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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Courtney Clyburn Pope, Circuit Court Judge

Circuit Court Case No. 2017-CP-02-1413
Supreme Court Case No. 2025-002534

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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Counterstatement of Issues on Appeal

- I. Whether a claim that was pled, tried, and submitted to the jury as one for gross negligence under the South Carolina Tort Claims Act may be recharacterized as an intentional tort based on isolated language in the complaint.
- II. Whether section 15-78-60(17) of the South Carolina Tort Claims Act applies where the case was tried and decided on a theory of gross negligence and no issue of intent to harm was submitted to or decided by the jury.
- III. Whether the trial court abused its discretion in admitting evidence concerning detention center policies and the adequacy of the investigation, including evidence referencing a Prison Rape Elimination Act (PREA) investigation.

Statement of the Case

This action arises under the South Carolina Tort Claims Act from a custodial search conducted at the Aiken County Detention Center. Respondent Otis Owens, a pre-trial detainee, sued alleging Petitioners Sheriff Michael Hunt, Aiken County Sheriff's Office, Aiken County Detention Center, and Aiken County were grossly negligent in the supervision and execution of that search and in their response to his resulting injury.¹

The case proceeded to a jury trial. The jury returned a verdict finding Petitioners grossly negligent. (R. 1). Petitioners moved for judgment notwithstanding the verdict and for a new trial. The trial court denied those motions, except as to a party not at issue here. (R. 8–9).

The court of appeals affirmed in part, concluding that the case was properly tried and decided as one for gross negligence. *Owens v. Hunt*, No. 2023-000009, 2025 WL 2158921, at *1 (Ct. App. July 30, 2025). Petitioners then filed for certiorari with this Court, which was granted.

¹ While Owen's complaint pled negligent hiring or supervision, at trial all evidence and testimony presented concerned gross negligence. This was reflected on the verdict form and later acknowledge in Owens's court of appeals briefing. (R.1).

Statement of the Facts

On January 27, 2017, Owens and other detainees were in the recreation yard at the Detention Center. (R. 19, 577–78, 741). Eleven detainees were present—four seated at a table playing cards and seven, including Owens, walking laps. *Id.*

Deputy Matthew Gibson, who was on duty as a relief officer in the pod, believed he observed detainees playing with dice, which is considered contraband. (R. 112, 198–99, 298, 832). After approaching the detainees and requesting the dice, which the detainees denied possessing, Deputy Gibson secured the yard and waited for Deputy Christopher Erickson to return before conducting searches. (R. 299, 741–42).

The detainees were lined up for searches, with Owens selected first. Owens was directed to place his hands against a window in view of detention center cameras and assume a search position. (R. 304, 319–20). Owens testified that Deputy Gibson conducted the search in a manner he described as “really rough,” including applying force while moving up his legs. (R. 741, 834). According to Owens, Deputy Gibson then grabbed and squeezed his testicles, causing immediate pain. (R. 742).

Deputy Gibson later acknowledged that he used a technique known as the “blade method,” which was not permitted under detention center policy. (R. 176–78). Testimony at trial established that policies governing custodial searches limit the use of force and prohibit techniques that create a risk of injury. *Id.*; (R. 462).

Owens immediately reacted by pulling away and exhibited signs of distress, including bending over and experiencing nausea. (R. 742–44). Deputy Erickson attempted to calm Owens by acknowledging he saw everything that happened and advised him to follow the grievance

process. (R. 583–84, 744). Owens experienced significant pain following the search, which persisted for several days and recurred over the following weeks. (R. 746–48, 783, 838).

Owens reported the incident that same day. Near the officer’s desk in the pod, Lieutenant Hettich met with Owens and other detainees involved and obtained written statements describing the search and alleged use of excessive force. (R. 390, 744, 758, 806). On notebook paper, Owens detailed the frisk, excessive force used on him, and that he felt sexually violated. (R. 749, 751-52). Owens also signed an affidavit. (R. 758). Lieutenant Hettich took both documents that night—materials that neither Owens (nor his counsel) would see again. (R. 753, 758, 806). There is no documentation or video evidence of this exchange. (R. 392-93).

