THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

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S.C. SUPREME COURT

G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2016-002248

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

V.

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

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in striking Appellant's negligent hiring and supervision cause of action and barring any evidence in support of the cause of action.

STATEMENT OF THE CASE

The appeal arises from the grant of Wal-Mart, U.S. Security, and Derrick Jones's (collectively Respondents) motion to exclude Appellant's negligent hiring, training, supervision and/or entrustment (hereinafter "negligent hiring and supervision") cause of action and any evidence in support of the cause of action by the Honorable G. Thomas Cooper following a pre-trial hearing. This Court in *Roddey v. Wal-Mart Stores East., LP*, reviewed the court of appeals' affirmance of the trial court's grant of Wal-Mart's motion for a directed verdict. 415 S.C. 580, 784 S.E.2d 670 (2016), *reh'g denied* (May 5, 2016). The Court held the trial court erred in granting a directed verdict on Appellant's negligence claim (hereinafter "negligent pursuit"), and reversed and remanded for a new trial as to all Respondents. *Id* at 592, 784 S.E.2d at 677. Respondents filed a petition for rehearing, which was denied and the matter was returned for a new trial.

Prior to the new trial, Respondents sought to limit the scope of the new trial and filed a motion to exclude the negligent hiring and supervision cause of action or, in the alternative, a motion for summary judgment, which Appellant opposed. Contrary to the initial motion, the trial court granted "[Respondents']motion in limine to bar evidence pertaining to [Appellant's] cause of action for [negligent hiring or supervision] on grounds of res judicata." (R.1-9). Appellant timely filed a motion for reconsideration pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure, which the trial court denied. In denying reconsideration, the court clarified its ruling applied "not only to [Appellant's negligent hiring and supervision cause of action], but also to any evidence offered to support that cause of action." (R.10). Appellant filed a motion to stay, which the trial court denied. A timely notice of appeal followed along with a petition for a writ of supersedeas to stay the trial scheduled for the next week, which the court of appeals granted. Appellant then filed a motion to certify this matter, which this Court granted.

STATEMENT OF FACTS

By way of background and context for the present appeal, on May 16, 2016, a little over a month prior to the car crash that killed Alice Hancock, Jones applied for a security officer position with U.S. Security, which immediately hired him. (R. 319-322; 173, 179, 180, 228). U.S. Security requires their security guards, in pertinent part, to meet state requirements, pass a drug test, have a current driver's license. *Id.* However, it hired Jones despite the fact that he had a suspended driver's license and had tested positive for THC, the active chemical in marijuana, at his pre-employment drug screening. *Id.* Additionally, Jones was statutorily ineligible[1] for employment as a security guard in South Carolina at the time he applied because of a drug conviction and a pending charge of strong-arm robbery. *Id.*

Through its contractual relationship with Wal-Mart, U.S. Security assigned Jones to work as a security guard in the parking lot of the Wal-Mart store in Lancaster.[2] *Roddey*, 415 S.C. at 583, 784 S.E.2d at 672. Wal-Mart required U.S. Security to comply with all federal and state laws, rules, and regulations; perform background checks; confirm safe driving records for their guards; and ensure that its guards have a current license. (R.319). When Jones was notified he would be working at Wal-Mart he was informed of explicit policies and procedures he must follow. *Id.* at 580, 585, 784 S.E.2d at 673 fn. 3. These rules included the following admonitions: a security

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[1] *See* S.C. Code Ann. § 40–18–80(A)(4) (stating to obtain a security officer certificate a person may not have been convicted of a felony or crime involving moral turpitude, unlawfully use drugs, and passed a SLED-approved pre-employment drug test).

