates in
13 view of the Court's ruling about the comparative negligence
14 offense, that would be the only ground I think we would
15 have in regard to the accident. However, we would move for
16 a directed verdict on the ground that the negligent hiring
17 cause of action should be dismissed as a matter of law,
18 because there is simply -- it's just not the proximate
19 cause of anything. It was not foreseeable -- as a matter
20 of law it was not foreseeable that Derrick Jones having a
21 marijuana conviction on his record that he didn't have, or
22 had a suspended driver's license and all of the other
23 myriad of mistakes that were made in the negligent hiring
24 of Mr. Jones would make it foreseeable that Mr. Jones would
25 engage in a high speed pursuit down the highway off the

DIRECTED VERDICT MOTION

1 premises. And we simply think that this case ought to boil
2 down to a matter of whether Mr. Jones acting as our
3 employee caused the accident, and if he did cause it or
4 joined with Ms. Hancock in causing it, whether her
5 comparative negligence bars her claim. But the negligent
6 hiring that we've heard so much about during the trial is a
7 rabbit trail into the bush leading no where, and as we
8 argued at the motion for summary judgment under the
9 standard for liability here it must be foreseeable to U. S.
10 Security Associates that he will do something like this and
11 we would submit to the Court that it's just not foreseeable
12 based on the mistakes that were made in the hiring and the
13 record that Mr. Jones had, that he is going to engage in
14 this kind of conduct and there simply is no proximate cause
15 relationship between Jones' prior bad acts and his actions
16 in following Ms. Hancock from Wal-Mart premises. And we
17 have argued, Your Honor, even a properly hired
18 non-negligently hired employee could have made the same
19 mistake that Derrick Jones made, and so to us the fact that
20 he was negligently hired and had a marijuana conviction and
21 a suspended licenses for a marijuana possession, not for
22 bad driving -- he would have been recklessly driving in the
23 past and caused a lot of wrecks it might be a different
24 story. But we move for a directed verdict on that ground
25 as to the negligent hiring cause of action.

EXHIBIT D

State of South Carolina	)	
	)	
County of Lancaster	)	
	)	2007-SP-29-593
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

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Videographer:

George Mirabal

Also present:

Travis Roddey

Lavinia 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."	3

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 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.

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

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 Sores 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. ["I]f 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 [ecalate] 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 goat?

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 KHAEULS?

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.

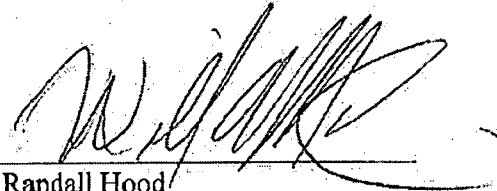
Once again, there is expert testimony on this issue, as well. Expert Gross testified Wal-Mart knew what the results would be (it was foreseeable) if they escalated a shoplifting situation in violation of their policy (Piece of Evidence No. 20). Expert Gross also testified Wal-Mart's negligence in not 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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March 26, 2010

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

FILED
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2009 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

- Faking 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?

35%

65 u/n

100%

If Defendants' percentage of negligence is 1% or greater, CONTINUE TO QUESTION 6.

- ☒ YES: GO TO QUESTION 7

YES: _____

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.

- 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.

Matthew M. Simpson
FOREPERSON

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

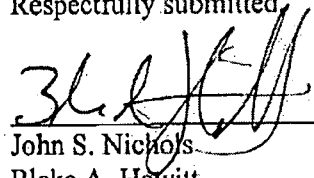
accident than the Defendants. This Court should exercise its discretion under the Thirteenth Juror Doctrine and order a new trial on the facts.

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, lines 1-10). 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

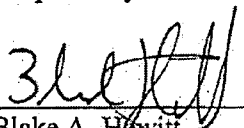
limit was 55), *id.* at 302, lines 3-16 (stipulation). Furthermore, “[c]omparison of a plaintiff’s negligence with that of the defendant is a question of fact for the jury to decide.” *Creech*, 328 S.C. at 32, 491 S.E.2d at 575. Just as the jury should have determined whether Wal-Mart was negligent and 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

**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, PA, 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 (Ct.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 (Ct. 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.

EXHIBIT J

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 DEPONENT: 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.)

Exhibit 7

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

Plaintiff,)

vs.)

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

Defendants.)
_____)

**PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION TO
DEFENDANTS' MOTION TO EXCLUDE
PLAINTIFF'S NEGLIGENT HIRING,
TRAINING, SUPERVISION, AND
ENTRUSTMENT CAUSE OF ACTION
AND/OR IN THE ALTERNATIVE
MOTION FOR SUMMARY JUDGMENT**

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 SLED-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.*

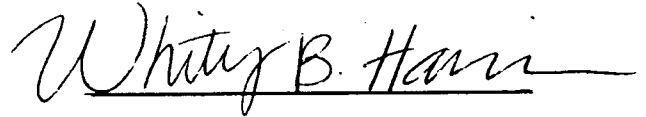
Exhibit A, Jones Deposition at p. 115 (emphasis added). One month prior to this incident, Jones pursued another vehicle off Wal-Mart property in his truck—the very same activity that led to Hancock's death. However, Defendants retained him on the payroll. In fact, when Jones sought clarification with 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

11/25/2008

Derrick L. Jones

State of South Carolina	)	
	)	
County of Lancaster	)	
	)	2007-SP-29-593
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

11/25/2008

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For Wal-Mart, Defendant
 G.D. "Doc" Morgan, Jr., Esq.
 McAnugan, Gaudetlock & Courie, L.L.C.
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Videographer: George Mirabal
 Also present: Travis Roddey
 Leanna Corpey

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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. Hancock.
 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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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 -----
 8 The reading and signing of this deposition is
 9 waived by the deponent and counsel for the
 10 respective parties.
 11 Whereupon,
 12 Derrick L. Jones, being duly sworn and
 13 cautioned to speak the truth, the whole truth,
 14 and nothing but the truth, testified as
 15 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.

25 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

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1 because madam court reporter has to be able to get
 2 an accurate record of what we're going to be
 3 discussing today, okay?
 4 A Okay.
 5 Q And if I -- if I prompt you, it's only because
 6 that's just -- that's just the rules.
 7 A Okay.
 8 Q And -- and the last thing: I'll ask a question,
 9 and if you'll wait till I get my question out to
 10 give your response, I would appreciate that. And
 11 if I ever cut you off, I'm telling you now it's
 12 unintentional. Let me know, "I wasn't finished,"
 13 and I'll be glad to let you finish because when we
 14 talk over each other, the court reporter can't get
 15 it down accurately, okay?
 16 A Okay.
 17 Q Now, could you please -- excuse me -- could you
 18 please tell us your full name?
 19 A My full name is Derrick Lamont Jones.
 20 Q Okay. Mr. Jones, where do you live at?
 21 A I live at 2376 Baron Dekalb Road, Camden, South
 22 Carolina, ZIP Code 29020.
 23 Q Okay. And what's your date of birth?
 24 A My date of birth is 9/28/78.
 25 Q Okay. And do you have a South Carolina driver's

1 A Uh-huh.
 2 Q -- or a few days ago.
 3 A Uh-huh.
 4 Q And this is a request to admit to you.
 5 A Uh-huh.
 6 Q Okay?
 7 Why don't you read No. 1 for me, and then you
 8 read your response for the record --
 9 A Okay.
 10 Q -- for this jury.
 11 A Responses No. 1 says, "Admit that Derrick Jones' SC
 12 driver's license was suspended on June 20th, 2006."
 13 Q And what was your answer?
 14 A "Response: Defendant Derrick Jones admits that --
 15 this request upon information and belief." No. 1
 16 never admitted that.
 17 Q Okay. So were you lying or your lawyer lying?
 18 MS. FLYNN: No.
 19 A No. I'm not lying. Far as June 20th of 2006 --
 20 Q Yes.
 21 A -- that my license was suspended? No.
 22 Q Okay. Well, let's go to, then, Tab No. -- in this
 23 notebook you've got --
 24 A Yes.
 25 Q -- I've got a bunch of tabs for you.

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1 license?
 2 A Yes, I do.
 3 Q Is it suspended?
 4 A Yes. Currently, it is.
 5 Q Okay. How did you get to this deposition today?
 6 A My lawyer, Stephanie Flynn.
 7 Q Okay.
 8 A Uh-huh.
 9 Q And how did you get to Stephanie Flynn's office?
 10 Where'd she pick you up at?
 11 A She picked me up at my residence.
 12 Q Okay.
 13 A Uh-huh.
 14 Q Are you working anywhere right now?
 15 A Not at this moment.
 16 Q Okay. Are you driving your car at this time?
 17 A No, sir.
 18 Q You were driving your car on June 20th, 2006,
 19 right?
 20 A Yes, sir.
 21 Q Your license was suspended at that time, though,
 22 right?
 23 A No, sir.
 24 Q Well, let me show you this. This is something we
 25 received yesterday -- or --

1 A Okay. What tab are we going to?
 2 Q We're going to Tab 54.
 3 A Tab 54?
 4 MS. FLYNN: I don't have 54.
 5 MR. MCKINNON: Forty-nine.
 6 THE DEPONENT: I don't --
 7 MR. HOOD: Forty-nine. I'm sorry.
 8 MR. MCKINNON: For 49.
 9 THE DEPONENT: Oh, okay.
 10 MR. HOOD: I've got it.
 11 THE DEPONENT: Tab 40.
 12 MR. HOOD: I apologize.
 13 THE DEPONENT: No.
 14 MR. HOOD: I've got -- some --
 15 THE DEPONENT: Not --
 16 MR. HOOD: -- of these --
 17 THE DEPONENT: -- a problem.
 18 MR. HOOD: -- are --
 19 MR. MCKINNON: Yeah.
 20 THE DEPONENT: Forty-nine. Hold on.
 21 (Sotto voce discussion between
 22 Mr. McKinnon and Mr. Stewart.)
 23 (Sotto voce discussion between
 24 Mr. Hood and Mr. McKinnon.)
 25 THE DEPONENT: Forty-nine.

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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	1 A Seeing that I see that stated, far as your dates 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 it was not brought 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 an 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 11	Page 13
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?	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 those 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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1 A Uh-huh. 2 Q -- you took a -- this is a drug test you took on 3 5/16/2006; do you see that? 4 A Yes, sir. 5 Q You had marijuana in your system at that time, 6 didn't you? 7 A No, sir. Because I passed the test. 8 Q You didn't -- 9 A I got -- 10 Q -- pass -- 11 A -- the -- 12 Q -- the -- 13 A -- job. 14 Q -- test, did you? 15 A I mean, yeah, I did. 16 Q Well, that doesn't have a line beside that "THC." 17 It seems like you got something in -- 18 A Yeah. 19 Q -- your -- 20 A I -- 21 Q -- system. 22 A -- see -- I see that. But at the time I took the 23 test, I passed the test. Mr. Bill Thompson took 24 the test. He the one performed the test with me. 25 And at the time -- at that time I -- I assume to	1 MR. MCKINNON: Twenty-eight 2 THE DEPONENT: Twenty-eight. 3 MR. HOOD: Twenty-eight. And we're going to 4 the middle. It's like it -- they are -- it's 5 probably -- about 15 pages in, there's a -- 6 there's a sheet and it says, "kk," and it's 7 right after that. And it's the purpose -- 8 it's the employee drug screening, Policy No. 9 650-01. 10 THE DEPONENT: Okay. 11 MR. HOOD: (To the deponent) It's right here. 12 THE DEPONENT: Have I passed it or ... 13 MR. HOOD: Yeah. Hold one second. I think you 14 -- 15 THE DEPONENT: It's about 15 pages in? 16 MR. HOOD: Let me see if we can find -- that's 17 II. 18 THE DEPONENT: Okay. 19 MR. HOOD: That's JJ. It's the next one. KK. 20 There we go. 21 THE DEPONENT: Okay. 22 MR. MCKINNON: It's about two-thirds in. 23 MR. HOOD: There we go. 24 MR. MORGAN: Two-thirds in? 25 MR. HOOD: There we go.
Page 15	Page 17
1 appear to have passed the test because he the one 2 signed off on it. If I had failed the test, it was 3 not brung to my knowledge. 4 Q Okay. So Mr. Bill Thompson is the person that then 5 hired you, even though you had a test that 6 indicated marijuana in your system? 7 A Yes, sir. I was hired by Mr. Bill -- William 8 Thompson. 9 Q Okay. And my question to you is: You were hired, 10 even though this test indicates you had marijuana 11 in your system, right? 12 A Yes, sir. I was hired. 13 Q Okay. Now, then let's go to Tab No. 32. The 28 -- 14 it's going to be 28. 15 A Twenty-eight? 16 Q Yes. 17 A Okay. Tab 28. 18 Q Excuse me. I'm sorry. I apologize. Thirty-one. 19 A Thirty-one. Tab 31. 20 Q I apologize. It was 28. 21 A Twenty-eight? 22 Q I was wrong. It's my fault, man. 23 A Not a problem at all. Thirty, 29, 28. 24 MR. MORGAN: (To Mr. Hood) All right. Which 25 one're we on?	1 MR. MCKINNON: Yeah. 2 Q This is a U.S. Security Associates policy and 3 procedure. The date of that is April 15th, 2004; do 4 you see that? 5 A Yes, sir. 6 Q Do you see the -- where it says, "The Purpose"? 7 A Yes, sir. 8 Q And could you read what it says for purpose? 9 A For purpose it says, "To provide the company policy 10 and procedure regarding employee drug screenings." 11 Q Okay. And then do you see "5" under "Procedure"? 12 A Yes, sir. 13 Q And do you see where it has "5.1 Preassignment Drug 14 Testing"? 15 A Yes, sir. 16 Q Can you read that for us? 17 A Yes, sir. "All applicants for employment will be 18 administered a five-panel drug screen as part of 19 the employment process as defined in paragraph 20 644 of the phrase to employment eligibility and 21 background screening section of U.S. P&P, 630-02. 22 The following procedures will apply." 23 Q Okay. Now, if you go to the next page. 24 A Okay. 25 Q Okay. And -- and I'm going to look at -- do you see

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1 where it has "5.1.5.1"?

