

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2019-000-507

**RECEIVED**  
OCT 11 2019  
SC Court of Appeals

Melvina Robinson,

v. Appellant

Walmart  
Stores, Inc.; Walmart  
Neighborhood Market;  
Walmart Stores East,  
LP; and Walmart  
Supercenter

Respondent

[INITIAL] BRIEF OF APPELLANT

Melvina Robinson  
110 Gatehouse Dr.  
Summerville S.C. 29486  
Appellate



cc Amy L. Gaffney  
Kelly T. Evans.  
3700 Forest Dr Suite 400  
Columbia SC. 29204

TABLE OF CONTENTS

Table of Authorities ..... ii

Statement of Issues on Appeal ..... 1

Statement of the Case ..... 1

Standard of Review ..... 1

Facts ..... 1

Arguments

1. BECAUSE RESPONDENT WITNESSES RAISED PERJURY IN PRIOR TO THE TRIAL AND SOME OF THE MAIN DISCUSSION IN DISCOVERY NOT REPRESENTED TO THE JURY ..... 2

2. BECAUSE REBUTTAL MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT WAS NOT CHARGED THE JURY THE PLAINTIFF TO REBUTTAL THE DEFENDANT’S WITNESSES TO PROVE BY A PREPONDERANCE OF THE EVIDENCE..... 2

Conclusion..... 2

TABLE OF AUTHORITIES\*

CASES

*Mains v. K Mart Corp.*, 375 S.E.2d 311(S.C. App.1988) ..... 2

Tyler v. MACKS STORES OF SC INC., 272 S.E.2d 633 (S.C. 1980)..... 2

Garner v. Morrison Knudsen Corp., 456 S.E.2d 907 (S.C. 1995)..... 2

STATUTES

S.C. Ct. Code Ann§ 22-33-300 App. 1988 ..... 2

S.C. Code Ann. § 22-33-400 (1985)..... 2

S.C. Code Ann. § 33-44-500 (Supp. 2000)..... 2

OTHER AUTHORITIES

RESTATEMENT (SECOND) Section 100 (1981) ..... 2

RESTATEMENT (SECOND) Section 200 (1981) ..... 2

RESTATEMENT (SECOND) Section 300 (1981) ..... 2

\*The authorities cited are fictitious and intended to show the form of citation only.

## STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT ERR IN FAILING TO FILE THE COMPLAINT IN THE DISCOVERY APPELLATE FILED WITH HUMAN AFFAIRS BY A PREPONDERANCE OF THE EVIDENCE?
2. THE APPELLATE WAS NOT ALLOWED TO REBUTTAL THE RESPONDANT'S WITNESSES AND THE COURT ERR IN CHARGING THE JURY THAT PERJURY WAS PROVED?

## STATEMENT OF THE CASE

On Tuesday, February 26, 2019, the jury in this case returned verdicts for the Defendant on Plaintiff's cause of action for defamation and false imprisonment and this Court issued its Order accordingly. See Exhibits A and B attached hereto. Pursuant to Rule 59, **New Trials; Amendment of Judgments**, of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff moves for a new trial on the following grounds;

## STANDARD OF REVIEW

In accordance with the "thirteenth juror doctrine" because the evidence does not justify the verdict. See, *Trivelas v. South Carolina Dept. of Transportation*, 593 S.E.2d 504 (S.C. App. 2004). The testimony of the Plaintiff, Denny Anderson, Clifford Brown, Jr. and Clinesha Brown was uncontroverted. Defendant's witnesses only stated they had no record of the incidents alleged in the Complaint and then referenced their policies. They did not challenge the testimony of Plaintiff's witnesses. Abuse of discretion, newly discovered evidence, thirteenth juror doctrine.

Witness for Defendants Heather Ganiere was not previously identified by Defendants in their responses to Plaintiff's Interrogatories but was allowed to testify on the last day of the trial over Plaintiff's Motion to Exclude. Plaintiff further renews it Motion to Exclude that was denied by

the Court at a hearing several months prior to the trial that for the first time listed Defendants other witnesses at trial.

## FACTS

The Court denied Plaintiff's request to allow the Plaintiff testify in rebuttal to the witnesses of the Defendants.

The Court did not charge the specific language of *Mains v. K Mart Corp.*, 375 S.E.2d 311(S.C. App.1988) regarding defamation by the actions of a Defendant in the presence of a family member.

1

## ARGUMENTS

- I. BECAUSE RESPONDENT RAISED PERJURY IN THIS SUIT ERR AGAINST DEFENDANT WITNESSES, THE APPELLANT WAS UNABLE TO REBUTTAL AND THE DEFENDANT REJECTING EVERY ANSWER APPELLANT WAS ABLE TO RESPOND WITH AN ANSWER
  
- II. BECAUSE APPELLANT WAS UNABLE TO PROVED BY CLEAR AND CONVINCING EVIDENCE, THE TRIAL COURT ERRED WHEN IT CHARGED THE JURY NOT ALLOWING THE APPELLANT TO PROVE BY A PREPONDERANCE OF THE EVIDENCE AND REMOVED THE DISCOVERY EVIDENCE BEFORE IT GOT TO THE JURY

## CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

October 7, 2019

/s/Melvina Robinson  
Melvina Robinson