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**Jan 10 2024**

**SC Court of Appeals**

**FORM 13**

**BRIEF OF APPELLANT\***

THE STATE OF SOUTH CAROLINA

In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM mcccormick county

Court of Common Pleas  
s/r lawton mcintosh, Circuit Court Judge

Case No. 2018-cp-3500074

scdc,

Respondent,

v.

Bryantavious Murray,

Appellant.

[INITIAL] BRIEF OF APPELLANT

Bryantavious murray 2156 cresthill drive  
columbia sc 29223

Attorney for Appellant

\* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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### Introduction

Bryantavious murray will be referred to as appellatant. steven pruiit will be referred to as respondant . reference of record shall be designated as "R" followed by the appropriate designation as set forth in the record on appeal transmitted by the clerk of the lower court.

References to transcript of hearing before the honorable gernal magistrate s/r mcintosh lawton on on july, 17 @ 10:00 am respectively shall be designated.

sc code section ann, 23-23- 150(2022)

sc code section ann 23-1-240(2022) body worn

sc code section ann 23-13-60(2022) power of

2021- 2022 bill 4406: excessive force. section 23-1-250

other authorites

restatement(second) of contracts section 100(1981)

restatement(second) of property section 200(1981)

restatement(second) of tort section 300(1981)

restatement(second) of tort section 908(2)(1981)

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

#### statement of issues on appeal

1. Did the trial court err in failing to find this action barred by res judicata?
2. Did the trial court err in charging the respondent that excessive force must be proven by a preponderance of the evidence.

#### Statement of the cases

on march 16, 2018 Bryantavious murray brought the action alleging excessive force against scdc officials , and medical malpractice. respondent attorney steven pruiit answered alleging bryantavious murray claims was unprecluded by judgement and denied settlement between parties . this action was tried on 7-17-2023 @ 10:00am, and the judgement was entered on july-24-2023

#### standard of review

This court reviews the circuit courts complaint of the excessive force guard brutality, de novo. koon v united states. 518 .us. 81(1996). In so doing the court should review the evidence in an evenhanded manner and to not take the evidence in the light most favorable to the plaintiff. In

shaw v. stroud, 13 f.3d 791 1994, the court observed that the level of punitive damages is not really a fact tried by the jury. but instead is an expression of [the jury] moral condemnation." 532 11 u.s.. at 432. 437(internal quotation marks omitted) in the course of holding thst appealant review of a trial courts applicatin of the excessive force guard brutality, is de novo, the court indicated that reviewing courts must accept "specific findings of fact" by the jury( i.d at 439 n.2 (emphasis added). thereby implying that the absence of such finding, reviewing court must resolve for themselves factual issues bearing on the application... As the south carolina supreme court recently explained , when the jury has made ' no express finding on a particular issue bearing on application of the excessive force. to infer one from the size of the award would thereby indirectly justify itself simon v. san paolo u.s. holding co.. 113 p.3d 63, 70(cal. 2005). accordingly, "[w]hile [court must] defer to express jury findings supported by the evidence. in the absence of an express finding on question[they] must independently decide "whether the fact at issue has been established. Id at 72. therewere no such findings in this case.

#### facts

The state of south carolina scdc use excessive force, with empty hand control/defensive tatics with 1hr of medical malpractice delay to treat the appealant on 4-8-2016with no prior trial. the use of force or guard brutality was content under scdc custody, and was against any scdc policy. the scdc presented evidence that it used empty hand controll on the appealant why he was on the ground and or in handcuffs on the appealant while housed in scdc . The total amount of injurys on the appealant was three or four stitches in the face, eleven(11). behind left ear, and a brian concussion, and one right swollen eye. the defense attorney presented plenty of affidavits threw federal appeal of a grant threw reverse on charges which the appealant has already went threw with the proper courts. that freashly cuts down to the use of force, and how muchwas applied and, were they errored with the amount of seconds, and minutes. The trial court errored on july 17 2023 when they failed to re amend plaintiffs motion to show not barred on complaint when the appealant showed showed claim on paperwork dated back to 3/16/18 by buffy hodes courts clerk stating plaintiff(2) year inquiry to not barrer to plaintiff claim in the proper court. the courts judge mcintosh granted defendants motion to dismiss plaintiffs claim without the proper evidence , and checking. The defense attorney filed a motion to answer complaint with a 50-50 chance that excessive force did happen to the appealant . which appealant request for a new trial , and settlement to end case with \$8.0 million

#### arguments

I Because respondent could have raised excessive force in his prior answer to plaintiffs complaint suit against appealant he is barred by re judicata from bringing this suit, also the trial

court erred in denying appellants time exceptions to the general magistrate 3/16/18 report and recommendation, thereby erroneously treating the July-17-2023, order estopping appellant from seeking interest accruing prior to 3/16/18 complaint, and summons there are unpaid judgements of 4/8/16 excessive force guard brutality case. see case Crowell v Kirkpatrick, 667 F. Supp. 2d 391 Kellough v. Bertrand 22 F. Supp. 2d 602 (S.D. Tex. 1998), and Jones v Treubig, No. 18-3775 (2d Cir. 2000).

ii. because excessive force, and guard brutality must be proven by clear and convincing, the trial court erred when it failed to settle and or jury in the court. The respondent must prove excessive force by a preponderance of the evidence with statement, of use of force, and medical incident reports with deliberate indifference malpractice.

20-391 Lombardo v. St. Louis (0612812021)

Dethorne Graham . Petitioner v. Ms, Connor et al

conclusion

for the reasons stated. this court should reverse the judgement of the circuit court...

respectfully submitted

December , 22, 2023

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