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 'CTL.' 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 not 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, "5.1." --

9 A "5." --

10 Q "5." --

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

Page 20

1 of 2006, right?

2 MS. FLYNN: Object to the form. (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 one.

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 Q 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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Page 24

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, sir.
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 they 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. FLYNN: 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 -- SLED 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 administrated 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 that 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 y'all had forms at U.S. Security	1 they say the "uh-huh" or "unh-unh." 2 A Oh, I'm 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. v 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 --	1	that as well.
2	MR. HOOD: Let's --	2	A Okay.
3	MR. MCKINNON: -- me --	3	MR. HOOD: (To Ms. Flynn) Is there something
4	MR. HOOD: -- see.	4	else that we're not getting?
5	MR. MCKINNON: -- look real --	5	MS. FLYNN: I've given you everything that I've
6	MR. HOOD: I've --	6	got -- I mean, everything that I -- I've asked
7	MR. MCKINNON: -- quick.	7	and asked and asked. That's everything that I
8	MR. HOOD: -- got to find my -- let me get my	8	know that exists.
9	index.	9	MR. HOOD: Who -- who would we need to talk to
10	MR. MCKINNON: Tab 13, maybe.	10	at -- at -- at U.S. Security to find out if
11	A Tab 13.	11	they're giving -- and I -- and I know it's not
12	Q This is a letter from SLED to you specifically.	12	you. But I need to find out because, you know,
13	A Uh-huh.	13	we're taking his deposition today, and we're
14	Q Do you see that?	14	entitled to ask him questions about those
15	A Uh-huh.	15	particular documents because he has a right to
16	Q And this is not from U.S. Security. And this	16	be able to answer questions about those
17	doesn't appear to be something that was sent to U.S.	17	documents. And if they're not giving you the
18	Security. This looks like it was sent to you; do	18	documents, how am I supposed to ask him
19	you see that?	19	questions about them?
20	A Yeah. I see it says, "Mr. Derrick L. Jones,	20	MS. FLYNN: I understand. I believe that they
21	261 Dixon Road," yes.	21	have given me everything -- I've been told and
22	Q Now, is it your testimony today that you also	22	-- affirmed to me that they've -- I've been
23	received something from U.S. Security about your	23	given every shred of document -- every piece of
24	license being suspended?	24	evidence relating to this accident. So to my
25	A Well, I want to say "yeah" because when I talked to	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	1	would certainly -- I have no problems asking
2	telling me that, you know, I'm getting all these	2	again.
3	charges, and he was telling me, "It's saying that	3	MR. HOOD: Have they lost an incident report?
4	your license is being suspended" --	4	MS. FLYNN: They've not -- they've not told me
5	Q I'm --	5	that they ever had one.
6	A -- due to the fact of -- of the marijuana charge and	6	MR. HOOD: Okay. And I'm just going to put
7	all this and all that -- he's like, "I'm going to	7	this on the record. And -- and, of course, you
8	send you what I've retrieved."	8	can object, but I'm going to at this time -- we
9	So if this is a letter from SLED directly --	9	obviously are going to continue with the
10	sent directly to me, then, yes. I've received more	10	deposition, but I'm going to request that the
11	than one letter.	11	deposition be -- remain -- that it remain open.
12	Q Okay. And -- and you would've received that letter	12	If other documents are found, that we be
13	from U.S. Security, right?	13	allowed to be able to question Mr. Jones about
14	A Right.	14	those particular documents because it appears
15	Q Now, the -- and the reason I ask that is --	15	that there are at least two -- we're only
16	A Uh-huh.	16	30 minutes into this thing -- there are two
17	Q -- I go through this -- and feel free -- and --	17	specific documents that Mr. Jones can recall
18	A Okay.	18	that we have not been provided at this
19	Q -- and you can look through this entire packet.	19	particular time, even though Ms. Flynn has said
20	A Okay.	20	they have done an exhaustive search and she has
21	Q I don't see one thing in this SLED packet that talks	21	provided us everything and every stick of paper
22	about your license being suspended.	22	they can find in regard to this accident.
23	A Okay.	23	MS. FLYNN: In the event that -- that
24	Q And I'm wondering where that document is from --	24	additional documents do arise, I don't have an
25	from U.S. Security because we haven't been provided	25	objection to the limited scope of the --

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1	MR. HOOD: Okay.	1	cannot detain, so what do you want me to do?"
2	MS. FLYNN: -- deposition --	2	They told me, "Well, just try to kind of like
3	MR. HOOD: Okay.	3	delay -- you know, try to delay her. Try to talk to
4	MS. FLYNN: -- related to those documents	4	her until we can get out there."
5	specifically.	5	When she came out, it kind of appeared to me
6	MR. HOOD: Okay.	6	that she walked right up to my truck. When I rolled
7	Q Mr. Jones, now I'm going to probably just kind of go	7	the window down, I say, "Hey, how you doing?"
8	through this thing just from the beginning --	8	She say, "Hey, how you doing?"
9	A Okay.	9	I say, "Can I talk to you for a minute, ma'am?"
10	Q -- basically. But I think we're going to start at,	10	She say, "Well, let me just throw my bag in the
11	I think, Tab 4.	11	car, and I'll be right back."
12	A Tab 4. Okay.	12	I say, "Well, you know, no need for all that.
13	Q Okay. Now, this is a -- this is a statement from	13	It'll -- it'll just take a minute."
14	Shawn Cox, who I think was a customer service agent	14	Once I said "it'll just take a minute," that's
15	or a customer service individual at Wal-Mart.	15	when she took out running. She got in the car. At
16	A Okay.	16	that time they were trying to -- they were -- they
17	Q At the top it's dated June 20th, 2006.	17	were trying to leave, but my truck was blocking the
18	A Uh-huh.	18	exit, far as, like, you know how you come down the
19	Q Feel free to read this whole thing because I'm just	19	aisle? And my truck was blocking that exit, so they
20	going to ask you about two or three sentences in	20	backed up.
21	here.	21	Q Well, you actually pulled your truck around to block
22	A Okay.	22	their exit --
23	MR. MORGAN: (To Mr. McKinnon) Tab what?	23	A Right.
24	MR. MCKINNON: Tab 4. It's Shawn Cox's	24	Q -- didn't you?
25	handwritten statement, Doc.	25	A Because I was trying to get the license plate tag
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1	A Okay.	1	because the whole time all I'm hearing from Wal-Mart
2	Q Okay. Going down probably about -- the page, and I	2	was, "You've got to get that license plate tag. We
3	start with -- at -- towards the bottom it says, "I	3	need that license plate tag number."
4	told him -- security -- to get her tag number."	4	Q Did they tell you why they needed the license plate
5	It's at the very -- it's towards the bottom. It's	5	tag?
6	-- said --	6	A No. I can't necessarily say they specified the
7	A Uh-huh.	7	urgency or the reason why I had to get the license
8	Q -- "I told" --	8	plate tag, but they did specify I needed to get that
9	A Saying, "and sped towards the stop sign. She did	9	license plate tag number.
10	not stop. I told him -- security -- to get the" --	10	Q Okay. And what was your understanding of what would
11	yes. Yes. Right.	11	happen if you didn't get the license plate tag
12	Q Okay. And it says, "I told him -- security -- to	12	number?
13	get her tag number right after she started towards	13	A I just kind of -- I mean, the way -- the way they
14	Chick-fil-A"; do --	14	were coming off, I kind of felt like if I didn't get
15	A Uh-huh.	15	this license plate number, I -- I -- I could be
16	Q -- you see that?	16	fired for, you know, not doing my job. They can go
17	A Yes, sir.	17	back to Bill. They can go back to U.S. Security and
18	Q What do you recall about what you were told by Wal-	18	say, "Well, we don't want him back here on our site
19	Mart to do in regard to this specific incident?	19	because he's not -- he's not up to the task. He
20	A I know it was around 10 -- 10:15ish, somewhere around	20	didn't do what we said we wanted him to do." That's
21	there. I got the call over the walkie-talkie,	21	how I kind of felt then.
22	telling me that there was a shoplifter coming out of	22	Q Okay. And did you recognize the voice that came
23	the GM side. At that time I asked them, "Well, what	23	over that walkie-talkie?
24	do you want me to do because I am a security	24	A Actually, it was more than one voice. At first I
25	officer, I'm not a -- I'm not a police officer. I	25	was talking to Hope. Then I was talking to Ms. 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 "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 you had to go 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 this 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 events that took -- I -- I
 9 have really -- to take a guess, I would probably say
 10 -- I have no clue. It maybe 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 it 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 swerving 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 I
 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 they 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 they car. It was people getting out
 21 of a car. So I thought maybe that've been them, so
 22 I could've just, you know, rolled in the parking
 23 lot, rolled behind they 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 complex, go to
2 the right, go on down a little bit further. Once I
3 was just like, "Man, they gone." I turns 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, on -- 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 it --
 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 the vehicle.
 3 Q Okay. You were already at 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 it was deep
 10 enough. It was definitely like a hill.
 11 Q Okay.
 12 A A little --
 13 Q Were --
 14 A -- hill.
 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 nice -- like, say, if you got a

1 Q -- passenger --
 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 took 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 -- 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 gone 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 --
 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.

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 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, hystatic [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. Izzard 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. Izzard -- 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 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, "Oh, 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 Far as the -- 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 stressing
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 it "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 to
 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," even.
 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 officer
 2 that searched my car. So how could you have found
 3 crack cocaine in my car when, at the time, I'm in
 4 jail?
 5 So I end up going back to jail at ten o'clock
 6 that morning. I got back out a 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, me -- in
4 front of me, in front of the judge, they contact him
5 on -- 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," this, that, and the third. 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

(Sotto voce discussion between
Mr. Stewart and Mr. McKinnon.)
3 A -- due to the fact of -- to get the crack cocaine --
4 trumped-up crack cocaine charges dropped, it 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 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 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 like. 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 became 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 sticking 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 trying --
 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. Plyler's statement.
 3 A Okay.
 4 Q Mr. Plyler's statement is -- let me see. It is No.
 5 44 for you.
 6 A Forty-four. Forty-four.
 7 MR. HOOD: (To Mr. McKinnon) Sure.
 8 Q This is Mr. Plyler'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 burnoned 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 their --
 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. Izzard.
 23 Did you continue talking -- how long do you
 24 think you were out there with Ms. Izzard?
 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. Izzard?
 4 A Uh-huh.
 5 Q Did you -- when you went back up the road to stop
 6 Ms. Izzard, 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 state 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. Izzard?
 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 to her, what happened
6 then?
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 -- 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

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1 is her laying back; you know what I'm saying? And
2 when I -- when -- when I was observing her laying
3 back, that's when -- what is it? -- the -- the fire
4 -- the fire dude?
5 Q Yeah.
6 A That's when 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 hyphenated [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's
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've asked me that, when you can plainly see I'm
2 -- it says, "security."
3 But other than that, I don't really remember a
4 -- a full-fledged conversations, 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 seems 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

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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 doing 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 them.
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 in
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."

