

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40194
(Summary Calendar)

RAMON L. PEREZ & EVANGELINA PEREZ,

Plaintiffs-Appellants,

versus

WAL-MART STORES, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(B-94-CV-218)

October 31, 1996

Before DAVIS, EMILIO M. GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Ramon L. Perez and Evangelina Perez appeal the trial court's denial of their Motion for New Trial which alleged abuse of discretion by the trial court and material misconduct by the jury foreman, William J. Vaughn. We AFFIRM.

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

This court's review of a district court's ruling on a motion for new trial is reviewed only for an abuse of discretion and the district court is given greater deference when the motion is denied, leaving the jury's determination undisturbed. *Weaver v. Amoco Production Co.*, 66 F.3d 85, 88 (5th Cir. 1995).

In *McDonough Power Equipment, Inc., v. Greenwood*, 464 U.S. 548 (1984), the Supreme Court established a two pronged test that governs situations like the case at bar. In the words of the Court "to obtain a new trial . . . a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for challenge for cause." *Id.* At 556. After reviewing the transcript of the voir dire examination, it is clear that the Appellants have not met their burden.

IT IS FURTHER ORDERED that appellees' application for leave to file a motion for damages and costs pursuant to Fed. R. App. P. 38 is DENIED.

JUDGMENT AFFIRMED.