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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Apellate Case No. 2025-002176

Case No. 2025-CP-10-01024

Teqyah Campbell and Lamona And Lamona Armstrong as parent and Legal Guardian of R.C., a minor,

Appellants,

v.

City of Isle of Palms and Isle Palms Police Dept.,

Respondents,

REPLY BRIEF OF APPELLANT

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INTRODUCTION

This appeal arises from the tragic shooting of minor R.C. on April 7, 2023, at a crowded public beach on the. Isle of Palms during an annual gathering known as "Senior Skip Day." Appellants do not dispute that, as a general proposition, law enforcement owes a duty to the public at large. They contend—as the pleadings squarely support—that the City's conduct in this case went far beyond the exercise of general police functions and gave rise to specific, individualized duties to the Appellants; that dispositive factual questions were improperly resolved against Appellants at the pleading stage; that critical newly discovered evidence was erroneously disregarded; and that the law has been applied in an inconsistent and unjust manner across cases arising from the very same incident. Respondents' brief largely sidesteps the factual allegations of the complaint, caricatures them as mere failure to protect claims, and seeks refuge in broad immunity provisions without grappling with the well-established exceptions and limitations on those immunities. This Court should reject that approach, reverse the dismissal, and remand for further proceedings.

ARGUMENTS

I. The City Owed a Special Duty to Appellants That Arose From It Voluntary Undertaking and the Special Circumstances of This Case, Distinguishing Its Obligations From Those Owed to the Public at Large.

Respondents argue that the City owed no individualized duty to Appellants because police generally owe a duty only to the public at large. While Appellants do not dispute that general principle, South Carolina law is equally clear that this rule admits of significant exceptions, and this case falls squarely within several of them.

A. The City Voluntarily Undertook Specific Protective Duties That Increased the Risk of Harm to Appellants.

South Carolina recognizes that one who voluntarily undertakes to render service to another is subject to liability where his failure to exercise reasonable care either increases the risk of harm or causes harm because of another's reliance upon the undertaking. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006). Respondents urge that the City's increased police presence on the beach was merely the exercise of its general public duty. This argument cannot withstand scrutiny when the allegations of the complaint are accepted as true—as they must be at this stage. *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

The complaint alleges far more than a general police response. It pleads with specificity that the City had actual, advance notice of "Senior Skip Day" through concerned parents, social media, and its own internal communications; that the City affirmatively represented it had personnel in "standby mode" and had notified neighboring jurisdictions; that the City deployed officers on the beach and in the parking lot specifically in response to this known and recurring threat; and that, in doing so, the City created the reasonable expectation among beachgoers—including Appellants—that the dangerous crowd would be controlled. When a government entity steps into the breach and assumes protective responsibility in a defined situation, it cannot simultaneously disclaim any duty to the individuals it has undertaken to protect. The City's voluntary and affirmative deployment of resources in anticipation of this specific event was not an exercise of general policing—it was a targeted operational decision that assumed protective duties toward the individuals on that beach.

Respondents assert that Appellants failed to allege the City's conduct increased the risk of harm beyond what was already present. This characterization misreads the complaint. Appellants alleged that the City's affirmative but inadequate response—deploying too few officers, failing to

disperse the crowd, standing by while violence escalated, and failing to communicate intelligence about a weapon in the crowd over the radio or take action to seize the firearm—did not merely fail to reduce the existing risk but affirmatively increased it. A crowd that is knowingly permitted to grow and become increasingly volatile under the watch of law enforcement presents a materially greater danger than one that is never assembled at all. By creating the appearance of control without exercising it, the City lulled beachgoers into a false sense of security and affirmatively increased the risk of the harm that ultimately materialized.

B. The City's Knowledge of a Specific Identified Threat Created a Special Relationship with the Victims.

South Carolina law recognizes a special relationship giving rise to individualized duty where the defendant has knowledge of a danger to a specific person that is different from the danger posed to others. *Edwards v. Lexington Cty. Sheriff's Dep't*, 386 S.C. 285, 293, 688 S.E.2d 125, 130 (2010). Respondents attempt to distinguish *Edwards* on the ground that the City did not "create" the dangerous situation or invite Appellants to it. But this framing misapprehends both *Edwards* and the allegations here.

