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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-002478
Case No. 2018-CP-40-4850

Randle Jackson as the Personal Representative of the
Estate of Dashaun Simmons, ... Respondent,

v.

South Carolina Department of Corrections,..... Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the lower court correctly held that the same gross negligence standard of S.C. Code Ann. § 15-78-60(25) must be applied to all other exemptions and fully explained the grant of summary judgment on that basis.

II. While Appellant failed to properly raise this issue, whether the lower court was well within its discretion to entertain and grant a subsequent summary judgment motion, particularly where the evidentiary record was vastly different.

III. Whether the lower court correctly determined that Appellant cannot avail itself of the Section 15-78-60(17) exemption due to Appellant's gross negligence.

IV. Whether the lower court correctly determined that the numerous violations of internal policies constituted gross negligence within the meaning of the Tort Claims Act exemptions.

STATEMENT OF THE CASE

This case was initially filed on September 12, 2018. However, Respondent[1] consented to a stay of the matter upon request of the Appellant. On September 19, 2019, a consent order to stay was entered pending resolution of criminal charges against a prison guard central to the case. The stay was lifted by consent of the parties on August 26, 2022. Shortly thereafter, the parties exchanged discovery. Appellant served its responses to Respondent's first requests for production and interrogatories on October 27, 2022. Soon after the stay was lifted, the case began appearing on trial rosters. The parties filed various continuance motions and scheduling orders while conducting discovery.

Respondent submitted his first supplemental discovery requests on February 3, 2023. A timely response was not received. As the case was scheduled to appear on the trial roster after April 15, 2023, Respondent was required to file a motion to compel on March 21, 2023 to elicit a discovery response, which did not arrive until November 10, 2023. Nevertheless, Respondent filed a motion for summary judgment in advance of trial on April 7, 2023. The motion argued that Appellant was grossly negligent and that the court should enter summary judgment as to liability. That motion was denied by the Honorable Daniel Coble on December 27, 2023. His order was not detailed and merely stated that there were genuine issues of material fact and that the arrest warrant created an issue for the jury. He signed a subsequent, slightly more detailed order on January 2, 2024.

[1] During the pendency of this litigation, Plaintiff Dashaun Simmons was killed by inmates while in the care and custody of Defendant SCDC. That incident, which occurred some time after the incident at issue in this appeal, is also the subject of litigation. The Personal Representative of Mr. Simmons' estate has been substituted as the Plaintiff in this matter. However, for the sake of simplicity, the term "Respondent" shall refer to both Dashaun Simmons and his estate.

Following the April 7, 2023 summary judgment motion, Respondent made great efforts to gather discovery that was not produced with the initial round of discovery requests. This includes the Rule 30(b)(6), SCRCP deposition of Appellant, which was the subject of a significant amount of litigation. It also includes Respondent's attempts to collect a full set of the Department of Corrections policies, procedures, and post orders, as well as other discoverable materials. By the time the summary judgment motion at issue in this appeal was heard by the lower court, Respondent had issued seven amended Rule 30(b)(6) deposition notices, the lower court had intervened at least twice to order Appellant to produce knowledgeable witnesses, and, in Respondent's view, Appellant was continuing to fail to produce knowledgeable witnesses about the enumerated topics.

On May 27, 2025, Respondent filed a Motion for Summary Judgment or, in the Alternative, a Motion to Strike SCDC's Answer. As discussed in the supporting memorandum submitted on August 1, 2025, the motion sought summary judgment with respect to each of Appellant's defenses and, alternately, sought Rule 37, SCRCP sanctions for Appellant's discovery misconduct. The motion specifically argued for summary judgement regarding each of Appellant's defenses of comparative negligence, intervening acts, Tort Claims Act exemptions, discretionary immunity, assumption of risk, and joinder. The motion sought the discovery sanction of striking Appellant's answer as an alternative to awarding summary judgment. On June 25, 2025, Appellant also filed a motion for summary judgment.

Judge Coble presided over the August 4, 2025 hearings for both Respondent's motion for summary judgment and Appellant's motion for summary judgment. On August 7, 2025, Judge Coble issued an order denying Appellant's motion and granting Respondent's motion. In his initial order, Judge Coble enumerated each defense and his reason for granting summary judgment. The

trial court issued a more detailed order on August 25, 2025, discussing the reasoning behind granting summary judgement as to each of Appellant's enumerated defenses.

On September 4, 2025, Appellant filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. Appellant argued—for the first time—that Respondent had filed a prior summary judgment motion and complained that the Court did not address that fact in its order granting summary judgment. Defendant's Motion to Alter or Amend was summarily dismissed by Form 4 on November 13, 2025. This appeal followed.

