THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Eugene H. Griffith, Jr., Circuit Court Judge

Case No. 2020-CP-02-02238

Appellate Case No. 2024-000592

Cassiopia Rhoads ..... Respondent-Appellant,

v.

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

FINAL RESPONDENT'S BRIEF OF RESPONDENT-APPELLANT RHOADS

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STATEMENT OF THE CASE

A. *Factual Background and Evidence*

The facts of this appeal arise from what an Aiken County jury determined to be grossly negligent acts/omissions by correctional officers who were tasked with overseeing Respondent-Appellant Cassiopia Rhoads ("Rhoads") while she was a pre-trial detainee in the Aiken County Detention Center ("the ACDC" or "the jail"). The facility is operated by Appellant-Respondent Aiken County Sheriff's Office ("ACSO"), which employs the correctional officers (the "COs") working there and is vicariously liable for their grossly negligent acts/omissions.

On May 3, 2019, Rhoads was booked into the ACDC on charges relating to fraudulent checks, shoplifting, and burglary. Although her initial health screening revealed no physical injuries/issues of consequence, a few days after her arrival into the jail, the side of Rhoads' head became swollen. Over the course of her detention, this ailment would continue to worsen and ultimately grow to become an enormous abscess that was horrifically misshaping her face and head (and would later be determined to be the result of a serious, life-threatening infection).

In response to Rhoads' worsening abscess, the jail's medical providers prescribed a treatment plan that was essentially limited to the administration of pain medication and a warm compress.[1] (R. Vol. IV pp. 1691-1717).[2] This blatantly inadequate treatment (coupled with an obvious failure to appropriately assess the malady) formed the basis for Rhoads' medical malpractice claim against SHP.[3] As discussed in greater detail below, her cause of action against the ACSO was distinctly different and related to gross negligence concerning: (1) the correctional

[1] Aiken County contracted with Southern Health Partners, Inc. ("SHP"), which is a corporation based out of Tennessee, to provide medical services for the detainees and inmates held at the jail.
[2] Although ACSO's brief implies that Rhoads was provided antibiotics in response to the abscess (ACSO's Initial Brief at p. 2), this inaccurate, as the only antibiotics she received in the jail related to an infected tooth. (R. Vol. IV pp. 1691-1717).
[3] Rhoads' medical malpractice claims against SHP were settled at mediation, with the gross negligence claims against ACSO proceeding to trial.

officers being aware that the medical staff believed the massive swelling was the result of self-harm and that they (the correctional staff) knew Rhoads was not self-harming and failed to act to correct the important misunderstanding; (2) at least one member of the jail's supervisory staff being made aware of Rhoads' critical condition and informed that the "boots-on-the-ground" COs had great concern of her deteriorating medical condition that needed to be discussed with medical staff but doing nothing about it (and actually making the lower-ranking officer feel that she might be fired if she advocated for the detainee); and (3) the jail's administration having failed to train COs and/or detainees (particularly those placed in solitary confinement) about the process for submitting an "administrative grievance" in an unnecessarily complicated system. Notably, these issues are vastly different than the manner in which ACSO has attempted to frame Rhoads' assertions of what constituted gross negligence, having inaccurately represented that Rhoads' claims were all about the correctional officers having not overruled the medical staff. To be clear, this case is not about "second guessing" a medical diagnosis, but rather the gross negligence of ACSO's COs failing to act on their own knowledge and adhere to their own duties.

"Inmate Grievance Records," inputted through the jail's "kiosk system," memorialize Rhoads having repeatedly pled for help as her abscess grew and overall health condition worsened. These grievances continued until the time ACSO's deputies placed her in solitary confinement,[4] at which point she lost access to the jail's kiosks.[5] The complaints lodged prior to her placement in solitary confinement included the following:

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[4] ACSO's deputies placed Rhoads in solitary confinement because she initiated a "peaceful protest" by refusing to go back to her cell and demanding to be taken to a hospital. (R. Vol. IV p.1726). Rhoads submits this act/behavior—placing her in solitary confinement for having lodged a "peaceful protest" seeking appropriate medical care, particularly when the treatment being provided was so blatantly and woefully inadequate—was one of several occurrences for which the jury could have determined to have constituted gross negligence by the COs.

[5] While the kiosks were not readily available to detainees housed in solitary confinement, there was supposed to be a process by which they could be accessed by detainees who were placed in solitary. However, because of improper training, the evidence revealed that the COs did not know

1) May 11, 2019: "I have a huge abcess [sic] on the side of my head that keeps getting bigger and hurts real bad I need my tooth pulled or some antibiotics."
2) May 16, 2019: "I'm having really [b]ad pain in my ear and fever."
3) May 20, 2019: "I have a fluid like sack on side of my head, above my ear, my ear aches and I'm still fighting a [fever] and severe [head] pressure. My eyes water constantly and I have severe nausea n [sic] vomiting. I also feel dizzy and can't focus my eyes when I stand up. The whole right side of my face is swollen and very painful. I have not been able to get out of bed for 4 plus days on the exception of showering. Please help me and send motrin."
4) May 21, 2019: "I have fluid under my skin above my [right] ear. Been there 4 plus days, whole side of face is swollen and have placed several sick calls and have not been seen yet. I am in severe pain and pressure in my head."
5) May 24, 2019: "I have been taken off all pain meds and still have yet to have seen the [dentist]."

(R. Vol. I pp. 131-136).

As a result of her deteriorating health during the month-long detention at the ACDC, Rhoads was involved in multiple incidents that included falls, loss of consciousness, and hallucinations. (R. Vol. IV pp. 1691-1717; R. Vol. IV pp. 1727-1737).

Both COs and fellow detainees testified that Rhoads' seriously deteriorating health was visible and obvious, as was the increasing size of the massive abscess on the side of her head that was described as growing to become the size of a grapefruit. (R. Vol. III p. 1010; R. Vol. III p. 1020; R. Vol. III pp. 1172-1175).At least one member of the correctional staff relayed concerns about Rhoads' ill health to SHP's medical providers, who responded by telling the deputy that they (*i.e.*, the medical staff) believed the cause of Rhoads' swollen head to be result of a self-inflicted injury. (R. Vol. III pp. 1170-1171). However, the COs knew this to be false—being the persons watching/guarding Rhoads on a 24-7 basis, they were well aware she was not self-harming. (R. Vol. III pp. 1172-1175).

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that Rhoads was to be allowed access to the kiosks. As discussed subsequently, this woefully inadequate training, concerning a very important part of healthcare delivery at ACDC, was part of Rhoads' assertions of gross negligence. (R. Vol. IV pp. 1423-1424, 1461-1462).

At least two COs informed ACSO's supervisory command staff (specifically Lieutenants Jessica Whitaker and Erik Riddell) that Rhoads' health was seriously deteriorating and relayed concerns that something more needed to be done. (R. Vol. III pp. 971-972; R. Vol. III pp. 1175, 1225). Further, the COs informed their command staff that the medical personnel erroneously believed Rhoads' health issues were the result of a self-inflicted injury and they (*i.e.*, the COs) knew this "diagnosis" was based on incorrect assumptions (that Rhoads, in fact, was not self-harming). However, these concerns/complaints fell on deaf ears, as the supervisory command staff did nothing in response to this information. (R. Vol. III pp. 971-972, 979; R. Vol. III pp. 1225-1226).

ACSO's jail administrator, Capt. Nicholas Gallam, admitted that, even without instruction from medical personnel, the jail's command staff (such as Whitaker and Riddell) are empowered to send a detainee to the hospital and are expected to do so when dealing with an obvious health problem. Capt. Gallam testified:

> Q: As far as the detention center itself, how do you – how does the – how does you and your training and expecting your correctional officers to comport themselves, ***is there any type of expectation for correctional officers to override the decisions of the clinical decisions, the medical decision making of the medical clinicians, the medical staff?***
>
> A: ***Yes***. There – there is an **expectation**, and we usually handle that at the supervisory level.

(R. Vol. IV pp. 1491-1492, emphasis added). Capt. Gallam went on to note that examples of when this "expectation" would apply would include "***if just something externally [sic] that's blatantly obvious***." (R. Vol. IV p. 1492, emphasis added). In closing, Rhoads' counsel argued that a grapefruit-sized abscess on the side of a detainee's head, that is growing larger and causing the person to lose consciousness, would be considered an obvious, external problem and exactly

the type of thing Capt. Gallam testified creates an expectation for action to be taken regardless of what the medical staff may have recommended. (R. Vol. IV p. 1492).

On June 2, 2019, approximately three weeks after the abscess began, Rhoads twice lost consciousness in her cell within the span of only a few hours. After the second episode, she was finally transported to Aiken Regional Medical Center ("ARMC"). Records from ARMC demonstrate Rhoads to have been suffering from an enormous infectious abscess (approximately 9.7 x 2.2cm in size) on the right side of her head that had destroyed a large portion of her skull and was so extensively invading her brain that it was causing a "right-to-left-midline shift"—meaning that her brain was being forcefully pushed to the left side by the invasion of the infectious mass into the right side of her skull). Medical providers at ARMC diagnosed Rhoads with a subgaleal abscess, epidural abscess, osteomyelitis (bone infection), and sepsis. She required neurosurgery to remove the infectious mass, and, because the abscess had become so large and invasive, a substantial portion of her skull required removal. (R. Vol. IV pp. 1783-1785; Vol. III p. 1100, lines 6-23). To this day, Rhoads has an enormous hole in her skull. (R. Vol. III p. 1098; Vol. III p. 269; Vol. IV pp. 1786-1787).

B. *Procedural Background*

On November 17, 2020, Rhoads filed a Summons and Complaint against ACSO for gross negligence. This pleading also included claims of medical malpractice and unfair trade practices against Southern Health Partners (and several medical providers), for which the filing of a Notice of Intent to File Suit and associated pre-suit mediation had already occurred. After considerable litigation/discovery, at a mediation held on July 20, 2023, Rhoads resolved all of her claims against Southern Health Partners ("SHP"). Therefore, the sole remaining claim was the gross negligence

cause of action claim under the South Carolina Tort Claims Act ("TCA") that had been brought against ACSO. This remaining cause of action against ACSO proceeded to trial during the week of October 9, 2023. After a week of trial, the jury deliberated for fewer than forty-five minutes before finding ACSO's employees had been grossly negligent and awarding Rhoads $950,000.00 in actual damages. (R. Vol. I p. 31).

