

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

Melvina Robinson

Appellant

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

v.

Respondent

[INITIAL] BRIEF OF APPELLANT

RECEIVED
NOV 15 2019
SC Court of Appeals

Melvina Robinson
110 Gatehouse Dr.
Summerville, South Carolina 29486
(843) 934-3694
Appellant

* Under Rule 208, 209(e), SCACR,

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

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT MOTION TO STRIKE
2. DID THE COURT ERR WHEN CHARGING THE JURY THE PREPONDERANCE OF THE EVIDENCE
3. DID ROBINSON'S CONSTITUTIONAL RIGHTS WERE VIOLATED
4. DID THE COURT ERRED WHEN THE COURT DENIED THE APPELLANT'S REQUEST TO ALLOWED THE APPELLANT'S TO TESTIFY IN REBUTTAL TO THE WITNESSES OF THE RESPONDENT

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.

ARGUMENTS

1. In defamation action, "actual malice" can mean the defendant acted recklessly or wantonly, i.e., with conscious disregard of plaintiff's rights, which requires that the defendant be chargeable with consciousness of his wrongdoing). It is ordinarily for the jury to determine whether or not the privilege has been abused or exceeded. *Woodward v. South Carolina Farm Bureau Insurance Co.*, 277 S.C. 29, 282 S.E.2d599 (1981).

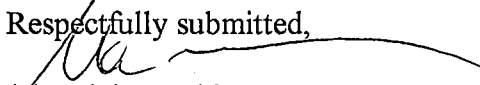
2. The tort of false imprisonment consists in the "(1) intentional and (2) unjustified (3) confinement of a person, (4) directly or indirectly (5) of which the person confined is conscious or is harmed by such confinement." *Noel v. Town of Plymouth*, 895 F. Supp. 346, 354 (D.Mass., 1995); *See* Restatement (Second), Torts § 35 (1965); *see also Wax v. McGrath*, 255 Mass. 340, 342, 151 N.E. 317, 318 (1926) (unlawful restraint by force or threat constitutes false imprisonment).

CONCLUSION

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

November 9, 2019

Respectfully submitted,


/s/ Melvina Robinson
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PROOF OF SERVICE

Dear Courts of Appeals I certify that on November 9, 2019 I mailed a copy of Initial of Brief and Designation of Matter to the Respondents Kelly T. Evans and Amy L. Gaffney at this address 3700 forest Dr., Suite 400 Columbia, S.C. 29204



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