STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2018-CP-40-04850
Randle Jackson, as the Personal Representative of the Estate of Dashaun Simmons, Plaintiff, v. The South Carolina Department of Corrections, Defendant.	)	**ORDER**

This matter is before the Court upon Plaintiff's Motion for Summary Judgment or in the Alternative Motion to Strike SCDC's Answer, Plaintiff's Motion to Compel, Defendant's Motion for Summary Judgment, and Defendant's Motion for Protective Order. All outstanding motions were heard during an in-person hearing on August 4, 2025 to resolve all issues prior to trial. The Plaintiff[1] was represented at the hearing by W. Baker Allen, Esq.; Joshua Hawkins, Esq.; and Sulaiman Ahmad, Esq. The South Carolina Department of Corrections (SCDC) was represented by William Davidson, Esq. After careful consideration of the arguments of the parties at the hearing, as well as all written memoranda submitted in support of these matters, Defendant's Motion for Summary Judgment is DENIED, Plaintiff's Motion for Summary Judgment is GRANTED, and Plaintiff's Motion to Compel is GRANTED. Defendant's Motion for Protective Order was considered resolved at the time of the hearing and Plaintiff's request to strike Defendant's Answer in the alternative will not be addressed in light of the Court's grant of summary judgment.

[1] The Court is informed that Plaintiff Simmons was killed in a separate attack at a different institution. For simplicity, rather than reference Mr. Simmons as Plaintiff's decedent, the Court will simply reference Mr. Simmons as the 'Plaintiff.'

Background

The instant case concerns an assault that occurred within Defendant SCDC's Broad River Correctional Institution (BRCI) located in Columbia, South Carolina. In July 2017, Plaintiff was housed in the Marion unit within BRCI, which is a level 3 or maximum-security dormitory within the institution tasked with housing inmates that are particularly dangerous. To ensure the safety and security of the prison employees, as well as the prisoners themselves, SCDC has developed policies and procedures governing the operation of its facilities and the various jobs within the facilities. Plaintiff submitted exemplar policies and post orders to the Court and described others during the hearing. Given SCDC's challenging and vitally important task to keep incarcerated individuals locked behind the walls of its institutions while at the same time insuring the safety of those living and working within the institutions, it is undoubtedly critical that SCDC's employees follow the department's policies and procedures. Furthermore, at the time of this particular assault, the Marion unit was in a state of "lockdown" during which the unit should have been subject to increased security.

On the evening of July 17, 2017, a shift change between the day-shift officer in Marion unit and the night-shift officer occurred around 7:15 pm. The day-shift officer, Matthew Kennedy, was working by himself in the Marion unit and the night-shift officer, Anthony Hall, would also be working alone that night. Both officers testified that when the shift change was completed that evening, the inmates had not been completely locked down. Ofc. Kennedy testified that Ofc. Hall had opened some of the doors when he arrived; Ofc. Hall testified that Ofc. Kennedy already had doors open when he arrived. In either event, the unit had not been locked down for the night as it should have been. Once Ofc. Hall arrived for his shift, Ofc. Kennedy left the Marion unit for the day without completing the evening lockdown and without completing a formal count, which is required

by SCDC policy. Ofc. Kennedy testified that he told a superior officer about the situation and that the superior officer told him to go home for the day without locking the inmates down. After Ofc. Kennedy left, no superior officer came to the unit to assist Ofc. Hall in getting the inmates under control. It should be noted that due to the lockdown status in Marion unit, inmates should not have been out of their cells without more than one guard present.