Post-trial, ACSO moved for a JNOV, moved for a new trial absolute, renewed its motion that S.C. Code § 15-78-70(d) should apply to Rhoads' prior settlement with SHP and serve to extinguish her TCA claims against ACSO, sought a set-off of the verdict to account for the settlement amount paid by SHP, and moved to reduce the verdict to the statutory cap set forth in the TCA. (R. Vol. I p.428-454). While opposing the motions for a JNOV, a new trial absolute, and application of S.C. Code § 15-78- 70(d), Rhoads did not oppose the request for a set-off or the applicability of the damages cap set forth in the TCA.

Initially, the Trial Court denied the motion for a JNOV, denied the motion for a new trial, denied the motion seeking to apply S.C. Code § 15-78-70(d), and applied a set-off to the verdict to account for the prior settlement with SHP and then applied the TCA cap. (R. Vol. I pp. 4-18). ACSO then filed a motion to reconsider and while that motion was pending, subsequently filed a notice of appeal with the Court of Appeals. The briefing herein relates to that appeal by ACSO.

Nearly a year after the trial of the case, the Trial Court wholly reversed course on the issue concerning S.C. Code § 15-78-70(d), ruling that the statute did apply and served to bar Rhoads from proceeding on her remaining cause of action against ACSO, thus effectively granting ACSO's motion for reconsideration on one of the issues within the initial post-trial orders. (R. Vol.

I pp. 19-28). Rhoads moved for reconsideration and also filed a notice of appeal. (R. Vol. II pp. 629-672). The Trial Court denied Rhoads' motion to reconsider on September 29, 2024. (R. Vol. I pp. 29-30). An appeal by Respondent-Appellant Rhoads followed and is the subject of separate briefing submitted by the parties to the Court of Appeals.

STANDARD OF REVIEW

The kitchen sink appeal submitted by Appellant-Respondent ACSO necessitates a host of different standards of review.

The question of whether a duty exists—including the question of whether correctional officers owe any duty to the detainees in their care—is a question of law for the court. *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (Ct. App. 1986). This issue will be reviewed *de novo*, as appellate courts review all questions of law *de novo*. *Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 530, 744 S.E.2d 178, 182 (2013).

When reviewing the trial judge's decision on directed verdict motions or judgment notwithstanding the verdict, the appellate court must apply the same standard as applies to the lower court by viewing the evidence and all inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. *Weir v. Citicorp Nat'l Servs., Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993); *Welch v. Epstein*, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). The appellant court may only reverse the denial of a motion for directed verdict or JNOV if no evidence supports the trial court's ruling which must deny the motions if either the evidence yields more than one reasonable inference or its inferences are in doubt. *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Watts v. Chastain*, 438 S.C. 597, 603, 885 S.E.2d 398, 401 (Ct. App. 2022). When considering directed verdict and JNOV motions, neither

the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000); *Erickson v. Jones Street Publishers*, LLC, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). In deciding whether to grant or deny a directed verdict motion and JNOV, the court is concerned only with the existence or non-existence of evidence. *Long v. Norris & Assocs., Ltd.*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 415 S.E.2d 393 (1992). The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); *Hunter v. Staples*, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999).

Issues dealing with the admission and exclusion of evidence are left to the trial court's discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). Therefore, on appeal, an appellate court will not disturb a trial court's evidentiary rulings absent a clear abuse of discretion. R*&G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000); *American Federal Bank v. No. 1 Main Joint Venture*, 321 S.C. 169, 467 S.E.2d 439 (1996) (admission and rejection of testimony is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal unless the appellant can show abuse of such discretion, commission of legal error in its exercise, and resulting prejudice to appellant's rights). The trial judge's decision regarding the admission of evidence will not be reversed on appeal unless it appears he clearly abused his discretion, and the objecting party was prejudiced by the decision. *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 548 S.E.2d 880 (Ct. App. 2001). "For this Court to reverse a case based on the admission of evidence, both error and prejudice must be shown." *Seabrook Island Prop. Owners' Ass'n.*, 365 S.C. 234, 242,

616 S.E.2d 431, 435 (Ct. App. 2005) (emphasis added). To show prejudice regarding evidence, an appellant must prove that there is a "reasonable probability the jury's verdict was influenced by the challenged evidence." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

As to the manner in which the trial judge charges the jury, an "appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion." *State v. Kinard*, 373 S.C. 500, 503, 646 S.E.2d 168, 169 (Ct. App. 2007).

REPLY ARGUMENT

Acts/Omissions of Gross Negligence by ACSO's Correctional Officers

As an initial matter, Rhoads must correct/address ACSO's repeated misstatements and misrepresentations regarding her allegations and the nature of the acts/omissions by the correctional staff that constituted grossly negligent conduct. By way of example, ACSO mischaracterizes the issues at trial as follows:

> 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' doctors and nurses) who were providing ongoing care and treatment to Rhoads for her medical conditions and so seek a different or alternative course of care or treatment […]
>
> 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.

(ACSO's Initial Brief, pp. 11, 14). To be clear, ACSO's brief inaccurately represents the factual issues in dispute at trial and inaccurately portrays what acts/omissions by the COs were shown to have amounted to gross negligence. Despite ACSO's failure to address or even acknowledge these acts/omissions in its briefing, three different occurrences, none of which require the COs to have practiced medicine and/or override the decisions of the medical staff, were demonstrated through

the evidence presented at trial and could have been determined by the jury to have amounted to grossly negligent acts/omissions by several of the COs working for ACSO:

> **Occurrence No. 1:** Deputy Carla Hill was told by the detention center's medical staff that they had determined self-harm to be the reason for Rhoads' massively swollen head—which is to say that the medical staff believed Ms. Rhoads was intentionally banging her head against the wall, her bunk, a sink, or some other hard object. Dep. Hill's own testimony demonstrated that she believed this to be inaccurate and undertook to ask other correctional officers, as well as Rhoads' fellow inmates, if they had seen Ms. Rhoads inflict self-harm. Dep. Hill testified that all of these inquiries came back in the negative—that no one had seen or had any reason to believe that Ms. Rhoads was self-harming. Deputy Hill testified that she took this information to her supervisor, Lieutenant Jessica Whitaker. However, there was no evidence that Lt. Whitaker did anything with this important information or otherwise undertook to correct the medical staffs' misinformation. Upon learning that the basis for the medical staffs' diagnosis was incorrect (that they believed Rhoads' swollen head to be the result of self-harm when, actually there was no self-inflicted injury), it was incumbent upon Lt. Whitaker to see that the medical staff was made aware of this information so that they could incorporate it into their diagnosis and prescribe a course of treatment that correctly reflected what was actually occurring. (R. Vol. III p. 1166-1173). Rhoads submits that this response (or lack thereof) by Lt. Whitaker was gross negligence.
>
> **Occurrence No. 2:** Deputy Kimberly Kelley grew gravely concerned about Rhoads' health during the detention at issue. Dep. Kelley testified that Rhoads was visibly very ill and, even as a layperson, she could tell that Rhoads required much more medical treatment/care than what the detention center's medical staff was providing. Dep. Kelley described how incredibly sick Rhoads appeared and her fear that she would die in the detention center if additional medical treatment was not arranged. Dep. Kelley testified that she took these concerns to her supervisor, Lieutenant Erik Riddell. Further, she testified that Lt. Riddell responded by telling her, "stay in your lane," and effectively rejected her concerns outright. Dep. Kelley testified that Lt. Riddell's negative response to her concerns was so intense that she feared for her job security if she pushed the matter any further or went above Lt. Riddell on the chain of command. Upon learning of Dep. Kelley's concerns about Ms. Rhoads' health, it was incumbent upon Lt. Riddell to make a reasonable inquiry into the validity of these concerns and to discuss these concerns with the medical staff (and, if necessary, his supervisors) so that they could take any action necessary. (R. Vol. III p. 1213-1254). Rhoads submits that this response (or lack thereof) by Lt. Riddell was gross negligence.
>
> **Occurrence No. 3:** Captain Nicholas Gallam testified that one of the reasons the detention center's administrative staff (such as himself) were contemporaneously unaware of any concern about Rhoads' health was because

> she didn't complete an "administrative grievance" on the jail's computer kiosk system. Capt. Gallam testified that if Rhoads had gone to the kiosk and clicked a particular drop-down box and navigated to a specific page to complete a particular administrative grievance form (different than the form about needing medical attention), he would have been made aware of the concern that the medical staff was not providing appropriate care and that she was gravely ill. Additionally, Capt. Gallam talked about the one-page document (printed both front and back) entitled "Inmate Rules and Regulations," which would have been provided to Rhoads at the time she was booked in the jail and that he claimed explained this process about "administrative grievances." However, a look into this document (R. Vol. IV p. 1804-1805) demonstrates that the administrative process had a level of complexity that for a layperson— let alone someone like Rhoads, who lacked in education and was also suffering from an infectious process invading her brain—would be difficult to understand. Capt. Gallam also testified that when one does not have access to the kiosk system (which would include Rhoads at the point she was placed in B-Max on May 24th), paper forms can be made available to detainees to complete grievances. Seemingly, Capt. Gallam was saying that he blamed Rhoads for not going through what he considered the proper channels and implying that, had she done so, he would have taken action about her need to be seen at a hospital. However, the evidence demonstrated that the "boots on the ground" deputies were untrained or otherwise unaware of this administrative grievance process, for even the correctional officers who were concerned about Rhoads' health and were trying to advocate for her (including Deputies Hill and Kelley) never informed Rhoads about this complicated process regarding how to navigate through the morass of the kiosk computer system to file an administrative grievance, nor did they offer to provide her with physical paperwork to enter a grievance. (R. Vol. IV pp. 1433-1503). Rhoads submits the ACSO's creation of an absurdly complicated and difficult to navigate administrative grievance filing process (including an informational form in 8-point font), coupled with a failure to train its employees as how the administrative grievance process operated or to inform detainee Rhoads about the process, was gross negligence.