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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 DEPONENT: 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 wouldn'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 him don't really too much be 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 get 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, be -- 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 daddy 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 At the --

4 A At U.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 if 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 Unh-unh.

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 this: 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

1 get no badge of honor tonight. Just -- you're not
 2 going to -- it's not going to be no major bust 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 -- 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 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 yea 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 his
 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 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 -- 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 I met 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. It 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	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 handbook 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 wasn'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 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 license plate tag number, that's what hyphenated [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 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 1.2 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 1.2.
 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 there is nobody supposed to be detained after
 3 they had -- if they've left the goods there 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 was -- 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 lists 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 stole
 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 3.15 --
 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 definitive requirements of what must be
2 accomplished and how. Post-orders will utilize --
3 utilize the following format." 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 -- it's kind of like
2 behind the Wal-Mart, but it's another exit, like.
3 say, from automotive 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 Jack 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 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.
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? All 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 rock and a hard place," what 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?	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 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 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 filled
 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, that, 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 3.3.2 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 Darnell 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.
 18 (Sotto voce discussion between
 19 Mr. Hood and Mr. McKinnon.)
 20 Q Now, underneath that it says that there are other
 21 violations which may result in immediate termination
 22 would be knowingly submitting false
 23 reports/falsehoods; you see that, right?
 24 A Yes.
 25 (Sotto voce discussion between

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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 13?
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 to, 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.
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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 At 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, telling 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; I've known 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 came 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 Well, 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 they store,

1 contractor?
 2 A They hired us in through Wal-Mart, but they only
 3 hired us far 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 there
 17 doesn't have anything over there as far as the
 18 reason for living -- leaving.
 19 A I left doing work for them because business kind of
 20 slowed up --
 21 Q Right.
 22 A -- at the time. Like I say, I was doing studio
 23 engineering, so we was -- I was getting -- I was
 24 getting paid, like, \$20 an hour, far 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 2000 -- 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 Juring this time?
 2 A Yeah. I could say so. I could say so. I think I
 3 might've worked a couple ins and out, odd 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 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.

1 know, versus 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 is dropped."
 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 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 SLED
 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 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, has" 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.

1 Q And then you would have left, right?
 2 A I sat there 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 Jack in 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 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 -- 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 803-427-1915.
 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; it
 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 nearly identical to the same statement that you did

1 says, w-h-e-r-e; that's supposed to be "were
 2 driving," right?
 3 A Where that at? On the first statement?
 4 Q The -- the middle of the page. Yeah.
 5 A (The deponent 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 Ms. 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." It

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 twice? Maybe, you know what I'm saying. 2 Q Okay. 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, "Gallagher 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. Do -- 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	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 the -- it says, 9 "Jones; collection date 5/16/06," and then it -- 10 under the THC, 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 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 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 of 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 y'all -- do y'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 9010030. 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 SLED 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, "Unarmed 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. Nance"; 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, I want 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.

1 THE DEPONENT: 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 maybe 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 Q Okay.
 2 A I really didn't, you know -- I -- 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 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 this 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 Only thing I could probably say is from U.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 resident. 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. Unh-unh. 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 -- it 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 whomever from any liability arising out of or
2 resulting from releasing this information"; do you
3 see that?
4 A I do.
5 Q Underneath that it 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 (Sotto voce 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 9910045, 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, yep.
 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 go 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 -- 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 normal shift is -- 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." 6.1. 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 Officeret 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 processant -- 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 It -- 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 the 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 I'm going to Tab 17.
 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. FLYNN: Object to the form.
 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.
 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 this 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 mean 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 if --
 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 "ii."
 18 This is going to be --
 19 A Before you get to 29 or ...
 20 Q Yes. Yes.
 21 MR. MORGAN: Did you say "ii," Randy?
 22 MR. HOOD: Yes.
 23 MR. MCKINNON: "LL", actually, I think.
 24 MR. HOOD: It's "ii."
 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 "6.1.4, 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
 22 130/1 (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 this 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 details 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?

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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 as either an observer/participant of the
5 incident or as a first individual an incident is
6 reported to. If the incident reports -- warrants
7 immediate attention, the appropriate supervisor
8 and/or branch or operations manager should be
9 notified by telephone"; do you see that?
10 A I do.
11 Q Did you notify anybody other than your father of
12 this particular incident?
13 A I didn't.
14 Q Okay.
15 A Not that night of the accident.
16 Q Okay.
17 A I didn't.
18 Q Okay.
19 A I didn't talk to Bill Thompson until the next day.
20 Q Okay. And then 5.2 says, "Supervisors can and
21 should complete the incident reports, in addition to
22 reviewing the security officer's report, as to their
23 personal involvement"; do you see that?
24 A I do.
25 Q Do you know if Bill Thompson ever completed an

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1 incident report"
2 A Not to my knowledge.
3 Q Okay.
4 A I -- 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 Hylant-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 Q Do you know if a copy of the incident report was
2 forwarded to Hylant-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
 6 project manager."
 7 A Uh-huh.
 8 Q You don't know who that would've been, do you?
 9 A No.
 10 Q Okay. But it would've gone through different chains
 11 of command with U.S. Security, right?
 12 A It would've had to.
 13 Q Okay.
 14 A Basically, like I say, when we -- when I filed the
 15 incident report with my daily log, I -- I didn't
 16 give it to Bill. You know what I'm saying?
 17 Q Sure.
 18 A We just filed it like we normally do.
 19 Q Okay.
 20 A Like, every day we'd have to log in and, you know,
 21 write what we did, far as on site, you know, on the
 22 shift, and you -- you filed that right there in the
 23 truck. I mean, we had everything in the truck. So
 24 I guess he would get that at the end of the week or,
 25 you know, when we had to turn in our time sheets;

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
 6 applicants whose sample shows the presence of an
 7 illegal drug must be informed that they are
 8 ineligible for hire."
 9 Q Did Bill Thompson ever inform you you were
 10 ineligible for hire?
 11 A No.
 12 Q If you go down to 5.2, do you see "5.2"?
 13 A Yes.
 14 Q "Drug Testing for Cause"?
 15 A Yes.
 16 Q It says, "Any employee who causes or contributes to
 17 an on-the-job accident or a near-miss in which
 18 injuries occur, property damage results, or the
 19 potential for such injury or damage existed will be
 20 tested for cause. Testing where damage has occurred
 21 includes reasonable suspicion that an employee is
 22 under the influence of drug."
 23 After this particular accident -- never mind.
 24 Never mind. Never mind. I -- I -- I withdraw it.
 25 Okay.

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1 that's when he would receive incident reports and
 2 the daily log sheets and stuff like that.
 3 Q Okay. And -- and -- and I -- you've seen where we
 4 got the sign-in sheet, but we don't have the
 5 incident report.
 6 A Yes.
 7 Q And -- and you don't have an explanation for that?
 8 A I -- I really don't.
 9 Q Okay.
 10 A I really don't.
 11 Q Okay. Let's go to -- I'm going to, now, kk.
 12 A Uh-huh.
 13 Q I'm sorry. We've already gone over that. Wait.
 14 Wait. Let me go a little bit -- I'm going to go
 15 over it some. But --
 16 A Okay.
 17 Q -- at -- we're under kk at 650-01. "Employee Drug
 18 Screening."
 19 A Okay.
 20 Q Now we've -- we've looked at this a little bit, and
 21 your -- understand that this just basically goes
 22 over the policy regarding the drug screen, right?
 23 A Right.
 24 Q And I'm just going to -- if I -- if you go to the
 25 third page, page 3 of 6.

1 Now when you took these tests to become the
 2 security officer with U.S. Security Associates, did
 3 you pass your test on the first try?
 4 A Yes.
 5 Q Okay.
 6 A Yes. Now, you -- you talking about far as
 7 Those --
 8 A -- drug screenings or --
 9 Q The -- no, no. Those things where you filled out
 10 and you --
 11 A The --
 12 Q -- you --
 13 A -- tests?
 14 Q -- got -- yes.
 15 A Yeah. Yeah. Yeah. Okay.
 16 Q Okay.
 17 A Definitely.
 18 Q Okay. I'm going to go to Exhibit 2A. It's page
 19 8 of 21.
 20 A Twenty-one.
 21 Q Under "Security and Officer Supervised Security
 22 Supervised Training" [sic], and it has "Security
 23 officer" --
 24 A What tab we going -- I'm sorry.
 25 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 "4742-3 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 yea or nay 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

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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 know, 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 indication 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. Its 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?

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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?

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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 "addendum." And it's at their -- their -- their
 2 page is WM2007 --
 3 A -- seven? 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 II 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 to --
 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. 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.
 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 at Wal-Mart.
 7 Trooper Howard, we know what he did. Trooper
 8 Burgess, the M.A.I.T. team. We know Phyllis Wright,
 9 Charles Campbell, and Chris Tipton, Patrolman
 10 Campbell, Paul Smith, Sam Plyler, Henrietta Izzard,
 11 Sam Hucy. 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. Izzard
 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. Kenric 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 "Q" --
 12 A Number 5?
 13 Q -- "Derrick Jones. No. Under No. 5. Be page 11.
 14 Be the next page.
 15 A Okay. And it has me where?
 16 Q At the -- at -- under "Q."
 17 A Okay. "Mr. Marshall is general counsel for U.S.
 18 Security Associates, Inc."
 19 Q And then it has "Q, 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 y'all talked on

1 so I want to say either yea or nay -- I really don't
 2 remember if I had my glasses that day.
 3 Q Okay.
 4 A I had just came --
 5 Q Because you came straight from the airport straight
 6 to --
 7 A Right. I --
 8 Q -- Wal-Mart?
 9 A -- had just came from -- I had just came 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 6, "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. FLYNN: Okay.
 2 (Off the record from 2:28 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 -- four forty -- 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 came 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: Eight, I think. Randy.
9 Q Excuse me. Eight. 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 hyphenated [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 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 me 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 "G, 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 "©" -- 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 Buffalo 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?

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 Tab 9, page -- okay. I don't need that.
6 We've gone over that.
7 Going to page 23. It's actually 22 and then
8 it'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 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 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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Derrick L. Jones

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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 McAlewin's.
7 Q Okay.
8 A That's about all I got for you: Jones and
9 McAlewin's --
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.

1 Q Okay.
2 A Never.
3 Q Was that the first time?
4 A That was the first time I ever been 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 Do you know where any of the McAlewin's 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.

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 get 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 voce 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 voce 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 get 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/four 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 up 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 tried to do --
3 Q Okay.
4 A -- was got 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 it 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 DEPONENT: Oh, I didn't see --
 2 MS. FLYNN: -- talking about the --
 3 THE DEPONENT: -- the -- I didn't see --
 4 MS. FLYNN: -- accident site.
 5 THE DEPONENT: -- 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. Were -- 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 crush 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, like I 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 office up there.
 2 Q Okay. Do you know -- I believe you've already
 3 answered this but -- 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 DEPONENT: 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 DEPONENT: 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'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 -- 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.

1 Q All right. And as 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 say, 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 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.

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 comprised 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 y'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? -- the Hucks guy, basically --
 5 Q Richard Hucks?
 6 A Right. He basically just kind of came -- came down
 7 and, you know, talked 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 y'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 y'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. Securities' 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 -- I met them
 3 there.
 4 Q All right. So y'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 y'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 at -- 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 to 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

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 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 this --
 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 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. Securities"?
 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.

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. It'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 he any 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 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 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 -- 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 a 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 or how

1 Q All right. Was that your first day on the job?
 2 A I want to believe -- 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 8.25/8.50. 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 -- well, 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 almost 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 how 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 say, 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 -- 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 Naw. She opened the door. She went --
 23 Q Okay. And went through the door --
 24 A -- 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 backseat, 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 I -- 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.	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 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 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 the -- 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

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 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 Once: 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 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 the attitude.
 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 only 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, shoo, 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 but 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?

Pages 302 to 305

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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 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 PPSB 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

7/23/2008

Page 16

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 watch 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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1 store, I motioned to Sarah, the door greeter,
2 that that was her so that she would know to stop
3 her. And I observed Sarah talk with her. And
4 Ms. Beckham had put the bag in front of the ice
5 machine, and Sarah continued to have a few words
6 with her. And then Ms. Beckham started to exit
7 the door and I followed her, radioed security
8 she was leaving the GM door, and I described her
9 clothing, and that's when I exited the store.