[2] Further, Wal-Mart has explicit roles security guards are to perform. Specifically, Wal-Mart has security guards for two reasons: (1) to provide protection through deterrence, i.e. visual presence, and (2) to communicate with customers to make them feel safe. Wal-Mart's policies are based on a belief that if people know there is a security guard, they are less likely to steal or break into vehicles in Wal-Mart's parking lot. (R. 147, 163); *see also Roddey*, 415 S.C. at 585, 784 S.E.2d at 673.

guard is not authorized to investigate shoplifting, a guard should never pursue a suspect off the property, and a guard should not pursue a suspect in a vehicle. *Id.* (R. 147-163).

On Jones's first day of work, Wal-Mart management informed him he should obtain a license plate number even if it required him to leave Wal-Mart's premises—a directive in violation of the rules and procedures. (R.199-Jones Deposition at p. 115 ("my very first day I had to go get a license plate tag number off the premises")). Jones sought clarification from his U.S. Security manager about whether he should violate the written policies at the instruction of Wal-Mart employees and he was told "you got to do what you got to do." (R. 199).

On June 20, 2006, the night of the fatal crash, Jones was patrolling the parking lot in a company vehicle—despite the fact that his driver's license was suspended.[3] *Id.* at 585, 784 S.E.2d at 673. Two Customer Service Managers were working at Wal-Mart that night: Shawn Cox and Hope Rollings. *Id.* at 583, 784 S.E.2d at 672. Together with Chuck Campbell, they were the three ranking managers in the store. All three managers were in radio contact with each other and with Jones. *Id.* at 585, 784 S.E.2d at 673 fn.2.

Donna Beckham, Hancock's sister, was shopping in Wal-Mart that night and was later identified as a shoplifter. *Id.* at 583, 784 S.E.2d at 672. Cox asked Jones to delay Beckham as she was exiting the store and proceeding to Hancock's car. *Id.* at 585, 784 S.E.2d at 673. Roughly the same time, Cox told Jones to get the license plate number off Hancock's vehicle. *Id.* Pursuant to Cox's instruction, Jones followed Beckham to the car and blocked her exit from the parking lot. *Id.* at 583, 784 S.E.2d at 672. Hancock reversed her car and left the parking lot while Jones remained in pursuit. *Id.*

[3] He 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. (R.327-29).

As Jones pursued Hancock's car, Wal-Mart employees instructed him to obtain the license plate number. *Id.* at 586, 784 S.E.2d at 673. According to Jones, as the vehicles exited the parking lot, Wal-Mart employees continued to direct him, through radio contact, to obtain the license plate number and at no point instructed him to stop pursuit. *Id.* The pursuit ended two miles from Wal-Mart when Hancock lost control of her vehicle, swerved off the roadway, and hit a tree. *Id.* 583-84, 784 S.E.2d at 672. Hancock died in the crash. *Id.*

Appellant filed suit alleging three causes of action against Respondents: (1) negligence-respondent superior, (2) negligent hiring and supervision–wrongful death, and (3) negligent hiring and supervision–respondent superior-survivorship. (R.119-29). At trial, Appellant put forth extensive evidence and testimony regarding the contractual relationship between U.S. Security and Wal-Mart, in which U.S. Security agreed to provide security services at Wal-Mart stores; background concerning Jones's hiring and employment with U.S. Security and assignment to a Wal-Mart location; fact witnesses, and an expert witness in parking lot security, guard force, and loss prevention. *Id.* at 583-87, 784 S.E.2d at 672-74; (R. 147-163).

At the close of Appellant's case-in-chief, Wal-Mart moved for a "directed verdict in their favor on all causes of action in the complaint." (R.562). In support of its directed verdict motion, Wal-Mart stated the only two allegations of alleged wrongdoing that had been made against Wal-Mart 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 to return to the store. (R.563). Wal-Mart argued the acts were not wrongful and that neither were a proximate cause of Appellant's injuries. *Id.* Further, Respondents stated, "Obviously[,] Wal-Mart does not employ Jones, [and] has no respondeat superior liability for his conduct." (R. 563). Appellant's counsel argued that sufficient evidence was presented on the breach and causation to survive a directed verdict, but the

trial court found there was insufficient evidence that Wal-Mart was negligent, or even if Wal-Mart was negligent there was a lack of proximate cause because the events were not foreseeable. As such, the trial court dismissed Wal-Mart "on all of the grounds argued." (R.573).