Any one, combination, or all of the grossly negligent acts/omissions delineated above could have been the basis of the jury's verdict finding in Rhoads' favor and are independent and separate from any acts of medical malpractice negligence by SHP' medical providers. Because any of these grossly negligent acts/omissions (which are categorically different than how ACSO tries to characterize the claims in the case) involve duties that the ACSO's correctional officers owed to Rhoads (and breached) and are sufficient to sustain the jury's verdict, the verdict must be upheld.

Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 419-20, 472 S.E.2d 253, 254 (1996) ("when the jury returns a general verdict involving two or more issues and its verdict is supported as to at least one issue, the verdict will not be reversed on appeal."); *see also Vinson v. Jackson*, 327 S.C. 290, 293, 491 S.E.2d 249, 250 (1997) (a "jury verdict should be upheld when it is possible to do so"). Under the "two issue" rule, "the appellate court will find it unnecessary to address all the grounds appealed where one requires affirmance." *Anderson* at 420, 472 S.E.2d at 254-55 (1996) (citing to *Smoak v. Liebherr–America, Inc.*, 281 S.C. 420, 315 S.E.2d 116 (1984) (where a case was presented to jury on negligence and breach of warranty causes of action, the appellate court need not address breach of warranty exceptions if it finds that verdict was supported by the evidence under the theory of negligence).

Despite ACSO's efforts to reframe the issues, this case is not about allegations that would require the correctional officers to "practice medicine" or to "second guess" the medical staff. The case involves several different acts/omissions of gross negligence related directly to the COs' role and responsibilities at the jail and that they did not uphold with regard to Rhoads, any one of which could have been the basis for the jury's verdict against the ACSO.

I. CORRECTIONAL OFFICERS OWE A DUTY TO THE DETAINEES OVER WHOM THEY HAVE CUSTODY AND CONTROL AND THE SHERIFF'S OFFICE IS LIABLE IF THE OFFICERS PERFORM THIS DUTY IN A GROSSLY NEGLIGENT MANNER THAT PROXIMATELY RESULTS IN INJURY

A. *State and Federal Law Establish a Duty Owed to Detainees Such as Rhoads*

ACSO makes the rather incredulous assertion that the correctional officers in charge of Rhoads (as well as the other detainees housed in the jail) owed absolutely no legal duty to her (or presumably to any of the other individuals in their custody). This assertion is not only legally indefensible but is fundamentally incompatible with the nature of detention/incarceration in a

civilized society. As a basic truth, detained/incarcerated individuals are entirely dependent upon jail/prison officials for their sustenance, safety, hygiene supplies, medicine, etc. When the government takes a person into its custody and holds her in jail against her will, the law imposes upon the government a duty to assume some responsibility for the person's safety and general well-being. *Hudson v. Palmer*, 468 U.S. 517, 526-527 (1984) ("[corrections officers] are under an obligation to take reasonable measures to guarantee the safety of the inmates themselves").[6] To argue that absolutely no duty exists toward these individuals, who cannot otherwise independently care for themselves, is patently illogical, would be unjust, and cannot be the law of the Palmetto State. As discussed below, South Carolina imposes a duty of care on sheriffs and their deputies with regard to jail detainees, and the government is liable if its employees breach this duty in a grossly negligent manner.

South Carolina law specifically proscribes that ACSO has **responsibilities and/or duties** with respect to detainees and inmates like Rhoads and can be liable if these duties are breached:

> The sheriff shall have custody of the jail in his county and, 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.

S.C. Code § 24-5-10 (emphasis added).[7] The South Carolina Code of Laws provides: "The governing body of each county in this State shall furnish, at all times, sufficient food, water,

[6] The United States Supreme Court has specifically found that a governmental entity cannot contract away "its constitutional duty to provide adequate medical treatment to those in its custody." *West v. Atkins*, 487 U.S. 42, 56 (1988).

[7] This statute is not advisory—it does not say sheriffs "may" or "should" safely keep inmates. If a sheriff's office owed no duty to the detainees and inmates committed to its custody, then there would be no purpose for the statute to prescribe that the sheriff "shall be liable." This mandatory language reflects the Legislature's intent to impose a binding legal duty. *See State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 197 (1997) ("where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense"). Although ACSO argues that "according to law" is overly vague, this phrase appropriately

clothing, personal hygiene products, bedding, blankets, cleaning supplies, and shelter from extreme heat or cold or rain for all persons confined in a jail and access to medical care." S.C. Code § 24-5-80. The ACSO, serving as the administrator for the Aiken County Detention Center (as opposed to Aiken County having assigned this responsibility someone else), holds this duty.

The South Carolina Tort Claims Act (TCA) provides:

> The State, an agency, a political subdivision, and a governmental entity are **liable for their torts in the same manner and to the same extent as a private individual under like circumstances**, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

S.C. Code § 15-78-40 (emphasis added). The manner in which private individuals are liable for a tort of negligence is well-established under South Carolina law. *See e.g. Shipes v. Piggly Wiggly St. Andrews, Inc.*, 269 S.C. 479, 482-483, 238 S.E.2d 167, 168 (1977) (citing Prosser, *Handbook of the Law of Torts* § 30, 4th ed. 1971, and setting forth the elements of a cause of action in tort). The TCA dictates that governmental entities are liable if their exercise of the aforementioned duty toward detainees is performed in a grossly negligent manner:

> **The governmental entity is not liable for a loss resulting from […] responsibility or duty** including but not limited to **supervision, protection, control, confinement, or custody of any** student, patient, prisoner, **inmate**, or client of any governmental entity, **except when the responsibility or duty is exercised in a grossly negligent manner.**

S.C. Code § 15-78-60(25) (emphasis added).

Considering the U.S. Supreme Court's proclamation that "[corrections officers] are under an obligation to take reasonable measures to guarantee the safety of the inmates themselves" (*Hudson v. Palmer, supra*) and merging these statutes, South Carolina law provides:

> A sheriff's office shall take reasonable measures to safely keep any person delivered/committed to jail and, to the same extent as a private individual undertaking this task but with the limitations on damages contained within

points to several legal principles, such as the TCA's proscription that the governmental entity is only liable if its employees are grossly negligent, as well as its damages cap on liability.

> the SCTCA, shall be liable if this responsibility/duty is exercised in a grossly negligent manner.

Combining S.C. Code § 15-78-40, 15-78-60(25) and 24-5-10.

With sovereign immunity having been abolished, the TCA defines the scope/extent of the governmental liability, confirming that although ordinary negligence is immunized with regard to a sheriff's duty to exercise reasonable care to those persons in his/her jail, gross negligence is actionable. The Legislature could have provided total immunity for sheriffs in all circumstances, but it did not. Instead, the Legislature specifically preserved liability in the very types of situations presented in this case, such as where an individual is in custody and the government's agents, in a grossly negligent manner, fail to take reasonable steps to prevent the detainee from suffering injury.

The legal duty ACSO owed to Rhoads is further established by the Constitutions of the United States and South Carolina, both of which prohibit "cruel and unusual punishment."[8] *See* 8th Amendment to United States Constitution and Article I, Section 15 of South Carolina Constitution. Setting aside the direct Constitutional issues—or more combining them with state statutes quoted above—ACSO's deputies owed a legal duty to not be grossly negligent in their efforts to prevent Rhoads from suffering cruel and unusual punishment.

[8] As a pre-trial detainee, Rhoads had not been adjudicated guilty of a crime and could not be subjected to any form of punishment. *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983); *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988). Since at least 1976 the Fourth Circuit has found that "a prisoner's right to adequate medical care and freedom from deliberate indifference to medical needs has been clearly established by the Supreme Court and this Circuit and, thus, was clearly established at the time of the events in question." *Tarashuk v. Givens*, 53 F.4th 154, 163 (4th Cir. 2022) (*quoting Scinto v. Stansberry*, 841 F.3d 219, 236 (4th Cir. 2016)).

Put simply, when read together, the aforementioned statutes, the South Carolina Constitution, and U.S. Constitution, establish a duty for sheriffs to "safely keep" detainees and a waiver of immunity and liability when this duty is performed in a grossly negligent manner.

B. The "Public Duty" Rule Is Inapplicable

ACSO misstates and misconstrues the public duty rule (often recalled the "public duty doctrine"), which is not applicable in the matter at bar. The public duty rule relates only to duties that are generally owed to "the public at large" and "holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually*." Steinke v. South Carolina Dept. of LLR*, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999). A quintessential example of the public duty rule would be a police department's general duty to protect the public from crime does not create a specific duty to protect any individual from a specific crime, and, thus, if a person is robbed, he/she cannot sue the police for failing to prevent the robbery. The public duty rule states that "statutes which create or define the duties of a public office create no duty of care towards individual members of the general public." *Edwards v. Lexington Cnty. Sheriff Dept.*, 688 S.E.2d 125, 386 S.C. 285 (S.C. 2010). South Carolina precedent makes clear that the public duty rule bars negligence claims against public officials only where the duty in question is owed to the public at large. *See Vaughan v. Town of Lyman*, 370 S.C. 436, 635 S.E.2d 631 (2006) (concerning the liability of a governmental entity for a trip and fall on a sidewalk that had become broken over time by overgrown tree roots); *Wells v. City of Lynchburg*, 331 S.C. 296 (finding city and county immune from liability because the maintenance of fire hydrants and water supply for firefighting is owed to the public generally); *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 439 S.E.2d 266, 268 (1993) (holding that the town's development ordinance was intended to protect the public from over-development,

not to protect homeowners from deprivation of water and other services). South Carolina courts have made clear the public duty rule does not bar liability where a special relationship exists between the government and the individual or where the statute imposes a specific duty to an identifiable class of persons. *See Jensen v. Anderson Cnty. Dept. of Social Services*, 304 S.C. 195, 403 S.E.2d 615 (1991) ("statute imposes on a specific public officer a duty to guard against a specific harm and that the class of persons to be protected, of which the plaintiff is a member, is identifiable before the fact").