In *Edwards*, the Supreme Court emphasized the respondents' actual knowledge of a specific, identified threat to the plaintiff—knowledge that transformed the general duty to the public into an individualized duty of care. *Id.* Here, the Yungwirth affidavit and the underlying complaint together establish that a City police officer received a direct, contemporaneous report that there was a firearm in the crowd—a report relayed in real time as the violence escalated. The officer did not use his radio, did not attempt to locate or seize the weapon, and did not warn others. This is not an allegation of generalized failure to provide adequate police protection. It is an allegation that a specific officer, having received specific intelligence about an imminent lethal threat in a crowd of civilians, took no action whatsoever. At that moment, the City's duty ceased

to be one owed only to the public at large. It crystallized into a duty owed to those specific individuals in the crowd who faced the identified threat—including Appellants.

Respondents' reliance on *Shelley v. S.C. Highway Patrol* is similarly misplaced. *Shelley* involved a highway patrol trooper's response to a single impaired motorist on the side of the road—a routine exercise of general police judgment. 432 S.C. 335, 340, 852 S.E.2d 220, 222 (Ct. App. 2020). The claims in *Shelley* arose entirely from the trooper's discretionary decision about how to respond to one individual's self-endangering behavior. This case presents an entirely different scenario: a large public gathering, repeated prior notice of violence and firearms, real-time intelligence of a specific weapon in a crowd, and a total failure to act on that intelligence. The breadth and specificity of the allegations here take this case far outside the narrow context of *Shelley*.

C. The City Created the Conditions That Enabled the Harm.

Unlike in *Shelley*, the City is not alleged simply to have failed to protect against a pre-existing risk. Rather, the complaint alleges that the City's affirmative decisions—to allow the gathering to proceed year after year without adequate planning, to deploy insufficient resources despite actual notice, and to fail to act on real-time intelligence about a weapon—created and maintained the dangerous conditions on the beach. As this Court recognized in *Greenville Mem'l Auditorium v. Martin*, a governmental entity cannot claim immunity for a loss that is traceable to its own affirmative conduct in creating a foreseeable risk, even if a third party's criminal act is the proximate cause. 301 S.C. 242, 245–47, 391 S.E.2d 546, 548–49 (1990). The City held the beach open, knew what Senior Skip Day entailed, and chose to respond in a manner wholly inadequate to the threat it knew was present. That is not passive inaction, it is the creation and maintenance of a dangerous condition.

II. The Trial Court Improperly Resolved Disputed Questions of Fact at the Pleading Stage.

Perhaps the most fundamental error in the dismissal below is the Trial Court's resolution of contested factual issues that are not susceptible to disposition under Rule 12(b)(6). The standard is clear: on a motion to dismiss, the court is required to construe the complaint in the light most favorable to the nonmovant and may sustain dismissal only when no set of facts alleged or reasonably deducible therefrom would entitle the plaintiff to relief. *Rydde*, 381 S.C. at 646, 675 S.E.2d at 433.

The issues of duty, foreseeability, breach, and the applicability of immunity exceptions are all—under South Carolina law—intensely fact-dependent inquiries that ordinarily require development of an evidentiary record. Whether the City's conduct rose to the level of gross negligence is explicitly a question for the jury. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 259 (2015); *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 565 S.E.2d 806, 815 (2002). Whether the City's actual notice of a specific weapon in the crowd and its total failure to act on that notice—constitutes gross negligence is a question the jury must resolve, not the Trial Court at the pleading stage.

Respondents argue that the immunities of S.C. Code Ann. §15-78-60(6) and (20) are absolute and preclude this inquiry. But that argument itself requires the resolution of a threshold factual question: whether the City's own independent negligence created or enhanced a foreseeable risk of harm distinct from the third party's criminal act. *Martin*, 301 S.C. at 245–47, 391 S.E.2d at 548–49. That question cannot be answered at the Rule 12(b)(6) stage without improperly treating the City's factual assertions as established. When a complaint plausibly alleges, as this one does, that a governmental entity received real-time notice of a lethal weapon in a crowd and did nothing,

that a crowd was permitted to grow violent and out of control despite actual advance notice, and that the City's own operational decisions created and sustained the dangerous conditions, the question of whether those facts bring the case within an exception to immunity is not one that can be resolved on the pleadings alone.

