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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2025-002354
Case No. 2017-CP-02-1413

Otis Owens, ... Respondent,

v.

Michael Hunt, in his Official Capacity as Sheriff
of Aiken County, Aiken County Sheriff's Office,
Aiken County Detention Center, and Aiken County, ... Petitioners.

BRIEF OF PETITIONERS

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

WILLIAM H. DAVIDSON, II
DAVIDSON & WREN, P.A.
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222

Counsel for Petitioners

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QUESTIONS PRESENTED

I. Did the Court of Appeals err in affirming the trial court which erred in allowing the Respondent to present an unpled claim for assault and battery as a converted gross negligence claim?

II. Did the Court of Appeals err in affirming the denial of the Petitioners' motions for directed verdict and JNOV based on S.C. Code Ann. § 15-78-60(17) of the Tort Claims Act?

III. Did the Court of Appeals err in failing to address or reverse the trial court's rulings which allowed the Respondent to proceed with claims or allegations related to the investigation conducted by Detention Center personnel under the Prison Rape Elimination Act, 34 U.S.C. § 30301 ("PREA")?

STATEMENT OF THE CASE

This is an appeal from an action brought pursuant to the South Carolina Tort Claims Act. On June 20, 2017, the Respondent Otis Owens filed a Complaint against the Petitioners Sheriff Michael Hunt, the Aiken County Sheriff's Office, Aiken County Detention Center, and Aiken County. The Complaint includes causes of action for gross negligence and grossly negligent hiring and supervision. (R. 19-23). Owens alleged that on January 27, 2017, Deputy Matthew Gibson, who was a corrections officer, committed a sexual assault or an act of sexual misconduct upon Owens during a pat down search at the Aiken County Detention Center. Specifically, in his Complaint, the Owens made the following factual allegations as the basis for his claims:

> On or about January 27, 2017, when the plaintiff was going in from the recreation yard, an Aiken County Detention Center corrections guard, "in searching the plaintiff, probed the plaintiff's belly button, ran his hands up the inside of the plaintiff's legs, and grabbed and squeezed the plaintiff's testicles. The guard maliciously and aggressively assaulted the plaintiff, going beyond anything necessary to search the plaintiff.

See, Complaint, ¶ 9. (R. 19-20). The guard referred to is Deputy Gibson. There are no additional allegations in the Complaint as to the factual basis of the claims.

The evidence at trial revealed that Owens, who was a pretrial detainee, was implicated with other inmates of using paper dice in the recreational area which was against Detention Center policy. The dice, as an implement for gambling, was contraband. As a result, a number of inmates, Owen included, were patted down by Deputy Gibson after returning from the recreational area as part of a search for the dice. As pled in the Complaint, Owens alleges that Deputy Gibson improperly conducted the pat down search, and in doing so, Gibson grabbed and squeezed one of his testicles. (R. 19-20). Owens alleges that he sustained an injury to his groin as a result.

After the completion of discovery, the case proceeded to trial on October 31, 2022, before Circuit Court Judge Courtney Clyburn Pope and an Aiken County jury. The Petitioners moved for a directed verdict at the close of Owens' case-in-chief and at the close of the evidence. Those motions were denied. On November 4, 2022, the jury returned a verdict in favor of Owens and awarded actual damages in the amount of $150,000. (R. 1).

The Petitioners thereafter filed post-trial motions including for judgment notwithstanding the verdict (JNOV), or alternatively, a new trial absolute. (R. 28-44). The trial court did not hold a hearing on the post-trial motions. Instead, the trial court issued a Form Order filed December 2, 2022, granting in part and denying in part the JNOV motion. The trial court granted a JNOV only as to Aiken County. The motion for new trial absolute was also denied. (R. 2-4).

The Petitioners then filed a Rule 59(e) motion. (R. 28-44). Without holding a hearing, the trial court issued an order which is titled "Order Granting Defendants' Motion to Amend Order" as filed on February 21, 2023. (R. 5-18). With that Order, the trial court granted the Petitioners' request that the court issue a ruling on each ground raised in the post-trial motions in order to properly present those issues for appellate review. The trial court further amended the Form Order and provided the bases for the court's rulings on the grounds raised in the post-trial motions.

The Petitioners thereafter filed a timely appeal to the South Carolina Court of Appeals. On July 30, 2025, the Court of Appeals issued an unpublished opinion affirming in part and reversing in part. The Court affirmed the judgment for Owens on his gross negligence cause of action and the denial of the Sheriff's post-trial motions, including his JNOV motion, related to that claim. The Court reversed on Owens' negligent hiring and supervision cause of action, finding that the trial court erred in denying the JNOV motion as to that claim. (Slip Op. at 9).

