STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Upon Certiorari to the South Carolina Court of Appeals

Appeal from Fairfield County
Court of Common Pleas
Paul E. Short, Jr., Circuit Court Judge

Ronnie Armstrong and
Tillie Armstrong,

Petitioners,

v.

Food Lion, Inc.,

Respondent

BRIEF OF PETITIONERS

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STATEMENT OF ISSUE ON APPEAL

Did the Court of Appeals err in its conclusion that the trial court properly directed a verdict in favor of respondent with respect to petitioners' causes of action which alleged respondent was vicariously liable, under principles of *respondeat superior*, for the torts committed by its employees against petitioners?

STATEMENT OF THE CASE

Petitioners, Ronnie Armstrong and Tillie Armstrong, were the plaintiffs in an action against Food Lion, Inc., Marcus Cameron, and Byron Thomas Brown. They alleged a number of causes of action to recover for injuries they suffered when they were attacked by Cameron and Brown, two Food Lion employees, in the Food Lion store in Winnsboro, South Carolina, on December 14, 1998. App. pp. 2-37. The cases were tried together in June 2002 in a proceeding before then Circuit Court Judge Paul E. Short, Jr. App. p. 38. Default judgment was granted in favor of both plaintiffs against the two individual defendants, Cameron and Brown. App. p. 142.

The plaintiffs alleged Food Lion was also responsible in damages for the injuries resulting from the torts of its employees, where Food Lion supplied the dangerous instrumentalities with which the employees carried out the attacks and injured the plaintiffs. App. pp. 172-74, 180-81. Food Lion asserted it should not be held liable for the torts of its employees because the evidence did not establish they were acting in furtherance of Food Lion's business. App. pp. 170-71, 181-82. The trial court agreed and directed a verdict on this theory of liability. App. pp. 196-97. The case proceeded on the negligent supervision claims, and the jury returned a verdict for Food Lion on that theory of liability. App. pp. 1, 197, 208.

Petitioners appealed the trial court's decision to grant a directed verdict in favor of Food Lion on the claims based on vicarious liability for the acts of its employees. App. pp. 264-317. In an unpublished decision filed June 10, 2004, opinion no. 2004-UP-366, a panel of the Court of Appeals summarily affirmed the trial court's decision, without discussing the evidence presented at trial and the reasonable inferences drawn from the evidence and without addressing any of the legal arguments made at trial and on appeal, instead merely citing six earlier decisions of this Court and the Court of Appeals. App. pp. 318-19. Petitioners sought rehearing, which the Court of Appeals denied by order dated August 19, 2004. App. pp. 320-33. This Court granted a writ of certiorari to review the decision of the Court of Appeals.

FACTS IN EVIDENCE AND INFERENCES THEREFROM

Ronnie Armstrong, his mother, Tillie Armstrong, and his sister, Edwanda Armstrong, went together to Food Lion on the night of December 14, 1998, to shop for groceries. App. pp. 50, 78-79, 103-04. As Ronnie was going down an aisle of the store, he encountered three Food Lion employees, all on duty and wearing Food Lion uniforms. App. pp. 51, 64, 106, 118, 199, 201, 205-06. At least two of these three employees had a "box cutter" or "case cutter" furnished by Food Lion for their work. App. pp. 51-52, 82, 150-51. One of these employees, defendant Brown, started swinging at Ronnie with the box cutter he was carrying, cutting him in the face, lip, and under his throat. App. pp. 51, 118. Ronnie fell to the floor, where another of the employees, defendant Cameron, jumped on him and further cut him in the back with a box cutter. App. pp. 51, 118-19. Ronnie's mother and another customer, Justin Loner, came to assist Ronnie and attempted to get Cameron and Brown off of him. App. pp. 51-52, 82, 119. Cameron turned and assaulted Mrs. Armstrong, knocking

her into the shelves and to the floor. App. pp. 52, 82-83. The evidence did not reveal the reason for the attacks. Ronnie Armstrong testified he did not know why the men attacked him. App. p. 52.