10 Q Okay. Go on.

11 A I exited the store and looked to the left.
12 Security, Mr. Jones, turned up the same parking,
13 what do you call them, lane.

14 Q Sure. Aisle.

15 A At that point the car was in reverse and was at
16 a high rate of speed, went over at least the one
17 curb that was in the center of the parking lot.
18 She went to flip around because the back end of
19 her car -- if you're driving, the back end of
20 her car went to the right. He was still in
21 front of her. They were nose to nose. She
22 flipped her car around and started to proceed in
23 the forward fashion, and that is when I told him
24 to get her tag number.

25 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 MS. 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. Jones 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. Beckham 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

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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?

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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 --

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- 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

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, 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.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No.: 2007-CP-29-0593

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

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, States 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 it's 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.

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 it's 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 it's 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 it's 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 than 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.

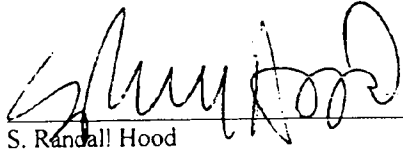
FOR A THIRD CAUSE OF ACTION
(Negligence - Respondeat Superior - Survivorship Action)
(Negligent Hiring, Training, Supervision and Entrustment - Survivorship Action)

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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July 25, 2007

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Exhibit F

**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, PA, 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 (Ct.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 (Ct. 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.

Exhibit G

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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April 13, 2016
Greenville, SC

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

RECEIVED

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

APR 14 2016

**Appeal from Lancaster County S.C. SUPREME COURT
Court of Common Pleas**

Brooks P. Goldsmith, Circuit Court Judge

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.

PROOF OF SERVICE

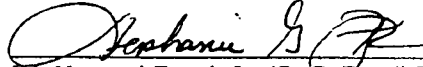
The undersigned hereby certifies that on the 13th day of April, 2016, a copy of Respondents' Petition for Rehearing was served by placing a copy of the Petition in an envelope with sufficient postage prepaid, and mailing it to counsel for Petitioner as follows:

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April 13, 2016


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Exhibit H

The Supreme Court of South Carolina

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

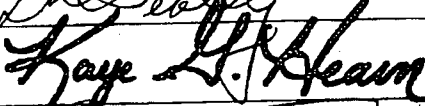
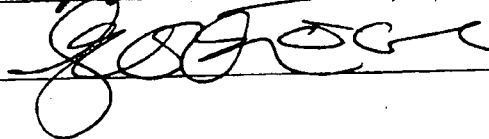
v.

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

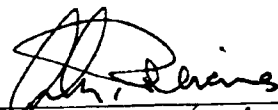
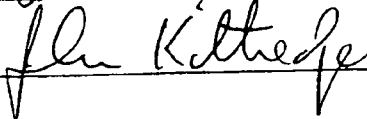
Appellate Case No. 2012-213375

ORDER

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

 J.
 J.
 A.J.

I would grant the Petition for Rehearing.

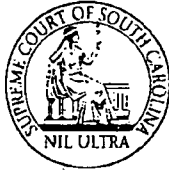
 C.J.
 J.

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

Exhibit I



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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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

Exhibit 8

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,
)

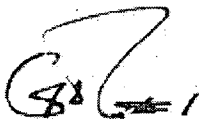
)
) Defendants.
)

**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

BJ 2

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

Q 1-4

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

 5

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. ATC, 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,

 # 6

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).

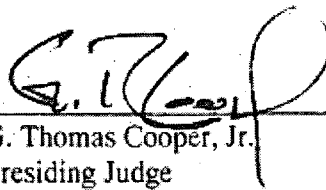
To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning 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

Exhibit 9

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 14th 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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# **Exhibit 10**



## Whitney Harrison

---

**From:** Shawn B. Deery  
**Sent:** Friday, November 04, 2016 3:35 PM  
**To:** Cooper, G. Thomas; Randy Hood  
**Cc:** Stephanie Flynn; Whitney Harrison; Cooper, G. Thomas Law Clerk (George C. James, III); Mitch Norrell; Norrell, Ilc Norrell & powers; Brent Stewart; Howard Boyd; Jessica Cooksey  
**Subject:** RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Judge Cooper: We would agree that the rule reads the way Mrs. Flynn points out. However, we do not believe that under these facts, the remaining half of the case could proceed to trial following our appeal of the recent Order. In all the cases we found that discuss the "not affected by the appeal" language of Rules 205 and 241(a), SCACR, the issues remaining in the circuit court were totally unrelated to the issue that was being appealed.

For instance, in *Mets v. Mims*, 384. S.C. 491, 682 S.E.2d 813 (2009) (discussing Rule 205), the issue appealed was an order regarding punitive damages and the half that remained in the circuit court dealt with the merits of a libel claim.

We do not believe such as separation exists here. In our view we are appealing the whole case because the recent Order essentially strikes a cause of action from Plaintiff's Complaint that we believe is still viable.

We look forward to speaking with everyone shortly.

Shawn

Shawn B. Deery  
803-779-0100 (Phone)  
sdeery@mcgowanhood.com (Email)

-----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, Ilc 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 <rhood@mcgowanhood.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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>

> -----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, Ilc 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.  
> 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:  
> [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.gwblawfirm.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com)  
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> This message is from the law firm Gallivan, White & Boyd, PA and may  
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> named recipient(s), please notify the sender and delete this email.

> Thank you -----Original Message-----

> From: Randy Hood [mailto:rhod@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, Ilc 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)  
> rhod@mcgowanhood.com  
> www.mcgowanhood.com

>  
> Additional offices located in:  
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> 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 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  
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>> Columbia, SC . Anderson, SC . Charlotte, NC . Georgetown, SC .  
>> Sumter, SC  
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>> 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.  
>>  
>> 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 pursuit 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 pursuit 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  
>>  
>> sflynn@GWBlawfirm.com<mailto:sflynn@GWBlawfirm.com>  
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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](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com)  
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> [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.gwblawfirm.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com)  
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> 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 <rhood@mcgowanhood.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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>> -----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, Ilc 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.

>> 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:

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>> Thank you -----Original Message-----

>> From: Randy Hood [mailto:rhoon@mogowanhood.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)  
>> rhoon@mogowanhood.com  
>> www.mogowanhood.com  
>>

>> Additional offices located in:

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>> 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 <[rhod@mcgowanhood.com](mailto:rhod@mcgowanhood.com)<<mailto:rhod@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 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)

>>> [rhod@mcgowanhood.com](mailto:rhod@mcgowanhood.com)<<mailto:rhod@mcgowanhood.com>> (Email)

>>> [www.mcgowanhood.com](http://www.mcgowanhood.com)<<https://urldefense.proofpoint.com/v2/url?u=http->

>>> 3>> A>

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>>>

>>> 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 pursuit 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 pursuit 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  
>>>  
>>> sflynn@GWBlawfirm.com<mailto:sflynn@GWBlawfirm.com>

>>>  
>>>  
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# **Exhibit 11**

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,

Plaintiff,

vs.

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

Defendants.

C.A. No.: 2007-CP-29-593

**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.2s 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 exclude<sup>1</sup> 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 Support<sup>2</sup>). 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 Exclude<sup>3</sup>; **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

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<sup>1</sup> Significantly, Defendants' motion to exclude is the equivalent of a motion to strike and/or a motion to dismiss.

<sup>2</sup> Defendants' Exhibits to their Motion and Memorandum have been excluded from this filing due to their volume, but are incorporated by reference.

<sup>3</sup> 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 therein.<sup>4</sup> 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

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<sup>4</sup> If this Court agrees the Order should be ruling on the Motion to Exclude as *to all Defendants*, Plaintiff's 59(e) 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(e) motion which raises the same issues and arguments made on a previous Rule 59(e) 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(e) 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.<sup>5</sup> 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.*

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<sup>5</sup> 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).

*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. 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. 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 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 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 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).<sup>6</sup> 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—

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<sup>6</sup> 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 judge<sup>7</sup>), 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-

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<sup>7</sup> **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.*

...

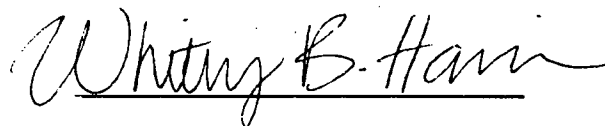
(f) It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield 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 S, 2016  
Columbia, SC

# **Exhibit 12**

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.**

**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), SCRCP 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.

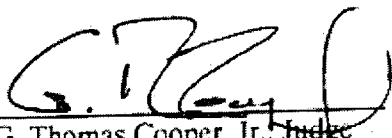




Accordingly, this Court hereby **DENIES** Plaintiffs' Motion under Rule 59(e), SCRCP, to reconsider this Court's November 2, 2016, Order. Furthermore, pursuant to Rule 59(f), SCRCP, the Court is of the opinion that oral argument is not necessary.

**IT IS SO ORDERED.**

Audrey, South Carolina  
November 7, 2016

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

# **Exhibit 13**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON  
PLEAS

COUNTY OF LANCASTER

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

Plaintiff,

**PLAINTIFF'S  
MOTION TO STAY**

vs.

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

Defendants.

Plaintiff Travis Roddey, individually and as the personal representative of the Estate of Alice Monique Beckham Hancock, respectfully requests this Court enter an Order staying the trial in this matter scheduled for November 14, 2016. This motion is made pursuant to Rules 205 and 241(a), SCACR. Plaintiff received electronic notice on November 7, 2016, of this Court's denial of Plaintiff's Motion to Alter or Amend and Reconsideration. As explained herein, Plaintiff believes the appeal of the trial court's order that will be filed on November 7, 2016, at the Court of Appeals provides appellate jurisdiction and stays the remainder of this matter, pursuant to Rules 205 and 241(a), SCACR. However, Plaintiff makes this motion out of an abundance of caution and seeks a stay to supplement the stay automatically triggered upon the filing of the appeal.

Rule 205, SCACR, provides the appellate court with exclusive jurisdiction over matters on appeal. The lower court may only proceed with matters not affected by the appeal. Rule 241(a), SCACR, in governing matters which are stayed while on appeal, provides:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Thus, a lower court may not act or issue orders that affect an issue on appeal, which would include, but not be limited to, proceeding to trial.

In *Tillman v. Oakes*, then Chief Judge Few acknowledged that the question of determining whether a lower court may proceed with a case once an order has been appealed is “a difficult one to answer.” 398 S.C. 245, 254, 728 S.E.2d 45, 50 (2012). The inquiry for this Court is whether the negligence cause of action is affected by the appeal of the negligent hiring and supervision cause of action. The answer must be yes.

First, the ability to immediately appeal this ruling demonstrates the impact of the appeal on the remaining cause of action. The Court’s Order excluding the negligent hiring and supervision cause of action against Defendants is the equivalent of an order to strike or order to dismiss. It is well settled that a motion to strike or motion dismiss is immediately appealable because it affects a substantial right and the merits of the Complaint. See Section 14-3-330(2)(b) (1976) (explaining an order striking a pleading is directly appealable if it involves a substantial right); *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990). Courts have explained when such an order is made the very merits of the cause of action and the complaint as a whole has been challenged to the point that substantially affects the litigation. *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *Cf. Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988) (an order “involves the merits” when it

finally determines “some substantial matter forming the whole or a part of some cause of action or defense . . . ”). Instinctively, this type of ruling limits the evidence that may be introduced, the strategy used by counsel, the witnesses that may be called, the calculation of damages, etc. Practically, the Order deprives Plaintiff of the right to put forth the case in the manner he chooses.

Second, the causes of action are intertwined to the point that one affects the other. Plaintiff’s negligent hiring and supervision cause of action alleges Wal-Mart and U.S. Security were negligent in their hiring, training, supervision and entrustment of Derrick Jones. Specifically, as to U. S. Security, Plaintiff argued Jones never should have been hired because he did not have a valid license, had pending criminal charges, tested positive for marijuana, and failed to comply with the statutory requirements for being a security guard in South Carolina.

Further, Plaintiff asserted that U.S. Security and Wal-Mart were negligent in the supervision of Jones. It is undisputed that Wal-Mart and U.S. Security were in a contractual relationship in which Jones was an employee of U.S. Security Wal-Mart had explicit policies on the role of security guards, shoplifting, and pursuit. Jones informed his U. S. Security supervisor that he was violating both U.S. Security and Wal-Mart’s rules and procedures. Specifically, Jones testified that on the his first day of work for U.S. Security at Walmart he was told to obtain a license plate number off of the premises by a Wal-Mart employee, which he did. See **Exhibit A**, Jones Deposition, at p. 115. Such act is in direct violation of the rules. Afterwards he informed his supervisor at U.S. Security and sought clarification with his manager about whether he should violate the rules and policies. *Id.* at 119–20. His supervisor told him “you got to do what you got to do.” *Id.* This negligent supervision fits within the negligent pursuit cause of

action because it is the negligent supervision by U.S. Security on the *exact issue and act of pursuit* that triggered the reckless and negligent pursuit that led to the fatal accident.

