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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000592
Case No. 2020-CP-02-2238

Cassiopia Rhoads, ... Respondent-Appellant,

v.

Aiken County Sheriff's Office, ... Appellant-Respondent.

INITIAL APPELLANT'S BRIEF OF APPELLANT-RESPONDENT

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Appellant-Respondent
Aiken County Sheriff's Office

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II. In the event that this Court reinstates the Order Relating to Post-Trial Motions filed March 12, 2024, did the trial court err in denying the Motion for New Trial Absolute filed by the Aiken County Sheriff's Office?

III. In the event that this Court reinstates the Order Relating to Post-Trial Motions filed March 12, 2024, did the trial court err in making an award of "offer of judgment interest" and costs which are in contravention of the legislative intent as expressed in 2005 Act Number 32 and the provisions of the Tort Claims Act including the express bar on any type of "interest prior to judgment"?

STATEMENT OF THE CASE

The Appellant-Respondent Cassiopia Rhoads was a pre-trial detainee at the Aiken County Detention Center ("ACDC") from May 3, 2019 through June 2, 2019. The Defendant Center is operated by the Respondent-Appellant Aiken County Sheriff's Office.

On June 2, 2019, Rhoads was taken to the Aiken Regional Medical Center ("ARMC") for treatment of an abscess that developed on the upper right side of her head. During her thirty days at ACDC, she received repeated medical care and treatment by the medical providers working for Southern Health Partners ("SHP"), which was the medical contractor at ACDC during the relevant time period. Over the course of the thirty days, Rhoads had in excess of twenty different encounters with medical staff including Dr. Robert Williams, Nurse Donna Wright, Nurse Sherry Shutters, and others. Those medical encounters are pled in detail in Rhoads' Complaint. *See*, Complaint, ¶¶ 70-88. (R. ___).

Rhoads, who was a heroin drug addict, had fallen prior to her arrest and incarceration on May 3, 2019. By May 7, 2019, Rhoads' medical records first mentioned a "knot" on the right side of her head. Rhoads was going through heroin detox for the first ten days of her incarceration and had contact with nurses on a daily basis during that time. In the next couple of weeks, Rhoads began to complain about the side of her head, and she was seen on numerous occasions by SHP medical personnel. She was generally treated with pain medication and antibiotics. On May 23, 2019, Rhoads was examined by Dr. Robert Williams who diagnosed a small hematoma to the right scalp and directed that she receive warm compresses and continued pain medication.

On May 24, 2019, Rhoads was charged with "barricading" for her refusal to follow orders to return to her cell. She was moved to a B-max cell. This is referred to as the

"barricading incident" in the litigation, and Rhoads claims that she was making a "peaceful protest" to be taken to the hospital. ACDC records do not reflect any request for medical attention in association with that incident. Notably, Rhoads had just been seen by Dr. Williams the day before, and there was no reported change in her condition.

On May 28, 2019, there was an emergency call to medical because Rhoads had fainted. She was checked by Nurse Donna Wright and was cleared to remain in B-Pod. Nurse Wright did follow up with Dr. Williams following that incident, and Dr. Williams directed that a CT scan be ordered. The CT scan was scheduled for June 5, 2019. On June 2, 2019, there was an additional incident in the mid-afternoon where Rhoads collapsed. She was evaluated again by Nurse Wright who cleared her to stay in B-Pod. A few hours later, there was an additional emergency where Rhoads began vomiting. At that point, Rhoads was transported to ARMC at the direction of SHP medical personnel. She was ultimately diagnosed with a subgaleal abscess, an epidural abscess, and osteomyelitis. She underwent surgery to remove the abscess.

On November 17, 2020, Cassiopia Rhoads filed a Complaint in the Aiken County Court of Appeals, naming as Defendants Southern Health Partners, Dr. Robert J. Williams, Michael E. Hunt, in his capacity as Aiken County Sheriff, and Aiken County. Southern Health Partners and Williams reached a settlement with Rhoads prior to trial. Additionally, Rhoads voluntarily dismissed Aiken County, and the Aiken County Sheriff's Office was substituted for Sheriff Hunt. At the time of trial, the only remaining cause of action against the Sheriff's Office was a gross negligence claim.

The case was tried before Circuit Court Judge Eugene Griffith and a jury beginning on October 9, 2023. The Sheriff's Office moved for a directed verdict as to the gross negligence

claim both after Rhoads' case-in-chief and at the close of all of the evidence. Those motions were denied. The jury ultimately returned a verdict in the amount of $950,000 actual damages.

Both parties filed post-trial motions. The Sheriff's Office filed a Motion for Judgment Notwithstanding the Verdict (JNOV), a Motion for New Trial Absolute, and a Motion to Reduce the Verdict to the Statutory Caps. On March 12, 2024, Judge Griffith issued two orders: (1) Order Relating to Post-Trial Motions and (2) Order Reducing Verdict to Statutory Cap. Ther verdict was reduced to $300,000. On March 22, 2024, the Sheriff's Office filed a timely Motion to Alter or Amend Order and/or Motion to Reconsider pursuant to Rule 59(e), SCRCP, to ensure that all issues were properly preserved for appellate review.

By April 11, 2024, Judge Griffith had not ruled on the pending Motion to Alter or Amend Order and/or Motion to Reconsider. On that date, which marked thirty days after the filing of the aforementioned orders, the Sheriff's Office proceeded with filing its Notice of Appeal. Rhoads also filed a Notice of Appeal on that same date.