Thus, the trial court's ruling effectively removed Wal-Mart from the case on both the negligent pursuit cause of action and the negligent hiring and supervision cause of action. Appellant's counsel sought clarification on the trial court's ruling on three separate occasions. (R.573-74). Each time the trial court stopped Appellant's counsel and informed counsel the court had ruled. *Id.*

The trial continued against U.S. Security and Jones, and the jury ultimately found U.S. Security and Jones were negligent. (R.272). However, it found Hancock was sixty-five percent at fault, and U.S. Security and Jones were collectively thirty-five percent at fault. *Id.* As to negligent hiring and supervision, the jury found that U.S. Security was negligent, but its negligence was not the proximate cause of Hancock's death. *Id.*

Appellant appealed arguing the trial court erred in granting a directed verdict to Wal-Mart. In a split decision by the court of appeals, the directed verdict was upheld. *See Roddey v. Wal-Mart Stores E., LP*, 400 S.C. 59, 732 S.E.2d 635 (Ct. App. 2012). On certiorari, this Court reversed, finding the trial court erred in granting the directed verdict because there was evidence Wal-Mart breached its duty of care and this breach could be found to be the proximate cause of the alleged injuries. *Id.* at 580, 784 S.E.2d at 670. Accordingly, the Court granted a new trial as to all Respondents. *Id.* at 592, 784 S.E.2d at 677. In reaching its decision, the Court explained, "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." *Id.* Respondents filed a petition for rehearing, but did not challenge the grant of the new trial, i.e. to all causes of action as pled in the complaint. The

petition was denied, and the matter was remitted and returned to the trial court for a new trial. (R. 91-102;103-04;105).

In anticipation of the second trial, Respondents attempted, for the first time, to limit the scope of the new trial by filing a motion to exclude the negligent hiring and supervision cause of action or, in the alternative, a motion for summary judgment on the grounds of issue preservation, appealability, and res judicata. (R.130-146). Specifically, Respondents argued the purpose of their motion was "to exclude [negligent hiring and supervision] from retrial" and thus contended the negligent hiring cause of action was previously determined by a jury, not appealed, and was barred under res judicata. Appellant opposed the motion, arguing the opinion stated this Court found the only remedy to address the trial court's error was the grant of new trial. (R.319-354; 603). After a hearing, the trial court took the issue under advisement and requested proposed orders from counsel. (R.611; 371-393).

The subsequent order issued by the trial court granted "[Respondents'] Motion *in limine* to bar evidence pertaining to [Appellant's] cause of action for negligent hiring, training, supervision and/or entrustment on grounds of res judicata" and ordered the trial to proceed. (R.9) (emphasis in the original). The trial court held that during the appeal Appellant "only challenged the directed verdict in favor of Wal-Mart," thereby limiting the issue on appeal to negligence and further held that Appellant was required to appeal the jury's verdict to revive the negligent hiring and supervision cause of action. *Id.* at p. 7-8. For those reasons, the trial court found evidence related to the negligent hiring and supervision cause of action were barred by res judicata. *Id.* at p. 8-9.

Appellant filed a motion to reconsider and/or alter and amend. (59(e) motion). First, Appellant argued the trial court's order misapprehended the posture of the motion, explaining all arguments briefed and presented at the hearing addressed the exclusion of the cause of action—

not evidence relating to the cause of action. (R.1-3). Thus, the trial court ruled on evidentiary grounds of res judicata that were never raised, and were legally unsound. *Id.* Regardless of the captioning, the order effectively excluded (or struck/or dismissed) the negligent hiring and supervision cause of action. (R.353-356). Second, Appellant argued the trial court erred based on a plain reading of the opinion, a review of the directed verdict motion from the first trial, and the law of the case doctrine. (R.356). Third, Appellant asserted res judicata did not apply because Section 26 of the Restatement (Second) of Judgments. *Id.*