The Petitioners filed a petition for rehearing which was summarily denied by the Court of Appeals by its order issued October 22, 2025.

The Petitioners sought a writ of certiorari which was granted by this Court by Order filed February 11, 2026.

STANDARD OF REVIEW

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

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

"Whether to grant a new trial is a matter within the discretion of the trial judge, and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law." *Austin*, 691 S.E.2d at 149.

ARGUMENTS

I. The Court of Appeals erred in affirming the trial court which erred in allowing the Respondent to present an unpled claim for assault and battery as a converted gross negligence claim. Based thereon, the Court of Appeals further erred in affirming the denial of the Petitioners' motions for directed verdict and JNOV based on S.C. Code Ann. § 15-78-60(17) of the Tort Claims Act.

The Petitioners contend that the trial court erred in allowing the Respondent Otis Owens to present an unpled claim for assault and battery as a converted gross negligence claim. Additionally, the trial court erred in denying the Petitioners' motions for directed verdict and JNOV based on Section 15-78-60(17) of the Tort Claims Act. The Court of Appeals addressed those issues in tandem and affirmed the trial court's rulings.

In its opinion, the Court of Appeals found that "the trial court properly denied Petitioners' motion for JNOV as to this claim because Owens consistently presented evidence for a gross negligence claim." (Slip Op. at 3). The Court of Appeals further ruled: "Any reference to assault in Owens's claim was used, among other factual allegations, to characterize how Petitioners were grossly negligent in their supervision and confinement of Owens." (Slip Op. at 3). In effect, the Court of Appeals recognized for the first time a cause of action in South Carolina for a negligent assault and battery. In doing so, the Court of Appeals disregarded (and in fact did not even reference) the substantial case law cited by the Sheriff demonstrating that negligence and intentional torts are mutually exclusive and cannot be melded to create a negligent/intentional tort.

It is unclear what the Court of Appeals referred to as "among other factual allegations." (Slip Op. at 3). Without any doubt, in his Complaint, the Owens makes the following factual allegations as the basis for his claims:

> On or about January 27, 2017, when the plaintiff was going in from the recreation yard, an Aiken County Detention Center corrections guard, in searching the plaintiff, probed the plaintiff's belly button, ran his hands up the inside of the plaintiff's legs, and grabbed and squeezed the plaintiff's testicles. The guard maliciously and aggressively assaulted the plaintiff, going beyond anything necessary to search the plaintiff.

See, Complaint, ¶ 9. (R. 19-20). The guard referred to is Deputy Gibson. There are no additional allegations in the Complaint as to the *factual basis* of the claims. Thus, it was simply incorrect to suggest that Owens did not allege an assault. *He used that very word*. In fact, in listing his particulars of "gross negligence," Owens alleges that the Petitioners were grossly negligent "(a) by assaulting the plaintiff, (b) by battering the plaintiff, and (c) by using excessive force." *See*, Complaint, ¶ 21. (R. 20-21). In effect, Owens improperly brought a gross negligence claim for what is only actionable as an assault and battery.

Yet, despite those allegations, the trial court, and then the Court of Appeals, allowed Owens to creatively (and improperly) plead an assault and battery claim under the guise of a gross negligence claim. It cannot be more obvious why that was attempted – to try to plead around and in contravention of Section 15-78-60(17) immunity which the General Assembly enacted *as the public policy of this State* to bar claims, such as this one, from being brought and won against a governmental entity. That is not and should not be the law of this State. The General Assembly did not re-enact sovereign immunity for most intentional torts only to allow a party to succeed in pursuing an intentional tort by simply calling it "gross negligence."[1]

The Petitioners provided a detailed explanation of existing precedent from our appellate

[1] *See*, *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990) (recognizing the "legislative objectives" of the Tort Claims Act are "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government").

courts that has recognized that negligence and intentional torts are mutually exclusive. South Carolina law cannot be clearer that an intentional tort cannot be committed negligently. Under our law, there is no question that a sexual assault is actionable as an intentional tort, namely as an assault and battery claim, and not as a negligence or gross negligence claim. As the Court of Appeals previously held, "[a]ssault and battery is generally classified as an intentional tort, as contrasted with a tort based on negligence." *Longshore v. Saber Security Services, Inc.*, 365 S.C. 554, 619 S.E.2d 5, 9-10 (Ct. App. 2005). In *Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607 (2011), this Court applied that very holding from *Longshore* in describing "assault" and "battery" as intentional torts not subject to comparative fault rules. 709 S.E.2d at 615, n.3. *See also*, *Prior v. South Carolina Medical Malpractice Liability Ins. Joint Underwriting Asso.*, 305 S.C. 247, 407 S.E.2d 655, 657 (Ct. App. 1991) (finding that sexual assault is an intentional tort "despite the use of the terms negligence and recklessness"); *Douglass v. Florence General Hospital*, 273 S.C. 716, 259 S.E.2d 117 (1979) (describing assault and battery as an intentional tort); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455, 459 (Ct. App. 1997) (describing civil assault and battery as an "intentional tort theory").