The situation in Marion unit was chaotic, and Defendant was well aware of this fact. The police services investigator who issued a report on the assault in this matter testified that "the inmates essentially ran that unit." PL Memo at 3. Despite the fact that this unit was a maximum security facility, the inmates would ignore the cells assigned by SCDC and would stay wherever they pleased. This lack of control over their housing "was fairly common for the unit at that time. . . . they just kind of went to whichever cell they—they almost assigned themselves cells." Dep. of Garris at 141, PL Memo at 2. Investigator Garris testified further that control over cell assignments is essential for the security of the institution. Indeed, following the assault on Plaintiff, he was located in a cell he was not assigned to and on the wrong side of the unit. To gain access to the side where he was found, he would be required to pass through a locked sally port. Thus, SCDC not only lacked control over whereabouts of prisoners within the smaller dorms in the Marion unit, but they also lacked control over the whereabouts of prisoners in the building in its entirety.

At some point during the evening of July 17, 2017, Ofc. Hall managed to lockdown all of the inmates behind cell doors. A logbook for that unit indicates Ofc. Hall started a formal count at 11:30 p.m. and Ofc. Hall testified this may have happened sometime around 9:00 pm.[2] Starting at

[2] The precise timing of these events should have been recorded in the various logbooks that the post orders mandate officers keep at their stations, however counsel for SCDC informed the Court during the hearing that he has searched for them and has been unable to locate all except for the log book on one side of the Marion unit. While they may have provided helpful information, it appears they have either been lost or destroyed.

around 10:00 p.m., the Shift Lieutenant, Ulysees Collins, testified that the operations center for the prison began receiving calls from inmates within the prison claiming that an inmate had been stabbed and was bleeding out. At some point the operations staff called Ofc. Hall in the Marion unit and Ofc. Hall reported that all was well. However, the calls continued to come in throughout the night. Notably, these calls were made from contraband cellphones possessed by inmates throughout the facility. Eventually, somewhere around 4:00 a.m., Lt. Collins and another officer went to Marion to check for the inmate who had been stabbed hours earlier. They did not find the inmate before they began to leave the unit, but as they were exiting the dorm they heard a banging on one of the cells and discovered the Plaintiff on the floor "full of holes." Pl. Memo at 7. Plaintiff Simmons had been brutally assaulted by assailants armed with makeshift weapons. The inmate who was banging on the door was a different inmate than the Plaintiff. Even though he was locked in a cell with someone who had been brutally stabbed, this inmate has never been identified by SCDC and was never questioned by investigators, despite being in the custody and control of defendants at all times.

During the subsequent police services investigation, an inmate in a cell across the hall from Plaintiff told investigators that Ofc. Hall opened the door to Plaintiff's cell to allow other inmates to attack him. He then locked the cell door back after the assault occurred. Plaintiff himself gave a statement indicating that Ofc. Hall opened the door to allow the attackers in and refused to let Plaintiff out of the dorm until shift change. Notably, because Ofc. Hall was the only officer working in the Marion unit that night, only he could have locked the door closed after the assault. The doors are equipped with a mechanism that prevents locking without the key so that the inmates are not able to lock others in their cells. Ofc. Hall testified that he did not open the cell doors to facilitate the assault.

Once Lt. Collins discovered Plaintiff on the floor of the cell, he sought medical assistance and had Plaintiff transported to the hospital. Plaintiff was admitted to the hospital for three days and was discharged with antibiotic and pain medication. However, SCDC refused to permit the medication for Plaintiff at the institution, and he was subsequently readmitted to the hospital after complications from infection arose.

I. Summary Judgment

Both Plaintiff and Defendant have moved for summary judgment in this case, with Plaintiff moving for summary judgment as to Defendant's affirmative defenses. Pursuant to Rule 56(c), summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). When considering a motion for summary judgment, the evidence and its reasonable inferences must be drawn in a light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hackworth v. Greenville County, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006) (citing Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001)). For the reasons set forth below, the Court denies Defendant's motion for summary judgment and grants Plaintiff's motion.

i. Comparative Negligence

Defendant has asserted the affirmative defense of comparative negligence. Under the doctrine of comparative negligence, the Plaintiff's negligence will bar recovery if his negligence was greater than the Defendant's negligence. Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597,