The trial court denied Appellant's motion to reconsider. (R.10). Notably, the court held the order barred the cause of action and any evidence that relates to the cause of action. (R.10). Appellant subsequently filed a motion to stay, which the trial court denied. (R.431-37; R. 12). A timely notice of appeal followed along with a petition for a writ of supersedeas to stay the trial, which the court of appeals granted. (R.13-14). This Court then certified this case upon motion by Appellant. (R.15).

ARGUMENT

The trial court erred in striking Appellant's negligent hiring and supervision cause of action and barring any evidence in support of the cause of action.

The trial court's orders contravene the express relief granted by this Court. The trial court was bound by the Court's decision to grant a new trial as to all causes of action. As to the evidentiary ruling, excluding any evidence pertaining to negligent hiring and supervision effectively eviscerates the grant of a new trial because the barred evidence relates to both causes of action, yet the trial court prohibited the evidence outright. The trial court is blatantly wrong. This ruling allows Respondents to assert that all evidence pertains to the negligent hiring and supervision cause of action and thus is barred under the order, which practically results in the granting of a directed verdict motion in favor of all Respondents not just Wal-Mart. In sum, the trial court's rulings do not fulfill the relief granted by this Court. This Court should reverse.

A. The opinion provides a new trial.

A plain reading of the opinion states, "we reverse the court of appeals' decision and remand for a new trial as to all [Respondents]." *Roddey*, 415 S.C. at 592, 784 S.E.2d at 677. The majority's reasoning explains how the trial court's error in granting Wal-Mart's directed verdict permeated the entire trial. 415 S.C. at 589-92, 784 S.E.2d 675-77. In fact, the majority acknowledges the difficulty of apportioning fault given the complexity and entwined nature of the two causes of action and the absence of Wal-Mart. 415 S.C. at 592, 784 S.E.2d at 676–77. Specifically referencing Wal-Mart's failure to supervise, the majority states:

> In addition to [Appellant's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, [*Appellant*] *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). *Id.* The majority's decision to grant a new trial was not taken lightly. The Court's phrasing "the only appropriate remedy in this situation is a new trial" readily acknowledged its decision was a substantial form of relief. However, given the incorrect grant of the directed verdict it was the only relief that would cure the error.[4] While the dissent disagreed with the outcome of the appeal, it recognized a new trial as to all parties was granted.[5] *Id.* at 593-94, 784 S.E.2d at 677-78. Thus, there is no suggestion or inference that the Court placed limitations on the scope of the new trial.[6] To the contrary, both writings reflect the Court's appreciation of the breadth of its holding.

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[4] In particular circumstances this Court has found a legal error requires a significant form of relief. *See e.g.*, *City of Rock Hill v. Suchenski*, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007) (explaining the dismissal of a criminal charge is the appropriate remedy when an arresting officer failed to provide the complete videotape from incident site); *State v. Jones*, 342 S.C. 121, 126, 536 S.E.2d 675, 677–78 (2000) (upholding the grant of a new trial when a *Franks v. Delaware*, 438 U.S. 154 (1978), violation occurred); *Burns v. S. Carolina Comm'n for Blind*, 323 S.C. 77, 80, 448 S.E.2d 589, 591 (Ct. App. 1994) (explaining when general jury instructions are "insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error, and a new trial is warranted").

[5] *See Id.* at 593-94, 784 S.E.2d 677-78 ("I am not convinced that even if [Appellant] 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."); *Id.* ("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.").