Both Ronnie and his mother suffered injuries as the result of this attack. Ronnie was cut very badly and required stitches. App. pp. 42, 54-61. In addition to the wounds to his face, lip, throat, and back mentioned above, he had severe cuts to his arm, chest, and nipple. App. pp. 55-57. His wounds resulted in significant scarring, characterized by a medical expert as "numerous traumatic scars." App. pp. 61, 76, 131-32. He incurred medical bills for treatment of his injuries. App. pp. 65-70, 98. He suffered from substantial emotional distress as the result of the attack, his bleeding, and his scars. App. pp. 61-62. He relived the incident and had difficulty sleeping. App. p. 61. He saw a trauma therapist because of his difficulty sleeping and dealing with his scars. App. p. 67. He was treated by a chiropractor for neck and spine problems resulting from the incident. App. pp. 68, 95-96. A plastic surgeon testified that his scars could be improved but not eliminated with surgery. App. pp. 132-33. Such surgery would be painful, would require hundreds of stitches, and would cost in excess of $6,550. App. pp. 69, 133-35, 139-40. Mrs. Armstrong also suffered physical injuries, including a low back problem, and she incurred expenses for treatment of her injuries and physical therapy. App. pp. 85-89, 99-100. She, too, had emotional distress from the shock of seeing her son bleeding so profusely, experienced difficulty sleeping, and ultimately suffered from heart failure. App. pp. 84-85. She also received therapy for this emotional trauma. App. pp. 86-87.

It was undisputed that the two individual defendants, Cameron and Brown, were Food Lion employees on duty at the time of this incident. As Food Lion's own evidence

established, at the time of the attacks, its employees were carrying out their duties stocking shelves. App. pp. 199-201. In its brief filed in the Court of Appeals, App. p. 288, Food Lion contended the plaintiffs' evidence did not establish that the employees were stocking shelves immediately prior to their attacks on the plaintiffs but were instead "just goofing off." This argument actually misstated the plaintiffs' evidence. Justin Loner, the witness who testified the employees were "just goofing off," was in fact describing his encounter with the three employees in another part of the store some minutes prior to the attacks. App. p. 116, l. 22 - p. 117, l. 15. Specifically, Loner stated, "I seen all three of them at the front of the store when I first walked in, just goofing off, talking, you know." App. p. 116, ll. 22-24. Loner then went elsewhere in the store to talk to a friend and was with his friend "maybe five minutes" before the incident in the store aisle occurred. App. p. 117, l. 2. By all accounts, when the attacks occurred, the employees were no longer at the front of the store where they had earlier been observed goofing off, but instead were in the store aisle where it was their job to stock shelves. A reasonable inference from this evidence is that the employees had gone to the aisle, with the case cutters supplied by Food Lion, to carry out their employment duty of stocking shelves.[1]

It was also undisputed that Food Lion supplied the box cutters used by its employees in these attacks. In its brief in the Court of Appeals, App. p. 300, n.6, Food Lion asserted the plaintiffs failed to present "any evidence that the box cutters were supplied to Brown and Cameron by Food Lion." That the knives were supplied by Food Lion is a reasonable inference from the evidence presented by the plaintiffs in this case. The knives were a necessary tool for the employees to use in their task of opening crates and stocking shelves

[1] Food Lion itself confirmed this inference *as fact* through the testimony of one of its own witnesses that they were stocking shelves when the incident occurred. App. pp. 199-201.

with merchandise, a duty of their employment. Because the knives were dangerous instrumentalities, the employee handbook prepared and supplied by Food Lion gave written warnings and instructions concerning the manner in which the knives should be used. App. pp. 151-52, 234. The only reasonable inference from this evidence is that these tools were supplied by Food Lion to its employees.[2]

ARGUMENT

THE COURT OF APPEALS ERRED IN ITS CONCLUSION THAT THE TRIAL COURT PROPERLY DIRECTED A VERDICT IN FAVOR OF RESPONDENT WITH RESPECT TO PETITIONERS' CAUSES OF ACTION WHICH ALLEGED RESPONDENT WAS VICARIOUSLY LIABLE, UNDER PRINCIPLES OF *RESPONDEAT SUPERIOR*, FOR THE TORTS COMMITTED BY ITS EMPLOYEES AGAINST PETITIONERS.