Owens also submitted a grievance through the detention center’s kiosk system, stating that Deputy Gibson had “grab[bed him] excessively” in the groin area. (R. 1039). In the grievance, Owens’s stated Deputy Gibson “violated me as a man and embarrassed me by grabbing me excessively in my crotch area. Deputy Erickson witnessed the whole thing.” (R. 1039). The officer on duty instructed Owens to resubmit the grievance/request for the matter to be addressed two days later when Lieutenant Butts would return to work, which Owens did. (R. 805, 1045).

Despite these reports, the investigation into the incident was limited. Testimony established that the PREA-related investigation lasted approximately one hour. (R. 460). Owens was not interviewed as part of that investigation, nor were other detainees present during the search. *Id.* The video recording of the search—captured by cameras in the yard—was not preserved. (R. 392–93, 449–50).

Additional testimony confirmed detention center policy required preservation of video evidence and documentation of witness interviews in connection with such investigations. (R. 330-

32, 333, 449–50, 464, 467).² Those procedures were not followed in this instance. *Id.* The investigation was closed before Owens received further medical evaluation, which later confirmed he sustained an injury around the groin.³ (R. 336).

In the days that followed, Owens made multiple requests for copies of his statement and affidavit and for documentation of the incident, but those requests were not fulfilled. (R. 1040, 1045).

This case, from pleading through verdict, was consistently treated as a claim for gross negligence under the Tort Claims Act. No intentional tort was submitted to the jury, no finding of intent to harm was requested or made, and the verdict rests solely on a determination that Petitioners failed to exercise slight care in the supervision and confinement of an inmate. (R. 19–23; R. 1009–1018; R. 1).

At trial and on appeal, Petitioners argued that the claim should be recharacterized as an intentional tort based on isolated language in the complaint. The trial court rejected that argument, (R. 918–920), and the court of appeals affirmed, recognizing that the case was tried and decided on a theory of gross negligence. This appeal follows.

² See R. 450 (explaining no assessment of any witness credibility occurred during the investigation); R. 460 (testifying that no interviews were recorded and no video evidence preserved); R. 330-32 (agreeing that a video with evidentiary value was not preserved in violation of policy); R. 359 (admitting no effort was made to preserve the video after the investigation or after Owen’s ultrasound determined he sustained an injury to the groin).

³ On February 24, 2020, Owens was taken to the Department of Corrections to get an ultrasound of his left and right testicles. (R. 339, 388, 748, 782, 840). The ultrasound showed Owens had sustained an injury around the groin. (R. 781). At that time, Owens’s right testicle was much larger than the left, and the area was tender to the touch. (R. 783). Owens explained he had a sensation of fluid on his right testicle while the left testicle felt “numb.” (R. 782-83). Owens was prescribed more ibuprofen for the pain and antibiotics to address fluid gathering in the sac around the testicles. (R.762). A week after receiving antibiotics, Owens’s symptoms cleared up. (R. 791).

Standard of Review

Petitioners ask the Court to reverse the denial of their motions for JNOV and a new trial absolute. A JNOV motion must be denied “where the evidence yields more than one inference” on the challenged issue. *Rogers v. Norfolk Southern Corp.*, 356 S.C. 85, 92, 588 S.E.2d 87, 90 (2003). The Court must view the evidence and resulting inferences in the light most favorable to the non-moving party and may grant a motion for JNOV when the evidence supports only one inference. *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 405, 680 S.E.2d 778, 781 (Ct. App. 2009). In considering a JNOV motion, a court is concerned with the existence of evidence, not its weight. A court considering a JNOV does not have authority to decide credibility issues or to resolve conflicts in the testimony or other evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). Finally, a motion for JNOV is the renewal of a directed verdict motion and cannot raise grounds beyond those stated in the earlier motion. *Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992). In sum, “[t]he jury’s verdict must be upheld unless no evidence reasonably supports the jury’s findings.” *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274.

A motion for new trial absolute based on the amount of a jury verdict may be granted only if the verdict amount is “so grossly . . . excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, corruption, or some other improper motives.” *Brinkley v. S.C. Dep’t of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

Arguments

This case does not redefine the line between intentional torts and negligence. Petitioners ask this Court to erase it. They seek to recharacterize a claim tried, instructed, and decided as gross negligence as an intentional tort—after the verdict—to obtain immunity, even though no

issue of intent was ever submitted to the jury. Accepting that position would collapse the framework the Legislature established under the Tort Claims Act by allowing intentional tort immunity to override negligence liability in cases like this one. South Carolina law does not permit that result.