STATEMENT OF THE FACTS

Dashaun Simmons began his tenure at the Broad River Corrections Institute (BRCI) on May 22, 2017. BRCI is classified as a level 3 maximum security or 'close' facility within the Department of Corrections, meaning it contains "violent offenders with longer sentences, and inmates who exhibit behavioral problems. . . . Inmates are closely supervised with their activities and movement highly restricted."[2] During the times relevant to this action, Simmons was housed at the Marion unit within BRCI. One of a handful of housing units at BRCI, Marion was known to be a particularly rough unit within the already high security prison. (Deposition of Brittney Livingston, pp.19–20, 60).

During the times relevant to this action, BRCI was in a state of "lockdown" or increased security due to events SCDC refuses to disclose. (Deposition of Evan Garris, p.146). In fact, the Marion unit at BRCI was so dysfunctional at that time that it was constantly on lockdown for one reason or another. (Dep. of Garris, at p.90). The unit is described as housing around 200 inmates on two sides separated by a locked sally-port. Inmates are not supposed to interact with those on the other side of the sally-port. (Deposition of Matthew Kennedy, p.16). Even though the two sides of the units are not supposed to interact with each other, and even though this is a particularly dangerous unit within a maximum-security prison, and even though BRCI was in an institutional lockdown at the time relevant to this action, the prison staff had little control over the whereabouts of the prisoners. (Deposition of Holden Byrd, p.40**:** "Q: How often do inmates end up in unassigned cells? How often to do inmates end up in cells they're not assigned to? . . . A: Happens

[2] Department of Corrections Ad Hoc Subcommittee, Feb. 21, 2019, p.7 available at https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/Facilities%20and%20Security%20Levels.pdf.

more than I would like to have seen."); (Dep. of Garris**,** p. 141**:** "Q: Or why they allowed Simmons to be in a – a non-assigned dorm room. Do you know any of that? A: That was fairly common for the unit at that time. . . . they just kind of went to whichever cell they – they almost assigned themselves cells"). In fact, Police Services Investigator Evan Garris, who was assigned to investigate the stabbing at issue in this case, admitted, "the inmates essentially ran that unit." (Dep of Garris, p.142). Investigator Garris went on to concede that this created a dangerous situation:

> Q: Why did nobody ever do anything about that?
> A: I don't know
> Q: Should something have been done about that?
> A: I would think it would be essential for the security of the institution for inmates to be in their assigned cells.

(Dep. of Garris**,** p.142).

On July 17, 2017, at 7:15 p.m., Corrections Officer Anthony Hall began his shift at the Marion unit of BRCI. Officer Hall was relieving Officer Matthew Kennedy, who was the day shift officer that day. Kennedy was working by himself in the dangerous Marion unit and testified that he was responsible for locking down inmates in the evening for the evening shift change. (Dep. of Kennedy, p.17). Despite the fact that there was an institutional lockdown taking place, it seems that the inmates in Marion unit were permitted to be out of their cells and to roam about the unit. Kennedy testified that on a typical night he would begin locking down the inmates around 6:00 or 6:30 in the evening. (Dep. of Kennedy, p.17).

SCDC policy requires that a level III institution like BRCI must conduct at least three "formal" counts per day, including one after the inmates are secured for lights out in the evening. (SCDC OP 22.06). As a "formal" count, this evening count requires a minimum of two officers to be present and to independently confirm that all inmates are accounted for. The inmates are required to remain standing in their count area so that "accurate and current information on the

number of inmates assigned to each institution, their names, SCDC numbers, housing assignments, **and bed assignments**" may be maintained. (emphasis added) (SCDC OP 22.06). It is obvious that one of the important purposes of doing these formal counts in the evening is to be certain that the inmates are in their appropriate cells.

There can be no question that, on the evening that Mr. Simmons was attacked, the count procedure described above—which is mandated by SCDC policy—was not followed and SCDC did not ensure that inmates were locked in their cells for the evening or maintain knowledge of which inmates were in which cells. (See SCDC OP 22.06). Kennedy testified that normally he would attempt to get inmates into their correct rooms, identify them with their ID's, and lock them in their rooms for the night. (Dep. of Kennedy, p.17). When the night shift officer relieving him arrives, both officers are required by SCDC policy to confirm the count and to ensure the doors are all locked. (SCDC OP 22.06). The day shift officer can only leave once the doors are all locked and the count is confirmed. (Dep. of Kennedy, p.19). But on the night of July 17, 2017, Kennedy witnessed the relief officer, Anthony Hall, *opening* several of the doors. (Dep. of Kennedy, pp.20-22; Statement of Kennedy). He reported this to his shift Lieutenant, Clinton Parker, who instructed Kennedy to go home and told him that that the superior officer would take care of it. (Stmt. of Kennedy). So the day shift officer knew that all of the prisoners had not been locked down, did not complete the formal count as required, and simply went home for the day. He informed his supervisor of this fact, and his supervisors did not send anybody to the dorm to lock the inmates down. SCDC was on notice that doors were open and inmates were not locked down when the day shift officer left for the day and Hall began the night shift.