In effect, gross negligence does not *per se* include intentional conduct. As indicated, South Carolina law recognizes that intentional torts may *not* be committed in a negligent manner. In other words, negligence and battery are mutually exclusive; there is no such cause of action for a negligent assault and battery or a grossly negligent assault and battery. *See*, *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (Ct. App. 2000) (recognizing that "an intentional tort … by definition cannot be committed in a negligent manner"); Restatement (Second) of Torts, § 262, cmt. d ("The definition of negligence given in this Section includes only such conduct as creates liability for the reason that it involves a risk and not a certainty of

invading the interest of another. It therefore excludes conduct which creates liability because of the actor's intention to invade a legally protected interest of the person injured or of a third person"). Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), this Court explained that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liability for injury to person or property, when such injury is not the result of premeditation and formed intention." 134 S.E. at 235. Thus, intent and negligence are mutually exclusive, and there is no claim of gross negligence that flows from intentionally tortious conduct. Moreover, in *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), the Court of Appeals recognized that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, the Court concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id*.[2]

The case of *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020), is particularly instructive. In that case, the plaintiff sued for an arrest and included causes of action for false arrest, malicious prosecution, and gross negligence. In affirming summary judgment on the gross negligence claim, the Court of Appeals wrote: "*There is also no viable claim for negligence or gross negligence.* Seabrook contends the officers negligently

[2] In the related context of force used to effect an arrest, South Carolina law holds an excessive use of force is actionable as an assault and battery. In *Moody v. Ferguson*, 732 F.Supp. 627 (D.S.C. 1989), the federal district court, applying South Carolina law, explained: "Although a law enforcement officer is privileged to use lawful force, he is nevertheless liable for assault if he uses force greater than is reasonably necessary under the circumstances." 732 F.Supp. at 632. Having found that "the force employed by the defendant in shooting at the plaintiff's car was unreasonable under the circumstances," the district court in *Moody* entered judgment in favor of the plaintiff on the state law assault claim. *Id*. *See also*, *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 671 (D.S.C. 1995) ("if a police officer uses excessive force, or 'force greater than is reasonably necessary under the circumstances,' he may be liable for assault or battery").

arrested him without probable cause. This is indistinguishable from his malicious prosecution claim." 853 S.E.2d at 510. (Emphasis added).

Thus, *Seabrook* is yet another case where our appellate courts correctly recognized that an intentional tort, like malicious prosecution, cannot be pled and prosecuted as a "gross negligence" claim. However, in the present case, the Court of Appeals did not address nor refute nor distinguish the existing case law and instead ruled that South Carolina law allows a plaintiff to pursue a claim *explicitly* premised on an assault and battery theory – a sexual assault no less -- as a gross negligence claim.

Additionally, this Court has previously explained that an intentional tort *cannot be converted into a negligence claim*. In *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006), this Court ruled that a defamation claim may not be converted into a negligence claim. Instead, any allegation that a statement is false or otherwise defamatory must be brought as a defamation cause of action. In that case, this Court affirmed the Rule 12(b)(6) dismissal of a negligence claim that was based on the same factual allegations as a defamation claim. This Court explained that "[a] claim that a statement constitutes libel or slander must be brought in a defamation cause of action, which is grounded in and affected by both common law and constitutional law." 629 S.E.2d at 674. *See also*, *McGlothlin v. Henneley*, 370 F.Supp.3d 603, 620 (D.S.C. 2019) (citing *Erickson* in dismissing negligence claim for defamation); *Leask v. Robertson*, 589 F.Supp.3d 506, 529 (D.S.C. 2022) (citing *Erickson*, district court found "[t]his is plainly a defamation claim in sheep's clothing. The court thus dismisses plaintiffs' negligence cause of action against Robertson"); *Bassford v. Bassford*, 2021 WL 5358976, *4 (D.S.C. 2021) (citing *Erickson* in dismissing negligence claim re-alleging defamation allegations). The same is true in the case at bar. As *Erickson* instructs, Owens cannot re-allege or convert his assault and

battery claim into a gross negligence cause of action. Yet, that is precisely what the trial court and the Court of Appeals permitted in the case at bar.