After the appeal was held in abeyance and jurisdiction was returned to the trial court, Judge Griffith issued an Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion on August 19, 2024. With that order, Judge Griffith granted the Sheriff's Office's Motion to Alter or Amend Order and/or Motion to Reconsider, and he also granted the Sheriff Office's JNOV motion on the basis of its defense pursuant to Section 15-78-70(d) of the Tort Claims Act. Judge Griffith further vacated his previous post-trial orders, including the Order Relating to Post-Trial Motions filed March 12, 2024, and Order Reducing Verdict to Statutory Cap filed March 12, 2024. Rhoads thereafter filed a Motion to Reconsider, which was denied by Order filed September 19, 2024.

On September 17, 2024, Cassiopia Rhoads filed a Notice of Appeal appealing the Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion filed August 19, 2024. Thereafter, on October 21, 2024, the Sheriff's Office timely filed a Conditional Cross-Appeal which states as follows:

> In the event that Rhoads seeks as relief in her appeal that this Court reverse the Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion and reinstate the previous post-trial orders which were vacated as well as the judgment previously entered on March 12, 2024, the Respondent-Appellant Aiken County Sheriff's Office hereby conditionally appeals the judgment entered on March 12, 2024, and the Order Relating to Post-Trial Motions filed on March 12, 2024, if reinstated.

See, Notice of Conditional Cross-Appeal filed October 21, 2024.[1]

[1] As indicated, on September 19, 2024, the trial court issued an order denying Rhoads' Motion to Reconsider. It was that final order issued on September 19, 2024, which triggers the thirty days for an appeal, including cross-appeal, per Rule 203(b)(1) and Rule 203(c), SCACR.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

"In an action at law, on appeal of a case tried by a jury, [appellate courts] may only correct errors of law. The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 142 (2010).

ARGUMENTS

Importantly, the cross-appeal filed by the Aiken County Sheriff's Office is a conditional appeal. As explained above, in its Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion filed August 19, 2024, the trial court granted the Sheriff's Office's Motion to Alter or Amend Order and/or Motion to Reconsider, and with that decision granted the Sheriff Office's JNOV motion on the basis of its defense pursuant to Section 15-78-70(d) of the Tort Claims Act. The trial court further vacated its previous post-trial orders, including the Order Relating to Post-Trial Motions filed March 12, 2024, and Order Reducing Verdict to Statutory Cap filed March 12, 2024.

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See, Notice of Conditional Cross-Appeal filed October 21, 2024.[2]

[2] On September 19, 2024, the trial court issued an order denying Rhoads' Motion to Reconsider. It was that final order issued on September 19, 2024, which triggers the thirty days for an appeal, including cross-appeal, per Rule 203(b)(1) and Rule 203(c), SCACR.

The August 19, 2024 Order vacates the previous post-trial orders as well as the judgment previously entered on March 12, 2024. That judgment and the post-trial orders are subject to appeal only if Rhoads seeks reinstatement of those orders and judgment as part of the relief sought in her current appeal. That is presently unknown since Rhoads has not as yet filed her opening brief, but it is anticipated that Rhoads will ask this Court to reverse the August 19, 2024 Order and reinstate the previous post-trial orders as well as the previous judgment. If that occurs, the Sheriff's Office is not waiving its appeal rights with respect to the Order Relating to Post-Trial Motions filed March 12, 2024, and the judgment entered that same date. That is the purpose of this conditional cross-appeal. If the August 19, 2024 Order is affirmed, then the issues addressed in this conditional cross-appeal need not be reached because that earlier order will remain vacated. However, the alternative bases for granting a JNOV to the Sheriff's Office may still be considered by this Court as additional sustaining grounds.[3]

I. In the event that this Court reinstates the Order Relating to Post-Trial Motions filed March 12, 2024, the trial court erred in denying the other bases raised by the Aiken County Sheriff's Office for a Judgment Notwithstanding the Verdict.

The trial court erred in denying the Sheriff Office's motions for directed verdict and JNOV as to the elements of Cassiopia Rhoads' gross negligence claim. The elements of gross

[3] In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id*. *See also*, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

negligence are well-settled. In order to prove gross negligence under South Carolina law, a Rhoads must show "(1) the [defendant] owed him a duty to do or not do any of things alleged; (2) the [defendant] breached this duty; (3) [Rhoads] was injured; and (4) the [defendant's] breach of duty proximately caused this injury." *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408, 409 (Ct. App. 1994). "A [gross] negligence claim is insufficient if one of these elements is absent." *Id*. *See also*, *Lord v. D&J Enterprises, Inc.*, 407 S.C. 544, 757 S.E.2d 695, 702 (2014) ("[t]o prevail on a [gross] negligence claim, a Rhoads must establish duty, breach, causation, and damages").

A. Duty of Care

As for the first element, Rhoads was first required to establish that the Sheriff's Office owed a legal duty of care. It is well settled that "[w]hether the law recognizes a particular duty is an issue of law to be determined by the court." *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47, 49 (1996). The trial court charged the jury that the Sheriff's Office "has a duty to safely confine, supervise, and maintain the custody of inmates." (Tr. V:125). As is discussed further below, this charge is based on an error of law and failed to properly or adequately instruct the jury as to the specific or particular legal duty arising from the facts of this case as alleged and presented by Rhoads.

Based upon colloquy among counsel, the trial court informed counsel that he based this charge of the legal duty of care owed by the Sheriff's Office on Section 15-78-60(25), which is an immunity provision in the Tort Claims Act. That was in error. In *Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989), this Court held that "[t]he South Carolina Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." 381

S.E.2d at 495. In *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579 (2001), the Supreme Court agreed that "[t]he TCA does not create causes of action, but only removes the common law bar of sovereign immunity in certain circumstances." 551 S.E.2d at 583. Thus, the Tort Claims Act, which does not create causes of action, likewise does not create nor establish any legal duty of care actionable under South Carolina law.