The relation between these two causes of action is further supported by the testimony of Plaintiff's expert Jeff Gross. At the first trial, Gross testified about the rules and regulations in place the night of the accident. (**Exhibit B**, Trial Transcript 120-126). In discussing the general rules governing shoplifting, Plaintiff's counsel read the following rule, "in the event of a shoplifter situation the security contractor [Jones] should act as a witness and *only assist when directed by a member of Wal-Mart management* or loss prevention or when you see the Wal-Mart associate in trouble or danger." *Id.* at 125. Gross testified one of Jones's managers told him to get the license plate, saw him leave the parking lot, and did nothing to call off the chase. *Id.* This violation mirrored the events that took place when Jones first started working for U.S. Security. Additionally, Plaintiff's counsel read the following rule: "Always remember to protect yourself and if possible assist others before attempting to protect property. *Remember, security contractors are precluded from search or pursuing suspects.*" *Id.* at 126 (emphasis added). Gross testified that the rule was violated by Jones, an employee of U.S. Security, and Wal-Mart. *Id.*

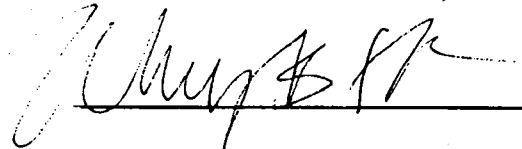
While the elements of the two causes of action are different, the negligent hiring and supervision cause of action fits within the negligent pursuit cause of action. Plaintiff's ability to put forth the negligent hiring and supervision cause of action directly affects the ability to try the remaining cause of action under Plaintiff's theory of the case.

Third, the stay should be granted as a matter of judicial economy. As this Court is well aware, this case has already been tried once and subsequently appealed to, and ruled on, by both appellate courts. Staying the remaining cause of action and thereby allowing a determination on

the viability of the negligent hiring and supervision cause of action promotes judicial economy and prevents the possibility of a third trial if the appellate courts agree that the negligent hiring cause of action is still viable.

For the reasons stated herein, Plaintiff respectfully request this Court issue a stay and continue the trial of this matter until such time as the appellate courts are able to rule on the issues.

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff

November 7, 2016  
Columbia, SC

# **Exhibit A**



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           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.

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     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.

# **Exhibit B**

## TESTIMONY OF JEFF GROSS

1 Q Are the people in the parking lot -- who is supposed  
2 to protect them?

3 A Well, there's an increase risk proportionate to the  
4 decreased risk that you get by having him there. If  
5 there's a deterrent value, people are going to see the  
6 cars or snatch merchandise or attack people in the parking  
7 lot or break-in to a car, the deterrent value he has is  
8 that he is there to observe, report, that the bad guy  
9 arguably would be looking for a security presence and if  
10 he leaves then that's gone. So any member of the public  
11 or even the employees whose cars are parked out there,  
12 people coming and going, children, would all have some  
13 increase of risk if the security person is gone.

14 Q Okay.

15 MR. HOOD: Your Honor, at this time I would move to  
16 have this -- I would move the security officer's guide, I  
17 would move it into evidence as Plaintiff's 7.

18 MR. BOYD: No objection.

19 THE COURT: It's without objection.

20 Q Now, this is not -- I don't have a board for it. Did  
21 Derrick Jones sign for a receipt of his security officer  
22 guide handbook?

23 A Yes, part of his personnel package.

24 Q So he would have been aware of these policies and  
25 procedures.

## TESTIMONY OF JEFF GROSS

1 A Yes. And they should have been reviewed if he would  
2 have been trained correctly.

3 MR. HOOD: I would move at this time, Your Honor, to  
4 have admitted Plaintiff's 8, Derrick Jones receipt of his  
5 handbook.

6 MR. BOYD: Without objection.

7 THE COURT: Admitted without objection.

8 Q Now, are you aware of guidelines for private security  
9 policies that were in the truck at the time that Derrick  
10 Jones was employed?

11 A Yes, they have a handout.

12 Q And this was created by Wal-Mart, wasn't it?

13 A It was created by Wal-Mart for their rules of  
14 engagement as a contractor in the area of security. These  
15 were Wal-Mart's rules that applied to the contractor.

16 Q And this would have been in his truck at the time of  
17 this particular situation.

18 A Yes.

19 Q Now, I'll ask you to look at the first page of this  
20 guideline. Do you see that?

21 A Yes.

22 Q Do you see where it says the primary function?

23 A Yes.

24 Q And what is the primary function under Wal-Mart's  
25 guidelines?

## TESTIMONY OF JEFF GROSS

1 A It says the primary function for private security  
2 contractors provide our customers with a safe shopping  
3 experience, the basic security method consists of two  
4 parts. The first part: Protection. Enables the security  
5 contractor to protect persons and property by acting as a  
6 deterrent in order to prevent thefts, damages or accidents  
7 and. And the second: Communications. Enables the  
8 security contractor to be a source of information to  
9 Wal-Mart management, and essentially it is observe and  
10 report.

11 Q Okay. And under number seven it says, "Because  
12 Wal-Mart expects security at the specific areas if the  
13 security contractor must leave his or her post please  
14 notify a member of Wal-Mart management first."

15 A That's correct.

16 Q Now, why do they have that particular policy?

17 A Well, you're paying for the benefit of having this  
18 security officer there. They've already defined what it  
19 is, the benefit that Wal-Mart enjoys and that is the  
20 deterrent value in the observe and report possibility, so  
21 if he leaves it's gone.

22 Q And up here it says, "This is to provide our  
23 customers with a safe shopping experience." Do you see  
24 that?

25 A Certainly.

## TESTIMONY OF JEFF GROSS

1 Q And when they violate these particular guidelines,  
2 are they providing a safe shopping experience?

3 A Not as safe as they would if he was there, otherwise  
4 they wouldn't have the function to begin with. If they  
5 didn't believe it was valuable they wouldn't do it.

6 Q Okay. I'm going to have you look at the second page  
7 of this --

8 THE COURT: Mr. Hood, let me interrupt you one quick  
9 second. You probably would have the attention of three or  
10 four more jurors if you could stand on the other side and  
11 do it the other way.

12 MR. HOOD: Yes, sir, Your Honor, I sure will.

13 Q Do you see number 14, Mr. Gross? And you can get up  
14 if you would like to.

15 THE WITNESS: May I, Judge?

16 THE COURT: Sure.

17 A Yes.

18 Q And number 14 says, "The patrol vehicle should not  
19 leave Wal-Mart property except for gas or maintenance."

20 A That's correct.

21 Q And do you have an opinion about whether that was  
22 violated in this case?

23 A Clearly it was.

24 Q And number 15, "For safety please drive at slow speed  
25 and wear your seatbelt and be aware of other cars and



## TESTIMONY OF JEFF GROSS

1 pedestrians that may be in or around the Wal-Mart parking  
2 lot."

3 A Yes, very important, especially to drive at a slow  
4 speed.

5 Q Why is that important?

6 A Well, the faster you go you run into a problem of  
7 recognition time versus reaction time. You might  
8 recognize that somebody has stepped out in front of you or  
9 a car has backed out in front of you but the faster you're  
10 going the less reaction time that you have to apply the  
11 brake. So going slow gives you time to recognize the  
12 hazard and avoid that hazard, and you're more observant  
13 when you are traveling slowly.

14 Q Have you had an opportunity to see the video of  
15 Derrick Jones engaging Ms. Hancock?

16 A Yes.

17 Q How would you describe that?

18 A I would not define what I'm seeing there as slow. I  
19 could not apply a speed to it but I think that it's  
20 intuitive when you see the video that it's not slow.

21 Q Do you have an opinion about whether he violated that  
22 particular safety rule?

23 A Yes.

24 Q Okay. And then number 16, "For safety always be  
25 alert for cars backing out of parking spaces and customers

## TESTIMONY OF JEFF GROSS

1 walking between cars." Why is that important?

2 A Well, you don't want to hit them. And, of course,  
3 distraction is going to increase your chance if you're  
4 going to hit someone. And speed, again, we've already  
5 talked about that, is certainly a problem.

6 Q When he was pursuing this car in the parking lot and  
7 out into the road, how was he being safe in being alert  
8 for these cars backing out?

9 A Well, the word safety means absence of risk, that's  
10 essentially what it means in our business. And if he's  
11 doing something that creates risk it just can't be safe,  
12 the more unsafe it is the more risk is associated with it  
13 so he increases risk here, therefore less safety.

14 Q Do you have an understanding of the amount of  
15 merchandise that was taken, or alleged to have been taken  
16 in this case?

17 A Not a dollar value. I know volume wise there was a  
18 bag that was sat down before the person exited the store,  
19 I see that in the video but I don't have a dollar amount.  
20 But volume wise it --

21 Q Have you seen the incident report that lists three or  
22 four pair of jeans at about \$50.

23 A I do, but I didn't recall a dollar amount.

24 Q Does \$50, whether she took it or left it at the exit  
25 before she ever left or whether she took it, would that

## TESTIMONY OF JEFF GROSS

1 ever justify what happened in this particular case?

2 A Well, no. But also Wal-Mart's own policies caution  
3 their people that no merchandise is worth getting hurt  
4 over, no merchandise is worth hurting anybody over, that's  
5 part of their policy and procedure. So they're cautioning  
6 their own employees, "We don't want to get people hurt  
7 over merchandise." So they're not saying more than \$150  
8 or less than \$150, they're saying merchandise is not worth  
9 getting hurt over.

10 Q Now, under number 26, "In the event of a shoplifter  
11 situation the security contractor should act as a witness  
12 and only assist when directed by a member of Wal-Mart  
13 management or loss prevention or when you see the Wal-Mart  
14 associate in trouble or danger." Do you see that?

15 A Yes.

16 Q Now, in this particular case, can you tell this jury  
17 who actually told Mr. Jones to get the license plate?

18 A One of the CSM's by radio.

19 Q Did the CSM see him leave the parking lot?

20 A Yes, testified that she did.

21 Q And can you tell this jury what Wal-Mart management  
22 did to call off this particular chase?

23 A Nothing. They told him to get the plate number and  
24 he drove at a right angle away from the store and engaged  
25 the person -- the plaintiff's vehicle at the front of it,

## TESTIMONY OF JEFF GROSS

1 that was in plain view in the front. They took off and he  
2 went after them and they did nothing. They saw it and  
3 they didn't call him back or do anything.

4 Q Now, look at number 29, this Wal-Mart policy. It  
5 says, "Think safety first."

6 A Yes.

7 Q "Always remember to protect yourself and if possible  
8 assist others before attempting to protect property.  
9 Remember, security contractors are precluded from  
10 searching or pursuing suspects."

11 A Yes.

12 Q Do you see that?

13 A Yes.

14 Q Was that violated?

15 A Yes, he pursued the suspects.

16 Q And who violated that safety rule?

17 A Well, Derrick Jones, the security officer, did, but  
18 it was secondary to a request by Wal-Mart to go get the  
19 plate number.

20 Q They both violated that policy.

21 A Yeah.

22 Q Now, you can have a seat again, Mr. Gross.

23 MR. HOOD: And at this time, Your Honor, I would move  
24 that the guidelines for private security contractors be  
25 admitted as Plaintiff's Exhibit 9.

## TESTIMONY OF JEFF GROSS

1 MR. BOYD: No objection.

2 THE COURT: Admitted without objection.

3 Q Now, here is a Wal-Mart policy about the  
4 investigation and detention of shoplifters. Do you see  
5 that?

6 A Yes.

7 Q Now, do you see the four elements of what is  
8 considered to be a shoplifter, at the bottom, number four  
9 exiting the facility and passing the last point.

10 A Yes.

11 Q Have you had an opportunity to see the video in this  
12 particular case?

13 A Yes.

14 Q And from your witness of the video, do you have an  
15 opinion about whether she met the Wal-Mart policy of being  
16 a shoplifter?

17 A Up to the point that she puts the bag down, yes.  
18 Once she puts the bag down and the contents wasn't even  
19 confirmed at that point, then I would say no. At that  
20 point there was no defined loss, it was over with  
21 according to their policy.

