

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Dec 03 2025**

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable Courtney Clyburn Pope, Circuit Court Judge

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Supreme Court Case No. 2025-002354

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Otis Owens .....Respondent,

v.

Sheriff Michael Hunt, the Aiken County Sheriff's Office, Aiken County Detention Center and  
Aiken County .....Petitioners.

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**Return to Petition for Writ of Certiorari**

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## Counterstatement of Questions Presented

1. Whether the Court of Appeals correctly affirmed a gross negligence verdict in a routine custodial injury case that was pled, tried, and submitted solely as a gross negligence claim under § 15-78-60(25), where Respondent Owens expressly disavowed any intentional tort theory and Petitioners' employee expressly denied any intentional conduct during his testimony.
2. Whether Petitioners' sovereign-immunity argument under § 15-78-60(17) fails as a matter of settled law because the case involves no allegation or finding of intent, Petitioners' employee expressly testified he did not commit any intentional tort, and the jury was instructed solely on gross negligence.
3. Whether the Court of Appeals correctly held that PREA related testimony was admissible as evidence of detention center policies and standards of care, not as an independent cause of action.

## Statement of the Case

This appeal arises from an admitted improper frisk of Respondent Otis Owens, a pretrial detainee, at the Aiken County Detention Center (“the Detention Center”), and Petitioners' failure to exercise slight care. (R.19). Owens filed a complaint against Petitioners Sheriff Michael Hunt, the Aiken County Sheriff's Office, the Detention Center, and Aiken County alleging gross negligence and negligent hiring and supervision. *Id.*

The matter was tried before the Honorable Courtney Clyburn Pope, and a verdict was rendered in Owens's favor in the amount of \$150,000 for gross negligence. (R.1). Petitioners filed post-trial motions, including judgment notwithstanding the verdict. (R.28-48). The Court granted JNOV as to Aiken County but otherwise denied the motions. Petitioners later sought clarification of the Court's rulings through a Rule 59(e), SCRCP motion, which was denied. (R.45, 2-18). This case then proceeded to an appeal.

The Court of Appeals issued an unpublished opinion affirming in part and reversing in part. *Owens v. Hunt*, Op. No. 2025-UP-271 (S.C. Ct. App. July 30, 2025). The Court affirmed the jury's

gross negligence verdict and the denial of Petitioners’ post-trial motions on that claim and reversed only as to negligent hiring and supervision—an issue Owens conceded in his brief. Petitioners’ petition for rehearing was denied, and they now seek certiorari.

### **Statement of Facts**

In January 2017, Owens was a pretrial detainee at the Detention Center. On January 27, 2017, corrections officer Deputy Matthew Gibson conducted pat down searches of several inmates after observing what appeared to be improvised paper dice<sup>1</sup> in the recreation yard, which constituted contraband under the Detention Center’s policy. (R. 294–295). Owens was among the inmates searched when they returned to their housing area.

Owens testified that Deputy Gibson used an improper “blade method” during the pat down—placing his hand vertically and striking upward into Owens’s groin—rather than the flat palm sweep required by training and written policy. (R. 176–178, 294–295). Multiple officers confirmed the “blade method” was not permitted. (R. 217–222; 449). According to Owens, Gibson struck his right testicle with significant force, causing immediate sharp pain and discomfort radiating into his abdomen. (R. 742–746). Witnesses testified Owens reacted visibly and appeared to be in pain immediately after the frisk. (R. 628–631; 861–865).

Owens promptly reported the incident and sought medical attention. He described swelling, tenderness, and numbness on one side of his scrotum. (R. 746–749). A facility nurse evaluated him, documented his symptoms, and noted that a follow up assessment was required to determine the extent of the injury. (R. 762–763).

Owens also filed a written grievance the same day, reporting Deputy Gibson used excessive force and violated policy. (R. 454–455). In response, the Detention Center initiated a Prison Rape

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<sup>1</sup> Notably, no dice were ever found.

Elimination Act (“PREA”) review, which, under the Detention Center’s own policies, required timely witness interviews, preservation of any security camera footage, and a documented investigative outcome. (R. 454–455). Testimony established that none of these steps were completed: no witnesses were interviewed, video of the pat down was not preserved, and no findings were recorded. (R. 463–468; Slip Op. at 4). Lieutenant Bowman, who oversaw PREA compliance, acknowledged these omissions violated PREA training and the Detention Center’s own guidelines. (R. 454–455; Slip Op. at 4).