The language in Section 15-78-60(25), where it refers to "supervision, protection, control, confinement, or custody," was not intended by the General Assembly to establish any particular legal duty owed by the Sheriff's Office or its employees operating the Detention Center. In fact, the very language in Section 15-78-60(25) does not specify any particular legal duty of care. However, even if such language could be construed as setting the parameters for the overarching or general types of duties that may be owed, that language certainly does not establish a specific or particular legal duty of care owed under the facts of this or any other case. At most (but certainly not conceded), that language could be construed as creating a public duty, but even that would be a tremendous stretch.

Nonetheless, if construed as stating the general parameters of the duties owed -- as stated in extreme generalities applicable to not only inmates but also at the same time to "students," "patients," and "clients" of governmental entities – the public duty rule would bar its use to establish a specific or particular legal duty of care owed in this case. As the Supreme Court has explained, "[t]he public duty rule presumes statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001). A Rhoads, therefore, has no right of action against a public officer or

entity for breach of a duty owing to the public only, even though such Rhoads may have been injured by the breach of that public duty. *Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). "The public duty rule is a negative defense which denies an essential element of Rhoads' cause of action: the existence of a duty of care to the individual Rhoads." *Arthurs*, 551 S.E.2d at 582. In other words, the public duty rule "is a rule of statutory construction, that is, a means of determining whether the legislative body that enacted the statute or ordinance intended to create a private cause of action for its breach." *Id.*

The Sheriff's Office contends that the legal duty, if any, owed under South Carolina law would be limited to a duty for a corrections officer to see that inmates who appear to be ill or in need of medical attention are seen and attended to by medical professionals. That is the extent of any legal duty of care. The ACDC officers are not legally responsible for determining the diagnosis of any medical condition or the course of treatment or for overruling the opinions of the medical professionals or for seeking a different or alternative course of care or treatment. In other words, the officers have the right to rely on the expertise of the medical professionals.

As discussed at length during the trial, Rhoads alleges that the Sheriff's Office owed a legal duty of care for their non-medically-trained detention officers and security staff to second-guess or override the medical decision-making of the clinicians (Southern Health Partners' doctor and nurses) who were providing ongoing care and treatment to Rhoads for her medical conditions and to seek a different or alternative course of care or treatment. That is a question of law for this Court to decide. Rhoads never presented the trial court with any authority establishing the legal duty of care owed under the allegations and evidence as presented. As argued at length and the trial court observed on the record numerous times, Rhoads did not offer a single case – from any state or federal court – where a court ruled that corrections officers,

knowing that an inmate is actually receiving medical treatment, should interfere with or override the medical decision-making of the medical personnel and seek other care for the inmate.

While federal law does not establish the legal duty of care under state law, it should inform that analysis. Certainly, the trial court should not find a legal duty of care under state law that would conflict with or cause the state actors to interfere with federal rights or otherwise violate the federal constitutional duty established for detention or corrections officers in this context. In *Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990), the Fourth Circuit held that a prisoner must show that corrections officials (such as the ACDC officers) were personally involved with a denial of treatment, deliberately interfered with a prison physician's treatment, or tacitly authorized or were indifferent to the prison physician's misconduct. The Fourth Circuit has similarly explained that prison officials who are untrained in medicine are entitled to rely on the judgment of medical professionals. *See*, *Iko v. Shreve*, 535 F.3d 225, 242 (4th Cir. 2008).

The Sheriff's Office pointed the trial court to numerous federal cases that support its position as to the applicable duty of care including the following authorities:

Pulliam v. Superintendent of Hoke Corrections, 2007 WL 4180743, *6 (M.D.N.C. 2007):

"***The bottom line is that prison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals***. Here, rightly or wrongly, the medical professionals determined that Rhoads' symptoms were not caused by asbestos exposure. It was not Webb, Groff, or Jacob's job to overrule them. Rhoads has not stated any claim for relief against them." (Emphasis added).

Lewis v. Hoke County, 2020 WL 5213929, *7 (M.D.N.C. 2020), *affirmed* 2022 WL 1641282 (4th Cir. 2022):

"It is also well settled that negligence or medical malpractice are not sufficient to establish deliberate indifference. *Estelle*, 429 U.S. at 105-106. "The bottom line is that prison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals." *Pulliam v. Super. of Hoke Correct.*, 1:05CV1000, 2007 WL 4180743 at *6 (M.D.N.C. Nov. 20, 2007) (unpublished)."

Tyson v. Gay, 2022 WL 15570697, *10 (E.D.N.C. 2022):

"Even if Gay actually had the authority to obtain outside medical care, because Gay is not alleged to be a medical provider, Gay generally is entitled to rely upon Nurse McLean's medical opinion. See *Iko*, 535 F.3d at 242 ("If a prisoner is under the care of medical experts ... a nonmedical prison official will generally be justified in believing that the prisoner is in capable hands." (quotation omitted)); see also *Lewis v. Hoke Cnty.,* No. 1:17CV987, 2020 WL 5213929, at *7 (M.D.N.C. Sept. 1. 2020) ("[P]rison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals." (citation omitted)), report and recommendation adopted, No. 1:17CV987, 2022 WL 292928 (M.D.N.C. Feb. 1, 2022), aff'd, No. 22-6171, 2022 WL 1641282 (4th Cir. May 24, 2022)."