A detainee in a county jail, whose liberty is restrained to the point she cannot provide necessary care on her own, is the quintessential example of the special relationship exception to the public duty rule. *See Rogers v. S.C. Dep't of Parole*, 320 S.C. 253, 256 (1995) ("When a defendant as the ability to monitor, supervise, and control an individual's conduct, a special relationship exists between the defendant and the individual."). ACSO, by virtue of its custody and control over Rhoads, had such a relationship that is distinct and separate from that owed to the public at large. During the relevant time of the facts at issue in the case, Rhoads was not a member of the general public but was a detained individual who was entirely reliant on jail officials for access to medical care. Rhoads was not "at large"; she was being held in custody by the ACSO. By definition, the public duty rule/doctrine does not apply to Rhoads or others in her position.

Rhoads is not asserting a general grievance as a member of the public but as a detainee in the ACDC and for whom (as described above) the law specifically proscribes a duty to the ACSO to take reasonable efforts to protect. As such, the public duty rule has no application to this matter.

C. A Duty to Question or "Override" Medical Staff Can Exist

Setting aside ACSO's attempts to mischaracterize what acts/omissions by the correctional officer amounted to gross negligence, in certain situations, the law does create a duty for

correctional officers to question or "override" staff. To this point, please see Rhoads' *Statement of the Case*, discussing how Capt. Gallam (the jail's own chief administrator) testified that correctional officers, particularly those working at the supervisory level, were expected to override any flagrantly wrong decisions of the jail's medical staff and this would apply to "something [external] that's blatantly obvious," and also discussing how several witnesses testified Rhoads had an ever-enlarging, grapefruit-sized abscess on the side of her head.

Despite ACSO's cherry picked cases about there not being a duty for correctional officers to "second guess" healthcare professionals, our federal jurisprudence does dictate that, when the need for additional medical care is apparent, a duty is placed on the COs to address the situation and correctional staff cannot hide behind a "right to rely" on the jail's medical staff. *Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023) (finding the plaintiff's claims actionable "because no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent"). In *Short*, a woman who had previously tried to commit suicide was detained in the jail in Davie County North Carolina. Upon arrival, the detainee was examined by a licensed nurse who did not label her as a suicide risk. *Id.* at 599. A few hours later, a law enforcement officer (Sergeant Morgan) completed the detainee's intake form, which asked several questions about the woman's mental health. *Id*. at 600. The detainee told Sergeant Morgan she had previously tried to commit suicide. Despite this statement and despite being trained on signs of suicide, the CO placed the detainee in an isolated cell because she was "being mouthy." *Id*. at 601. One of the sergeant's subordinates noted concerns with placing the detainee in an isolation cell given her previous suicide attempt. *Id*. at 600-601. Later that morning, the detainee was found to have hung herself. *Id*. Notably, this chain of events occurred in a span of less than 24-hours. In ruling that the factual allegations were sufficient to establish the

sergeant acted recklessly in failing to address the detainee's medical concerns, the court noted the sergeant, based on his training, "knew that [the detainee] posed a serious suicide risk if Sergeant Morgan did not act." *Id*. at 613. The court noted "'protocol violations' demonstrate that a defendant 'knew of and disregarded a substantial risk of serious injury to the detainee or that they actually knew of and ignored a detainee's serious need for medical care.'" *Id*. This is true even if the policy or protocol is unwritten. *Id.* (*quoting Younger v. Crowder*, 79 F.4th 373, 384 (4th Cir. 2023)). The court further rejected appellees' argument that the sergeant could rely on the medical opinion of the licensed nurse who had examined the detainee, holding:

> Sergeant Morgan was not acting on the express instruction of a medical provider—Appellees merely contend that Sergeant Morgan did not violate Ms. Short's constitutional rights because the nurses who examined Ms. Short did not take or order these additional steps either. **But Sergeant Morgan cannot use the Medical Defendants' conduct or failure to act to shield her from liability on these facts.** Holding otherwise would shield non-medical defendants from liability whenever a medical provider was at some point consulted.

Id. at 614 (emphasis added). When a correctional officer fails to act in response to a detainee's obvious medical need, four elements must be shown with regard to the deliberate indifference standard in federal actions),[9] all of which are present in the matter:

1. [the detainee] had a medical condition or injury that posed a substantial risk of serious harm;
2. the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed;

[9] Although they are similar to one another, the standard for proving gross negligence is actually a lower bar than that of proving deliberate indifference. *Pack v. Associated Marine Institutes, Inc.*, 362 S.C. 239, 247, 608 S.E.2d 134, 139 (Ct. App. 2004) (*citing Jensen v. Conrad*, 570 F.Supp. 114, 122 (D.S.C. 1983) ("In defining the concept of deliberate indifference, it is important to recognize that although it is closely associated with gross negligence, there is a significant distinction. In essence, gross negligence is the breach of reasonable standards of conduct posing obvious dangers to others while deliberate indifference involves a knowing lack of regard or concern for the safety of others.").

3. the defendant knew or should have known (a) that the detainee had that condition and (b) that the defendant's action or inaction posed an unjustifiably high risk of harm; and
4. as a result, the detainee was harmed.

Short v. Hartman, 87 F.4th 593, 611 (4th Cir. 2023).

The holding in *Short* is clear—a medical provider's failure to act does not automatically excuse a correctional officer's failure to act when the officer is on notice of the detainee's medical condition yet chooses to ignore it simply because medical staff has been consulted. The only appreciable differences between the case at bar and *Short* are: (1) Rhoads did not die and (2) her inadequate medical care continued for an entire month rather than a single day, despite several ACSO's deputies knowing it was insufficient and based on an incorrect belief of self-harm. As Capt. Gallam testified, ACSO's officers were supposed to overstep medical personnel if they were alerted to an obvious medical issue that was not being sufficiently addressed. This unwritten policy demonstrates that the COs knew of the risk of blindly and unjustifiably relying on the medical staff yet consciously disregarded those risks. Similar to how the sergeant in *Short* was put on notice of the detainee's suicidal nature, Riddell and Whitaker were put on notice that boots-on-the-ground deputies had grave concerns about Rhoads' worsening condition and inadequate medical care and that the medical staff incorrectly believed that she was self-harming. Unlike the tragic detainee in *Short*, Rhoads was fortunate enough to live through her mistreatment; however, the acts and omissions of the ACSO's deputies were equally egregious, showing they acted with reckless indifference to her medical needs when her need for care was apparent and when informed that the medical staff incorrectly believed Rhoads to be self-harming.[10]

[10] Rhoads reiterates, had she actually been self-harming to such a degree that the self-harm was causing such massive swelling to the side of her head, even a layperson would understand the obvious need that something be done (psychiatric care, restrains, etc.) and that a failure to address the lack of this would also amount to gross negligence by the ACSO.

Given the serious and obvious nature of the enormous and growing abscess on the side of Rhoads' head that was worsening on a near daily basis, viewing the evidence in the light most favorable to the Plaintiff, the jury determined that ACSO's officers (more specifically, Riddell and Whitaker) were grossly negligent (and even deliberately indifferent) for having disregarded the numerous concerns voiced by their deputies, yet failing to act or even inquire about Rhoads' health and need for additional medical care.

D. *S.C. Code § 24-5-10 has not been "Repealed by Implication"*

Although never actually briefed to the Court of Appeals (ACSO's appeal merely "relies upon" and claims to incorporate by reference a prior brief submitted to the Trial Court),[11] ACSO asserts that S.C. Code § 24-5-10 was "impliedly repealed" by the SCTCA.[12] However, a finding that a law has been repealed by implication is a high burden that ACSO cannot meet. A statute can be repealed by implication only "to the extent of the repugnancy" between it and the subsequent inconsistent statute. *McLain v. S.C. Dep't of Educ.*, 323 S.C. 132, 134, 473 S.E.2d 799, 800 (1996) (*citing Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co.*, 295 S.C. 243, 368 S.E.2d 64 (1988)).

> Repeals by implication are not favored by courts and to repeal a statute on account of an asserted conflict or repugnancy with another, the repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconcilement; for if they can be construed so that both can stand, the Court will so construe them. Further, the general rule is that statutes of a specific nature […] are not to be considered as repealed in whole or in part by later general statutes such as those included in Tort Claims Act, unless there is a direct reference to the former statute or the intent of the legislature to repeal is explicitly implied therein.

[11] ACSO's brief to the Trial Court relied upon *Robinson v. Metts*, 86 F.Supp.2d 557 (D.S.C. March 17, 1997), in which the Federal District Court case that noted the implicit repeal of S.C. Code § 23-13-10, which is an entirely different statute.

[12] Notwithstanding its argument, at trial, ACSO explicitly conceded that the statute has not been repealed. (R. Vol II p. 899).

City of Rock Hill v. S.C. Dep't of Health & Env't Control, 302 S.C. 161, 167–68, 394 S.E.2d 327, 331 (1990) (internal quotations and citations omitted).

Nowhere in the TCA is there any mention or suggestion of S.C. Code § 24-5-10 being repealed. Nor has there been a single reported case during the nearly four decades that has transpired since the TCA became law that has found S.C. Code § 24-5-10 to have been implicitly repealed. In fact, since the TCA was enacted, S.C. Code § 24-5-10 has been cited by both the South Carolina Supreme Court and United States District Court of South Carolina, with neither Court finding S.C. Code § 24-5-10 was repealed explicitly or "impliedly." *See Henry v. Horry Co.*, 334 S.C. 461 (1999) and *McDonald v. Marlboro County*, 2013 U.S. Dist. LEXIS 176207 (D.S.C. Dec.16, 2013). There was nothing the least bit "repugnant" about S.C. Code § 24- 5-10 providing that a sheriff's office has a duty to undertake reasonable efforts to safely confine those person committed to the jail or that it would be liable if this duty were exercised in a grossly negligent manner. Accordingly, ACSO cannot meet the high burden needed to demonstrate that the law has been impliedly repealed.

E. The South Carolina Minimum Standards for Local Detention Facilities Are Applicable

ACSO asserts the *Minimum Standards for Local Detention Facilities in South Carolina* ("the *Minimum Standards*") have no relevance in this case, arguing that the *Minimum Standards* have not been adopted by the South Carolina Legislature. As an initial matter, the case that ACSO cites for this argument (*Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)) and does not stand for the proposition ACSO asserts. Even more importantly, ACSO's position ignores that, a decade after the *Myrtle Beach Hosp., Inc.* case, South Carolina's legislature specifically adopted the *Minimum Standards* by the enacting amendments to S.C. Code § 24-9-30 (which became law in 2010). The beginning of the Minimum Standards sets forth the statutory authority:

> 1001 STATUTORY AUTHORITY
>
> The authority to establish and enforce the standards and requirements herein, unless otherwise noted, is based upon the South Carolina Code of Laws, 1976, as amended, Sections 24-9-10 through 24-9-50, which read as follows:
>
> > SECTION 24-9-10. Jail and Prison Inspection Division established in Department of Corrections; personnel. There is hereby established a Jail and Prison Inspection Division under the jurisdiction of the Department of Corrections. The inspectors and such other personnel as may be provided for the division shall be selected by the director of the department.