Other inmates testified that Deputy Gibson routinely performed pat downs using the same upward striking motion and that they experienced similar testicular pain or swelling immediately afterward. (R. 485–497; 861–865). Although the trial court limited witnesses’ testimony regarding medical diagnoses, they consistently described injuries arising from the same method. (R. 861–865). The Court of Appeals upheld admission of this testimony under Rule 404(b), SCRE, as evidence of a common pattern of improper pat downs. Slip Op. at 5.

Several of the Detention Center employees testified that any pat down resulting in injury constitutes a deviation from policy. Significantly, Sheriff Hunt testified that an officer who injures a detainee during a frisk has exceeded the level of force permitted by policy. (R. 449). Deputy Gibson conceded that the technique he used did not conform to the Detention Center’s pat down protocol and that supervisors had not corrected him. (R. 217–222).

Owens and his parents testified regarding the emotional impact of the incident, including embarrassment, humiliation, and a sense of violation. (R. 742–749). Owens described persistent swelling and discomfort in the days following the pat down. (R. 746–749).

The jury heard testimony from Owens, multiple inmates, and Detention Center personnel and returned a verdict finding Petitioners grossly negligent in supervising and confining Owens.

(R. 1). On appeal, the Court of Appeals found evidence in the record provided ample support for the jury’s determination. Slip Op. at 3–4. As the court summarized, “Owens consistently presented evidence for a gross negligence claim,” and the jury could reasonably determine the pat down “was excessive, violated detention center policy, and that [Petitioners] failed to exercise slight care.” Slip Op. at 3–4. Accordingly, the Court of Appeals affirmed the jury’s verdict on the gross negligence claim.

### **Arguments**

Petitioners attempt to transform this case—pled, tried, and decided *solely* as one for gross negligence—into an intentional tort case that was never pled, never argued, and expressly disavowed at trial. On direct appeal, Petitioners raised a wide array of issues—challenging evidentiary rulings, the verdict form, damages, closing argument, and the admission of both lay and Rule 404(b), SCRE testimony—and the Court of Appeals rejected each argument in an unpublished, fact specific decision. Slip Op. at 3–6. The issues now presented for certiorari simply reassert the same mischaracterizations previously raised and rejected. The petition should be denied.

#### **I. The Claim Tried Below was for Gross Negligence—Not an Intentional Tort—and South Carolina Law Does Not Treat Descriptive Allegations as Pleading an Assault and/or Battery Claim.**

South Carolina law determines the nature of a claim by examining the substance of the allegations actually pled, not by isolated descriptive terms. *Doe v. Bishop of Charleston*, 407 S.C. 128, 140–41, 754 S.E.2d 494, 501 (2014). A litigant likewise may not convert one tort into another through characterizations of the conduct. *Erickson v. Jones Street Publishers*, 368 S.C. 444, 467, 629 S.E.2d 653, 667 (2006). Also, a party is bound by the legal theory it pleads and the theory on

which it tries the case. *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322, 323 (Ct. App. 1992); *Johnson v. Alexander*, 413 S.C. 196, 201, 775 S.E.2d 697, 700 (2015).

Under these settled principles, the presence of the words “assaulting” or “battering” in the Complaint’s particulars of gross negligence did not plead the intentional torts of assault or battery. Those terms describe how the alleged negligence occurred, not the legal theory asserted. The Court of Appeals expressly recognized this point, holding that “[a]ny reference to assault . . . was used, among other factual allegations, to characterize how [Petitioners] were grossly negligent.” Slip Op. at 3.

Owens pled only two causes of action: gross negligence in supervision and confinement, and grossly negligent hiring and supervision. (R. 19–23). Neither cause of action includes the elements of assault or battery. Neither alleges intent, malice, or willfulness. And neither purports to state an intentional tort. Consistent with the pleaded theory, the jury was instructed solely on negligence and gross negligence; no instruction concerning intent or intentional torts was given. (R. 1015–1018). The verdict form contained no interrogatory permitting a finding of assault or battery. (R. 1).

The trial record reflects the same understanding. During argument on directed verdict, Owens’s counsel stated: “[w]e haven’t alleged anything intentional.” (R. 920). That clarification was accepted by the trial court and never challenged as a misstatement of the theory pled. Under *Johnson*, Petitioners are bound by the theory on which the case was tried.

The Court of Appeals applied these principles faithfully. It did not create a new tort or alter the nature of the claim. Instead, it recognized that, as a factual matter, the case “was consistently presented as a gross negligence claim,” and any references to “assault” were merely “factual allegations, to characterize” not assertions of an intentional tort. Slip Op. at 3. That

determination is fact based, grounded in well-supported pleading rules, appears in an unpublished opinion, and presents no question warranting certiorari under Rule 226, SCACR.