Kennedy's testimony and his voluntary statement to police services indicate that he witnessed the fact that there were unlocked doors in the Marion unit, informed his superior officer,

and then left his post at the instruction of that officer without a completed count and with the knowledge that all cells had not been locked down. Irrespective of the reason *why* those cells were unlocked and the unit was not locked down, Kennedy, Parker—and thus SCDC—were well aware that the unit had not been locked down and that no formal count had been completed. During his deposition, Parker denied ever having a conversation with Kennedy and denied knowing anything about it:

> Q: …. It's my understanding, and it may be correct, that [Kennedy] said he reported that to Clinton Parker who I thought was the supervisor. Would you have had any reason for Matthew Kennedy, the Marion unit D1 officer, to tell you anything about [Anthony] Hall?
> A: No
> Q: Okay.
> A: We never had a conversation

(Deposition of Clinton Parker, p.8). Notably, the duty roster for that day does show a Lieutenant Clinton Parker on duty during the D1 shift. (BRCI July 17, 2017 Duty Roster). Thus, the evidence in this case demonstrates that SCDC was on notice that the D1 shift officer in Marion Unit had left his post without locking down all the doors and that nothing was done to address the situation. It was effectively chaos in Marion Unit, and SCDC chose to do nothing about it and to leave the night shift officer to his own devices, as the sole officer in the unit, among the inmates.

The night shift officer, Anthony Hall, testified that when he arrived at Marion unit for his shift around 7:00 that evening, numerous inmates were already out of their cells. He elaborated that while it was commonplace for inmates to be out of their cells when he arrived for shift change, Kennedy would typically stay around until they were all locked up. However, that night Kennedy left the unit before the inmates were locked up and the count was completed. (Deposition of Anthony Hall at pp.23-24). Hall was then alone in Marion unit attempting to corral the inmates into their cells using only basic commands and patience—he had no assistance from either

Kennedy or any supervisor—so that the evening count could be completed. This was a recurring problem about which he had previously notified his supervisors and the Warden, yet received no assistance. (Dep. of Hall, p.110).

As the evening progressed, the operations area within the prison started to receive phone calls from prisoners within the prison.[3] The shift supervisor for the D2 shift (the night shift when the incident occurred) testified that these calls started coming in a couple hours into his shift or around 10:00 pm. (Deposition of Ulysses Collins, pp.12-13). The callers told the operations desk that someone had been stabbed and was bleeding out and would not survive to see the morning if he not receive medical attention. (Dep. of Livingston, pp.29-30). The control room supervisor that evening, Brittney Livingston, places these calls at a later time in the evening, however there is much confusion over the precise timeline. Importantly, the timing of these calls could easily be confirmed through the operations logbook, which should have been provided in discovery and is required by SCDC policy to record matters such as this.[4] However, this document has never been produced despite multiple discovery requests seeking its production.[5] Respondent also requested the phone records from that evening, which were likewise never produced.

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[3] Notably, these calls came from contraband cell phones possessed by prisoners and from units other than the Marion unit where the incident occurred. Thus, prisoners in a maximum security prison that is on lockdown who are locked in cells in an entirely separate building know more about what is taking place inside the Marion unit that the guards who are allegedly in control of the prison. The willful indifference and sheer incompetence of SCDC employees during this time is absolutely staggering.

[4] See Post Order 6 – Control Room/Communications ("This officer(s) will maintain a clear, factual, concise and **permanent** log of all events to include all staff assigned, all visitors to this post, all equipment/keys assigned, inmate count, all inmate activities conducted, and any other incidents or emergencies related to the institution." (emphasis added).

[5] Defense counsel has claimed that they were unable to find various missing log books from that evening. The only possible conclusions are that the log books were destroyed in violation of policy,

The inmate calls "went on for about an hour or two hours into the shift." (Dep. of Collins, p.12). Eventually, after receiving numerous calls informing him that an inmate had been stabbed and was bleeding to death in a cell somewhere in the prison, the shift supervisor, Ulysses Collins. decided that he would look into things. (*Id*). According to his statement, Collins went to the Marion unit around 12:15 a.m. and found about 20 or 30 doors unlocked in the unit. (Statement of Collins). Again, it is unclear how the timeline unfolded, because at some point around 3:00-4:00 a.m. Collins visited the Monticello unit—an entirely separate building from the Marion unit—to talk with an inmate who had communicated to the officer in that unit that an inmate had been stabbed in Marion unit. The officer in the Monticello unit confirms this interaction somewhere around 3:00-4:00 a.m. in both his written statement the next morning and in his deposition testimony. (Statement of Byrd; Dep. of Byrd**,** p. 21).