And most certainly, the law does not allow such "creative" pleading in order to circumvent other laws, be it the statute of limitation in *Erickson* or the bar of sovereign immunity here. *See*, *Cartee v. Wilbur Smith Associates, Inc.*, 2010 WL 1052082, *5 (D.S.C. 2010) ("[t]he court cannot allow creative pleading to accomplish what [plaintiff] cannot do under law"). Although the Court of Appeals' opinion is not published and hence is not technically precedent, it does send the wrong message – in effect, the Court of Appeals is sanctioning such "creative pleading" -- first, by allowing it to stand and second, by failing to even address the issue. The Court of Appeals did not even reference, let alone refute or distinguish, the binding precedent that *Erickson* presents and which the Sheriff strenuously argued.

Again, it should be patently obvious why Owens pled his assault and battery claim as a gross negligence claim. That was done in order to avoid the bar of Section 15-78-60(17) immunity and the strong and well-established precedent in this State governing sexual assaults in the civil context. There is no question that Owens pursued this case as a sexual assault. Indeed, the trial court allowed Owens' counsel, over objection, to present extensive testimony on the application of the Prison Rape Elimination Act, 34 U.S.C. § 30301 ("PREA"), which by law applies only to allegations of "rape" as defined by the Act. *See,* 42 U.S.C. § 30309(9) (defining "rape"). Owens should be estopped from denying that his claim was for a sexual assault or "rape" as defined by PREA. Moreover, as examples of evidence supporting the verdict, the Court of Appeals even pointed to PREA-related allegations. (Slip Op. at 4) ("Lieutenant Bowman admitted that the detention center's PREA investigation did not comply with agency policies"). Thus, the Court of Appeals acknowledged that this case involves a sexual assault.

Yet, the Court of Appeals then ruled in an entirely conclusory manner and without any analysis that "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). The Court of Appeals ignored that Owens alleged that Deputy Gibson acted maliciously and with the intent to cause harm. *See*, Complaint, ¶ 9. (R. 19-20).[3] More importantly, South Carolina law recognizes 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." *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 136 (Ct. App. 2000). That is black letter South Carolina law that should not have been overlooked or ignored. Because Owens alleged that Deputy Gibson committed an act of sexual assault or sexual misconduct upon him, the Petitioners are entitled to absolute sovereign immunity under Section 15-78-60(17) of the Tort Claims Act, which provides: "The governmental entity is not liable for a loss resulting from … employee conduct … which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17). The law infers an intent to harm from Deputy Gibson's conduct as alleged, and thus, the Petitioners are entitled to a directed verdict and JNOV based on sovereign immunity. The trial court rejected the Petitioners' claim for sovereign immunity under Section 15-78-60(17) by treating Owens' claim as one for gross negligence rather than what it was – a claim for assault and battery. (R. 9-10). That constitutes reversible error. Binding

[3] Owens is judicially bound by the allegations in his Complaint. In *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322 (Ct. App. 1992), the Court of Appeals held that "parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise." 418 S.E.2d at 323. "The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action." *Id*. *See also*, *Johnson v. Alexander*, 413 S.C. 196, 775 S.E.2d 697, 700 (2015); *Kitchen Planner, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020).

precedent holds that a governmental entity is not liable for a sexual assault committed by an employee, and that is true regardless of how the plaintiff has creatively pled his claim. Quite simply, Owens should not be permitted to plead a sexual assault committed maliciously and with the intent to harm and to rely on PREA regulations which apply only to a *prison rape*, and nonetheless avoid the bar of Section 15-78-60(17) immunity because the Court of Appeals found it not to be "applicable" without any explanation as to why not.

As outlined above, there is substantial South Carolina precedent, from this Court and the Court of Appeals, that was disregarded. As this Court found in *Erickson*, "creative pleading" simply should not be permitted to circumvent clearly applicable defenses such as a statute of limitations defense in *Erickson* or, in this case, sovereign immunity under the Tort Claims Act. Quite clearly, an intentional tort may not be pled and tried under the guise of a negligence or gross negligence theory, and that is particularly true as to allegations of a sexual assault and battery, as is the subject of this litigation.

II. The Court of Appeals erred in failing to address or reverse the trial court's rulings which allowed the Respondent to proceed with claims or allegations related to the investigation conducted by Detention Center personnel under the Prison Rape Elimination Act, 34 U.S.C. § 30301 ("PREA").