I. A Claim Tried and Decided as Gross Negligence Cannot Be Recharacterized as an Intentional Tort.

Petitioners attempt to recast this case as a “hybrid” tort—an intentional tort repackaged as negligence. The record forecloses that characterization. This case involves a negligence claim based on how officers carried out a custodial search and how they failed to follow required procedures in responding to the incident that followed.

South Carolina law looks to the theory of liability asserted in a complaint, not isolated descriptions of conduct. *See Barnwell Prod. Credit Ass’n v. Hartzog*, 231 S.C. 340, 347, 98 S.E.2d 835, 839 (1957) (holding the theory of the complaint is determined from its overall scope and tenor, not isolated or fragmentary statements). The analysis turns on the theory asserted and litigated. *See Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 467, 629 S.E.2d 653, 667 (2006) (rejecting attempt to pursue a different theory of liability based on the same factual allegations). Here, the theory pled and pursued was gross negligence.

Owens pled two causes of action: gross negligence and negligent hiring and supervision. (R. 20–22). The gross negligence claim alleged multiple breaches of duty, including failure to follow policy, failure to supervise, and failure to provide medical care. (R. 20–21). Within that list, references to “assaulting” and “battering” appear alongside traditional negligence allegations. Those terms describe how the alleged negligence occurred; they do not transform the claim into a standalone intentional tort.

The record confirms it. The jury was instructed solely on gross negligence and returned a verdict on that basis. (R. 1009–1018; R. 1). The trial court’s instructions properly tracked the issues framed by the pleadings and the evidence presented. *See Pittman v. Galloway*, 281 S.C. 70, 73–74, 313 S.E.2d 632, 634–35 (Ct. App. 1984) (recognizing that jury instructions should track the issues framed by the pleadings and the evidence); *see also Singletary v. S.C. Dep’t of Educ.*, 316 S.C. 153, 159, 447 S.E.2d 231, 234 (Ct. App. 1994) (explaining jury instructions are confined to the issues made by pleadings and supported by the evidence). Although Petitioners argued at directed verdict that the claim should be treated as an intentional tort, the trial court rejected that argument. During that exchange, Respondent’s counsel clarified that no intentional tort was being pursued. (R. 920). Petitioners did not request an instruction on assault or battery or object to its absence, and the case was submitted to the jury on that basis.

That framing is controlling and consistent with settled tort principles. As explained in *Prosser and Keeton on the Law of Torts*, “[t]he defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but it is not an intentional wrong.” W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 8 (5th ed. 1984). “The line has been drawn by the courts at the point where the known danger ceases to be only a foreseeable risk which a reasonable person would avoid, and becomes in the mind of the actor a substantial certainty.” *Id.*

South Carolina law reflects that principle in practice. In *Longshore v. Saber Security Services, Inc.*, 365 S.C. 554, 619 S.E.2d 5 (Ct. App. 2005), the Court of Appeals affirmed a verdict finding liability for negligent use of force while rejecting assault and battery claims arising from the same conduct, explaining that such verdicts can be harmonized and are not inconsistent. *Id.* at

561–62, 619 S.E.2d at 9–10. Even where physical force is involved, South Carolina law does not require the conduct to be treated as an intentional tort as a matter of law. Instead, it may be evaluated under a negligence theory depending on the facts and the theory pursued.

Our precedent likewise draws a bright line between an intentional tort and negligence based on how a case is actually pled and supported by facts. In *South Carolina Medical Malpractice Liability Insurance Joint Underwriting Ass’n v. Ferry*, 291 S.C. 460, 354 S.E.2d 378 (1987), the Supreme Court recognized that labels alone do not control. Rather, the viability of a negligence claim turns on whether the complaint alleges facts supporting negligence. There, the Supreme Court agreed that the original complaint alleged no facts supporting a negligence claim. Although the complaint used terms like “negligence” and “recklessness,” the only facts pled amounted to an intentional tort. An amended complaint was subsequently filed adding alleged specific failures to “exercise ordinary care” and other breaches of professional duty, in addition to the prior intentional tort allegations. *Id.* Ultimately, the Supreme Court concluded that the amended allegations “sufficiently state[d] maintainable causes of action in professional negligence and recklessness.” *Id.* at 463–65, 354 S.E.2d at 380–81.