(R. Vol. IV pp. 1806-1809).

In the capacity as a Rule 30(b)(6) designee, Capt. Nicholas Gallam, the jail's chief administrator, testified that the Aiken County Detention Center is required to follow the *Minimum Standards for Local Detention Facilities in South Carolina*. (R. Vol. V pp. 1951-1952).

Further, even if the *Minimum Standards* had not been adopted by our Legislature, they are still very much relevant to the case and evidence of the duty of care was owed to Rhoads. Policies, procedures, and standards can have relevance (and are admissible), even if not specifically adopted by our Legislature. *Caldwell v. K–Mart Corp.*, 306 S.C. 27, 31, 410 S.E.2d 21, 24 (Ct. App. 1991) (holding a defendant's violation of its own internal policies and procedures can be offered as evidence tending to show negligence); *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006) ("a court may establish and define the standard of care by looking to […] a defendant's own policies and guidelines").

F. Expert Testimony Was Not Needed to Show Gross Negligence

Although presented only in a very brief argument, ACSO incorrectly asserts expert testimony was required. However, expert testimony is not needed to support a claim of ordinary (gross) negligence. *See Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 758 S.E.2d 501 (2014) (noting that expert testimony is not required in cases of ordinary negligence and that, even in medical malpractice actions, expert testimony is not with respect to nonmedical, administrative, ministerial,

or routine care that is within the understanding of a layperson). While standard of care testimony is often required to make claims of medical malpractice, our courts are clear that ordinary negligence claims do not carry such a requirement. *See Hook v. Rothstein*, 281 S.C. 541, 551, 316 S.E.2d 690, 697 (Ct. App. 1984) (noting that expert testimony is only needed if the topic/issue in an "area beyond the realm of ordinary lay knowledge"). The question of whether expert testimony is required is a matter usually left to the discretion of the trial judge. *Babb v. Lee Cty. Landfill SC*, LLC, 405 S.C. 129, 154, 747 S.E.2d 468, 481 (2013) ("due to the fact-specific nature of the determination, it is a question that must be left within the discretion of the trial judge").

The trial jury correctly determined that Rhoads' assertions of ordinary (gross) negligence (essentially the three occurrences discussed previously) were within the realm of a lay person's understanding and did not require expert testimony and, most assuredly, did not abuse its discretion in making such a determination. Further, even if expert testimony was required, ACSO's Capt. Gallam provided such testimony that supported Rhoads' claims.[13]

G. Evidence of Gross Negligence by ACSO's Correctional Officers

ACSO argues that if it owed a duty to Rhoads and other detainees (which, as discussed above, Rhoads submits that such a duty most certainly existed), Rhoads did not demonstrate grossly negligent conduct. ACSO's argument again mischaracterizes the claims and overlooks the most egregious conduct by its correctional officers.

The South Carolina Supreme Court has defined gross negligence as a relative term that means the absence of care necessary under the circumstances, noting that it is ordinarily a "mixed

[13] Please see the *Statement of the Case*, discussing how Gallam testified there is an "expectation" for correctional officers, working at the supervisory level, to override any flagrantly wrong decisions of the jail's medical staff and this would apply to "something [external] that's blatantly obvious," which Rhoads asserts would include an ever-enlarging, grapefruit-sized abscess on the side of a detainee's head that is causing neurologic problems.

question of law and fact," which unless there is only one reasonable inference supported by the evidence, should be decided by the jury. *Etheredge v. Richland Co. School Dist. One*, 341 S.C. 307, 310 (2000).

Unlike a court examining a burden of proof issue, a court analyzing directed verdict, JNOV, and new trial motions is concerned solely with the existence of evidence and not with its weight. *Pike v. South Carolina DOT*, 332 S.C. 605, 610 (Ct. App. 1998). At trial, Rhoads presented multiple witnesses and exhibits through which a reasonable jury could determine at least one occurrence by which ACSO's COs had been grossly negligent with respect to Rhoads. While Rhoads submits that the three occurrences discussed in the Statement of the Case section above stand alone on this issue, she will, nonetheless, briefly summarize that evidence.

Testimony of ACSO's own jail administrator, Capt. Gallam, established that when an inmate was suffering from a serious medical condition that is "blatantly obvious," his correctional officers are supposed to take action to address the issue. (R. Vol. IV pg. 1492). Numerous witnesses testified as to the serious nature of the abscess on the side of Rhoads' head and explained that, even to the naked-eye of a lay person, it was blatantly obvious that something was gravely wrong with her health. In addition to Rhoads' own testimony, those witnesses included correctional officers Bauer, Hill, and Kelley and also former detainees Carver and Jimmerson. Additionally, the medical images (taken after Rhoads was finally transported to a hospital) objectively show severe swelling protruding on the right side of Rhoads' head and such that any juror could view and reasonably infer such swelling would have been a blatantly obvious external symptom in need of immediate medical attention. (R. Vol. pp. 1761-1782). There was testimony that Hill and Kelley took concerns about Rhoads' deteriorating health and obvious need for additional medical care to their supervisors (Whitaker and Riddell), who did nothing in response.

Despite ACSO's characterization of this evidence being "mere advertence," a reasonable jury could conclude this to have been gross negligence—a failure to use even slight care to see that a blatantly obvious and serious medical need was addressed.

There was testimony that the correctional officers were informed that the jail's medical staff believed self-harm to be the cause of the massive swelling on the side of Rhoads' head and also knew this was incorrect (that the COs knew Rhoads was not self-harming). Despite having this crucially important knowledge, ACSO's deputies never passed this information along to the medical staff nor did they discuss with the medical providers why, if Rhoads was causing severe self-injury, she was not receiving psychiatric care, being placed in restraints, or otherwise addressing such mental illness. While ACSO may desire to characterize such inaction as "mere advertence," a reasonable jury could conclude this to have been gross negligence—a failure to use even slight care in response to a treatment plan based off of incorrect information (or if she had been self-harming, not in any way addressing the self-injurious behavior).

Capt. Gallam testified that if Rhoads believed she required medical attention beyond what she was receiving, then she should have filed an administrative grievance. However, the evidence demonstrated that this avenue to address the concern was effectively hidden. Submitted into evidence, the "Inmate Rules and Regulations" form given to all detainees was in font that was so small it was practically unable to be read and was overly complicated (R. Vol. IV pp.1804-1805). Equally as important, the evidence demonstrated that the "boots on the ground" deputies were not even trained about the administrative grievance process, let alone how Rhoads could employ the process once she was placed into solitary confinement as a consequence of her peaceful protest asking to be taken to a hospital.[14] While ACSO may desire to characterize this problem as "mere

[14] Deputy Kelly, who was trying to help Rhoads, did not even know about the administrative grievance process. (R. Vol. III pp. 1212-1255).

advertence," as reasonable jury could find the "hidden" administrative grievance process to have been gross negligence—a failure to use even slight care to create a process about which detainees (and COs) were informed and had reasonable access.

H. Proximate Cause

Although not particularly explained or developed, ACSO argues that Rhoads did not present any evidence that ACSO's gross negligence proximately caused harm. (ACSO's Initial Brief, p. 15). This argument, like so much of ACSO's position, is founded entirely on a mischaracterization of what acts/omissions constituted gross negligence. ACSO writes, "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." (ACSO's Initial Brief, p. 15). However, this misstates what this case is really about. The gross negligence at issue is not the least bit about interfering with the jail's medical professionals but is about the three occurrences described in the Statement of the Case section above. As to how any one of these occurrences proximately caused injury to Rhoads, this was established by the expert medical testimony presented by Dr. Edward O'Bryan and established that earlier intervention (which would most likely have occurred, had ACSO's COs not been grossly negligent) would have avoided/mitigated Rhoads' damages. (R. Vol. III pp.1075-1123).

II. THE TRIAL COURT DID NOT ERR IN DENYING A NEW TRIAL ABSOLUTE

A. The Jury Charges Were Appropriate

While a trial court is required to charge the current and correct law of South Carolina, a charge is viewed as being sufficient if, when read as a whole, it contains the correct definition of the law. *State v. Kinard*, 373 S.C. 500, 503, 646 S.E.2d 168, 169 (Ct. App. 2007). "An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of

discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). Additionally, to warrant a reversal, the party challenging the charges must demonstrate that he suffered prejudice by the way the jury was charged. *Id*.

ACSO argues that a defendant's duty and the charges related thereto must be demonstrated with absurd specificity that mirrors the exact factual situation presented in the case, asserting that the Trial Court "erroneously left it to the jury's whim to decide what the ACDC officers were required to do or not do under the facts as alleged and presented," and that the charges read to the jury "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."[15] (ACSO's Initial Brief, pp. 18-19, 21). Such absurd specificity is not required and the charges provided to the jury,[16] particularly when read as a whole, fairly and accurately instructed the jurors on ACSO's duty to undertake reasonable efforts with respect to Rhoads' safety during her detention and that the government was only to be found liable if COs were grossly negligent and thereby proximately caused her to suffer injury. The Trial Court charged the jury:

[15] ACSO repeatedly insinuates that the source of a duty owed must specifically address the exact factual situation at issue. By way of example, ACSO writes, "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." (ACSO's Initial Brief, p. 18). Setting aside that this statement again mischaracterizes the nature what acts/omissions Rhoads asserted were grossly negligent (none of which were a claim that the COs were to "second guess" the medical staff), ACSO draws the lens far too narrow, as such specificity is not required when demonstrating that a defendant owes a duty to a plaintiff. If this were a slip and fall case at a grocery store, it would seem that ACSO would argue that a plaintiff must specifically show a duty to take reasonable efforts to timely clean up a known spill of 2% milk that occurred on aisle three on a Tuesday afternoon. Certainly, that is not such, as the duty owed to invitees is to use reasonable care. *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 289–90, 356 S.E.2d 123, 128 (Ct. App. 1987) ("The reasonable care required is measured by the ability of a reasonably prudent man to anticipate danger under the conditions known or reasonably anticipated to exist").