Upon the defendant's motion for a directed verdict, the trial court was required to view the evidence and all reasonable inferences therefrom in the light most favorable to the plaintiffs. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 366, 468 S.E.2d 645, 648 (1996); *Murphy v. Jefferson Pilot Communications Co.*, 364 S.C. 453, 461, 613 S.E.2d 808, 812 (Ct. App. 2005); *Sims v. Giles*, 343 S.C. 708, 714, 541 S.E.2d 857, 860 (Ct. App. 2001). The same standard applies to an appellate court's review of the trial court's action. *See F & D Elec. Contractors, Inc. v. Powder Coaters, Inc.*, 350 S.C. 454, 458, 567 S.E.2d 842, 843 (2002); *Murphy*, 364 S.C. at 461, 613 S.E.2d at 812; *Sims*, 343 S.C. at 714, 541 S.E.2d at 860. If more than one reasonable inference could be drawn from the evidence, the court was required to submit the case to the jury. *Heyward v. Christmas*, 357 S.C. 202, 207, 593

[2] A reading of the argument with respect to the directed verdict motion demonstrates that this fact was undisputed. *See* App. pp. 172-92. That Food Lion had supplied the knives used by these employees was accepted by the court and by counsel for both parties and was at the heart of the argument before the trial court on the issue of whether the plaintiffs had presented sufficient evidence to overcome Food Lion's directed verdict motion. Food Lion cannot legitimately contend that this fact is not reasonably deduced from the plaintiffs' evidence.

S.E.2d 141, 144 (2004); *Triple E, Inc. v. Hendrix and Dail, Inc.*, 344 S.C. 186, 190, 543 S.E.2d 245, 246 (Ct. App. 2001); *Sims*, 343 S.C. at 714, 541 S.E.2d at 860-61. As Food Lion acknowledged in its brief filed in the Court of Appeals, App. pp. 290, 295, if doubt exists as to whether a servant is acting within the scope of employment in injuring a third person, the doubt is resolved against the master, at least to the extent of requiring the issue to be submitted to the jury. *See Jones v. Elbert*, 211 S.C. 553, 558, 34 S.E.2d 796, 798-99 (1945); *Carroll v. Beard-Laney, Inc.*, 207 S.C. 339, 346, 35 S.E.2d 425, 427 (1945); *Adams v. South Carolina Power Co.*, 200 S.C. 438, 441, 21 S.E.2d 17, 19 (1942); *Hyde v. Southern Grocery Stores, Inc.*, 197 S.C. 263, 272, 15 S.E.2d 353, 357 (1941); *Cantrell v. Claussen's Bakery*, 172 S.C. 490, 494, 174 S.E. 438, 440 (1934); *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986). This principle has been reaffirmed by the Court of Appeals since its decision in this case. *See Murphy*, 364 S.C. at 462, 613 S.E.2d at 812.

The Court of Appeals failed to apply this standard in its decision in this case. It cited *Lane v. Modern Music, Inc.*, 244 S.C. 299, 136 S.E.2d 713 (1964), for the proposition that the plaintiff bears the burden of proving the employment relationship and that the employee was acting in the scope of his employment. *See* App. p. 319. But this statement confused the plaintiffs' burden of proof with the standard applicable at the directed verdict stage of the proceedings. For the reasons set forth below, viewing the evidence and the reasonable inferences therefrom in the light most favorable to the plaintiffs, the trial court should have denied the directed verdict motion and submitted these causes of action to the jury.