**II. Petitioners' Sovereign Immunity Argument Under § 15-78-60(17) Fails as a Matter of Settled Law on the Tort Claims Act and Presents No Issue Warranting Certiorari.**

Petitioners' sovereign immunity argument depends entirely on the premise that this case involved an intentional tort. The record forecloses that premise. As the Court of Appeals expressly recognized, the claim tried below was gross negligence, and intentional tort immunity does not apply. The Court of Appeals' opinion is unequivocal: "the protection from liability under section 15-78-60(17) does not extend to gross negligence and, thus, is not applicable here." Slip Op. at 4. That finding alone defeats any basis for certiorari review.

The Complaint pled only negligence based claims: gross negligence in supervision and confinement and grossly negligent hiring and supervision. (R. 19–23). At trial, Owens's counsel expressly disavowed any intentional tort theory: "[w]e haven't alleged anything intentional." (R. 920). That clarification was accepted by the trial court and never challenged as a misstatement of the theory pled. The trial court instructed the jury exclusively on negligence and gross negligence. (R. 1015–1018). The verdict form contained no interrogatory by which the jury could have found intentional tort liability. (R. 1). As discussed above, a party is bound by the theory on which the case was tried, and Petitioners cannot recast a negligence verdict as an intentional tort judgment post hoc to obtain immunity under § 15-78-60(17). *See Johnson*, 413 S.C. at 201, 775 S.E.2d at 700.

Even if Petitioners' factual premise were correct, which it is not, section 15-78-60(17) still would not apply. South Carolina precedent establishes the controlling analytical structure for Tort

Claims Act cases involving overlapping exceptions. Three decisions—*Steinke*, *Repko*, and *Chakrabarti*—foreclose Petitioners’ theory.

First, *Steinke v. South Carolina Department of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), holds that the custodial supervision exception (§ 15-78-60(25)) imposes an affirmative statutory duty on detention officials to supervise and protect detainees, and it expressly preserves liability where that duty is exercised in a grossly negligent manner. *Steinke* recognizes that the Legislature carved out custodial supervision cases for gross negligence, not intent, because of the nature of the governmental duty involved. The Court of Appeals followed this framework and correctly analyzed the claim as falling within §15-78-60(25). Slip Op. at 3–4.

Second, *Repko v. County of Georgetown*, further reinforces this principle, holding that once any applicable Tort Claims Act exception invokes a gross negligence standard, that standard governs the liability analysis across all overlapping exceptions. 424 S.C. 494, 501, 818 S.E.2d 743, 751 (2018). *Repko* rejected attempts to isolate exceptions from one another and held that when any applicable exception requires a gross negligence standard, that standard governs the entire liability analysis across all asserted exceptions. *Id.* (quoting *Steinke*). *Repko* forecloses reliance on section 15-78-60(17) where the custodial supervision exception applies and the jury has already returned a gross negligence verdict.

Third, *Chakrabarti v. City of Orangeburg*, confirms that the gross negligence standard follows the claim wherever it arises under the Tort Claims Act. 403 S.C. 308, 319, 743 S.E.2d 109, 115 (Ct. App. 2013). *Chakrabarti*, instructs courts to interpret the Tort Claim Act’s exceptions in harmony, not in competition, and to apply the standard required by the most specific applicable exception. Because Owens’s claim arises from the duty to supervise a detainee, and because the jury found gross negligence under section 15-78-60(25), *Chakrabarti*, dictates that the

gross negligence standard controls and cannot be displaced by section 15-78-60(17) (“[w]hen an exception that contains the gross negligence standard applies to a case, the gross negligence standard is read into any of the other applicable exceptions.”); *see also*, Slip Op. at 3–4 (recognizing that because the jury found gross negligence under § 15-78-60(25), intentional tort immunity under § 15-78-60(17) could not apply).

Taken together, *Steinke*, *Repko*, and *Chakrabarti* form a coherent and binding line of authority governing the Tort Claims Act analysis in custodial supervision cases. Each decision reinforces the same structural rule: once a claim falls within an exception governed by a gross negligence standard, that standard controls across all potentially applicable exceptions, including § 15-78-60(17).

The Court of Appeals’ analysis directly follows this Court’s controlling framework. The Court of Appeals found that the claim “was consistently presented as a gross negligence claim,” identified §15-78-60(25) as the governing exception, and held that § 15-78-60(17) “does not extend to gross negligence.” Slip Op. at 3–4. The court’s reasoning was consistent with *Steinke*, *Repko*, and *Chakrabarti*.