[16] If the law specifically delineated what particular acts/omissions constitute negligence and gross negligence, jury trials would not be needed.

I tell you that the Aiken County Sheriff's Office is a governmental entity. A governmental entity is responsible for the actions or omissions of actions of its employees that were performing within the course and scope of their employment and agency relationship. In South Carolina, a lawsuit of this type against government employees must be brought against the agency for which the employee was acting, not against the individual employee [….]

Here, the wrongful conduct as alleged is gross negligence. Now, I define for you more gross negligence. It is the failure to exercise even slight care. It is the intentional conscious failure to do something that is incumbent upon one to do, or the doing of a thing intentionally that one ought not to do. When a person is so indifferent as to his or her misconduct as to not give slight care as to what he or she is doing, that is gross negligence. Gross negligence is the absence of slight care that is necessary under the circumstances. Now, I'm going to explain more of this later, but the Aiken County Sheriff's Office maintains that all of Ms. Rhoads' claims relate to allegations where the Aiken County Sheriff's Office is immune from responsibility. **The law is that damages for failure to properly confine, supervise and maintain its inmates is not recoverable <u>unless</u> it is established that the Aiken County Sheriff's Office was grossly negligent. Mere negligence is not enough to recover for such injuries**[….]

Now, another Defense which the sheriff's department presented in pleadings is that any injuries and damages suffered by Ms. Rhoads were the result of any -- of independent acts of a third person. The sheriff – Aiken County Sheriff's Office claims that Ms. Rhoads' injuries were caused by the treatment of the medical providers, the Southern Health Partners[….]

Now, I'll tell you also that regarding the sole negligence of a third party. So I instruct you that if the plaintiff's injury was not proximately caused by the defendant's gross negligence, but was solely caused by the negligence or wrongdoing of another party or entity, then the plaintiff cannot recover. The defendant does not have the burden of proving that the negligence of the other person caused the plaintiff's injury. Instead, the burden remains on the plaintiff to prove that the defendant's gross negligence was at least a contributing proximate cause to her injuries[….]

Now, I'd also tell you that regarding the duty owed, the determination of duty owed in a case of this type is a decision that the judge makes. sorts of trials, it's a decision I make. tell you what I've decided in this case. So in these And I'll The Aiken County Sheriff's – and it's generally determined and handed to me by the law. I read the law, find the duty. The duty in this case is that the Aiken County Sheriff's Office has a duty to safely confine, supervise and maintain the custody of its inmates[….]

Now, the federal law has its rule, and each state has its own version of the sovereign immunity. In South Carolina, we applied sovereign immunity and had many exceptions to the rule until our state Supreme Court in a case in

1985 ruled that the rule of sovereign immunity and all the exceptions were just a scattered patchwork that lacked continuity, logic and fairness. So the Supreme Court said sovereign immunity and all the exceptions is too confusing, and we're going to abolish it, and they did[….]

Now, the next year, our general assembly, our state legislature, adopted as law what's known as the torts claims act. That law was intended to replace the former common law of sovereign immunity and the exceptions which have existed over many years. So that was kind of recent, if you think about it, in '85. In general, the tort claims says this: The government is immune from liability from the acts from any of its employees acting within the scope of their official capacity and duties, except under certain circumstances.

The law says that this act is the sole law from which a person may sue the governmental entity. So it's their only avenue to get a lawsuit for the government is to sue under the tort claims act. Now, the tort claims act provides the framework within which a person can seek recovery for a wrongful act of an employee of the government, but the act provides limitations to this. The primary limitation to recovery is that the government employee is only responsible for his or her acts of gross negligence.

All right. All right. I'm trying to simplify this case in the parts that the plaintiff has got to proved. In order to prevail, the plaintiff must prove the following elements: A duty was owed to her, the duty owed was breached by the defendant's acts, that breach proximately caused her injuries and the resulting damages that she incurred from those injuries. All right. This is a gross negligence case, but I want to define negligence as well so that you all understand it. So in this case, the plaintiffs must prove more than simple negligence in order to prevail against a governmental entity, such as the Aiken County Sheriff's Office. The simple negligence definition is given to differentiate between simple negligence and gross negligence. Negligence means that a person did not use the same amount of care that an ordinary person of reason and prudence would exercise under the same circumstances. Careless means the same thing.

I've defined gross negligence, but I'm going to go over it again out of an abundance of caution. Now, negligence is a failure to exercise due care. Gross negligence is a failure to exercise even slight care, the absence of slight care that is necessary under the circumstances. I charge you that South Carolina law states that a governmental entity, such as the Aiken County Sheriff's Office, is liable only if it is grossly negligent in confining, supervising, and maintaining its inmates.

Gross negligence involves an intentional, conscience failure to do something that one ought to do or the doing of something one ought not to do. Gross negligence involves conduct that shows an utter disregard of caution amounting to the complete neglect for the safety of others. Gross negligence connotes the failure to exercise a slight degree of care. A

> **defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct a to not give slight care to what he is doing.**
>
> Now, I will instruct you further that no inference of gross negligence arises from the mere fact that an incident occurs. The plaintiff must prove from the greater weight or the preponderance of the evidence that there has been a breach of a legal duty owed to them by the defendant as I have already instructed you. I instruct you that the defendant, the Aiken County Sheriff's Office, in operating the Aiken County Detention Center, as authorized by law, to contract with a medical contractor in this case, such as Southern Health Partners, to provide medical care to inmates.
>
> **I further instruct you that the defendant, the Aiken County Sheriff's Office, is not liable for any acts or omissions constituting medical malpractice or medical negligence committed by Southern Health Partners, their doctors or their nurses in the diagnosis and care provided to the plaintiff. That means that your verdict cannot be based upon any acts or omissions committed by the Southern Health Partners and doctors.** Your only call here in this case is to determine the liability of the employees of the Aiken County Sheriff's Office. You are required to judge the conduct of the Aiken County Sheriff's Office employees in which they were and with knowledge that they had at the time of the events at issue, and not judge them with the benefit of hindsight.
>
> Let me read that again and make sure I'm clear in reading this sentence. You are required to judge the conduct of the sheriff's office employees in which they were and with the knowledge that they had at the time of the events at issue, not with the benefit of hindsight. In other words, the reasonableness of the Aiken County Sheriff's Office employees at issue must be judged from the prospective of a reasonable officer when the events occur rather than with 20/20 vision of hindsight.

(R. Vol. IV pp. 1669-1670, 1661, 1665-1666, 1668-1672).

As demonstrated from the excerpts above, the charges made clear that the jury was only to consider the conduct of ACSO's employees, thoroughly explained that ACSO was only liable for gross negligence, and repeatedly emphasized the high bar of proving gross negligence. There is nothing incorrect or improper about the jury instruction, and ACSO cannot meet its burden of demonstrating prejudice by the manner in which the jury was charged.

As addressed above, the Court properly charged the jury and contrary to Defendant's argument, "what the ACDC officers were required to do or not do under the facts alleged and

presented," was described to the jury by the Defendant's own witness: Capt. Gallam. There was ample evidence in the record for the jury to find that some ACDC officers failed to exercise even slight care in doing what those facts required them to do.

Defendant's argument that only their proposed request to charge #7 was the correct charge under the law on the duty owed (R. Vol. 1 p. 448), ignores all the legal authority presented above supporting the level of specificity Defendant argued that the Court charge for the duty was not required under the law. In short, Defendant wants to dictate what the duty owed is, instead of allowing the Court to decide.

Defendant's argument that the word "safely" is too ambiguous ignores that the Court charging the jury that the Defendant had "a duty to safely confine, supervise and maintain the custody of inmates," was followed with charges on "Affirmative Defenses" and "Governmental Immunity," which explained to the jury that the Defendant was entitled to the affirmative defense of sovereign immunity and could only be held liable under the S.C. Tort Claims Act "for acts of gross negligence." See Charge to Jury, See "Duty Owed to Plaintiff" and "Governmental Immunity." And that the Court then re-iterated that the "Plaintiff must prove elements: (1) duty was owed to her; (2) Duty owed was breached by Defendant acts; (3) Breach proximately caused her injuries; (4) resulting damages," before charging the jury on negligence versus gross negligence. See Charge to Jury, "Specific Law: Negligence and Gross Negligence."

Jury charges must be considered as a whole and a court reviewing a trial court's jury charges must consider the jury charges in their entirety. *Keaton v. Greenville Hosp. Sys.*, 334 S.C. 488, 497-498 (1999).

When read as a whole, the Court's jury charges were neither ambiguous nor confusing, and they were correct statements of South Carolina law, including S.C. Code § 24-5-10 and S.C. Code § 15-78-60(25).