Notably, *Ferry* rejects the position advanced here by Petitioners that conduct must be treated as an intentional tort regardless of how the claim is pled. Where the complaint alleges facts supporting an independent negligence theory, the claim may proceed on that basis. Accordingly, *Ferry* confirms that a negligence claim turns on the facts alleged and supported, not on the labels used to describe the conduct.

By treating *Prior v. South Carolina Medical Malpractice Liability Insurance*, as dispositive, Petitioners overlook the analysis that controls. 305 S.C. 247, 407 S.E.2d 655 (Ct. App. 1991). Petitioners direct this Court to *Prior* for the proposition that conduct described as battery

must be an intentional tort. But that reading fails to account for what the Court did. *Prior* applied the rule set forth in *Ferry*—that labels alone do not control and that the viability of a negligence claim turns on whether the facts alleged support a negligence theory. *See id.* at 249–50, 407 S.E.2d at 657 (quoting *Ferry*, 291 S.C. at 463–65, 354 S.E.2d at 380–81). While the allegations in *Prior* supported only an intentional tort, that does not displace *Ferry*'s governing principle. Petitioners' argument skips that step and instead treats descriptive allegations as dispositive.

Moreover, *Prior* involved conduct that a prior court had previously found intentional. 305 S.C. at 249–50, 407 S.E.2d at 657. As reflected in the underlying decision in *Honea v. Prior*, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988), the allegations concerned a physician who, during a medical visit, took indecent liberties with a patient. Those allegations described solely sexual misconduct rather than the negligent performance of medical care or an independent act, such as a policy violation. *Id.* at 528, 369 S.E.2d at 847. The *Prior* court considered whether those underlying allegations could be treated as negligence for purposes of coverage and held they could not; the physician could not recast those allegations as negligence simply by labeling them as such. 305 S.C. at 249–50, 407 S.E.2d at 657. Neither the *Prior* nor *Honea* opinions recognize any separately articulated or viable negligence theory arising from the underlying *Honea* allegations. That difference reflects the same principle applied in *Ferry*: the analysis turns on the allegations pled and supported.

That same principle appears where intentional torts are pled. In *State Farm Fire & Casualty Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000), the plaintiff asserted five causes of action: intentional infliction of emotional distress, false imprisonment, assault, battery, and invasion of privacy. *Id.* at 10–11, 530 S.E.2d at 136–37. All plainly intentional torts. The court analyzed them as the intentional torts the plaintiff actually pled. In doing so, the court

rejected the plaintiff's attempt to invoke coverage by recasting intentional conduct in negligence terms. *Id.* at 11, 530 S.E.2d at 137.

Petitioners' remaining authorities likewise do not support their position. Cases such as *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), and *Douglass v. Florence General Hospital*, 273 S.C. 716, 259 S.E.2d 117 (1979), address intentional tort claims, not claims involving the negligent performance of an authorized act. In *Gist*, the court held that false imprisonment is an intentional tort for which negligence is not an element. 336 S.C. at 619, 521 S.E.2d at 167. That holding defines the elements of a false imprisonment claim and does not foreclose an independent negligence theory.

In *Douglass*, the Court recognized that even where a claim is framed as assault and battery, it "may ultimately prove to be one sounding in either simple negligence or heedlessness and recklessness," depending on the facts. 273 S.C. at 721, 259 S.E.2d at 120.⁴ Thus, these cases do not support Petitioners' contention that labeling conduct as an intentional tort is dispositive.⁵

In *Seabrook v. Town of Mount Pleasant*, the plaintiff alleged negligence based *solely* on the absence of probable cause for an arrest. 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020). The court held that such a theory was indistinguishable from malicious prosecution and therefore not independently actionable as negligence. 432 S.C. at 445–46, 853 S.E.2d at 510. The complaint did not challenge the manner in which the arrest was carried out or allege any independent breach of duty. *Id.*

⁴ The negligence claim in *Douglass* was barred under the charitable immunity doctrine then in effect, not because the alleged conduct could not sound in negligence. 273 S.C. at 720, 259 S.E.2d at 119.

⁵ While Petitioners turn to *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997), for its description of assault and battery, the case addressed the preclusive effect of a prior adjudication of liability and does not bear on the classification of a claim at the pleading stage.