[6] This Court on numerous occasions has granted a new trial based on a trial court's error in granting a directed verdict and in doing so, has simply stated it was remanding for a new trial. *See, e.g.*, *S.C. Fed. Credit Union v. Higgins*, 394 S.C. 189, 196, 714 S.E.2d 550, 553 (2011) (Kittredge, J.) (remanding the matter for a new trial based on improper grant of a directed verdict, and noting it need not reach other issues); *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 366, 635 S.E.2d 97, 99 (2006) (Waller, J.) (remanding the matter for a new trial after finding the trial court erred in granting a directed verdict as to the respondents); *see also 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). Moreover, if this Court intended to limit the causes of action to be tried it would have specifically stated such restriction and provided instructions to the trial court. For example, in the same term of court this matter was heard, the Supreme Court remanded cases for new trials or proceedings with limiting instructions on the issues to be heard by the lower tribunal. *See*

B. The trial court's orders are contrary to the law of the case doctrine.

The trial court erred in finding the negligent hiring and supervision cause of action and any evidence related to the cause of action were barred on grounds of res judicata, including its interpretation of Wal-Mart's directed verdict motion and the appealability of the motion. The trial court's orders reflect Respondents' attempt to rewrite the opinion to limit the relief granted under the guise of interpretation. However, any confusion or quarrel with the relief should have been addressed to this Court by way of a petition for rehearing. Respondents failed to avail themselves of that opportunity and it was error for the trial court to subvert this Court's expressed relief, which is the law of the case.

The law of the case doctrine strictly prohibits issues that have been decided in a prior appeal to be relitigated in the trial court in the same case. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). The law of the case applies to issues explicitly decided and those that are necessarily involved given the appellate court's ruling. *Id.* (citing *Nelson v. Charleston & W. Carolina Ry. Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957) (explaining where the Court granted a new trial in the first appeal for errors in the charge, it inferentially determined the trial court had not erred in refusing defendant's motion for a directed verdict "for if there had been error in this respect it would have been unnecessary to consider any other questions"); *see also Warren v. Raymond*, 17 S.C. 163, ___ S.E. ___ (1882) (explaining all points decided by an appellate court or necessarily involved in the court's decision are res judicata and cannot be considered again in the cause). The law of the case doctrine equally applies to a petition for rehearing. *Shirley's Iron*

Allegro, Inc. v. Scully, 418 S.C. 24, 36, 791 S.E.2d 140, 146 (2016) (limiting the causes of action to be addressed by the circuit court following a remand); *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 252, 791 S.E.2d 719, 723 (2016) (instructing the Workers' Compensation Commission that their consideration of the issue was limited). The Court's silence as to limiting instructions demonstrates the intent to grant Appellant a new trial on all causes of action.

Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right.").

Pursuant to Rule 221(a), SCACR, a party is required to file a petition for rehearing to address any points an appellate court may have overlooked or misapprehend. Rule 221(a), SCACR. The petition for rehearing provides a party the opportunity to address with the Court a wide range of perceived issues including, but not limited to: an incorrect statement of fact, an error of law, a grammatical mistake, an ambiguity, and/or an unforeseen consequence. A party's failure to address a concern in the petition for rehearing precludes the party from later raising the matter to the trial court or in a subsequent appeal. *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009).

Respondents attempt to curtail the expressed grant of a new trial by arguing the negligent hiring and supervision cause of action was not before this Court. Respondents frame this issue as one of interpretation; however, that is simply not the case. As discussed *supra*, there is no ambiguity in the relief granted. Further, to the extent Respondents required an interpretation of the opinion that should have been addressed in a petition for rehearing, pursuant to Rule 221, SCACR.