Petitioners’ reliance on *State Farm Fire & Casualty Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000), is misplaced. *Barrett* construed an insurance policy exclusion and held that “an intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in sexual misconduct towards an adult.” *Id.* at 10, 530 S.E.2d at 136. That rule of inferred intent arose solely in the insurance coverage context and has no application to the Tort Claims Act, which is a statutory waiver of sovereign immunity—not a contract of insurance. The Legislature defines the scope of governmental liability and immunity. Importing *Barrett*’s insurance law reasoning into the Tort Claims Act would rewrite the statute by analogy to a

fundamentally different legal framework. South Carolina courts have expressly rejected that approach. The Tort Claims Act is a limited waiver of sovereign immunity created by statute; courts may not expand or restrict its provisions by importing common law doctrines not found in the Act itself. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 628 S.E.2d 496, 501 (Ct. App. 2006); *see also Hawkins v. City of Greenville*, 358 S.C. 280, 292–93, 594 S.E.2d 557, 563–64 (Ct. App. 2004). Reading *Barrett* into the Act would do exactly what *Proctor* forbids by grafting external insurance law concepts on to a statutory immunity scheme that is controlled solely by the Legislature.

Ultimately, the Court of Appeals' resolution of this issue was straightforward, fact based, and fully consistent with controlling law. It did not announce any new rule, identify any ambiguity, or create any conflict. Because the decision turned on the application of settled principles to the specific record in this case, certiorari should be denied.

### **III. The Court of Appeals Applied Settled Law in Affirming the Admission of PREA Related Testimony, and No Novel Legal Issue Is Presented.**

Finally, the third issue involves testimony referencing the Prison Rape Elimination Act (“PREA”) and the Detention Center’s response to Owens’s grievance. The Court of Appeals addressed this evidentiary question directly, explained the limited purpose for which the PREA related testimony was admitted, and concluded that its admission was consistent with established negligence principles. Slip Op. at 4. This determination reflects a routine application of evidentiary law to the facts of the case and raises no legal question appropriate for certiorari review.

Owens did not plead a PREA cause of action, and the jury received no instruction on PREA. PREA became relevant at trial only because its protocols were incorporated into the Detention Center’s own training and operating policies. PREA was not introduced as a theory of liability

and entered the case only after Petitioners elicited testimony referencing PREA protocols during their examination of the Detention Center's personnel. Multiple witnesses, including Deputy Gibson and Lieutenant Bowman, testified that PREA requirements were part of their annual training and set forth specific steps for responding to an inmate complaint of improper contact. (R. 217–222; 454–455). Under longstanding South Carolina precedent, internal policies, regulations, and training materials are admissible to assist the jury in determining the standard of care in a negligence case. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006); *Hubbard v. Taylor*, 339 S.C. 582, 592, 529 S.E.2d 549 (Ct. App. 2000); *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 78, 439 S.E.2d 266 (1993); *S.C. State Hwy. Dep't v. Meredith*, 241 S.C. 306, 309–10, 128 S.E.2d 179 (1962). The trial court's admission of PREA related testimony aligns within this settled evidentiary framework.

The Court of Appeals reaffirmed this understanding. It did not treat PREA as a source of liability or suggest that PREA creates a private right of action. Rather, the court recognized that the testimony was relevant to show the Detention Center's own procedures for investigating inmate complaints and to shed light on whether those procedures were followed. Slip Op. at 4. This is a classic example of using institutional standards to illuminate the standard of care, and the Court of Appeals properly concluded the trial court acted within its discretion in admitting the evidence.

Federal decisions cited for the proposition that PREA does not authorize a private cause of action are therefore immaterial. Owens did not invoke PREA as an independent statutory basis for liability. The question presented below and resolved by the Court of Appeals was whether PREA derived policies, adopted and implemented by the Detention Center, were admissible as evidence of institutional practices bearing on the negligence claims. South Carolina courts have long admitted comparable evidence for that purpose.

Finally, the Court of Appeals' ruling was fact specific and unpublished. It applied ordinary Rules 401 and 402, SCRE, relevance principles to a particular evidentiary record and did not create, modify, or question any rule of South Carolina law. Such determinations do not meet the standard for certiorari review under Rule 226, SCACR. Because the PREA issue was resolved through a routine, deferential evidentiary analysis, further review is unwarranted.

### **Conclusion**

The Court of Appeals applied settled South Carolina law to the claims actually pled and tried, and its unpublished, fact based decision presents no question of jurisprudential significance under Rule 226. Because the petition rests on mischaracterizations of the record rather than any unsettled legal issue, certiorari is neither necessary nor warranted. The petition should be denied.

*Signature Page to Follow*

Respectfully submitted,

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