The Petitioners argued that the trial court erred in allowing Owens to proceed with claims or allegations related to the investigation conducted by Detention Center personnel under the Prison Rape Elimination Act, 34 U.S.C. § 30301 ("PREA"). The Sheriff sought a new trial absolute, which was denied. The Court of Appeals did not even address this issue. Instead, the Court pointed to the manner by which the PREA investigation was conducted as evidence supporting the verdict on the gross negligence claim. (Slip Op. at 4) ("Lieutenant Bowman admitted that the detention center's PREA investigation did not comply with agency policies").

In so doing, the Court of Appeals disregarded the Sheriff's arguments and the overwhelming precedent establishing that Owens' PREA-related allegations are not actionable because PREA does not create a private right of action. *See*, *Taylor v. Worrick*, 2016 WL 11190496, *7 (D.S.C. 2016); *Moorman v. Herrington*, 2009 WL 2020669, *2 (W.D. Ky. 2009). That means that PREA cannot serve as the basis for either a § 1983 federal statutory claim or a state law gross negligence claim. As the federal district court held in *Ngono v. Geo Group, Inc.*, 2023 WL 2325573 (W.D. Pa. 2023), "[t]he PREA, however, does not create a cause of action, and thus Plaintiff cannot assert a negligence claim under it." 2023 WL 2325573, *4. "While the PREA was intended in part to increase the accountability of prison officials and to protect the Eighth Amendment rights of Federal, State, and local prisoners, nothing in the language of the statute establishes a private right of action." *Id*. "Likewise, as to Plaintiff's challenge to the sufficiency of the investigation into his rape and assault allegations under the PREA, Plaintiff has no freestanding constitutional right to such an investigation, let alone a cause of action to challenge the sufficiency of the investigation." *Id*. Similarly, in *Franklin v. Franklin County*, 2023 WL 1978907 (E.D. Ky. 2023), the federal district court explained:

> Ms. Franklin alleges that the Defendants are liable for negligence because they failed to enforce 'PREA rules through training and supervision.' She also plainly alleges that they 'had a ministerial duty to enforce PREA's requirements.' However, as the Defendants point out, PREA is not mandatory and does not create a private cause of action. Rather, PREA was enacted to study the problem of rape in prisons and provide funding and expertise to address it.

2023 WL 1978907, *10. *See also*, *Jena v. Geo Group, Inc.*, 2023 WL 114701 (N.D. Tex. 2023) ("Plaintiff states that Doss committed negligence per se by sexually assaulting him because the Prison Rape Elimination Act (PREA) is meant to provide inmates legal protection from rape. The PREA, however, does not create [or] provide a cause of action, and thus Plaintiff cannot

assert a claim under it"). In short, the trial court, as well as the Court of Appeals, erred in allowing alleged violations of PREA to serve as the basis for Owens' gross negligence claim which is in direct violation of controlling federal law.

Moreover, the Court of Appeals did not consider the fact that there is no evidence that the allegations related to a PREA investigation proximately caused any injury to Owens. Under South Carolina law, proximate cause requires evidence of causation in fact and legal cause. *McKnight v. South Carolina Department of Corrections*, 385 S.C. 380, 684 S.E.2d 566, 569 (Ct. App. 2009). "Causation in fact is demonstrated by establishing the plaintiff's injury would not have occurred 'but for' the defendant's [wrongful act], while legal cause is proved by establishing foreseeability." *Id*. A post-incident investigation, even if not properly conducted or deficient in some respect, is not a proximate or "but for" cause for the incident itself. In effect, the PREA investigation did not cause the alleged sexual assault of Owens to occur, nor did it result in any damage or injury to the Owens. The trial court's failure to even consider the issue of proximate cause and particularly the absence of evidence of proximate cause was in error and is a further basis for reversal.

CONCLUSION

Based on the foregoing discussion and analysis, the Petitioners Michael Hunt, in his Official Capacity as Sheriff of Aiken County, Aiken County Sheriff's Office, Aiken County Detention Center, and Aiken County respectfully request that the Court reverse in part the Court of Appeals and reverse the orders issued by Circuit Court Judge Courtney Clyburn Pope denying the Petitioners' motions for directed verdict, JNOV, and new trial absolute and remand for entry of judgment as a matter of law in favor of the Petitioners, or alternatively, for a new trial absolute.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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

WILLIAM H. DAVIDSON, II #1558
DAVIDSON & WREN, P.A.
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222

Counsel for Petitioners

March 13, 2026