Under principles of vicarious liability, an employer is liable for the torts of its employees committed in the scope of the employment. *See Jones*, 211 S.C. at 558-60, 34

S.E.2d at 798-99; *Adams*, 200 S.C. at 441, 21 S.E.2d at 19; *Hyde*, 197 S.C. at 271-72, 15 S.E.2d at 356-57; *Crittenden*, 288 S.C. at 114-16, 341 S.E.2d at 387-88. As this Court recognizes:

> "The reason which has supported the principle of respondeat superior, based upon the judicial interpretation and declaration of public policy, is that the principal, selecting his agent and directing the manner in which he shall execute the agency, should in justice to third persons with whom the agent may deal, and who are not responsible either for his selection or conduct, be held liable for his torts."

See Jones, 211 S.C. at 558, 34 S.E.2d at 798, *quoting Sams v. Arthur*, 135 S.C. 123, 130, 133 S.E. 205, 208 (1926); *see also* F. Patrick Hubbard and Robert L. Felix, *The South Carolina Law of Torts* 637-40 (2d ed. 1997) (explaining policy reasons for imposing liability upon employers for the torts of their employees).

In assessing liability under a theory of *respondeat superior* in the context of a master-servant relationship, the courts look to two factors: (1) whether the tortfeasor was a servant (an employee, as opposed to an independent contractor) and (2) whether the tort was committed by the servant acting within the scope of his employment. *See Anderson v. West*, 270 S.C. 184, 187, 241 S.E.2d 551, 553 (1978); *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 226-27, 317 S.E.2d 748, 752-53 (Ct. App. 1984). The first of these two factors is undisputed in this case: the individual defendants, Brown and Cameron, were both employees of Food Lion and were on duty in the Food Lion store when they engaged in these assaults. This case turns on whether the trial court erred in resolving the second factor – whether they were acting within the scope of their employment – against the plaintiffs without submitting that question to the jury.

The standard for assessing whether a jury issue is presented where a servant is alleged to be acting within the scope of his employment in his commission of an intentional tort was fully explained in *Crittenden*:

> Under the [test adopted by the Supreme Court], it is not necessary to find the particular act creating liability was within the servant's authority. Nor is it necessary that the assault should have been made as a means or for the purpose of performing the work the servant was employed to do. "If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority." On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment. *If there is doubt as to whether the servant in injuring a third party was acting at the time within the scope of his employment, the doubt will be resolved against the master, at least to the extent of requiring the question to be submitted to the jury for determination.*

See Crittenden, 288 S.C. at 115-16, 341 S.E.2d at 387 (citations omitted) (emphasis added). This standard has consistently been followed throughout the reported decisions on this issue: where there exists any doubt as to whether the employee was acting in the scope of his employment, the issue is one for the jury to decide. *See Jones*, 211 S.C. at 558, 34 S.E.2d at 798-99; *Carroll*, 207 S.C. at 346, 35 S.E.2d at 427; *Adams*, 200 S.C. at 441, 21 S.E.2d at 19; *Hyde*, 197 S.C. at 272, 15 S.E.2d at 357; *Cantrell*, 172 S.C. at 494, 174 S.E. at 440; *Murphy*, 364 S.C. at 462, 613 S.E.2d at 812. Under this standard, upon the evidence presented in this case, it was for the jury to determine whether these employees were acting within the scope of their employment, thereby subjecting Food Lion to liability for their misconduct.

A number of appellate decisions have addressed the issue of whether the trial court should have directed a verdict in favor of an employer alleged to be responsible for the intentional tort of its employee, such as an assault, upon a third party. In those cases, the employer contended the assault was outside the scope of employment, either because it was