22 Q And their own manager said it was over with at that  
23 time too, didn't he?

24 A Yes. And even at that their policy says if they are  
25 going to go outside the store after someone not to go more

## TESTIMONY OF JEFF GROSS

1 than 10 feet.

2 Q Okay. And I will put the second page of this up.  
3 Down here where it says limitations in the pursuit and  
4 detention of suspects, do you see that?

5 A Yes, sir.

6 Q Can you read the first one for the jury?

7 A "Never pursue a fleeing suspect more than  
8 approximately 10 feet beyond the point where you are  
9 located when the suspect begins to run to avoid detention,  
10 10 feet is about three long steps. This limitation  
11 applies both inside and outside the facility."

12 Q And can you read the second one for the jury?

13 A "Never pursue a suspect who is in a moving vehicle."  
14 And it says after that, "Never pursue a suspect off the  
15 facility's property, never use a moving vehicle to pursue  
16 a suspect and terminate the pursuit of a suspect if the  
17 suspect begins to enter a vehicle."

18 Q Do you have an opinion to a reasonable degree of  
19 certainty whether these policies were violated?

20 A They were not -- they were violated, yes. They were  
21 not adhered to, no.

22 Q Who broke these rules?

23 A Well, physically USA (sic) Security did, Mr. Jones,  
24 but what I would call through tacet approval Wal-Mart  
25 didn't do anything to stop him. So they didn't tell him

## TESTIMONY OF JEFF GROSS

1 not to, they told him to go out and get this license plate  
2 number, but with that they didn't give any other direction  
3 or guidance.

4 Q Can you tell the jury why they have policies like  
5 this, or safety rules like this?

6 A Because pursuits are dangerous. If you're dealing  
7 with a shoplifter you always have the possibility of a  
8 fight, you have the possibility of production of a weapon,  
9 you have the possibility that the employee will be injured  
10 in the physical altercation. When vehicles are involved  
11 you have the possibility that somebody pulls a weapon from  
12 a vehicle as they are getting in, the vehicle itself can  
13 be used as a weapon, it's escalating the possibilities of  
14 injury at each step. And what Wal-Mart has done in my  
15 professional opinion is they've tried to engineer out  
16 these risks through developing these policies. This is  
17 how we're going to stay away from these problems, we're  
18 going to have these procedures and policies.

19 Q Now, in regard to never pursue a fleeing suspect,  
20 never, never, never, never, did Derrick Jones have a valid  
21 driver's license at this time?

22 A No.

23 Q Do you have an opinion to a reasonable degree of  
24 certainty about whether you should have a valid driver's  
25 license if you're driving a vehicle patrolling a Wal-Mart

## TESTIMONY OF JEFF GROSS

1 parking lot?

2 A Should have one if you are patrolling or not. If you  
3 drive a vehicle the state requires you to have a driver's  
4 license.

5 Q And who should have discovered that?

6 A Well, if it was discoverable by doing a background  
7 check prior to employment, in other words, the date of  
8 suspension or the violation that caused the suspension was  
9 discoverable at that point they would have known there was  
10 a problem coming with his driver's license. At the point  
11 that he received a suspension notice he certainly could  
12 have told his employer.

13 Q And is a marijuana conviction, is that -- do you get  
14 an automatic suspended license in South Carolina?

15 A My understanding in South Carolina you do.

16 Q If they would have done a background check on him  
17 would they have discovered that?

18 A They would have discovered it and I would have  
19 expected them to react to it.

20 Q Why would a security company allow someone they knew  
21 was going to lose his license, why would they have allowed  
22 him or hire him as someone who could patrol a parking lot?

23 A I can't give a good reason other than profits.

24 MR. HOOD: Your Honor, previously I had used a flow  
25 chart and asked about U. S. Security Associates, at this



## TESTIMONY OF JEFF GROSS

1 time because I forgot to move that into evidence I would  
2 move into evidence U. S. Security and Associates Policy and  
3 Procedure 630-02 with the attachments.

4 MR. BOYD: No objection.

5 THE COURT: Admitted without objection.

6 MR. HOOD: And at this time, Your Honor, I would also  
7 move into evidence the Wal-Mart investigation and detention  
8 of shoplifter policy, it's about 70 pages, I would move  
9 that in as Plaintiff's Exhibit 11 at this time.

10 MR. BOYD: May I look at that just for a moment?

11 THE COURT: Sure.

12 MR. BOYD: No objection.

13 THE COURT: It will be admitted without objection.

14 Q Now, Mr. Gross, have you had an opportunity to look  
15 at the videotapes in this particular case?

16 A Yes.

17 Q And have you had an opportunity to read all of the  
18 depositions and all of the materials given to you in this  
19 case?

20 A Yes.

21 Q Could you tell this jury and explain to this jury  
22 exactly what occurred when Donna Beckham left the  
23 Wal-Mart -- when she dropped the bag with the greeter and  
24 then exited the store that night?

25 A She places the bag on the ground, she walks out of

# **Exhibit 14**

## Whitney Harrison

---

**From:** Whitney Harrison  
**Sent:** Monday, November 07, 2016 9:47 AM  
**To:** 'Cooper, G. Thomas Law Clerk (George C. James, III)'; Randy Hood; Cooper, G. Thomas; Stephanie Flynn; Norrell, Ilc Norrell & powers; Mitch Norrell  
**Cc:** Shawn B. Deery; Howard Boyd  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration  
**Attachments:** motion to stay signed.pdf; Plainitfff's Motion to Stay Exhibits.pdf; Matter of Decker.pdf; In re Estate v Connor.pdf

Judge Cooper and George,

Thank you for letting us know your ruling on our Motion to Alter or Amend and Reconsideration. Attached is our Motion to Stay the November 14, 2016 trial until an appellate court resolves the appeal. As we discussed on Friday, it is our belief that the filing of the notice of appeal automatically triggers exclusive jurisdiction to the appellate court. The following motion addresses how the negligent hiring and supervision cause of action affects the negligent pursuit cause of action to the extent you disagree that an automatic stay is in place.

Also, on Friday you asked to be briefed on the appeal of a denial of a stay. Based on my reading of case law, following the denial of a motion to stay a party may appeal the ruling through a supersedeas. The filing of the supersedeas does not remove the circuit court's jurisdiction until such time the court of appeals either grants a temporary stay or a stay outright. I have attached two cases for your further review on this subject matter. Generally it is the party seeking the removal of the automatic stay who seeks appellate review. While the facts in the case before you are an inverse, I believe the final analysis for your jurisdictional inquiry is you would retain jurisdiction if you were to deny a motion to stay and retain such jurisdiction until the court of appeals makes a ruling granting a stay.

If you decide to deny our motion to stay, we ask that you have George send us your order at our Rock Hill office so that we may file it in the Lancaster Clerk's Office or with your permission we ask to file this pdf copy with the Lancaster Clerk's office.

Please let us know if you have any questions or concerns.

Whitney

Whitney B. Harrison  
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---

**From:** Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]  
**Sent:** Monday, November 07, 2016 9:36 AM  
**To:** Randy Hood; Cooper, G. Thomas; Stephanie Flynn; Norrell, Ilc Norrell & powers; Mitch Norrell  
**Cc:** Whitney Harrison; Shawn B. Deery; Howard Boyd  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Counsel,

Attached is a scanned copy of the signed Order Denying Plaintiff's Motion for Reconsideration that was submitted over the weekend.

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  
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---

**From:** Randy Hood [mailto:rhod@mcgowanhood.com]  
**Sent:** Monday, November 07, 2016 9:11 AM  
**To:** Cooper, G. Thomas <GCooperJ@sccourts.org>; Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, llc Norrell & powers <resipsa@comporium.net>; Mitch Norrell <mnorrell@comporium.net>  
**Cc:** Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Shawn B. Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Thank you Your Honor. As soon as we receive the order on the 59e, we will file a motion to stay (almost immediately, sent by email to you and George and all others on this email). If you are going to deny a motion to stay, would you mind simply denying it before you leave. I think a Form 4 will suffice but, of course, leave that to you. I really appreciate you addressing this issue this morning. Once again, I hope you have a safe and wonderful holiday.

Have a great day. Blessings.

Randy

S. Randall Hood  
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**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:** Cooper, G. Thomas [<mailto:GCooperJ@sccourts.org>]  
**Sent:** Monday, November 07, 2016 8:53 AM  
**To:** Randy Hood; Stephanie Flynn; Norrell, Ilc Norrell & powers; Mitch Norrell  
**Cc:** Whitney Harrison; Cooper, G. Thomas Law Clerk (George C. James, III); Shawn B. Deery; Howard Boyd  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

We did not work Sunday. Your Motion will be addressed within the hour. GTC

---

**From:** Randy Hood [<mailto:rhod@mcgowanhood.com>]  
**Sent:** Monday, November 07, 2016 8:43 AM  
**To:** Stephanie Flynn <[SFlynn@gwblawfirm.com](mailto:SFlynn@gwblawfirm.com)>; Norrell, Ilc Norrell & powers <[resipsa@comporium.net](mailto:resipsa@comporium.net)>; Mitch Norrell <[mnorrell@comporium.net](mailto:mnorrell@comporium.net)>  
**Cc:** Whitney Harrison <[wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)>; Cooper, G. Thomas <[GCooperJ@sccourts.org](mailto:GCooperJ@sccourts.org)>; Cooper, G. Thomas Law Clerk (George C. James, III) <[GCooperLC@sccourts.org](mailto:GCooperLC@sccourts.org)>; Shawn B. Deery <[sdeery@mcgowanhood.com](mailto:sdeery@mcgowanhood.com)>; Howard Boyd <[Hboyd@gwblawfirm.com](mailto:Hboyd@gwblawfirm.com)>  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George

I called Judge Cooper's office number provided by the SC Judicial website. The message asked that in lieu of leaving a message to send a message to [gcooperlc@sccourts.org](mailto:gcooperlc@sccourts.org). I was simply wondering where we could obtain the order denying our 59(e).

If someone could write back and let us know or call me on my direct dial at 803-327-7828, it would be greatly appreciated. I am not attempting any type of ex parte communication but was simply inquiring about location of an order. Thanks in advance.

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)  
[rhod@mcgowanhood.com](mailto:rhod@mcgowanhood.com) (Email)  
[www.mcgowanhood.com](http://www.mcgowanhood.com) (Website)

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---

**From:** Randy Hood

**Sent:** Sunday, November 06, 2016 3:10 PM

**To:** Stephanie Flynn

**Cc:** Whitney Harrison; [gcooperj@sccourts.org](mailto:gcooperj@sccourts.org); [gcooperlc@sccourts.org](mailto:gcooperlc@sccourts.org); Shawn B. Deery; Howard Boyd

**Subject:** Re: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George

I will not regurgitate our disagreement with Defense Counsel. We have each laid out our positions. I simply ask that you post your order by scanned copy before you leave on vacation (today if possible). We will then file a Motion to stay (assume it will be denied). If possible to send the decision on Motion to Stay by scan today, we can then file our appeal from that decision. I apologize for asking these to be done before you leave for vacation. The appeal of motion to stay can then be heard in Court of Appeals next week (hopefully). Lastly, should we consider electronic submission of orders by you to be acceptable as a result of the exigency of this situation. Thank you in advance. I sincerely hope you have a wonderful and safe vacation.

Blessings. Have a wonderful day.

Randy Hood

S. Randall Hood

McGowan, Hood and Felder, LLC

Rock Hill, South Carolina

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803-327-7828 (direct dial)

[rhoor@mogowanhood.com](mailto:rhoor@mogowanhood.com)

[www.mogowanhood.com](http://www.mogowanhood.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 6, 2016, at 2:36 PM, Stephanie Flynn <[SFlynn@gwblawfirm.com](mailto:SFlynn@gwblawfirm.com)> wrote:

Dear Judge Cooper and George,

We have had the opportunity to review Plaintiff's Motion to Alter or Amend and for Reconsideration and, in the way of a brief response, we do not believe there is basis for the Court to reconsider its ruling.

The Order is not excluding or striking a cause of action, but appropriately excluding evidence against USSA of negligent hiring as that cause of action was tried to a jury and is now *res judicata*. The proper framing of this issue was clarified in our letter to the Court and is properly addressed in the Order from which the appeal will be taken. This Court is obviously not limited in its determination of this issue by the title of the motion. As Plaintiff even pointed out in cases in the motion to reconsider (p. 3, fn.4), it is the substance of the requested relief that matters, regardless of form in which the request for relief was framed. *See, e.g., Richland County v. Kaiser*, 351 S.C. 89 (Ct. App. 2002). Argument of the specific evidentiary issues associated with the negligent hiring case (e.g., relevance of a pre-hiring drug screen of Jones by USSA) was deferred because we believe the ruling that negligent hiring is *res judicata* is determinative as to the relevance and admissibility of such evidence. Any probative value such evidence could possibly have on the negligent pursuit action is strongly outweighed by the danger of unfair prejudice, confusion of the jury and misleading of the issues.