McCann v. Ogle County, 909 F.3d 881, 887-888 (7th Cir. 2018):

"Applying the same analysis to the Ogle County defendants, including the claims against Sheriff Beitel and Captain Kerwin, we reach the same conclusion. Neither individual was responsible for providing medical care to McCann. Rather, Sheriff Beitel and Captain Kerwin reasonably relied on Dr. Cullinan to determine the proper course of care for McCann and themselves took no steps to contribute to or detract from the treatment McCann received. The law allowed these officials to rely on Dr. Cullinan in this way. See *Berry*, 604 F.3d at 440 (underscoring that the law "encourages non-medical security and administrative personnel ... to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so"); see also *Miranda*, 900 F.3d at 343 (applying similar reasoning to reject allegations of inadequate medical care brought against non-medical jail officials). The district court, in short, was right to award summary judgment to these individual defendants."

Berry v. Peterman, 604 F.3d 435, 440-441 (7th Cir. 2010):

"Berry failed to present sufficient evidence to support a reasonable jury finding that jail administrator Peterman acted with deliberate indifference. As a nonmedical administrator, Peterman was entitled to defer to the judgment of jail health professionals so long as he did not ignore Berry. See *Hayes v. Snyder*, 546 F.3d 516, 527-28 (7th Cir. 2008)*; Johnson v. Doughty,* 433 F.3d 1001, 1010-11 (7th Cir. 2006); *Greeno v. Daley*, 414 F.3d 645, 655-56 (7th Cir. 2005); *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004). The undisputed facts show that Peterman met this standard. He consulted with the medical staff, forwarded Berry's concerns to the DOC, and timely responded to Berry's complaints. That he took no further action cannot be seen as deliberate indifference. As a practical matter, it would be unwise to require more of a nonmedical staff member like Peterman. As *Hayes, Johnson, Greeno, Spruill*, and a host of other cases make clear, the law encourages non-medical security and administrative personnel at jails and prisons to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so. The district court properly granted summary judgment as to defendant Peterman."

Spruill v. Giles, 372 F.3d 218, 236 (3d Cir. 2004):

"If a prisoner is under the care of medical experts (Dr. McGlaughlin and Brown in this case), a non-medical prison official will generally be justified in believing that the prisoner is in capable hands. This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor. Moreover, under such a regime, non-medical officials could even have a perverse incentive *not* to delegate treatment responsibility to the very physicians most likely to be able to help prisoners, for fear of vicarious liability."

The foregoing authorities should inform this Court as to the legal duty owed in the specific factual circumstances presented by this case. The applicable duty of care does not require the ACDC officers, all non-medically trained personnel, to have overridden the medical decision-making of the SHP medical clinicians and sought a different course of treatment for Rhoads.

In sum, Rhoads has not established a duty of care breached by the Sheriff's Office or its employees. The facts taken in a light most favorable to Rhoads establish that she was under the ongoing care of the SHP medical professionals from May 4, 2019 through June 2, 2019. She was seen on numerous occasions for checking her vitals during her ten days of detox, for medpass where she received her medications and had face-to-face encounters with SHP personnel at least twice a day, for numerous sick call visits, and for consultations at her cell after she required medical attention. She was also seen and evaluated by Dr. Robert Williams on May 23, 2019. Dr. Williams also received updates from the nurses after that date, and on May 28, 2019, he directed that a CT Scan be ordered, which was scheduled for June 5, 2019. The complete SHP medical records for May 3, 2019 through June 2, 2019 were admitted into evidence by Rhoads and have not been disputed as inaccurate. Those medical records, as indicated, show ongoing medical care by the SHP personnel and numerous medical encounters

between Rhoads and SHP personnel. There was no evidence presented that the SHP medical staff was unaware of Rhoads' medical condition and appearance from May 4, 2019 through June 2, 2019. There is no evidence that any ACDC officers interfered with or denied Rhoads medical care that the clinicians believed was needed or appropriate. The correct legal duty of care allows the ACDC officers, knowing that Rhoads was receiving medical care, to rely on the professional judgment of the medical clinicians. Rhoads did not present the trial court with any legal authorities, including case law, suggesting that a different duty of care applies to the facts of this case.

Rhoads has also not presented any evidence that any alleged breach of the legal duty of care proximately caused Rhoads any harm. Rhoads has not shown any evidence that any ACDC officers interfered with or denied Rhoads medical care that the clinicians believed was needed or appropriate. Rhoads has not shown that any acts or omissions by any ACDC officers prevented Rhoads from receiving ongoing care from the SHP professionals or proximately caused a denial of medical care by the SHP professionals.

The case is premised entirely upon errors in the medical decision-making by the SHP clinicians, including diagnosis and treatment, but the legal duty does not require the ACDC officers to second-guess or override those decisions, and in fact, if there were such a duty, it would have serious public policy consequences and would likely require corrections officers to violate the federal constitutional duty of care, which does not allow interference with the medical providers. *See*, *Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990). Other similar public policy consequences would result if there is a legal duty of care requiring non-trained and unlicensed personnel to be called upon to make medical decisions, even if those decisions were limited to seeking out a different course of treatment or even a second opinion for an inmate. There is no

legal duty recognized in this State nor in any jurisdiction for corrections staff to be legally required or mandated to take such steps. In contrast, medical decision-making, by state law, is required to be made by qualified and educated persons who are duly licensed as medical providers (physicians and nurses) by the State. None of the ACDC officers at issue held any such licensure, and as a result, it was error to conclude that the officers had any legal duty to make medical decisions or to interfere with the medical decision-making of the licensed clinicians.