outside the authority conferred on the employee by the employer or because it was not in furtherance of the master's purpose. But in deciding this issue, the courts have rejected the notion that the master is not responsible where the actions of the employee exceed the employee's authority or violate the employer's express instructions. *See, e.g., Jamison v. Howard*, 271 S.C. 385, 387-88, 247 S.E.2d 450, 451 (1978) (despite employer's contention that manager did not have authority to sell goods on credit, issue of employer's liability for assault and battery committed upon manager's instructions was for the jury); *Carroll*, 207 S.C. at 343, 35 S.E.2d at 426 (master may be liable where tort is against his express instructions); *Hyde*, 197 S.C. at 272, 15 S.E.2d at 357 (jury issue was presented as to scope of employment, notwithstanding that meat department manager instituted attachment proceedings contrary to express instructions of his employer); *Crittenden*, 288 S.C. at 115, 341 S.E.2d at 387 (it is not necessary that employee be acting within his authority). Rather, the courts hold that it is the character of the employment, not the instructions given by the employer to the employee, which determines liability. *See Hancock v. Aiken Mills, Inc.*, 180 S.C. 93, 97-99, 185 S.E. 188, 190-91 (1936) (court could not say, as a matter of law, that building a fire at premises to keep warm was outside scope of employment of brick mason). The Court of Appeals gave no consideration to these precedents and the principles they espouse.

Our courts have also rejected the argument that, as a matter of law, the employer is not held responsible if the employee's actions occur during a deviation from the employer's business. *Carroll*, 207 S.C. at 343-46, 35 S.E.2d at 426-27. As this Court has said,

> "the servant must have abandoned and turned aside completely from the master's business, to engage in some purpose wholly his own, before the master ceases to be liable for his act; it is not every deviation from the direct

> line of his duties on the part of an employee that constitutes a turning aside from, and an abandonment of, his master's business."

Carroll, 207 S.C. at 344, 35 S.E.2d at 426 (citation omitted). The deviation issue is one of degree and for determination by the jury "'unless the deviation is so great, or the conduct so extreme, as to take the servant outside the scope of his employment and make his conduct a complete departure from the business of the master.'" *Carroll*, 207 S.C. at 345, 35 S.E.2d at 427 (citation omitted). The conduct of the employee falls outside the scope of employment as a matter of law only if there is *no doubt* his actions were "wholly disconnected" from the furtherance of the master's business. *See Crittenden*, 288 S.C. at 116, 341 S.E.2d at 387.

In applying this standard to determine if the issue is to be submitted to the jury, the courts consider a number of factors. In *Crittenden*, it was significant that the attack occurred at the job site, during normal working hours, and while the employee was engaged in activities incident to his duties. *See Crittenden*, 288 S.C. at 116, 341 S.E.2d at 387-88. In *Carroll*, where the employee deviated from his employment and injured an innocent third party using an instrumentality supplied by the employer, the issue of the employer's liability under the doctrine of *respondeat superior* was properly submitted to the jury. *See Carroll*, 207 S.C. at 343-53, 35 S.E.2d at 426-30. As the Supreme Court explained in a later case arising from the same incident at issue in *Carroll*,

> This doctrine [of *respondeat superior*] has its foundation or origin in the consideration of public policy, convenience, and justice. It was designed to protect innocent third parties from the acts of agents to whom the principal has entrusted the means of committing an injury. In actions of that kind, the well settled rule is, as stated in the minority opinion in the *Carroll* case: "Where one is found in the possession of the property of another, apparently using it in the business of such other, he is presumed to be the agent or servant of the owner and acting within the course of his employment."

See Falconer v. Beard-Laney, Inc., 215 S.C. 321, 330, 54 S.E.2d 904, 908-09 (1949), *quoting Carroll*, 207 S.C. at 361, 35 S.E.2d at 433 (dissenting opinion). The decision of the Court of Appeals simply ignored this presumption recognized by this Court.

In this case, these principles required the trial court to submit to the jury the cause of action premised on the doctrine of *respondeat superior*. Here, the plaintiffs, customers in the Food Lion store, were attacked by two of its employees. The employees were on the premises during their working hours and in the course of their employment. *Cf. Crittenden*, 288 S.C. at 116, 341 S.E.2d at 387-88 (attack at job site, during normal working hours, while employee was engaged in activities incident to his duties). They were in uniform, on duty, stocking shelves on the aisle where the attack occurred. They were using case cutters, admittedly dangerous knives that had been furnished by Food Lion for their use in performing their duties. This evidence was sufficient to give rise to the presumption that these employees were acting within the scope of their employment. Under the authority of *Carroll* and *Falconer*, where the employer had furnished the instrumentalities used in the attack, it was for the jury to decide if the employer was liable for the injuries resulting from their conduct. *Falconer*, 215 S.C. at 330, 54 S.E.2d at 908-09; *Carroll*, 207 S.C. at 343-46, 35 S.E.2d at 426-27.