B. *The Mention of a Logo During Closing Argument and the Issue of How Hospital Costs Would be Paid*

ASCO's assertion that, during closing arguments, Rhoads' counsel showed the jury "letterhead for Southern Health Partners that was not in evidence" is a blatant misstatement of the record. (ACSO's Appeal, p. 23). In truth, the letterhead had been admitted into evidence, and Rhoads' counsel merely called-out and directed the jury's attention to part of a document that was in evidence. (R. Vol. IV p. 1581-1582). Plaintiff's Exhibit 1, which was admitted into evidence at the start of trial, was Rhoads' medical record from SHP. (R. Vol. IV p. 1699-1694; 1700-1707). The top right corner of many of the pages (including but not limited to the history and physical form) contained the company's logo, which stated, "Your Partner in Affordable Inmate Healthcare." To be clear, this document was in evidence and ASCO's assertion to the contrary is simply false. In closing, Rhoads' counsel argued:

> The judge will tell you credibility includes something to the effect of what makes sense to you. What makes sense? Let's talk about what makes sense. This one is amazing to me. The 31st day of her detainment -- excuse me -- June 2nd, she will go to the hospital that night. But in the early afternoon, she loses consciousness again and she's so sick at that point that the medical's recommendation is for her to have the buddy in place when she gets up. Not let's go figure out -- let's take her to the hospital and get her a CT scan. Let's just get her a buddy in place. A 28-year-old lady who's so sick she can't get up without a buddy. And still nobody says to these nurses, are you sure about that? Let's put in an incident report. Let's bring it up to Captain Gallam's attention.[17]

[17] The portion of the closing argument also demonstrates that Rhoads' claims of gross negligence were not that the correctional officers were supposed to have overridden the medical decision making of SHP's healthcare staff but that the treatment plan was so patently absurd (to have a young lady so sick that she can't stand without a buddy but still not ensure that any meaningful

> Now, she does pass [out] a second time on the same day, and that's finally, finally, finally when the nursing staff sends her to the hospital. Why? Why in the world did this happen? Well, let's talk about Southern Health Partners, the folks that the guards are not speaking up against in any way. **This is in evidence. This is her history and physical form.** And this is going to be a very small. Because I want you know one thing, that this is what -- this is what the company they hired stands for: "*Your partner in affordable inmate healthcare*" It's right there. What are these guys bragging about? You're partnering [with] quality inmate healthcare? They don't even brag about you're partnering [with] reasonably adequate inmate healthcare. What these guys are bragging about, the doctors and nurses, is you're partnering [with] affordable inmate healthcare. That's their the company tagline. **Maybe somebody doesn't want to pay to have this thing treated.** We have a right to rely on medical. Do you have right to rely on medical on somebody who's bragging about what we do is we make it affordable? Good judgment and common sense. Would you go to a doctor that said cheap healthcare? And Cassi doesn't have any choice.

(R. Vol. IV p. 1582-1583). Again, the logo which Rhoads' counsel referenced was in evidence, and ACSO's argument to the contrary is simply not true. Also, the argument about which ACSO complains—"Maybe somebody doesn't want to pay to have this thing treated"—did not make any sort of improper representation to the jury about who was responsible for paying for Rhoads' medical treatment or even what particular treatment was needed. This portion of the closing argument did not state, let alone imply, that it was Southern Health Partners or ACSO who was responsible for the cost of Rhoads' medical care had she been sent to a hospital but simply argued that the reason no one was ensuring she received the care she required (despite the obviousness that medical treatment was needed) may have related to financial motivations.[18]

Setting aside the fact that there is nothing improper about this argument, ACSO did not make a contemporaneous objection. A contemporaneous objection was required to preserve

---

testing is done as to why) that concern for Rhoads' health and safety should have been brought to the attention of the jail's administrator.

[18] The contract between ACSO and SHP did address how the cost of a detainee's medical needs would be paid and gave an allowance for SHP to pay for medical care and allowed the company to retain any unused funds. (R. Vol. II p. 489-503)

closing argument issues for appeal. *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005). ACSO has even acknowledged the need to have contemporaneously objected, having stated: "And maybe I should have made a contemporaneous objection. But I also didn't want to irritate the Court." (R. Vol. IV p. 1596). The exception to that general rule is when there has been "vicious inflammatory argument that results in clear prejudice," but what Rhoads' counsel stated was nothing of the sort. *Dial v. Niggel Assocs.*, 333 S.C. 253, 262, 509 S.E.2d 269, 274 (1998).

The test for granting a new trial for alleged improper closing argument of counsel is whether the defendant was prejudiced to the extent he was denied a fair trial. *Holston v. Jackson*, 278 S.C. 137, 139-40, 292 S.E.2d 794, 795 (1982). Nearly the entirety of ACSO's defense of the case centered on an assertion that the COs had an allegedly unfettered right to rely on SHP—claiming the treatment SHP provided to Rhoads did not need to be questioned, no matter how blatantly inadequate it may have been. Rather hypocritically, ACSO now takes issue with Rhoads having noted that the primary concern of the medical providers and/or ACSO may be something other than seeing that necessary medical care was provided. Notably, Rhoads' counsel never commented that SHP or ACSO held any particular responsibility to pay for her medical treatment. Simply pointing out to the jury that what seems to matter most is "affordable" healthcare (as opposed to quality healthcare or even adequate healthcare) may explain how Rhoads was allowed to become so very sick before she was taken to a hospital is not a "vicious inflammatory argument that results in clear prejudice," nor does it rise to the level of having denied ACSO a fair trial.

ACSO failed to timely object to the comment in closing argument that it now raises. Setting aside the fact that ACSO is simply wrong to represent that the logo was not in evidence, when it

was clearly part of Plaintiffs Exhibit 1, the statement (which was entirely proper) was not so inflammatory that it denied ACSO a fair trial or requires a new trial.

C. The Trial Court Did Not Err by Excluding Evidence of Rhoads Checking Out of the Hospital after Using Drugs or that She was Incarcerated at the Time of Trial

Many days after the gross negligence of the ACSO's deputies proximately caused the injuries at issue in this case, Rhoads' was admitted in Aiken Regional Medical Center and, nearly a month after her admission, Rhoads made the exceedingly poor decision to briefly return to drug use and leave the hospital against medical advice. However, these events had zero impact/baring on Rhoads' injuries or any other fact at issue in the case. ACSO presents zero evidence that Rhoads' use of illicit substances and/or departure from the hospital prior to the advised discharge date in any way impacted her damages or any other issue.[19] In other words, the drug use and against-medical-advice discharge, which ACSO contends was error not to have allowed into evidence, took place weeks after ACSO's grossly negligent acts/omissions had caused Rhoads to require extensive medical care. ACSO had no expert testimony or any other competent evidence to demonstrate the drug use and/or against medical advice discharge (which occurred weeks after the pertinent events) had any impact or bearing on Rhoads' damages or any other issue in the case. Seemingly, ACSO wanted to bring out these facts in an effort to paint Rhoads out to be to be a junkie and unduly prejudice her claim. Even if one assumes the drug use and discharge against medical advice (which, again, happened long after the gross negligence and damages had already

[19] Following the neurosurgery to address the massive infectious abscess on the side of her head and remove the infected portion of her skull, Rhoads' was prescribed intravenous antibiotics to fight infection. Given that she did not develop a post-surgical infection, despite the prescription of antibiotics not having been fully completed, by leaving the hospital a few days prior to the advised discharge date, Rhoads actually lessened her damages by having the hospital treatment and corresponding bill cut shorter by a few days. (R. Vol. II p. 821).

occurred) were somehow relevant to facts in controversy, they are unduly prejudicial and any probative value they might have is outweighed by their prejudicial effect.

In fact, as Rhoads' counsel explained to the Trial Court during the argument on the motion *in limine* on this issue, Dr. O'Bryan (the only medical expert at trial) was deposed and asked questions about this exact topic and testified he did not believe it had any impact on Plaintiff's treatment and recovery, essentially pointing out that by the time she left the hospital, she had undergone a month's worth of IV antibiotics, and that plus the removal of the infected bone itself, had sufficiently eradicated the infection from her body. (R. Vol. II pp. 821-822, Vol. V p. 2147, p. 2151). (There was zero evidence that Rhoads' drug use in the hospital and checking herself out against medical advice had any impact on recovery and, in fact, the only testimony on this issue demonstrated that these decisions had zero impact on her recovery. ACSO's argument that the excluded evidence was necessary to explain Plaintiff's "deficits" claimed at trial is a red herring. At trial, ACSO was permitted to cross-examine Rhoads, and did so, on her drug addiction and drug use and Rhoads admitted to the jury that she previously had serious problems with drug addiction. (R. Vol. III pp. 1264-1277).

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Rule 403 SCRE. The admission of evidence is within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011).

ACSO argues the Trial Court committed reversible error by not permitting cross-examination of Rhoads and Dr. O'Bryan about her aforementioned drug use and decision to leave the hospital against medical advice but does not present any legitimate argument as to how these

things were relevant or why it was not within the Trial Court's discretion to determine that any probative value they had would be outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Seemingly, ACSO's desire to engage in such cross-examination was to try to inflame the jury that Rhoads' had used drugs while in the hospital. That is precisely why this evidence was the topic of one of Rhoads' motions *in limine* and the Court correctly applied Rule 403 in determining that any probative value was substantially outweighed by the danger of unfair prejudice.

A similar analysis applies to the Trial Court's exclusion of evidence that Rhoads was, at the time of trial, incarcerated with the South Carolina Department of Corrections. ACSO's argument that this evidence was required to be introduced to show Plaintiff's "bias against the Sheriff's Office and law enforcement and corrections in general" strains credibility. At trial, Rhoads admitted to being guilty of the criminal charges for which she had been arrested and further admitted she deserved to be locked up for what she had done. (R. Vol. III pp. 1264, 1275). ACSO's assertion that Rhoads was "allowed to testify as to her current condition and give the impression that she 'has turned her life around' but able to hide the truth of her current incarceration which is certainly a significant part of her current condition" is offensive. Rhoads has overcome a very real and terrible addiction—whether she is out of prison or remains incarcerated, this is a laudable accomplishment.[20]

In summary, ACSO argues the Trial Court committed reversible error by not permitting evidence that Rhoads was currently incarcerated at the time of trial but does not present any legitimate argument as to how or why it was not within the Trial Court's discretion to determine

[20] The assertion that drug addicts are incapable of using drugs while incarcerated ignores the sad reality that drugs and drug use are just as prevalent within SCDC as they are anywhere else in society.

that any probative value pertaining to the alleged bias would be outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Seemingly, ACSO's desire to inform the jury that Rhoads' remained incarcerated at the time of trial was to try to inflame the jury that the Plaintiff had used drugs while in the hospital. That is precisely why this evidence Rhoads' then-current incarceration was one her motions *in limine,* and the Court correctly applied Rule 403 in determining that any probative value was substantially outweighed by the danger of unfair prejudice.

III. THE TRIAL COURT DID NOT ERR WITH REGARD TO THE UNACCEPTED OFFER OF JUDGMENT

The Trial Court did not err by applying S.C. Code § 15-35-400 and Rule 68, SCRCP, after the verdict surpassed Rhoads' offer of judgment. ACSO is not immune from the consequences of rejecting Rhoads' very reasonable offer of judgment ("OOJ"), which was filed more than year prior to trial and, ultimately, was vastly exceeded by the jury's verdict. By virtue of a statutory mandate and our court rules, ACSO is subject to consequences of its decision to decline Rhoads' OOJ. South Carolina law provides that governmental entities (such as ACSO) "are liable for their torts in the same manner and to the same extent as a private individual under like circumstances." S.C. Code §15-78-40. Being liable for torts "in the same manner and to the same extent as a private individual" would necessarily mean being subject to the consequences of an OOJ. Governmental immunity from the consequences of an unaccepted (and later exceed) offer of judgment is not and should not be the law of the State of South Carolina.