B. Other Claimed Sources for Legal Duty

Finally, the Sheriff's Office raises some additional arguments about the legal duty question as asserted at the directed verdict and JNOV stages. To the extent that the trial court relied on Section 24-5-10 of the Code of Laws as establishing a legal duty, which is unclear on the record, the Sheriff's Office submits that Section 24-5-10 does not create a duty of law applicable to this case for several reasons. Section 24-5-10, which states: "The sheriff shall have custody of the jail in his county and, if he appoints a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, *according to law.*" S.C. Code Ann. § 24-5-10. (Emphasis added).

First, any claim against the Sheriff's Office based on Section 24-5-10 (which was never pled) is barred by operation of the public duty rule, as is evident by the inclusion of the "according to law" language in Section 24-5-10. Clearly, the General Assembly intended for any legal duties of care to be established elsewhere in the law. There is no other credible reading for the inclusion of the "according to law" language.

Second, the second half of Section 24-5-10, specifically "if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law" is part of the "scattered patchwork of sovereign liability" that pre-dated *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), and the enactment of the Tort Claims Act, and which has been impliedly repealed by the Tort Claims Act, just like the other "sheriff's statute," Section 23-13-10. *See*, *Robinson v. Metts*, 86 F.Supp.2d 557 (D.S.C. 1997).[4]

Third, the reliance on the word "safely" is so general and ambiguous that it provides no clear guidance and actually creates a strict tort standard which is not the law. That point is addressed further below.

Additionally, Rhoads cannot show a legal duty of care based on the Minimum Standards for Local Detention Facilities in South Carolina, which have never been adopted as regulations, do not have the "force of law," and cannot establish a legal duty. *See*, *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868, 871 (2000) (recognizing "[t]hese Minimum Standards have never been subject to the legislative scrutiny afforded regulations under the Administrative Procedures Act. Instead, they are merely the product of the County Association, adopted by the DOC, an executive agency. They cannot validly be viewed as expressing anything about legislative intent").[5] Likewise, the only portions of the Minimum Standards in evidence do not establish any legal duty of care for the ACDC officers under the

[4] For a full analysis on the implied repeal of the liability portion of Section 24-5-10, the Sheriff's Office relies on its pre-trial brief which is incorporated herein by reference. (R. ___).

[5] Under the Administrative Procedures Act (APA) and its supporting case law, the Minimum Standards for Local Detention Facilities in South Carolina expressly do not have the force or effect of law. S.C. Code Ann. § 1-23-10(4) sets forth the APA's definition of "regulation," which provides in pertinent part that "[p]olicy or guidance issued by an agency other than in a regulation *does not have the force or effect of law*." (Emphasis added).

allegations and facts presented. The Minimum Standards do not address what duty, if any, a corrections officer has in dealing with an inmate who the officer knows is receiving ongoing medical treatment from the medical professionals.

Likewise, as the Supreme Court has explained, internal policies or guidelines do not establish a legal duty of care, although once a "legal duty" is established as a matter of law, internal policies or guidelines may be treated as evidence to assess the applicable "standard of care." *See*, *Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011). In *Doe*, the Supreme Court held that [i]t follows that, if no duty has been established, evidence as to the standard of care is irrelevant. Only when there is a duty would a standard of care need to be established." 711 S.E.2d at 912. In short, there is a significant difference between a "legal duty of care" and a "standard of care," and accordingly, standards, guidelines, and internal policies cannot be admitted as evidence to establish a legal duty of care.

Finally, Rhoads presented no expert testimony from a corrections expert as tendered and accepted by the trial court to establish any standard of care. Even the one medical expert who testified, Dr. Edward O'Bryan, was not offered as an expert in correctional medicine and offered no opinions regarding the conduct of the ACDC officers nor any acts or omissions by any of the officers at issue. During discovery, Rhoads identified Aubrey Land as a corrections expert but did not call him, likely because of the strength of the *Jones v. Council* motion in limine that was filed and was pending before the trial court. In short, the standard of care was never established by Rhoads.

C. Proof of Gross Negligence

Even if the Court were to hold that there is a legal duty for the ACDC officers to second-guess or override the medical decision-making of the medical clinicians, the officers' conduct must rise to the level of gross negligence, i.e., the absence of even slight care. Based on Section 15-78-60(25) of the Tort Claims Act, the Sheriff's Office is not liable for ordinary or simple negligence, and as a result, Rhoads was required to prove gross negligence by the Sheriff's Office in order to prevail. Under South Carolina law, "[g]ross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Clyburn v. Sumter County School District No. 17*, 317 S.C. 50, 451 S.E.2d 885, 887 (1994). "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." *Id*.

Therefore, the key inquiry is whether the conduct at issue – the failure to second-guess or override the medical decision-making of the medical clinicians and take Rhoads to the hospital -- constitutes carelessness or mere inadvertence which is the hallmark of simple negligence, as opposed to willfulness and recklessness that qualifies as gross negligence. *See*, *Sturken v. Richland Oil Co.*, 248 S.C. 355, 150 S.E.2d 341, 343 (1966). *See also*, *Powell v. Shore*, 242 S.C. 403, 131 S.E.2d 155, 159 (1963) (Supreme Court describes "mere inadvertence" as "simple negligence"); *Jumper v. Goodwin*, 239 S.C. 508, 123 S.E.2d 857, 861 (1962) (same). A finding of gross negligence requires more than proof of an error or mistake. *See*, *Pilot Industries v. Southern Bell Telephone & Telegraph Co.*, 495 F.Supp. 356, 362 (D.S.C. 1979) ("[p]roof of error or mistake alone has been held to insufficient to make out a case of gross negligence"). As the Supreme Court has explained, the conduct required to demonstrate gross negligence requires a consciousness of wrongdoing. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 106 S.E.2d 258, 264 (1958).