599 (2002). Defendant argues that Plaintiff was negligent by failing to notify prison officials of death threats he had received and was responsible for his own assault. However, the Court finds that there is no genuine issue of material fact to support the affirmative defense that Plaintiff was responsible for his own assault. Based on the evidence presented, the only reasonable inference that can be drawn by a reasonable jury in this case is that at the time of the assault Plaintiff was asleep in a locked cell. There is no evidence in the record to suggest that even if Plaintiff believed an assault was possible that he had knowledge of the time, place, or manner of an assault. Thus there is no genuine issue of material fact that Plaintiff was responsible for his own assault while sleeping behind a locked door.

ii. Intervening Acts

Defendant has also asserted as an affirmative defense that Plaintiff's damages are the result of intervening acts for which Defendant is not responsible. Where an intervening act is claimed as a bar to liability the test is whether the act of the third party was reasonably foreseeable given the attendant circumstances. Mellen v. Lane, 377 S.C. 261, 283, 659 S.E.2d 236, 247 (Ct. App. 2008) (citations omitted). An act is reasonably foreseeable where it is a natural and probable consequence of the original actor's conduct. Id. at 283, 659 S.E.2d 236, 248 (citation omitted). If the action of the third party was foreseeable, the Defendant is still liable. Id.

The Court finds that there is no genuine issue of material fact regarding this affirmative defense, as the only reasonable inference that could be drawn from the evidence is that an assault on a prisoner by other prisoners is a foreseeable consequence of Defendant's lack of control over the Marion unit. SCDC's failure to follow its own policies with respect to security and control of inmates, as well as supervision of its staff, created a situation in which inmates with the intention to harm other inmates could easily find a way to produce that result, as was the case here. The

evidence shows that the BRCI and Marion unit house dangerous inmates who are violent offenders and may exhibit behavioral problems. SCDC's own officers testified that "the inmates essentially ran that unit" and that this was "known to police services agents as well." PL Memo at 13. Even in a light most favorable to the Defendant, under these circumstances an assault on another prisoner was clearly foreseeable. Because the assault on Plaintiff was a foreseeable consequence of Defendant's lack of control over the unit, Plaintiff is entitled to judgment as a matter of law.

iii. **Tort Claims Act Exemptions**

The South Carolina Tort Claims Act (hereinafter, the "TCA"), S.C. Code Ann. §§ 15-78-10, et. seq., imposes liability upon State actors "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 in the legislation. S.C. Code Ann. §15-78-40.

Defendant's Answer in this matter claims immunity from liability pursuant to subsections (3), (4), (5). (6), (13), (17), (20), and (25) of the enumerated exemptions from liability found in Section 15-78-60. However, subsection (25), which Defendant agrees applies in this case, contains a limitation to the exception when the Defendant's duty to supervise and protect an inmate is done in a negligent manner. The subsection provides:

> The governmental entity is not liable for a loss resulting from:
>
> * * *
>
> (25) 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 Ann. § 15-78-60(25).

Just three years after enactment of the TCA, the Court of Appeals decided a wrongful death and survival case involving Defendant SCDC. Jackson v. S.C. Dep't of Corr., 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989), cert. granted, decision aff'd, 302 S.C. 519, 397 S.E.2d 377 (1990). The plaintiff in Jackson was stabbed and killed by another inmate with a history of mental health issues and violent behavior. After the plaintiff prevailed at trial, the trial court granted a JNOV which the Court of Appeals reversed, holding that sufficient evidence existed to find SCDC grossly negligent. On appeal, SCDC argued that even if it was grossly negligent, it would have been immune from liability under subsection (5) concerning exercise of discretion by SCDC. The Court of Appeals rejected this argument, holding that the gross negligence standard found in subsection (25) must be read into any other exceptions. Id. at 128, 390 S.E.2d at 469.