In argument on the directed verdict motion in the trial court, Food Lion relied on *Hamilton v. Davis*, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990). The trial court agreed *Hamilton* was controlling and granted the directed verdict motion. App. pp. 196-97. The Court of Appeals also relied on *Hamilton* in its decision. App. p. 319. This reliance is misplaced.

In *Hamilton*, the manager of certain rental property of the owner, engaging in horseplay, struck with his vehicle a person he had hired to assist with maintenance of the grounds. The plaintiff argued the case was controlled by *Jones* and *Crittenden*, but the Court of Appeals found those cases inapplicable. *See Hamilton*, 300 S.C. at 415, 389 S.E.2d at 299. The Court of Appeals noted that in *Jones* and *Crittenden* the evidence established the attacks by employees on third parties were for a purpose in furtherance of the master's business, while in *Hamilton* there was no such evidence. *See Hamilton*, 300 S.C. at 415-16, 389 S.E.2d at 299. The Court of Appeals found the situation to be controlled instead by *Lane v. Modern Music, Inc.*, 244 S.C. 299, 136 S.E.2d 713 (1964), in which this Court addressed the actions of an employee done for an independent purpose, for his personal amusement, and not in furtherance of the employer's interests. *Hamilton* held,

> While [the employee] was certainly in the act of furthering his master's business in collecting the debris and removing it from the yard, he momentarily stepped away from that business when he committed the assault on [the plaintiff]. The assault was clearly of a personal nature, indulged in for his own personal amusement.

See Hamilton, 300 S.C. at 417, 389 S.E.2d at 300. Significantly, the Court of Appeals further explained,

> We are not unmindful of the principle that, where there is doubt as to whether the servant is acting within the scope of employment in injuring a third person, the doubt will be resolved against the master, at least to the extent of requiring the issue to be submitted to the jury. However, there is no doubt in the case at hand. The record before us contains evidence indicating the assault arose out of acts of mischief and horseplay. Indeed, there is no evidence the assault occurred for any other reason and there is certainly no evidence it occurred in furtherance of the master's business.

See Hamilton, 300 S.C. at 417 n.2, 389 S.E.2d at 300 n.2 (citation omitted). As the Court of Appeals noted in citing *Hamilton* in this case, the evidence in *Hamilton* demonstrated "without doubt" that the assault was personal in nature. *See* App. p. 319. Just as this

distinction set the *Hamilton* case apart from *Jones* and *Crittenden*, it also sets it apart from the case now before the Court. In this case, as Food Lion concedes, App. p. 293, it was *not* clear from the evidence why this attack occurred. Although there was evidence that these employees had been "goofing off" elsewhere in the store earlier, the evidence also demonstrated that, by the time of the attack, the employees were in the aisle doing their jobs stocking shelves. App. pp. 199-200. There was no evidence that their actions were for a personal purpose.

The Court of Appeals further relied on the decisions in *Lane*; *Holder v. Haynes*, 193 S.C. 176, 7 S.E.2d 833 (1940); and *Vereen v. Liberty Life Ins. Co*, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991), but that reliance is also unwarranted. In each of those cases, the evidence demonstrated that the employee was carrying out a personal purpose wholly disconnected from the furtherance of the employer's business. *See Lane*, 244 S.C. at 305-06, 136 S.E.2d at 716-17; *Holder*, 193 S.C. at 189, 7 S.E.2d at 839; *Vereen*, 306 S.C. at 429, 412 S.E.2d at 429. But here, the evidence simply does not reveal the reason for the attack by Food Lion's employees on these customers. Without any evidence that the purpose was personal to the employees and wholly disconnected from Food Lion's business, the scope of employment issue was properly one for the jury.