Before the trial court, Respondents refuted the need for a petition for rehearing by arguing under their interpretation of the opinion it was inconceivable that the Court would be granting a new trial on all causes of action because the jury verdict was not the subject to the appeal. (R.615). That position is inconsistent with Respondents' final brief to this Court in the first appeal. Respondents were acutely aware that if this Court were to grant Appellant's requested relief, they could be subject to a new trial as to all Respondents on all causes of action. (R.78). To address the issue now on appeal, Respondents stated in a footnote in their final brief:

> 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 [U.S. Security], 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 [U.S. Security], 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.*

(R.78)(emphasis added). Respondents were cognizant that this Court could grant a new trial as to all Respondents on all causes of action—and proactively sought exclusion of the negligent hiring and supervision cause of action, which it did not receive in the ultimate mandate. Based on Respondents' prior arguments they should have raised that as an error with the Court. Moreover, to the extent Respondents had any hesitation or uncertainty in the interpretation of the Court's granted relief, the proper forum for Respondents to address those matters was with this Court prior to the remitting of this case. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) (noting the sending of the remittitur ends appellate jurisdiction). Thus, this Court's grant of a new trial is the law of the case. Accordingly, the trial court was bound by this Court's decision and the trial court erred by excluding the negligent hiring and supervision cause of action and barring any evidence offered to support the cause of action.

C. The trial court erred in barring any evidence of the cause of action.

The trial court's order barring any evidence in support of the negligent hiring or supervision cause of action must be reversed. The ruling exceeds the traditional notion of a motion in limine and effectively serves as a dispositive order for both causes of action[7]. Further, and more troubling,

[7] Appellant acknowledges that generally a motion in limine is not considered a final ruling because it is subject to change based on the developments in a trial, and is therefore not immediately appealable. *S.C. Dep't of Transp. v. McDonald's Corp.*, 375 S.C. 90, 92, 650 S.E.2d 473, 474 (2007). However, an order that is not directly appealable may be considered if there is an appealable issue before this Court. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005). Here, the trial court's order striking a cause of action is properly

is that this now-barred evidence was specifically referenced as part of the basis for this Court's reversal in the first appeal. A holding that precludes the jury from considering evidence that this Court deemed so probative that the case required an entirely new trial is perplexing.

The admission or exclusion of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 25–26, 609 S.E.2d 506, 509 (2005). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell,* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citation omitted). To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice. *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

At the outset, Appellant recognizes consideration of this assertion of error is somewhat irregular. This is not the typical backward-glancing review of a record in which an appellant points to prejudice within the context of a completed trial. This is not because Appellant requested the review of an interlocutory order; it is because the characterization of this holding as "evidentiary" is actually just striking the cause of action by another name. Of course if Appellant is precluded from proving a cause of action, it may as well be struck. However, even if this Court were to agree with the assertion that the negligent supervision and hiring cause of action is not part of the remand, it does not follow that evidence of such should be inadmissible.

before the Court. The Court should therefore address this evidentiary issue as a means of potentially avoiding a future appeal and promoting judicial economy. *Id.* (explaining the Court will consider an issue "in an effort to avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy)").

A motion in limine addresses evidentiary issues. The purpose of a motion in limine is to obtain a pretrial ruling to prevent the disclosure of a potentially prejudicial matter to the jury. *State v. Smith*, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999); *see also Luce v. United States,* 469 U.S. 38, 40 n. 2 (1984) ("[A]ny motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered."). Generally, a motion in limine is viewed as a protective order against either prejudicial questions, statements, or material. 15 S.C. Jr. Appeal and Error § 78.

While South Carolina jurisprudence has yet to addressed an order granting a motion in limine in an analogous context, courts across the country have addressed similar issues. In other jurisdictions, an order granting a motion in limine to exclude all evidence of an issue has been considered "inappropriate." *See e.g, Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975) (holding orders ruling on motions in limine should rarely exclude broad categories of evidence); *Hinkle v. Ford Motor Co.*, No. 3:11-24-DCR, 2012 WL 5868899, at * 8 (E.D. Ky. Nov. 20, 2012)("[T]he Court will not rule on this substantive issue in a motion in limine."); *Bell v. Prefix, Inc.*, No. 05-74311, 2009 WL 3614353, at *1 (E.D. Mich. Nov. 2, 2009) ("Normally, motions in limine are not proper procedure devices for the wholesale disposition of theories or defenses"). Numerous courts have reversed a trial court's grant of a motion in limine that either excludes all evidence as to a cause of action or effectively serves as a summary judgment motion. *See e.g., Louzon v. Ford Motor Co.*, 718 F.3d 556, 563 (6th Cir. 2013) ("the motion in limine is no more than a rephrased summary judgment motion, the motion should not be considered")[8];