Numerous cases decided after Jackson have reaffirmed the rule that when a TCA exception containing the gross negligence standard applies in a case, that same standard will be read into all other applicable exceptions. Chakrabarti v. City of Orangeburg, 403 S.C. 308, 320, 743 S.E.2d 109, 115 (Ct. App. 2013); see also, Steinke v. S.C. Dep't of Lab., Licensing & Regul., 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999) ("the correct approach, when a governmental entity asserts various exceptions to the waiver of immunity, is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard."); Repko v. County of Georgetown, 424 S.C. 494, 506 818 S.E.2d 743, 750 (2018) ("when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception."). In the instant case, the application of subsection (25) is obvious, as this case clearly concerns Defendant's duty to supervise, protect, control and confine inmates at BRCI, including Plaintiff. S.C. Code Ann. § 15-78-60(25). Therefore, each of the claimed exceptions in Defendant's

Answer is subject to the gross negligence standard found in subsection (25). If Defendant was grossly negligent, the TCA exemptions may not be invoked to escape liability.

a. Gross Negligence

Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). It is the failure to exercise slight care. Id. Gross negligence has also been defined as a relative term and means the absence of care that is necessary under the circumstances. Hollins v. Richland County School Dist. 1, 310 S.C. 486, 427 S.E.2d 654 (1993). "Gross negligence ordinarily is a mixed question of law and fact." Clyburn v. Sumter County School Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) (citations omitted). However, "[w]hen the evidence supports but one reasonable inference . . . the question becomes a matter of law for the court." Id. at 53, 451 S.E.2d at 888-89 (citations omitted).

Here, the Court finds as a matter of law that the evidence presented supports but one reasonable inference—that Defendant SCDC was grossly negligent. The failure to follow policies and procedures alone is grounds to find gross negligence. See Jinks v. Richland Cnty., 355 S.C. 341, 348, 585 S.E.2d 281, 285 (2003) (detention center officers' failure to follow policy concerning medical observation is evidence of gross negligence). Defendant had numerous policies in place on July 17, 2017 to ensure the protection and safety of the guards and the inmates at BRCI, but the only reasonable inference that can be drawn from the evidence presented is that those policies were completely ignored. On July 17, 2017, Defendant knew that the Marion unit was a particularly problematic unit within BRCI. Defendant knew that "the inmates essentially ran that unit" and chose to reside in whichever cells they pleased, creating a security risk. PL Memo at 2–3. Defendant

also knew that the inmates in the Marion unit had not been locked down for the evening when Ofc. Kennedy left for the day at the direction of his superior officer. Yet despite the dangerous conditions in that unit, SCDC officers that evening failed to follow basic policies and procedures. Defendant argues that it was short staffed due to difficulties hiring and retaining correctional officers. Def. Memo at 2. However, inadequate staffing does not discharge Defendant's duty to maintain control within the Marion unit. If anything, the lack of staffing heightens the need to strictly follow procedures in place to maintain control.

The only conclusion that can be reasonably drawn from the facts in this matter is that Defendant consciously failed to control the situation in Marion unit. As such, the Court finds as a matter of law that Defendant SCDC was grossly negligent. Because Defendant was grossly negligent, Defendant cannot avail itself of the TCA exemptions and Plaintiff is entitled to judgment as a matter of law with respect to this defense.

iv. Discretionary Immunity

Defendant also asserts discretionary immunity under the TCA pursuant to S.C. Code Ann. § 15-78-60(5). To establish a defense of discretionary immunity, a government entity must establish that its employees were faced with alternatives, that they actually weighed competing considerations, and made a conscious choice utilizing accepted professional standards. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). In the instant case, as stated above, subsection (5) does not provide Defendant immunity because Defendant was grossly negligent as a matter of law. Moreover, there is no evidence that an officer or employee of SCDC weighed competing alternatives and made a discretionary choice conforming to any professional standards. As there is no evidence of such a decision, there is no

genuine issue of material fact to support this defense and Plaintiff is entitled to judgment as a matter of law.