Additionally, the defamation cases provide little support for Petitioners’ position. Those decisions effectively show that the negligence allegations were not independent claims at all, but were duplicative of defamation. *See Erickson*, 368 S.C. at 473–74, 629 S.E.2d at 673–74; *McGlothlin v. Hennelly*, 370 F. Supp. 3d 603, 620 (D.S.C. 2019); *Bassford v. Bassford*, No. 9:21-cv-02351-DCN, 2021 WL 5358976, at *2 (D.S.C. Nov. 17, 2021). In *Bassford*, the court made this point explicit, explaining that the plaintiff “allege[d] the same facts and issues in the form of a negligence claim.” 2021 WL 5358976, at *2. By contrast, Owens’s claim arises from the way an authorized act was performed, including violations of policy and failure to exercise due care—conduct distinct from any defamation or intentional tort theory.

This case falls on the negligence side of the line Prosser and Keaton describes, involving risk rather than intentional harm. Deputy Gibson was authorized, indeed required, to conduct a pat down search if he deemed it necessary. The claim is not that touching itself was impermissible, but that Deputy Gibson performed that authorized act using a prohibited method and in violation of policy, along with the policy violations that continued after the initial search. That is, at most, the negligent or reckless performance of an authorized act, not conduct undertaken with the purpose or substantial certainty of causing harm. Petitioners’ attempts to recast that claim as an intentional tort ignore both the governing legal framework and the record in this case, and it should be rejected.

This conclusion is consistent with South Carolina law more broadly, which recognizes that law enforcement conduct involving the risk of physical harm may be evaluated under negligence principles where appropriate.⁶ *See Clark v. South Carolina Department of Public Safety*, 362 S.C.

⁶ *See also District of Columbia v. Chinn*, 839 A.2d 701, 706–07 (D.C. 2003) (recognizing that police use-of-force claims may sound in negligence where supported by an independent breach of a standard of care); *Timmons v. Metropolitan Government of Nashville & Davidson County*, 307

377, 384–85, 608 S.E.2d 573, 577 (2005); *see also Newkirk v. Enzor*, 240 F. Supp. 3d 426, 438 (D.S.C. 2017) (recognizing that liability may arise from the negligent performance of official duties).

Nothing about this case alters the distinction between intentional torts and negligence. It does not expand or blur that line. Instead, it applies established principles to a claim that was pled, tried, and decided as one for gross negligence based on how officers carried out a custodial search and responded to the incident that followed.

II. Section 15-78-60(17) Does Not Apply Because This Case Does Not Involve an Intentional Tort.

Petitioners contend they are entitled to immunity under section 15-78-60(17) of the South Carolina Code of Laws. That provision applies only where the loss results from conduct involving “actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-60(17). That requirement was not part of this case.

Intent played no role in how this case was presented or decided. In closing, Petitioners argued that Respondent “ha[d] to prove gross negligence,” meaning that Deputy Gibson “didn’t exercise slight care in performing his duties at the detention center on that day.”⁷ (R. 991). The trial court then instructed the jury that “gross negligence is a failure to exercise a slight degree of care” and that a defendant is liable if he “breached the duty by failing to exercise even a slight degree of care.” (R. 1015). That instruction reflects settled South Carolina law, under which gross

S.W.3d 735, 743 (Tenn. Ct. App. 2009) (holding claim properly sounded in negligence where injury resulted from negligent assessment rather than an intentional use of excessive force); *Dormu v. District of Columbia*, 795 F. Supp. 2d 7, 13 n.18 (D.D.C. 2011) (noting that while there is no such thing as a “negligent battery,” the circumstances surrounding the use of force may support a negligence theory).

⁷ Petitioners took the same position in opening, telling the jury that Deputy Gibson “denies that he ever grabbed Mr. Owens’s testicles” and “denies he ever squeezed or did anything inappropriate.” (R. 129, 132).

negligence is the failure to exercise slight care. *See Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994); *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 331–32, 566 S.E.2d 536, 544 (2002). The jury was thus instructed that liability turned on whether Petitioners failed to exercise slight care, not on whether anyone acted with intent to harm. No instruction on intent was given. (R. 1009-18). The verdict reflects a finding of gross negligence. (R. 1). Significantly, that verdict encompassed not only how the search was conducted, but also the broader failures in response and investigation that followed.