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[8]*See also, Dunn v. State Farm Mut. Auto. Ins. Co.*, 264 F.R.D. 266, 274 (E.D. Mich. 2009) ("[M]otions in limine are meant to deal with discrete evidentiary issues related to trial and are not [an] excuse to file dispositive motions disguised as motions in limine."); *see also Johnson v. Chiu*, 199 Cal. App. 4th 775, 780, 131 Cal. Rptr. 3d 614, 618 (2011) (explaining a motion in limine that "seeks to exclude all evidence pertaining to part or all of a cause of action based on an argument

These courts have explained that such rulings do not adhere to the purpose of these motions because they were never intended to be dispositive motions. *Ferguson v. Marshall Contractors, Inc.*, 745 A.2d 147, 151 (R.I. 2000).

In sum, courts generally refuse to address non-evidentiary legal issues through motions in limine because they are not the proper procedural mechanism to address dispositive motions. In *Louzon,* and *Ferguson*, the courts viewed the motions in limine as attempts to circumvent the rules. *Louzon*, 718 F.3d at 563. *Ferguson*, 745 A.2d at 150. The Sixth Circuit explained that by allowing this type of motions practice "a litigant could raise any matter in limine, as long as he included the duplicative argument that the evidence relating to the matter at issue is irrelevant." *Id.*, at 563. The Supreme Court of Rhode Island, in *Ferguson*, in reviewing the motion, found that, since the purpose of the motion was to exclude all evidence of duty rather than a piece of evidence, the motion was improperly dispositive. 745 A.2d at 151. Furthermore, multiple courts have expressed grave concerns that using a motion in limine as a dispositive motion invites violations of a party's fundamental rights to due process and right to jury trial. *Amtower v. Photon Dynamics, Inc.*, 71 Cal. Rptr. 3d 361, 373 (2008), *as modified* (Feb. 15, 2008) ("[Motions in limine] circumvent procedural protections provided by the statutory motions or by trial on the merits; they risk blindsiding the nonmoving party; and, in some cases, they could infringe a litigant's right to a jury trial. Adherence to the statutory processes would avoid all these risks."). For these reasons, courts repeatedly have reversed the grant of a motion of limine as an error of law.

In the present case, the trial court's order far exceeded an evidentiary ruling by effectively serving as a dispositive motion. This alone is an error of law. This error is compounded by the

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that plaintiff lacks evidence to support part or all of the cause of action is but a disguised motion for summary adjudication").

fact that the ruling barred any evidence in support of the cause of action in direct contradiction to a plain reading of the opinion and violates the law of the case doctrine. *See e.g., Ferguson*, 745 A.2d at 151 (holding law of the case doctrine applies to motions in limine). The opinion in no manner bars evidence that involves negligent hiring and supervision. Instead, the opinion relies on evidence of negligent supervision, including entrustment, in finding that Appellant satisfied his duty to put forth evidence of Wal-Mart's breach of its duty of care and such evidence could be determined to be the proximate cause of Hancock's injuries. *Roddey*, 415 S.C. at 580, 784 S.E.2d at 670. The Court deemed evidence and testimony that Jones was instructed by Rollings and Cox to "repeatedly" get the license tag number, including instructing him to continue a pursuit off the premises two miles from the store, in direct violation of Wal-Mart policies, worthy of including in its opinion and upon consideration of those facts granted a new trial. *Id.*, 415 S.C. at 584-86, 784 S.E.2d at 673 (2016).