The second portion of Plaintiff's Motion is again directed to the relief requested in the original filings provided to the Court on this issue. We responded to the arguments made by Plaintiff by way of our letter reply of October 31<sup>st</sup>, which we have attached and would incorporate herein by reference. Plaintiff's motion continues to either misinterpret or misconstrue the arguments and issues on appeal. The arguments made by Defendants on appeal that USSA/Jones should not be subjected to retrial together with Walmart were directed to the negligent pursuit action, as were the Court's discussions of that issue, since that was the only cause of action on appeal. We found no need to clarify an issue not before the appellate courts.

As another point, Plaintiff's motion contends the Court overlooked the way in which the directed verdict was made. Plaintiff has conceded, however, and even conceded before this Court, that Jones was not an employee of Walmart. Plaintiff implies that he attempted to clarify Judge Goldsmith's directed verdict ruling on three occasions, but was cut-off. Negligent hiring was never even uttered and, in any event, Plaintiff fully briefed the issue for Judge Goldsmith the very next day in a 23 page motion with no mention of negligent hiring. If they thought that issue needed to be preserved against Walmart, they should have done so. Similarly, if they believed that Walmart's dismissal from the case warranted an appeal on their cause of action for negligent hiring, it should have been included on appeal.

Finally, Plaintiff contends Restatement exceptions to *res judicata* dictate that it does not apply. Plaintiff recites subsection (b) in support of the proposition that the Supreme Court expressly reserved Plaintiff's right to proceed on negligent hiring, which simply goes back to Plaintiff's previous arguments on that issue. Subsection (c) applies when a plaintiff cannot seek a certain remedy due to limitations of subject matter jurisdiction or restrictions of the court's authority to entertain multiple theories or demands for multiple remedies or forms of relief. Here, there was no restriction based on subject matter jurisdiction or on the court's authority during the first trial. The court itself determined the claims that were decided by the jury. Finally, Plaintiff cites no extraordinary reason for requiring USSA to be subjected to negligent hiring again when a jury has already ruled.

We appreciate your continued consideration of these issues and are happy to address any questions or concerns the Court may have.

**Stephanie G. Flynn**  
Partner  
sflynn@GWBlawfirm.com

<image001.jpg>

**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  
vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA 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.

---

**From:** Whitney Harrison [<mailto:wharrison@mcgowanhood.com>]  
**Sent:** Saturday, November 5, 2016 4:40 PM  
**To:** [gcooperj@sccourts.org](mailto:gcooperj@sccourts.org); [gcooperlc@sccourts.org](mailto:gcooperlc@sccourts.org)  
**Cc:** Randy Hood; Shawn B. Deery; Howard Boyd; Stephanie Flynn  
**Subject:** Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George,

Attached please find Plaintiff's Motion to Alter or Amend and for Reconsideration, along with exhibits for your review.

In the event you deny the motion, we were wondering if it would be possible for George to mail the original order and original order denying the 59(e) to our Rock Hill office (address listed below) so that we may file the orders with the Lancaster clerk's office. If it is more convenient, with your permission we will file the scanned copies with the clerk's office.

Randy Hood  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732

Please let us know if you have any questions or concerns.

Thanks!

Whitney

Whitney B. Harrison  
McGowan, Hood & Felder, LLC  
803.779.0100  
[wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)



<Roddey - Judge Cooper Ltr.pdf>

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Exhibit 15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2007CP290593

Travis A. Roddey, 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 Litigant

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. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), 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 LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

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

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

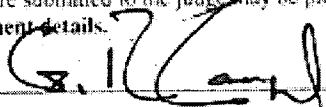
INFORMATION FOR THE PUBLIC INDEX

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 amounts contained in this form may 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 2126

Date 11-7-16

9:50 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____ to 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

Exhibit 16

Whitney Harrison

From: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>
Sent: Monday, November 07, 2016 10:10 AM
To: Whitney Harrison; Randy Hood; Cooper, G. Thomas; Stephanie Flynn; Norrell, Ilc Norrell & powers; Mitch Norrell
Cc: Shawn B. Deery; Howard Boyd; Kathy Hall
Subject: RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593
Attachments: 11.7.16 Form 4 Roddey v Walmart.pdf

Counsel,

Attached is a scanned copy of the original signed Form 4 Denying Plaintiff's Motion to Stay. I will be sending the original along with the original Order Denying the Plaintiff's Motion for Reconsideration to the Lancaster County Clerk of Court today.

I have included the contact at the Lancaster County Clerk of Court, Ms. Kathy Hall, to keep her up to date on this case. Judge Cooper has told me to inform her that it is to be assumed that we will continue on with this case as scheduled beginning Monday November 14, until we hear otherwise from the Plaintiff's appeal.

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

From: Whitney Harrison [mailto:wharrison@mcgowanhood.com]
Sent: Monday, November 07, 2016 9:48 AM
To: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Randy Hood <rhoo@mcgowanhood.com>; Cooper, G. Thomas <GCooperJ@sccourts.org>; Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, Ilc Norrell & powers <resipsa@comporium.net>; Mitch Norrell <mnorrell@comporium.net>
Cc: Shawn B. Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>
Subject: RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George,

Thank you for letting us know your ruling on our Motion to Alter or Amend and Reconsideration. Attached is our Motion to Stay the November 14, 2016 trial until an appellate court resolves the appeal. As we discussed on Friday, it is our belief that the filing of the notice of appeal automatically triggers exclusive jurisdiction to the appellate court. The following motion addresses how the negligent hiring and supervision cause of action affects the negligent pursuit cause of action to the extent you disagree that an automatic stay is in place.

Also, on Friday you asked to be briefed on the appeal of a denial of a stay. Based on my reading of case law, following the denial of a motion to stay a party may appeal the ruling through a supersedeas. The filing of the supersedeas does not remove the circuit court's jurisdiction until such time the court of appeals either grants a temporary stay or a stay outright. I have attached two cases for your further review on this subject matter. Generally it is the party seeking the removal of the automatic stay who seeks appellate review. While the facts in the case before you are an inverse, I believe the final analysis for your jurisdictional inquiry is you would retain jurisdiction if you were to deny a motion to stay and retain such jurisdiction until the court of appeals makes a ruling granting a stay.

If you decide to deny our motion to stay, we ask that you have George send us your order at our Rock Hill office so that we may file it in the Lancaster Clerk's Office or with your permission we ask to file this pdf copy with the Lancaster Clerk's office.

Please let us know if you have any questions or concerns.

Whitney

Whitney B. Harrison
McGowan, Hood & Felder, LLC
803.779.0100
wharrison@mcgowanhood.com

From: Cooper, G. Thomas Law Clerk (George C. James, III) [<mailto:GCooperLC@scccourts.org>]
Sent: Monday, November 07, 2016 9:36 AM
To: Randy Hood; Cooper, G. Thomas; Stephanie Flynn; Norrell, llc Norrell & powers; Mitch Norrell
Cc: Whitney Harrison; Shawn B. Deery; Howard Boyd
Subject: RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Counsel,

Attached is a scanned copy of the signed Order Denying Plaintiff's Motion for Reconsideration that was submitted over the weekend.

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

From: Randy Hood [<mailto:rhood@mcgowanhood.com>]
Sent: Monday, November 07, 2016 9:11 AM
To: Cooper, G. Thomas <GCooperJ@scccourts.org>; Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, llc Norrell & powers <resipsa@comporium.net>; Mitch Norrell <mnorrell@comporium.net>
Cc: Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org>; Shawn B. Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>
Subject: RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Thank you Your Honor. As soon as we receive the order on the 59e, we will file a motion to stay (almost immediately, sent by email to you and George and all others on this email). If you are going to deny a motion to stay, would you mind simply denying it before you leave. I think a Form 4 will suffice but, of course, leave that to you. I really appreciate you addressing this issue this morning. Once again, I hope you have a safe and wonderful holiday.

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)
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From: Cooper, G. Thomas [<mailto:GCooperJ@sccourts.org>]

Sent: Monday, November 07, 2016 8:53 AM

To: Randy Hood; Stephanie Flynn; Norrell, Ilc Norrell & powers; Mitch Norrell

Cc: Whitney Harrison; Cooper, G. Thomas Law Clerk (George C. James, III); Shawn B. Deery; Howard Boyd

Subject: RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

We did not work Sunday. Your Motion will be addressed within the hour. GTC

From: Randy Hood [<mailto:rhoo@mcgowanhood.com>]

Sent: Monday, November 07, 2016 8:43 AM

To: Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, Ilc Norrell & powers <resipsa@comporium.net>; Mitch Norrell

<mnorrell@comporium.net>

Cc: Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G. Thomas <GCooperJ@sccourts.org>; Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Shawn B. Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>

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From: Randy Hood
Sent: Sunday, November 06, 2016 3:10 PM
To: Stephanie Flynn

Cc: Whitney Harrison; gcooperj@sccourts.org; gcooperlc@sccourts.org; Shawn B. Deery; Howard Boyd
Subject: Re: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

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Randy Hood

S. Randall Hood
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We appreciate your continued consideration of these issues and are happy to address any questions or concerns the Court may have.

Stephanie G. Flynn
Partner
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From: Whitney Harrison [<mailto:wharrison@mcgowanhood.com>]
Sent: Saturday, November 5, 2016 4:40 PM
To: gcooperj@sccourts.org; gcooperlc@sccourts.org

Cc: Randy Hood; Shawn B. Deery; Howard Boyd; Stephanie Flynn
Subject: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George,

Attached please find Plaintiff's Motion to Alter or Amend and for Reconsideration, along with exhibits for your review.

In the event you deny the motion, we were wondering if it would be possible for George to mail the original order and original order denying the 59(e) to our Rock Hill office (address listed below) so that we may file the orders with the Lancaster clerk's office. If it is more convenient, with your permission we will file the scanned copies with the clerk's office.

Randy Hood
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732

Please let us know if you have any questions or concerns.

Thanks!

Whitney

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<Roddey - Judge Cooper Ltr.pdf>

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# **Exhibit 17**

## TESTIMONY OF JEFF GROSS

1 Q Are the people in the parking lot -- who is supposed  
2 to protect them?

3 A Well, there's an increase risk proportionate to the  
4 decreased risk that you get by having him there. If  
5 there's a deterrent value, people are going to see the  
6 cars or snatch merchandise or attack people in the parking  
7 lot or break-in to a car, the deterrent value he has is  
8 that he is there to observe, report, that the bad guy  
9 arguably would be looking for a security presence and if  
10 he leaves then that's gone. So any member of the public  
11 or even the employees whose cars are parked out there,  
12 people coming and going, children, would all have some  
13 increase of risk if the security person is gone.

14 Q Okay.

15 MR. HOOD: Your Honor, at this time I would move to  
16 have this -- I would move the security officer's guide, I  
17 would move it into evidence as Plaintiff's 7.

18 MR. BOYD: No objection.

19 THE COURT: It's without objection.

20 Q Now, this is not -- I don't have a board for it. Did  
21 Derrick Jones sign for a receipt of his security officer  
22 guide handbook?

23 A Yes, part of his personnel package.

24 Q So he would have been aware of these policies and  
25 procedures.

## TESTIMONY OF JEFF GROSS

1 A Yes. And they should have been reviewed if he would  
2 have been trained correctly.

3 MR. HOOD: I would move at this time, Your Honor, to  
4 have admitted Plaintiff's 8, Derrick Jones receipt of his  
5 handbook.

6 MR. BOYD: Without objection.

7 THE COURT: Admitted without objection.

8 Q Now, are you aware of guidelines for private security  
9 policies that were in the truck at the time that Derrick  
10 Jones was employed?

11 A Yes, they have a handout.

12 Q And this was created by Wal-Mart, wasn't it?

13 A It was created by Wal-Mart for their rules of  
14 engagement as a contractor in the area of security. These  
15 were Wal-Mart's rules that applied to the contractor.