As discussed above, the evidence is undisputed that Rhoads received medical care, including over twenty medical encounters within a one-month span. The SHP medical encounters are pled in detail in Rhoads' Complaint. *See*, Complaint, ¶¶ 70-88. (R. ___). There are no allegations that the correctional staff denied Rhoads medical care at the detention center or denied access to SHP personnel. Even after Rhoads was placed into B-Max on May 24, 2019, she continued to be seen by the SHP personnel as documented in the medical records and the incident reports, including on May 24th, May 28th, May 29th, May 30th, May 31st, and June 2nd, as well as additional encounters twice a day during medpass when Rhoads received medication as she herself testified. Rhoads' case is premised on the alleged failure of the ACDC officers to take Rhoads to the hospital without SHP authorizing outside medical care. Rhoads herself testified that she never made a request, verbal or in writing, to Lt. Riddell or Lt. Whitaker, the shift supervisors at issue, for any type of medical assistance or to be taken to the hospital. Even if there is a legal duty, which is denied, Rhoads has not shown "conscious wrongdoing" or the "intentional, conscious failure" on the part of any ACDC officers. At most, the evidence shows a mistake or inadvertence or carelessness – likely based on the absence of any clear duty of care established by law (as the trial judge himself commented did not exist in May/June 2019). Thus, the Sheriff's Office was entitled to a directed verdict and JNOV because the evidence, even taken in a light most favorable to Rhoads, does not support a finding of gross negligence or recklessness, that is, assuming a duty of care exists.

In sum, based on the foregoing discussion, Rhoads failed in her proof of each of the elements of her gross negligence claim, and accordingly, the Sheriff's Office's JNOV motion should be granted on these alternative bases.

II. In the event that this Court reinstates the Order Relating to Post-Trial Motions filed March 12, 2024, the trial court erred in denying the Motion for New Trial Absolute filed by the Aiken County Sheriff's Office for a Judgment Notwithstanding the Verdict

A. Trial Court Did Not Correctly Charge the Particular Duty of Care Owed by the Aiken County Sheriff's Office and its Officers

Under South Carolina law, it is well settled that "[a] trial court must charge the current and correct law." *Stephens v. CSX Transportation*, 415 S.C. 182, 781 S.E.2d 534, 542 (2015). "Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Id*.

As discussed above, the trial court charged the jury that the Aiken County Sheriff's Office "has a duty to safely confine, supervise, and maintain the custody of inmates." (Tr. V:125). That charge, however, failed to properly or adequately instruct the jury as to the specific or particular legal duty arising from the facts of this case as alleged and presented by Rhoads. In effect, with the duty of care stated with such generalities, the trial court erroneously left it to the jury's whim to decide what the ACDC officers were required by law to do or not do under the facts as alleged and presented. A legal duty must be determined by the trial court and should be based on existing authority, be it statutory or the common law. The legal duty should not be expressed in such general terms that the jury gets to decide what the law actually requires in a given set of circumstances. That does not allow for a fair, even-handed system of justice where similarly situated defendants are held to the same legal duties of care. If the applicable legal duty of care owed under a specific set of factual circumstances is left to a jury to decide, one jury may decide that ACDC officers were required to do X to satisfy the legal duty of care while another jury in another part of the state could conclude that detention officers are required to do

Y (something entirely different) to satisfy the legal duty of care. That flies in the face of the clear precedent that mandates that "[w]hether the law recognizes a *particular duty* is an issue of law to be determined by the court." *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47, 49 (1996). (Emphasis added). Importantly, the case law does not say a "general duty" but rather a "particular duty." In *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997), the Supreme Court elaborated on that point:

> Whether the law recognizes a particular duty is an issue of law to be decided by the court. In some circumstances, however, the question of whether a duty arises depends on the existence of particular facts. Where the existence or non-existence of a duty depends on facts, it is the duty of the court to instruct the jury as to the defendant's duty, or absence of duty, if either conclusion as to the facts is reached.

486 S.E.2d at 5. (Citation omitted). There are literally dozens of South Carolina cases holding that the trial court has the duty to instruct on the "particular duty" of care that is owed. Again, where the duty is expressed in generalities, as what occurred in this case, the jury is provided no guidance and is left to do what it thinks the law requires, but that is not the jury's role and that is contrary to due process and all notions of fundamental fairness. In short, where the trial court fails to charge the "particular" duty of care owed, the jury does not receive the "current and correct law," and the verdict cannot stand.

In this case, the Sheriff's Office requested that the trial court use its Request to Charge #7, which states:

> I charge you that the legal duty of care that is owed by the Defendant Aiken County Sheriff's Office is as follows:
>
> The employees of the Sheriff's Office are legally responsible for seeing that prisoners are attended to by medical professionals. They are not legally responsible for determining the diagnosis of any medical condition or the course of treatment or for overruling the opinions of the medical professionals.

(R. __). That proposed charge states the legal duty of care with *particularity* as was required. If that is not the correct law, then the correct legal duty of care still needs to be charged with particularity for the allegations and facts presented. Simply instructing the jury that the duty is "to safely confine, supervise, and maintain the custody of inmates" provides no real guidance whatsoever. (Tr. V:125). In fact, the term "safely," as was discussed during trial, is so ambiguous that it could be construed however the jury wanted. (Tr. II:5-24, 49-71). In fact, the use of the word "safely" implies a strict tort standard. Jails and prisons are challenging and dangerous places, and if the legal duty requires that the inmates remain "safe" under any and all circumstances, that will make any injury by an inmate actionable. That is not the law nor should it be the law. If this Court on appeal concludes that the Sheriff's Office is not entitled to a JNOV, the Sheriff's Office should at least receive a new trial absolute based on the charge given on the legal duty of care. The verdict should not be permitted to stand.