v. Assumption of the Risk

Defendant also asserts assumption of the risk as an affirmative defense. "In order for the doctrine of assumption of the risk to apply in a particular case, the injured party must have freely and voluntarily exposed himself to a known danger which he understood and appreciated." Cole v. Raut, 378 S.C. 398, 4095, 663 S.E.2d 30, 33 (2008). The South Carolina Supreme Court has held that "a plaintiff is not barred from recovery by the doctrine of assumption of risk unless the degree of fault arising therefrom is greater than the negligence of the defendant." Davenport v. Cotton Hope Plantation Horizontal Property Regime, 333 S.C. 71, 508 S.E.2d 565 (1998). Subsequently, the Court has recognized that Davenport "effectively abolished the affirmative defense of assumption of the risk . . . holding that the doctrine has been largely subsumed by the law of comparative negligence." Cole, 378 S.C. at 402 n.2.

Thus, assumption of the risk cannot be a complete defense in this case, and as the Court held above regarding comparative negligence, the Court finds that there is no genuine issue of material fact to support the affirmative defense that Plaintiff was responsible for his own assault. As discussed above regarding comparative fault, there is no evidence to suggest that Plaintiff was responsible for being assaulted while sleeping behind a locked door. There is no genuine issue of material fact to suggest that Plaintiff voluntarily exposed himself to the conditions within the unit in which Defendant placed him.

Defendant cites a federal case from a distant jurisdiction in its brief, arguing that it supports the proposition that inmates are responsible for their own safety. Def. Memo at 10; McGill v. Duckworth, 944 F.2d 344 (7th Cir. 1991). However, in that case the plaintiff left his cell to go to the showers while the specific individuals who had been threatening him were "on his heels." McGill, 944 F.2d at 351. He passed by officers while his assailant was close behind him without making any effort to notify the officer of his impending danger and was subsequently assaulted in the shower. This scenario is clearly distinguishable from the present case where Plaintiff had no reason to believe he was in imminent peril while sleeping in the locked cell.

vi. Joinder

Finally, Defendant's Answer claims Plaintiff has filed to name a necessary and indispensable party. Defendant has not identified any indispensable or necessary party that has not been joined. Therefore, there is no genuine issue of material fact to support such a defense.

II. Motion to Compel

The final matter heard during the August 4, 2025 hearing was Plaintiff's Motion to Compel. Plaintiff argues that witnesses during the numerous Rule 30(b)(6) depositions of Defendant were in possession of documents that appeared to be unproduced. Additionally, Plaintiff has requested items such as logbooks, phone records, policies and procedures, photographs, and other items that may not have been produced in their entirety. During the hearing, Plaintiff's counsel argued that they can only know what they should have received and cannot know what Defendant may have and failed to produce because only Defendant controls those materials.

Counsel for the Defendant argued that he has made inquiries and has provided all of the documents and materials that are available. Defense counsel points out that Defendant is a

sprawling government agency and communicating with all individuals that may have responsive materials is challenging.

This case is now seven years old. Irrespective of the reasons for the delay, the facts are what the facts are. To the extent that Defendant is in possession of discoverable material responsive to Plaintiff's discovery requests that has not yet been produced, Plaintiff's Motion to Compel is GRANTED. Defendant shall provide any materials that have not yet been provided within 30 days of this Order.

Conclusion

Fore the reasons discussed above, Defendant's Motion for Summary Judgment is DENIED, Plaintiff's Motion for Summary Judgment is GRANTED, and Plaintiff's Motion to Compel is GRANTED.

AND IT IS SO ORDERED.

[Judicial e-Signature Page to Follow]

Richland Common Pleas

Case Caption: Dashawn Simmons , plaintiff, et al vs South Carolina Department Of Corrections

Case Number: 2018CP4004850

Type: Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774