The evidence in the record supports that framework. Deputy Gibson acknowledged that the frisk policy was designed to ensure “the safety of inmates.” (R. 166). He further agreed that conduct such as grabbing or twisting an inmate’s testicles would constitute a “safety rule violation.” (R. 267). The record also shows that Deputy Gibson used the “blade method” in conducting the search, which is prohibited by detention center policy. (R. 176–78).

Sheriff Michael Hunt’s testimony reinforces that conclusion. He agreed that causing an injury during a pat down search, particularly where there is no resistance, violates detention center policy. (R. 462). He further acknowledged that grabbing an inmate’s testicles during a search would violate the requirement that searches be conducted with dignity. (R. 196–97, 198).

Sheriff Hunt also confirmed that when an allegation implicates a possible PREA violation, related video footage should be preserved, and that such footage is important for a jury to evaluate the incident. (R. 464, 467). The failure to preserve that evidence here was itself a departure from required procedures. These admissions underscore that the case turned on compliance with governing standards, not any allegation of intent to harm.

The evidence further established that detention center personnel failed to preserve video evidence of the search and did not follow required investigative procedures. (R. 392–93; R. 449-

50). The PREA investigation was limited and did not include basic witness interviews. (R. 460). Those failures concern how the search was conducted and how the incident was handled—all questions of care. *See Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 314–16, 743 S.E.2d 109, 113–15 (Ct. App. 2013) (upholding gross negligence claim based on failure to follow governing procedures in carrying out governmental duties).

While Petitioners focus on the presence of physical contact as a basis to recharacterize the claim, that focus does not alter the analysis. Searches necessarily involve physical contact, and such contact is ordinarily privileged when conducted in accordance with governing standards. The relevant inquiry is whether the conduct complied with those standards. Where the evidence shows the use of a prohibited technique and failures to follow required procedures, liability arises from the way the search was performed—not from any intent to harm. South Carolina law evaluates such conduct by reference to the degree of care exercised in carrying out a duty, and the applicable standard of care may be informed by governing policies and procedures. *See Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) (explaining that negligence turns on breach of a duty and failure to exercise the required degree of care); *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135–36, 638 S.E.2d 650, 656–57 (2006) (recognizing that internal policies and procedures may inform the standard of care in negligence actions).

The structure of the Tort Claims Act confirms that result. Section 15-78-60(17) provides immunity only for intentional conduct, while subsection (25) expressly preserves liability for gross negligence in the “supervision, protection, control, confinement, or custody” of an inmate. S.C. Code Ann. § 15-78-60(25). The Legislature drew a distinction between intentional wrongdoing and failures of care in custodial settings. South Carolina courts have consistently treated claims

arising in that context as questions of gross negligence. *See Madison*, 371 S.C. at 144, 638 S.E.2d at 661; *Steinke*, 336 S.C. at 392, 520 S.E.2d at 152. That framework reflects the Legislature’s decision to preserve liability for failures of care in custodial settings.

Petitioners’ position, if accepted, would collapse the framework of the Tort Claims Act as applied to cases like this one. If any instance of injury during a custodial care were treated as an intentional tort, subsection (17) would swallow subsection (25), eliminating negligence based liability in precisely the category of cases the Legislature chose to preserve. The Act must be construed as a whole, and its provisions cannot be interpreted in a manner that renders one part a nullity. *See Chakrabarti*, 403 S.C. at 319, 743 S.E.2d at 115 (rejecting interpretation of the Tort Claims Act that would render portions of the statute a nullity).

Even if Petitioners’ characterization of the search were accepted, the verdict would still stand because it is supported by independent evidence of failures in the response that followed. For example, Owens testified that he made multiple requests for medical attention following the incident but received no meaningful response. (R. 789–90). Although he ultimately received an ultrasound, that did not occur until nearly a month after the injury. (R. 387). This evidence provides a basis for Owens’s claim that detention center personnel failed to respond to an obvious injury and repeated requests for care—failures that sound in negligence, not professional medical judgment. The record likewise reflects additional failures in the response and investigation to the frisk, including the failure to preserve video evidence and to follow required investigative procedures. (R. 392–93; R. 449–50; R. 460). These failures provide independent bases for the jury’s finding of gross negligence, regardless of how the search itself is characterized. *See Curcio*, 355 S.C. at 320, 585 S.E.2d at 274.