B. Closing Argument About Southern Health Partner's Unwillingness to Pay For Hospital Care and its Ramifications

During Rhoads' closing argument, her counsel showed a letterhead for Southern Health Partners that was not in evidence and was never addressed during testimony. Counsel drew attention to the use of the word "affordable" in the slogan used by SHP and suggested to the jury that SHP had a financial reason not to send Rhoads to the hospital. (Tr. V:42).

That closing argument was highly prejudicial on several levels.

First, the slogan was that of SHP who was no longer a Defendant in the case at the trial and for whose acts it was established and stipulated that the Sheriff's Office bore no vicarious liability.

Second, there was no evidence presented during the trial as to any obligation, by law or contract, for SHP to incur the costs of any hospitalization. The SHP contract was never placed in evidence. At no point was the duty to pay for outside medical care raised as an issue with any witness.

Third, the accusation made by Rhoads' counsel is contrary to established South Carolina law holding that there is no obligation on the part of the Sheriff's Office or Aiken County to pay for outside medical care required by pre-trial detainees. *See*, *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). That is not the law for convicted inmates, some of which are also housed at ACDC. But for a pre-trial detainee like Rhoads, there is no legal duty for anyone, including SHP, to pay for Rhoads' hospitalization, and certainly, there was no evidence to indicate otherwise.

Finally, because Rhoads was claiming in excess of $340,000 in hospital bills and another $70,000 in supposed future medical expenses, this improper closing argument was even more prejudicial because it implied to the jury that Rhoads' hospital expenses were the Sheriff's Office's responsibility regardless of fault and had not been paid, since those expenses were being claimed as damages in this litigation.

In effect, it created an issue that was not raised during the trial or litigated by the parties. The trial court was asked to make a curative instruction and declined to do so. (Tr. V:55-58, 105-109). The insinuations by Rhoads' counsel were improper, deliberate, and planned. They served no purpose other than to inflame the jury. The trial court erred in refusing the curative proposed by the Sheriff's Office counsel. Accordingly, the Sheriff's Office deserves a new trial absolute.

C. Inadmissible Hearsay Evidence of Future Medical Costs

The trial court erred in allowing Rhoads, as a lay witness, to testify that the costs of her future medical care were $70,000. (Tr. III:147-149). Rhoads laid no foundation for that testimony. She did not even state the source of that information, and at any rate, the information – even if it came from a credible medical provider – was hearsay with no applicable exception. The testimony was clearly offered for the truth of the matter asserted.

Under South Carolina law, in order for Rhoads to recover for the future costs of medical care or treatment, Rhoads must present expert testimony. Lay testimony is insufficient. It is well-settled that "[a]ny award of future medical expenses must be based upon something more than mere speculation" and "[i]n proving future medical expenses, the value of such care is established through expert testimony." *Roberson v. United States*, 2010 WL 4822325, *12 (D.S.C. 2010).

In effect, the jury was provided no foundation by which to judge the credibility and accuracy of that testimony, and it was inadmissible hearsay. In *Huntley v. Rite Aid of South Carolina, Inc.,* 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000), the Court of Appeals found testimony of future medical expenses to be hearsay but concluded that there was no abuse of discretion because the testimony was offered by an expert who can rely on hearsay. In the case at bar, the hearsay testimony was offered by a lay person, namely Rhoads herself, in what may only be characterized as self-serving testimony.

Notably, neither the trial court nor the jury were advised as to the source of this information. In fact, in responses to interrogatories served on October 2, 2023, just a week before trial, Rhoads was asked for an "itemized statement of all damages" per the standard

interrogatory. *See*, Rule 33(b)(5), SCRCP. Rhoads did not identify future medical costs of $70,000 (nor any amount).[6] The trial court erred in admitting that evidence of future medical expenses, and the Sheriff's Office was prejudiced thereby given the fact that Rhoads claimed those expenses in her counsel's closing argument and the likelihood that those damages were included in the $950,000 verdict. (Tr. V-49).

D. Evidence that Rhoads Checked Out of Hospital After Using Drugs

The trial court also erred in disallowing the Sheriff's Office's counsel from questioning both Rhoads and Dr. Edward O'Bryan, her medical expert witness, regarding the fact that Rhoads checked herself out of Aiken Regional Medical Center against medical advice on July 7, 2019. The reason that Rhoads took that action was that she had used heroin and methamphetamine in the bathroom of her hospital room and subsequently failed a drug test, both of which are facts she admitted and were not in dispute. The trial court should have allowed cross-examination of both witnesses to explore how that impacted Rhoads' recovery, which was very much an issue in the case. That evidence would have also demonstrated that there was an alternative explanation for the deficits that through her own lay testimony she was claiming resulted from the injury.

E. Evidence that Rhoads is Currently Incarcerated

The trial court erred in not allowing the jury to learn that Rhoads had been and remained incarcerated at the South Carolina Department of Corrections at the time of trial. The trial court did allow evidence of incarceration at SCDC to be admitted for Rhoads' witnesses, but not for

[6] Rhoads' Responses to Defendant's Interrogatories are in the record as a court exhibit. (R. ___).

Rhoads herself. The fact that Rhoads remains incarcerated on the very charges for which she was in the Aiken County Detention Center and arrested by the Sheriff's Office was relevant and admissible to show bias against the Sheriff's Office and law enforcement and corrections in general. That bias impacted Rhoads' credibility. Rhoads was further allowed to testify as to her current condition and give the impression that she "has turned her life around" but was able to hide the truth of her current incarceration which is certainly a significant part of her current condition.