There is no hyperbole in asserting that affirming this evidentiary holding would completely strip Appellant from his means of proving his case. A motion in limine is designed to prevent prejudice at the forefront, but here it serves the opposite purpose in preventing Appellant from presenting the complete chain of events giving rise to the alleged injuries. The facts underlying these causes of action are inextricably interwoven, nevertheless Respondents would have this Court prohibit Appellant from adducing evidence germane to both causes of action simply because that evidence pertained to the issue of negligent hiring and supervision. Yet, the importance of many of those facts are even highlighted within the Court's opinion as important parts of the arc of Appellant's case. The Court noted, "Wal–Mart policy prohibited employees from pursuing shoplifters beyond the parking lot" and that management is required to enforce the policies and procedures. *Id.* at 584, 784 S.E.2d at 673. While "Jones knew that he was not supposed to leave

the parking lot" the Court repeatedly mentioned the evidence offered that he was instructed in contradiction to the policies and procedures by Wal-Mart management, i.e. his supervisors.

The Court noted that "Jones testified that when he received a call on his radio informing him that Beckham shoplifted and that she was exiting Wal–Mart," 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?'" *Id.* at 585, 784 S.E.2d at 673. Jones explained that at first "he was instructed to delay Beckham by talking to her." *Id.* When he tried to engage her in conversation, she ran so 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.''' *Id.* at 585-86, 784 S.E.2d at 673. Jones stated despite knowing he was violating policy "he felt pressure due to the instruction" from Rollings and Cox. *Id.* at 586, 784 S.E.2d at 673. "[A]fter telling [Rollings and Cox] 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.'" *Id.* at 586, 784 S.E.2d at 673-74. Furthermore the Court noted that Jones testified he was in radio communication with Wal-Mart management as he followed Hancock to the highway. *Id.* at 586, 784 S.E.2d 674. Significantly, the Court wrote that throughout those events Jones "was under the impression that if he did not get the license plate tag number, he could be fired for not doing his job." *Id.* at 586, 784 S.E.2d at 673.

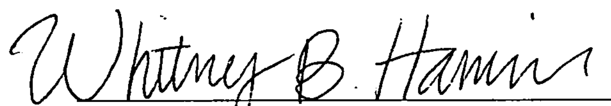
In addition to the evidence relied on by the Court's opinion, Appellant is barred from introducing evidence pertaining to Jones's credibility. For example, Appellant is prohibited from introducing evidence that Jones lied on his job application or that he knowingly pursued Hancock while having a suspended driver's license. Appellant is also barred from introducing evidence that

Jones withheld his drug use when applied to U.S. Security. Moreover, this same evidence goes to whether Jones's actions were willful, wanton, or reckless in his pursuit of Hancock.

The trial court inserted itself far beyond the scope of a preliminary ruling to the point that it has taken control of Appellant's case-in-chief. The trial court has precluded the jury from considering evidence relied on by this Court, and prejudiced Appellant by ensuring a directed verdict in favor of Respondents. Accordingly, this Court should reverse.

CONCLUSION

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



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2016-002248

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

v.

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

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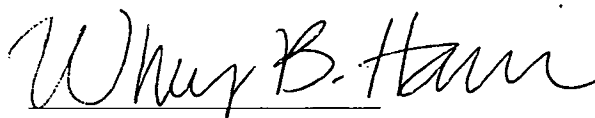
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the Brief of Appellant and the Reply Brief filed on August 18, 2017, with this Court complies with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

Respectfully submitted,



August 18, 2017
Columbia, SC

Whitney B. Harrison
McGowan, Hood & Felder, LLC

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PROOF OF SERVICE

The undersigned hereby certifies that on August 18, 2017, she served counsel for Respondent with Appellant's *Final Brief and Final Reply Brief* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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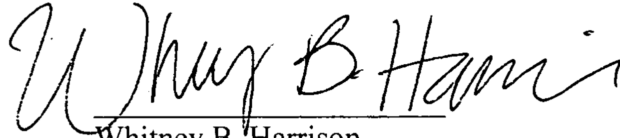
Signature Page to Follow

Respectfully submitted,



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