For these reasons, section 15-78-60(17) does not apply because this case involves no allegation or finding of intent to harm. Petitioners' argument depends on recharacterizing a negligence claim after it has been tried and decided and invoking an immunity provision that was never at issue before the jury. South Carolina law does not permit that result.

III. The Trial Court Properly Admitted Evidence Related to the PREA Investigation.

Petitioners' remaining argument concerns the admission of testimony referencing a PREA investigation. That argument does not provide a basis for reversal and is without merit.

The evidence was not offered to establish an independent cause of action under PREA. It was introduced as part of the factual context surrounding the detention center's policies, the handling of the incident, and the adequacy of the response. The trial court recognized that distinction and permitted the evidence for that limited purpose. (R. 10–11).

That ruling is well within the trial court's discretion. The admission of evidence is reviewed for abuse of discretion, and reversal is warranted only where the ruling is controlled by an error of law or results in prejudice. *See State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008). Relevant evidence is admissible if it has any tendency to make a fact of consequence more or less probable. Rule 401, SCRE.

Here, the challenged testimony was directly relevant to whether detention center personnel followed applicable policies in responding to the incident. The record reflects that the investigation into the search was cursory at best: it lasted less than an hour, no inmate witnesses were interviewed, no interviews were recorded, and the video footage of the search was not preserved. (R. 392–94, 449–51, 460–61, 330–33, 359). Testimony further established that preservation of such evidence was required by policy when an allegation of injury or misconduct was made. (R. 464–65). Evidence concerning those procedures, and Petitioners' failure to follow

them, was directly relevant to whether Petitioners exercised slight care in supervising and responding to the incident.

Nor was the evidence offered to establish negligence per se. South Carolina law is clear that the violation of a policy or standard does not constitute negligence per se but may be considered by the jury as evidence of a breach of duty. *See Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 315, 594 S.E.2d 867, 875–76 (Ct. App. 2004). Here, Sheriff Hunt testified that detention center policies required preservation of video evidence and proper investigative procedures following allegations of injury. (R. 464–65). That testimony independently qualifies as an admission of a party-opponent. Rule 801(d)(2), SCRE. The PREA-related testimony thus served only as evidence of those standards and Petitioners’ failure to follow them.

To the extent Petitioners suggest the PREA investigation could not establish proximate cause, that argument misses the point. The evidence was not admitted to establish an independent causal theory, but as part of the overall evidence bearing on whether Petitioners exercised slight care in responding to the incident.

Petitioners do not meaningfully contend that the admission of this evidence resulted in prejudice. Instead, their argument is framed as one of legal error. Petitioners assert that any reference to PREA was categorically improper because it does not create an independent cause of action. *See generally*, Pet’s Brf. at 13; *see also* 34 U.S.C. § 30301. That framing is misplaced. The admissibility of evidence does not turn on whether it supports a standalone claim, but whether it was admitted for a permissible purpose. Here, the trial court admitted the evidence as relevant to detention center policies and the adequacy of the response to the incident. This is an evidentiary determination reviewed for abuse of discretion, not de novo error of law. *See generally, Fletcher*, 379 S.C. at 24, 664 S.E.2d at 483.

Whether PREA creates a standalone claim is immaterial. The only question is whether the evidence was admitted for a permissible purpose. It was.

Petitioners' argument instead reflects the consequences of their own litigation choices. Petitioners did not timely produce the PREA report, and instead disclosed it only days before trial. (R. 56, 84). They then chose not to present testimony from Lieutenant Bowman, the officer responsible for the investigation, to establish any foundation for the report or explain its contents. (R. 89). At the same time, Petitioners failed to preserve the very video evidence their own policies required them to retain following an allegation of injury. (R. 330–33, 360, 464–65). Having failed to develop or present that evidence, Petitioners cannot now recast the resulting evidentiary record as error on appeal.

In any event, Petitioners cannot demonstrate that the admission of this evidence affected the verdict. The jury was instructed solely on gross negligence and returned a verdict on that basis. (R. 1009–1018; R. 1). There is no indication the jury treated the PREA-related evidence as an independent claim or relied on it for any improper purpose.

The trial court acted within its discretion in admitting the challenged testimony, and the court of appeals correctly affirmed that ruling. Petitioners cannot recast the evidentiary record on appeal to manufacture reversible error where none exists.

Conclusion

For these reasons, the trial court should be affirmed as to the gross negligence verdict.

Signature Page to Follow

Respectfully submitted,

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