The authority for offers of judgment arises from both our state's statutory law and Rules of Civil Procedure:

> Offer of Judgment. Except in domestic relations actions, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, at any time more

> than twenty days before the actual trial date, file with the clerk of the court a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer….

S.C. Code § 15-35-400(A).

> Offer of Judgment. Any party in a civil action, except a domestic relations action, may file, no later than twenty days before the trial date, a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or to allow judgment to be taken against the offeror for a sum stated therein, or to the effect specified in the offer.

Rule 68(a), SCRCP.

The South Carolina Court of Appeals has specifically found that Rule 68(b) (codified through S.C. § 15-35-400) "is intended to encourage settlements and avoid protracted litigation." *Black v. Roche Biomedical Laboratories, a Div. of Hoffman-LaRoche, Inc.*, 315 S.C. 223, 227, 433 S.E.2d 21, 24 (Ct. App. 1993); *see also, Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (recognizing the unique posture of an offer of judgment and its underlying aims of promoting fairness and reasonable compromise without the need for a trial). There is no reason that this purpose should not be applicable to government entities.

Notably, the Statute states that it is applicable to "<u>any</u> civil action," and the Rule states that it is available to "<u>any</u> party in a civil action." Neither the Statute nor the Rule make exceptions for SCTCA defendants, but, quite importantly, both specifically include a provision that OOJs do not apply to domestic relations actions. As our Appellate Courts have repeated stated: "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' The maxim should be used to accomplish legislative intent, not defeat it." *State v. Leopard*, 349 S.C. 467, 473, 563 S.E.2d 342, 345 (Ct. App. 2002) (*quoting S.C. Dep't of Consumer Affairs v. Rent–*

A–Center, Inc., 345 S.C. 251, 256, 547 S.E.2d 881, 883–84 (Ct. App.2001)); *see also, Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000). Thus, by the Statute and Rule having made a specific statement that OOJs are not applicable to domestic relations actions but being silent as to Tort Claims Act actions, our rules of construction dictate that the Legislature is presumed not to have exclude SCTCA cases from the statute dealing with OOJs.

S.C. Code § 15-35-400 and Rule 68 SCRCP do not exclude governmental entities, and their plain and unambiguous terms require costs and interest to be added to the verdict in this case in any civil case. "There is a basic presumption that the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects." *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). "[W]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Bryant v. City of Charleston,* 295 S.C. 408, 411, 368 S.E.2d 899, 901 (1988).

ACSO's argument that S.C. Code § 15-78-120's prohibition against prejudgment interest prevents OOJs from being applicable to governmental entities is misplaced and overlooks that pre-judgment interest and the interest that pertains to an unaccepted offer of judgment are distinct and different under South Carolina law. Notably the amount of interest charged on the two are different. Pre-judgment interest is set at an annual rate of eight and three-quarter percent (8-3/4%) by SC. Code § 34-31-20(A), while, set slightly less, offer of judgment is calculated at an annual rate of eight percent (8%) by SC. Code § 15-35-400(B). While the actual difference in the two numerical figures may be small, the fact that they are not the same demonstrates that the type of

interest is different and that the OOJ interest is not the same as the prejudgment interest referenced in S.C. Code §15-78-120.

The South Carolina Supreme Court has noted the differences in the purpose of the two types of interest, finding "prejudgment interest" is meant to compensate plaintiffs and an offer of judgment interest is meant to encourage pretrial settlement, while avoiding delays. *Garrison v. Target*, 435 S.C. 566, 586-87, 869 S.E.2d 797, 808-09 (2022). In short, the statutory prohibition against pre-judgment interest being charged to governmental entities is inapplicable in the present analysis, as interest on an offer of judgment is a different type of interest and the plain language of both S.C. Code § 15-35-400 and Rule 68 contain no exception to offer of judgment interest being assessed to government entities who received a verdict in excess of a plaintiff's prior offer of compromise.

Despite ACSO's twisted historical recitation, the timing of the passing of the Statute and amendment to Rule 68 demonstrate that the Legislature did not intend to exclude governmental entities from offers of judgment. The current Offer of Judgment statute was created after the Tort Claims Act, and Rule 68 was subsequently amended to conform with the statute.

S.C. Code § 15-35-400 came about as part of the "Tort Reform Act of 2005 Relating to Medical Malpractice," which was approved by the Governor on April 4, 2005. The synopsis of that Act read in pertinent part that it was meant to amend the code of laws "by adding section 15-35-400, so as to provide for offers of judgment after commencement of a civil action based on contract or seeking the recovery of money damages and to provide for consequences of nonacceptance…" 2005 S.C. Acts 32. By order of the South Carolina Supreme Court dated January 5, 2006, Rule 68 SCRCP was amended to "make this provision consistent with S.C. Code Ann. Section 15-35-400, which became effective July 1, 2005." *In re Amendments to S.C. Rules of Civil Procedure*, 2006 S.C. LEXIS 157 (2006).

The plain language of S.C. Code § 15-35-400 does not provide governmental entities with any exceptions to the consequences of a rejection of an offer of judgment. The Offer of Judgment statute was created after the Tort Claims Act, with Rule 68 being subsequently amended to conform with the statute, and neither the statute nor the rule carves out any governmental exceptions.[21] Rule 68 SCRCP and S.C. Code § 15-35-400 do not address the government at all, and their plain and unambiguous terms require costs and interest to be added to the verdict in this case.

In addressing OOJs and interest, courts have recognized that an award of interest "arises from a defense attorney's strategic decision to reject an offer of settlement, and proceed to trial." Therefore, an award of OOJ interest does not arise out of the actions of the underlying controversy and is not taxed to the defendant's policy limits on liability as damages but is an expense associated with the "defense costs" and strategy of the case. *Cox v. Peerless Insurance Co.,* 774 F.Supp. 83, 86 (1991 D.Conn.).

In contrast to ACSO's argument that S.C. Code § 15-35-400 and Rule 68 are not applicable to SCTCA cases, a review of the public indexes shows that this is not the prevailing view of governmental entities throughout our state. SCTCA defendants routinely file offers of judgment pursuant to S.C. Code § 15-35-400 and Rule 68, specifically, but not limited to:

- South Carolina Department of Public Safety
- South Carolina Department of Transportation
- South Carolina Department of Mental Health
- South Carolina Department of Education
- South Carolina School for the Deaf and Blind
- Hampton County
- Town of Fairfax Police Department

[21] When governmental entities are treated differently than private parties, the South Carolina Rules of Civil Procedure explicitly state as such. For example, Rule 4 delineates specific requirements for service on the government, and Rule 55 provides an exception for the government not being held in default.

- Town of Fairfax
- Richland County
- Leon Lott, in his official capacity as Sheriff of Richland County
- Town of Allendale
- Berkeley County School District
- Allendale Barnwell Disabilities and Special Needs Board
- City of Charleston
- City of Charleston Police Department
- City of N. Charleston
- City of Columbia
- City of Gaffney
- City of Gaffney Police Department
- City of Spartanburg
- Spartanburg City Police Department
- Anderson County School District One
- Town of Williamston
- Williamston Public Safety Department
- Williamston Police Department
- Chesterfield County School District
- The Sheriff of Florence County[22]

(R. Vol. III pp. 1264-1277). In short, SCTCA defendants routinely and regularly file offers of judgment in SCTCA cases, directly contradicting the arguments made to this Court.

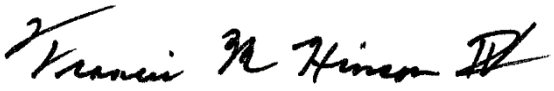
CONCLUSION

As set forth above, the Trial Court's post-orders from March 12, 2024, correctly denied the ACSO's motion for a judgment notwithstanding the verdict, correctly denied ACSO's motion for a new trial absolute, and appropriately awarded interest and costs associated with the unaccepted

[22] This list of South Carolina governmental entities that have routinely filed offers of judgment was compiled by Rhoads' counsel review of the online public indexes and search for governmental entities filing of governmental entities filed offers of judgments in civil litigation. This litany of governmental entities who have utilized S.C. Code § 15-35-400 and Rule 68 SCRCP offers of judgment is merely a sampling and not intended to represent an exhaustive list. Plaintiff would submit that the actual number of governmental entities filing offers of judgment is substantially larger. Notably, the very same law firm who is arguing for the applicability in this matter has filed offers of judgment on behalf of governmental entities.

offer of judgment. When the Court of Appeals reverses the Trial Court's post-trial order from August 19, 2024 (which erroneously determined, as a result of her prior settlement with Southern Health Partners, S.C. Code § 15-78-70(d) barred Rhoads' gross negligence cause of action against ACSO), the initial post-orders (from March 12, 2024) should be upheld.

Respectfully submitted,



November 10, 2025
Columbia, SC

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Eugene H. Griffith, Jr., Circuit Court Judge

Case No. 2020-CP-02-02238

Appellate Case No. 2024-000592

Cassiopia Rhoads ..... Respondent-Appellant,

v.

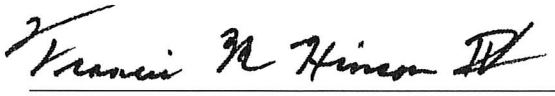
Aiken County Sheriff's Office ..... Appellant-Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Respondent–Appellant Rhoads' final briefs comply with Rule 211(b), SCACR, but would note that, in an effort to comply with the Court's order from June 20, 2025 (denying Respondent-Appellant's motion to include, within the record on appeal, a new matter not originally presented to the lower court), with the FINAL BRIEF OF THE RESPONDENT–APPELLANT: (1) paragraph of argument has been removed from pages 34-35, (2) the accompanying footnote (no. 14) was edited to explain the removal; and (3) references to "new" materials were deleted from the "Other" section of the Table of Authorities.

<signature on page following>

Respectfully submitted,



November 10, 2025
Columbia, SC

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