Significantly, the cases on which the Court of Appeals relied also did not involve the other distinguishing factor present in this case: these employees were using a dangerous instrumentality furnished to them by their employer, which gave rise to a presumption that they were acting within the scope of their employment. *See Falconer*, 215 S.C. at 330, 54 S.E.2d at 908-09; *Carroll*, 207 S.C. at 361, 35 S.E.2d at 433 (dissenting opinion); *cf. Lane*, 244 S.C. at 305-06, 136 S.E.2d at 716-17 (Supreme Court found there was no evidence that

employer knew employee had in his possession or had authorized the use of the "mongoose" device with which he caused plaintiff's injuries). In this case, notwithstanding Food Lion's contention that the actions of these employees were unauthorized, the evidence that they were acting in the course of their employment and using knives furnished by Food Lion triggered the presumption, and it became the province of the jury to determine whether they were, in fact, acting within the scope of their employment. *See Carroll*, 207 S.C. at 345, 35 S.E.2d at 427.

Considered in the light most favorable to the plaintiffs, the evidence and inferences therefrom on the scope of employment issue were the following: (1) the plaintiffs were customers in the Food Lion store when they were attacked by two Food Lion employees with knives; (2) there was no evidence as to the reason for the attack, whether for personal reasons or in furtherance of Food Lion's business; (3) at the time of the attacks, the employees were on duty during their scheduled working hours, wearing Food Lion uniforms, and engaged in stocking shelves in one of the store aisles, a duty of their employment; (4) the knives were supplied by Food Lion for opening boxes or crates in connection with this task; and (5) the knives were dangerous instrumentalities, as evidenced by Food Lion's own written warnings to its employees concerning the manner in which they should be used.

Based on this evidence, and applying the presumption that an employee is acting within the scope of his employment when he causes injury during the course of employment and with an instrumentality furnished by the employer, this case should have been submitted to the jury. *Cf. Jamison*, 271 S.C. at 387-88, 247 S.E.2d at 451 (court erred in granting summary judgment to shop owner because it could be inferred from evidence that manager who directed another to shoot creditor was on a mission to collect a debt due to the owner's

shop); *Jones*, 211 S.C. at 558-60, 34 S.E.2d at 788-89 (issue was for jury where dairy farm manager assaulted contractor who came on premises to address problem with refrigeration system he had installed); *Hyde*, 197 S.C. at 271-72, 15 S.E.2d at 356-57 (employee who exceeded authority and violated the employer's express instructions in issuing attachment proceedings could still be deemed to be acting within scope of employment); *Lazar v. Great Atlantic & Pacific Tea Co.*, 197 S.C. 74, 79-81, 14 S.E.2d 560, 562-63 (1941) (where manager left his store and sought out and assaulted one of the store's customers, court properly submitted to jury the question whether manager was acting within scope of employment and discharging duties for the master); *Hancock*, 180 S.C. at 97-99, 185 S.E. at 190-91 (court could not say, as a matter of law, that workers' building of fire at worksite was outside scope of employment); *Cantrell*, 172 S.C. at 493-94, 174 S.E. at 439-40 (jury issue presented where bakery's truck driver assaulted competitor's truck driver, whom he suspected of damaging bread he had delivered); *Crittenden*, 288 S.C. at 115-16, 341 S.E.2d at 387-88 (where assault by employee was outside his authority and totally unable to be expected by employer, scope of employment issue was nonetheless one for the jury); *Gathers*, 282 S.C. at 226-27, 317 S.E.2d at 752-53 (jury issue presented where supermarket security guard and other employees detained and assaulted customer they mistakenly believed had been shoplifting). The trial court committed reversible error in taking this issue from the jury. The Court of Appeals' decision affirming the trial court's ruling should be reversed.

CONCLUSION

For the foregoing reasons, this Court should find that the trial court erred in directing a verdict in favor of Food Lion and should remand the case for a new trial on the plaintiffs' causes of action against Food Lion based on vicarious liability for the actions of its employees.

Respectfully submitted,

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