16 Q And this would have been in his truck at the time of  
17 this particular situation.

18 A Yes.

19 Q Now, I'll ask you to look at the first page of this  
20 guideline. Do you see that?

21 A Yes.

22 Q Do you see where it says the primary function?

23 A Yes.

24 Q And what is the primary function under Wal-Mart's  
25 guidelines?

## TESTIMONY OF JEFF GROSS

1 A It says the primary function for private security  
2 contractors provide our customers with a safe shopping  
3 experience, the basic security method consists of two  
4 parts. The first part: Protection. Enables the security  
5 contractor to protect persons and property by acting as a  
6 deterrent in order to prevent thefts, damages or accidents  
7 and. And the second: Communications. Enables the  
8 security contractor to be a source of information to  
9 Wal-Mart management, and essentially it is observe and  
10 report.

11 Q Okay. And under number seven it says, "Because  
12 Wal-Mart expects security at the specific areas if the  
13 security contractor must leave his or her post please  
14 notify a member of Wal-Mart management first."

15 A That's correct.

16 Q Now, why do they have that particular policy?

17 A Well, you're paying for the benefit of having this  
18 security officer there. They've already defined what it  
19 is, the benefit that Wal-Mart enjoys and that is the  
20 deterrent value in the observe and report possibility, so  
21 if he leaves it's gone.

22 Q And up here it says, "This is to provide our  
23 customers with a safe shopping experience." Do you see  
24 that?

25 A Certainly.

## TESTIMONY OF JEFF GROSS

1 Q And when they violate these particular guidelines,  
2 are they providing a safe shopping experience?

3 A Not as safe as they would if he was there, otherwise  
4 they wouldn't have the function to begin with. If they  
5 didn't believe it was valuable they wouldn't do it.

6 Q Okay. I'm going to have you look at the second page  
7 of this --

8 THE COURT: Mr. Hood, let me interrupt you one quick  
9 second. You probably would have the attention of three or  
10 four more jurors if you could stand on the other side and  
11 do it the other way.

12 MR. HOOD: Yes, sir, Your Honor, I sure will.

13 Q Do you see number 14, Mr. Gross? And you can get up  
14 if you would like to.

15 THE WITNESS: May I, Judge?

16 THE COURT: Sure.

17 A Yes.

18 Q And number 14 says, "The patrol vehicle should not  
19 leave Wal-Mart property except for gas or maintenance."

20 A That's correct.

21 Q And do you have an opinion about whether that was  
22 violated in this case?

23 A Clearly it was.

24 Q And number 15, "For safety please drive at slow speed  
25 and wear your seatbelt and be aware of other cars and



## TESTIMONY OF JEFF GROSS

1 pedestrians that may be in or around the Wal-Mart parking  
2 lot."

3 A Yes, very important, especially to drive at a slow  
4 speed.

5 Q Why is that important?

6 A Well, the faster you go you run into a problem of  
7 recognition time versus reaction time. You might  
8 recognize that somebody has stepped out in front of you or  
9 a car has backed out in front of you but the faster you're  
10 going the less reaction time that you have to apply the  
11 brake. So going slow gives you time to recognize the  
12 hazard and avoid that hazard, and you're more observant  
13 when you are traveling slowly.

14 Q Have you had an opportunity to see the video of  
15 Derrick Jones engaging Ms. Hancock?

16 A Yes.

17 Q How would you describe that?

18 A I would not define what I'm seeing there as slow. I  
19 could not apply a speed to it but I think that it's  
20 intuitive when you see the video that it's not slow.

21 Q Do you have an opinion about whether he violated that  
22 particular safety rule?

23 A Yes.

24 Q Okay. And then number 16, "For safety always be  
25 alert for cars backing out of parking spaces and customers

## TESTIMONY OF JEFF GROSS

1 walking between cars." Why is that important?

2 A Well, you don't want to hit them. And, of course,  
3 distraction is going to increase your chance if you're  
4 going to hit someone. And speed, again, we've already  
5 talked about that, is certainly a problem.

6 Q When he was pursuing this car in the parking lot and  
7 out into the road, how was he being safe in being alert  
8 for these cars backing out?

9 A Well, the word safety means absence of risk, that's  
10 essentially what it means in our business. And if he's  
11 doing something that creates risk it just can't be safe,  
12 the more unsafe it is the more risk is associated with it  
13 so he increases risk here, therefore less safety.

14 Q Do you have an understanding of the amount of  
15 merchandise that was taken, or alleged to have been taken  
16 in this case?

17 A Not a dollar value. I know volume wise there was a  
18 bag that was sat down before the person exited the store,  
19 I see that in the video but I don't have a dollar amount.  
20 But volume wise it --

21 Q Have you seen the incident report that lists three or  
22 four pair of jeans at about \$50.

23 A I do, but I didn't recall a dollar amount.

24 Q Does \$50, whether she took it or left it at the exit  
25 before she ever left or whether she took it, would that

## TESTIMONY OF JEFF GROSS

1 ever justify what happened in this particular case?

2 A Well, no. But also Wal-Mart's own policies caution  
3 their people that no merchandise is worth getting hurt  
4 over, no merchandise is worth hurting anybody over, that's  
5 part of their policy and procedure. So they're cautioning  
6 their own employees, "We don't want to get people hurt  
7 over merchandise." So they're not saying more than \$150  
8 or less than \$150, they're saying merchandise is not worth  
9 getting hurt over.

10 Q Now, under number 26, "In the event of a shoplifter  
11 situation the security contractor should act as a witness  
12 and only assist when directed by a member of Wal-Mart  
13 management or loss prevention or when you see the Wal-Mart  
14 associate in trouble or danger." Do you see that?

15 A Yes.

16 Q Now, in this particular case, can you tell this jury  
17 who actually told Mr. Jones to get the license plate?

18 A One of the CSM's by radio.

19 Q Did the CSM see him leave the parking lot?

20 A Yes, testified that she did.

21 Q And can you tell this jury what Wal-Mart management  
22 did to call off this particular chase?

23 A Nothing. They told him to get the plate number and  
24 he drove at a right angle away from the store and engaged  
25 the person -- the plaintiff's vehicle at the front of it,

## TESTIMONY OF JEFF GROSS

1 that was in plain view in the front. They took off and he  
2 went after them and they did nothing. They saw it and  
3 they didn't call him back or do anything.

4 Q Now, look at number 29, this Wal-Mart policy. It  
5 says, "Think safety first."

6 A Yes.

7 Q "Always remember to protect yourself and if possible  
8 assist others before attempting to protect property.

9 Remember, security contractors are precluded from  
10 searching or pursuing suspects."

11 A Yes.

12 Q Do you see that?

13 A Yes.

14 Q Was that violated?

15 A Yes, he pursued the suspects.

16 Q And who violated that safety rule?

17 A Well, Derrick Jones, the security officer, did, but  
18 it was secondary to a request by Wal-Mart to go get the  
19 plate number.

20 Q They both violated that policy.

21 A Yeah.

22 Q Now, you can have a seat again, Mr. Gross.

23 MR. HOOD: And at this time, Your Honor, I would move  
24 that the guidelines for private security contractors be  
25 admitted as Plaintiff's Exhibit 9.

## TESTIMONY OF JEFF GROSS

1 MR. BOYD: No objection.

2 THE COURT: Admitted without objection.

3 Q Now, here is a Wal-Mart policy about the  
4 investigation and detention of shoplifters. Do you see  
5 that?

6 A Yes.

7 Q Now, do you see the four elements of what is  
8 considered to be a shoplifter, at the bottom, number four  
9 exiting the facility and passing the last point.

10 A Yes.

11 Q Have you had an opportunity to see the video in this  
12 particular case?

13 A Yes.

14 Q And from your witness of the video, do you have an  
15 opinion about whether she met the Wal-Mart policy of being  
16 a shoplifter?

17 A Up to the point that she puts the bag down, yes.  
18 Once she puts the bag down and the contents wasn't even  
19 confirmed at that point, then I would say no. At that  
20 point there was no defined loss, it was over with  
21 according to their policy.

22 Q And their own manager said it was over with at that  
23 time too, didn't he?

24 A Yes. And even at that their policy says if they are  
25 going to go outside the store after someone not to go more

## TESTIMONY OF JEFF GROSS

1 than 10 feet.

2 Q Okay. And I will put the second page of this up.

3 Down here where it says limitations in the pursuit and

4 detention of suspects, do you see that?

5 A Yes, sir.

6 Q Can you read the first one for the jury?

7 A "Never pursue a fleeing suspect more than

8 approximately 10 feet beyond the point where you are

9 located when the suspect begins to run to avoid detention,

10 10 feet is about three long steps. This limitation

11 applies both inside and outside the facility."

12 Q And can you read the second one for the jury?

13 A "Never pursue a suspect who is in a moving vehicle."

14 And it says after that, "Never pursue a suspect off the

15 facility's property, never use a moving vehicle to pursue

16 a suspect and terminate the pursuit of a suspect if the

17 suspect begins to enter a vehicle."

18 Q Do you have an opinion to a reasonable degree of

19 certainty whether these policies were violated?

20 A They were not -- they were violated, yes. They were

21 not adhered to, no.

22 Q Who broke these rules?

23 A Well, physically USA (sic) Security did, Mr. Jones,

24 but what I would call through tacet approval Wal-Mart

25 didn't do anything to stop him. So they didn't tell him

## TESTIMONY OF JEFF GROSS

1 not to, they told him to go out and get this license plate  
2 number, but with that they didn't give any other direction  
3 or guidance.

4 Q Can you tell the jury why they have policies like  
5 this, or safety rules like this?

6 A Because pursuits are dangerous. If you're dealing  
7 with a shoplifter you always have the possibility of a  
8 fight, you have the possibility of production of a weapon,  
9 you have the possibility that the employee will be injured  
10 in the physical altercation. When vehicles are involved  
11 you have the possibility that somebody pulls a weapon from  
12 a vehicle as they are getting in, the vehicle itself can  
13 be used as a weapon, it's escalating the possibilities of  
14 injury at each step. And what Wal-Mart has done in my  
15 professional opinion is they've tried to engineer out  
16 these risks through developing these policies. This is  
17 how we're going to stay away from these problems, we're  
18 going to have these procedures and policies.

19 Q Now, in regard to never pursue a fleeing suspect,  
20 never, never, never, never, did Derrick Jones have a valid  
21 driver's license at this time?

22 A No.

23 Q Do you have an opinion to a reasonable degree of  
24 certainty about whether you should have a valid driver's  
25 license if you're driving a vehicle patrolling a Wal-Mart

## TESTIMONY OF JEFF GROSS

1 parking lot?

2 A Should have one if you are patrolling or not. If you  
3 drive a vehicle the state requires you to have a driver's  
4 license.

5 Q And who should have discovered that?

6 A Well, if it was discoverable by doing a background  
7 check prior to employment, in other words, the date of  
8 suspension or the violation that caused the suspension was  
9 discoverable at that point they would have known there was  
10 a problem coming with his driver's license. At the point  
11 that he received a suspension notice he certainly could  
12 have told his employer.

13 Q And is a marijuana conviction, is that -- do you get  
14 an automatic suspended license in South Carolina?

15 A My understanding in South Carolina you do.

16 Q If they would have done a background check on him  
17 would they have discovered that?

18 A They would have discovered it and I would have  
19 expected them to react to it.

20 Q Why would a security company allow someone they knew  
21 was going to lose his license, why would they have allowed  
22 him or hire him as someone who could patrol a parking lot?

23 A I can't give a good reason other than profits.

24 MR. HOOD: Your Honor, previously I had used a flow  
25 chart and asked about U. S. Security Associates, at this



## TESTIMONY OF JEFF GROSS

1 time because I forgot to move that into evidence I would  
2 move into evidence U. S. Security and Associates Policy and  
3 Procedure 630-02 with the attachments.

4 MR. BOYD: No objection.

5 THE COURT: Admitted without objection.

6 MR. HOOD: And at this time, Your Honor, I would also  
7 move into evidence the Wal-Mart investigation and detention  
8 of shoplifter policy, it's about 70 pages, I would move  
9 that in as Plaintiff's Exhibit 11 at this time.

10 MR. BOYD: May I look at that just for a moment?

11 THE COURT: Sure.

12 MR. BOYD: No objection.

13 THE COURT: It will be admitted without objection.

14 Q Now, Mr. Gross, have you had an opportunity to look  
15 at the videotapes in this particular case?

16 A Yes.

17 Q And have you had an opportunity to read all of the  
18 depositions and all of the materials given to you in this  
19 case?

20 A Yes.

21 Q Could you tell this jury and explain to this jury  
22 exactly what occurred when Donna Beckham left the  
23 Wal-Mart -- when she dropped the bag with the greeter and  
24 then exited the store that night?

25 A She places the bag on the ground, she walks out of