The Trial Court's dismissal short-circuited that inquiry. South Carolina's courts have consistently held that early dismissal is disfavored where fact-intensive issues of duty, foreseeability, and breach remain unresolved. By granting dismissal without permitting any factual development, the Trial Court deprived Appellants of the opportunity to demonstrate—through discovery—the full extent of the City's knowledge, its operational decisions, and the manner in which those decisions proximately caused R.C.'s injuries.

III. The Trial Court Erred in Refusing to Consider the Yungwirth Affidavit, Which Constitutes Newly Discovered Evidence Material to the Issues of Actual Notice and Gross Negligence.

Respondents contend the Yungwirth affidavit cannot constitute "newly discovered evidence" because it was in the *Dehn* matter on July 17, 2025—before the August 5 hearing. This argument is technically correct as to the filing date but misses the point entirely and ignores the realities of litigation. The affidavit was filed in a separate, parallel proceeding to which Appellants were not a party. Although the *Dehn* case involves the same incident and the same defendants, Appellants did not have access to every filing in that case as a matter of course. The affidavit was submitted in connection with briefing in *Dehn* just eighteen days before Appellants filed their own opposition brief on August 1, 2025—an extraordinarily compressed for identifying, locating, reviewing, and incorporating evidence from a parallel proceeding. The standard for newly discovered evidence under *Elam v. S.C. DOT* requires that the evidence was unavailable "despite diligent efforts." 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Whether Appellants exercised the

requisite diligence is itself a factual question that the Trial Court resolved summarily in Respondents' favor without analysis.

More fundamentally, Respondents fail to grapple with the substantive significance of the affidavit. Mr. Yungwirth's sworn testimony does not merely repeat what was already alleged in the complaint. It provides specific, particularized, eyewitness confirmation that before the shooting, a City police officer received a direct, in-person report that there was a firearm in the crowd; that the officer made no radio call; that the officer took no action to locate or seize the weapon; and that the shooting occurred approximately twenty minutes later.

This is not cumulative evidence—it is direct proof of the City's actual, contemporaneous knowledge of an imminent lethal threat and its total failure to respond. This evidence is directly material to three critical legal issues that the Trial Court resolved against Appellants: (1) whether the City's conduct constituted gross negligence sufficient to overcome the immunity provisions it invoked; (2) whether the City's failure to act on specific, real-time threat intelligence transformed its general public duty into an individualized duty to those in the crowd; and (3) whether the City's own independent conduct—separate from the third party's criminal act—proximately caused Appellants' injuries. None of these questions could be properly resolved without consideration of this affidavit, and the Trial Court's refusal to consider it warrants reversal.

IV. The Inconsistent Application of the Law Across Cases Arising From the Same Incident Constitutes Manifest Injustice and Warrants Reversal.

Respondents argue that the interlocutory rulings in *Dehn* and *Mack* are without preclusive effect because they are not final judgments, and that any inconsistency is therefore merely speculative. While Appellants acknowledge the technical limitations of offensive non-mutual collateral estoppel in this context, they urge this Court not to confuse legal doctrine with the equitable obligations of appellate review.

The undisputed record reflects the following: the same incident, the same beach, the same defendant, the same legal theories, and the same governing law produced three separate cases before the same court. In *Dehn* and *Mack*, the City's motion to dismiss was denied. In this case, it was granted. Respondents offer no substantive legal distinction between these outcomes. They cannot, because none exists.

Respondents assert that the denial of a motion to dismiss in *Dehn* and *Mack* is of no consequence because those courts may yet grant summary judgment or directed verdict in the City's favor. See *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994). But this argument cuts against Respondents, not for them. If the claims in *Dehn* and *Mack* are sufficient to survive a motion to dismiss if those plaintiffs are entitled to proceed to discovery, to develop the factual record, and to have their claims evaluated on the merits—then so are the Appellants here, who assert materially identical claims arising from the same event. To say that the *Dehn* and *Mack* plaintiffs may ultimately lose on summary judgment is to say nothing more than that all litigants may ultimately lose on summary judgment. It does not justify denying Appellants the same opportunity to develop their claims.