III. In the event that this Court reinstates the Order Relating to Post-Trial Motions filed March 12, 2024, the trial court erred in making an award of "offer of judgment interest" and costs which are in contravention of the legislative intent as expressed in 2005 Act Number 32 and the provisions of the Tort Claims Act including the express bar on any type of "interest prior to judgment."

Cassiopia Rhoads filed a post-trial motion seeking an award of so-called "offer of judgment interest" and additional costs pursuant to Section 15-35-400 and Rule 68, SCRCP. The Sheriff's Office opposed that motion on the basis that "offer of judgment interest" or any type of "interest prior to judgment" is not recoverable against a governmental entity pursuant to Section 15-78-120(b). Furthermore, TRMC asserted that Section 15-35-400 and Rule 68(b), SCRCP, on which Rhoads' motion is based, are not applicable to governmental entities. In rejecting those arguments, the trial court granted the motion for "offer of judgment interest" and awarded $37,478.40 in interest and costs totaling $16,056.83. (Order, p. 4). The Sheriff's Office contends that the trial court erred in awarding the "offer of judgment interest" and costs against a governmental entity.

By way of background, Section 15-35-400 was enacted as part of Act 32 of 2005. Section 18 of Act 32 reads: "The provisions of this act do not affect any right, privilege, or

provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33." Section 18 was then codified as part of the Tort Claims Act. S.C. Code Ann. § 15-78-220 provides: "The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33." *See,* S.C. Code Ann. § 15-78-220. Thus, the provisions of Act 32, including Section 15-35-400, are inapplicable to cases brought pursuant to the Tort Claims Act.

Additionally, Section 15-35-400 conflicts with a specific section of the Tort Claims Act, as Section 15-78-120(b) provides that a Tort Claims Act defendant is not liable for pre-judgment interest or any "interest prior to judgment." *See*, S.C. Code Ann. § 15-78-120(b) ("No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment"). If the General Assembly had intended for pre-judgment interest or any "interest prior to judgment" to be recoverable under Section 15-35-400 against a governmental entity, then Section 15-78-120(b) would have been amended to reflect that exception. It was not, which clearly reflects the legislative intent that Section 15-35-400 is not applicable to Tort Claims Act cases.[7]

[7] Since 2006, the General Assembly has also demonstrated by its consideration of proposed amendments to the Tort Claims Act that Section 15-35-400 and Rule 68(b) do not apply under current law to Tort Claims Act cases. As part of comprehensive bills seeking to amend the Tort Claims Act which were debated but not enacted during the past several sessions of the General Assembly, the amendments under consideration include an amendment to Section 15-78-120(b) to make a variation of Section 15-35-400 and Rule 68(b) applicable to governmental entities sued under the Tort Claims Act. *See* e.g., Bill S. 81, § 6 (introduced in the Senate during 2021 session); Bill S. 386, § 6 (introduced in the Senate during 2019 session). This legislative activity further reflects that an amendment to the Tort Claims Act

Rule 68, SCRCP, was amended in 2006 to adopt certain language and provisions from Section 15-35-400. Rule 68(b), however, is not and cannot be construed as applicable to governmental entities sued under the Tort Claims Act. Otherwise, Rule 68(b) would be in direct conflict with Section 15-78-120(b) and also would be unconstitutional.[8] Section 4 of Article V of the South Carolina Constitution requires that procedural rules must be subordinate to statutory law. That constitutional provision states: "The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." *See*, S.C. Const., art. V, § 4. (Emphasis added). In construing this provision, the Supreme Court in *Stokes v. Denmark Emergency Medical Services,* 315 S.C. 263, 433 S.E.2d 850 (1993), explained that "[t]he clause 'subject to the statutory law' establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure." 433 S.E.2d at 852. *See also, Marichris v. Derrick,* 384 S.C. 345, 682 S.E.2d 301, 305 (Ct. App. 2009) ("A rule of civil procedure may not limit the provisions of a statute"). Consequently, Rule 68(b) cannot be read as creating liability for pre-judgment interest where statutory law, namely Section 15-78-l20(b), provides for sovereign immunity for pre-judgment interest or any "interest prior to judgment" and where the General Assembly has expressly provided that Section 15-35-400 is not applicable to governmental officials or entities sued under

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– which has not been enacted to date – would be necessary to make Section 15-35-400 and Rule 68(b) applicable to Tort Claims Act cases such as the case at bar.

[8] The Note to the 2006 Amendment for Rule 68 provides: "This amendment makes this provision consistent with S.C. Code Ann. § 15-35-400, which became effective July 1, 2005." The intent, therefore, was not to make Rule 68(b) broader in scope or application that Section 15-35-400. If Section 15-35-400 is not applicable to a particular case, then Rule 68(b) is also not applicable to that case.

the Tort Claims Act. Therefore, in order to be constitutional, Rule 68(b) must be read as being inapplicable to Tort Claims Act cases including the present case.

In sum, the trial court erred in making an award of "offer of judgment interest" against a governmental entity. The award of $31,035.62 in interest and costs totaling $16,056.83 should be reversed.

CONCLUSION

Based on the foregoing discussion and analysis, in the event that this Court reinstates the Order Relating to Post-Trial Motions filed March 12, 2024, the Respondent-Appellant Aiken County Sheriff's Office respectfully request that the Court reverse that Order to the extent that it denied a JNOV on the alternative bases addressed herein or alternatively reverse the Sheriff's Office's Motion for a New Trial Absolute. The Court is also request to deny the award of "offer of judgment" interest and costs.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Respondent-Appellant
Aiken County Sheriff's Office

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