This Court has recognized that Rule 59(e) reconsideration is appropriate to prevent manifest injustice, including where a court's ruling creates inequitable disparity in the treatment of similarly situated parties. *Elam*, 361 S.C.at 24, 602 S.E.2d at 780. The injustice here is not abstract or speculative. Multiple victims of the same shooting, represented by the same counsel, asserting the same theories against the same defendant, have received diametrically opposite treatment in the courts of this State. The Appellants before this Court including a minor child who sustained a gunshot wound to his shoulder and a comminuted ballistic fracture of his proximal humeral shaft—

have been told they have no right even to proceed to discovery, while other victims of the same gunman have been permitted to do so.

This inconsistency cannot be rationalized away by reference to the non-preclusive effect of interlocutory orders. It is a substantive failure of equal justice that this Court has both the authority and the obligation to correct. Whatever legal theory ultimately governs—whether framed in terms of equity, manifest injustice, or the proper application of South Carolina tort law—the result should be the same: Appellants are entitled to the

same opportunity to litigate their claims as the similarly situated plaintiffs in *Dehn* and *Mack*.

V. The Gross Negligence Standard Must Be Read Into the Immunity Provisions Upon Which the City Relies.

Respondents argue that because neither the victims nor the gunman were "students, patients, prisoners, inmates, or clients" of the City, the gross negligence standard of S.C. Code Ann. § 15-78-60(25) cannot be read into the other immunity provisions upon which the City relies. Appellants respectfully submit this argument was correctly addressed in the motion to reconsider and warrants further attention here.

The South Carolina Supreme Court has held that when an applicable exception to the waiver of immunity contains a gross negligence standard, that standard must be read into all other applicable exceptions. *Repko v. Cty. of Georgetown*, 424 S.C. 494, 504, 818 S.E.2d 743, 749 (2018); *Steinke v. S.C. Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 520 S.E.2d 142 (1999); *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). The key question under *Repko* is whether the exception containing the gross negligence standard actually applies to the facts of the case. 424 S.C. at 504, 818 S.E.2d at 749.

The public beach on the Isle of Palms is expressly public property "intended or permitted to be used as a park, playground, or open area for recreational purposes." S.C. Code Ann. § 15-78-

60(16). The complaint specifically alleges the City's responsibility for "security and supervision of the public beach" and its failure to correct a known dangerous condition within a reasonable time after actual notice. [Compl. ¶¶ 9–10, 25.]

Subsection 15-78-60(16) thus applies to this case, and unlike subsections (6) and (20), it expressly conditions immunity upon the absence of actual notice followed by unreasonable delay in correction. Because subsection (16) is an applicable exception, and because it imposes a reasonableness standard that functions analogously to a gross negligence inquiry, its standards must inform the analysis of the other immunity provisions the City invokes. The City cannot simultaneously invoke subsection (6) and (20) as absolute immunities while ignoring the qualifying effect of subsection (16)'s actual-notice-and-correction standard on those same provisions.

Moreover, even if this Court were to conclude that no exception containing a gross negligence standard applies, the question of whether the City's conduct was grossly negligent, independent of immunity—remains a factual question for the jury that cannot properly be resolved at the Rule 12(b)(6) stage.

CONCLUSION

The Trial Court's dismissal of Appellants' claims was error for multiple independent reasons. The complaint adequately pleads a special duty owed to Appellants arising from the City's voluntary undertaking, its receipt of specific threat intelligence, and its affirmative creation of dangerous conditions beyond those owed to the general public. Disputed factual questions central to the duty, breach, and immunity analyses were improperly resolved against Appellants at the pleading stage. The Yungwirth affidavit, which provides direct sworn testimony of the City's actual notice of a weapon in the crowd and its total failure to respond, was erroneously excluded from

consideration. And the dismissal of Appellants' claims while permitting materially identical claims in *Dehn* and *Mack* to proceed constitutes a manifest injustice that this Court should not countenance.

At minimum, Appellants were entitled—under the South Carolina Supreme Court's controlling decision in *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019)—to an opportunity to amend their complaint before entry of final judgment. The outright dismissal without leave to amend was an independent and additional ground of error.

For all of the foregoing reasons, Appellants respectfully request that this Court reverse the Trial Court's Order Granting Respondents' Motion to Dismiss, reinstate Appellants' claims against the City of Isle of Palms, and remand for further proceedings consistent with this Court's opinion. In the alternative, Appellants request that this Court remand with instructions to permit amendment of the complaint prior to any further dispositive rulings.

Respectfully submitted,

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