Eventually, Collins finds his way back to the Marion unit after speaking with the prisoner in Monticello. He and the yard Seargent, Renee Wright, start searching and fail to locate any injured prisoner in Marion. They give up the search and, as they are leaving the unit, they hear a banging on the last door coming out of the unit. They open the door and discover Simmons "on the bottom bunk full of holes." (Dep. of Collins, p.15). Simmons had been brutally assaulted at some point earlier in the evening—around 10:00 p.m. according to the testimony of Collins—and despite numerous calls for aid by inmates throughout the prison, he was left to bleed out "full of holes" until sometime after 4:00 a.m.

After he was discovered, Simmons was taken to the hospital for treatment. He suffered massive blood loss from multiple stab wounds and bubbling air from his wounds. He lost

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they were destroyed intentionally as a cover up, or defense council is intentionally not producing them. None of these options are excusable.

consciousness on the table at the hospital and was still receiving CPR when he left the hospital for the trauma center. The next day, Simmons was readmitted to the hospital due to infection concerns because of SCDC's failure to provide medication to him.

Following the attack, Simmons filed suit for SCDC's failure to protect and other tortious conduct related to the stabbing and served SCDC with the pleadings and discovery requests. On October 17, 2018, SCDC filed its Answer. At the request of SCDC, on October 4, 2019, the parties filed a Consent Order to Stay Deadlines Pending Resolution of Criminal Charges due to criminal charges filed against one of the SCDC officers working during the attack. Those charges were subsequently dismissed by the Fifth Circuit Solicitor's Office.

Years after Simmons served the complaint and discovery requests, he finally received the first discovery responses from SCDC on October 27, 2022. On February 3, 2023, Simmons served his first supplemental discovery requests upon SCDC. After more than a month passed and the case had already appeared on trial dockets, Simmons was forced to file a motion to compel responses to the supplemental discovery requests on March 21, 2023. Simmons did not receive a response to these discovery requests for an additional seven months. When the responses were served on November 10, 2023, they were deficient. Despite the insufficiency of Appellant's discovery responses, Respondent submitted a motion for summary judgment in advance of trial on April 7, 2023. Respondent argued that Appellant was grossly negligent and that the court should enter summary judgment as to liability. That motion was denied by the Honorable Daniel Coble on December 27, 2023. His order was not detailed and merely stated that there were genuine issues of material fact and that the arrest warrant created an issue for the jury.

In the lengthy time between when SCDC's responses were due and when SCDC finally sent deficient responses, Respondent worked diligently and took depositions of inmates and guards

identified in SCDC's responses to Simmons' first set of interrogatories. Simmons' made a second attempt at a Rule 30(b)(6) deposition of SCDC on January 23, 2024, with a date of deposition set for February 7, 2024, at defense counsel's office in Columbia.[6] Before the deposition could take place, defense counsel submitted a motion for a protective order asserting various grounds, many of which border on ridiculous. For example, defense counsel asserted that Simmons could not conduct discovery on any information concerning the SCDC's affirmative defenses because it would "invade the mental impression of counsel for the Defendant . . . ." (February 5, 2024, Def. Mot. for Protective Order at 2). Beyond the obvious fact that defendants bear the burden of proving defenses they assert, a layperson would likely understand that an affirmative defense pleading in an answer is not work product. Such was the frivolous nature of defense counsel's repeated attempts to impede and delay the Rule 30(b)(6) deposition.

As Respondent continued to attempt to conduct the Rule 30(b)(6) deposition, the lower court was forced to intervene twice to order Appellant to comply with Respondent's deposition notices. Respondent persisted in his efforts to conduct discovery. Prior to filing the May 27, 2025, Motion for Summary Judgment or, in the Alternative, Motion to Strike SCDC's Answer, Respondent served his Seventh Amended Rule 30(b)(6), SCRCP Deposition Notice and Topic List on April 24, 2025. Appellant's continued failure to comply with the lower court's orders regarding the deposition, as well as its failure to provide discoverable documents and informed testimony, was the basis of the Motion to Strike aspect of the May 27, 2025 motion.

Despite the difficulties in obtaining discoverable evidence from Appellant, Respondent was able to elicit various bits and pieces of useful evidence through depositions and eventual

[6] Plaintiff submitted a much earlier Rule 30(b)(6) deposition notice in October 2021, but that deposition did not take place due to SCDC seeking a stay.

production of significant documents. For example, during the deposition of Ulysees Collins, one of the officers on duty the evening of the assault, Respondent learned for the first time that there was actually another inmate in the room with Simmons when he was stabbed. That inmate—a man who was literally in a room with Simmons as he was assaulted—has yet to be identified. Additionally, the post orders for Broad River Correctional Institution, which describe the specific duties and responsibilities of each post within the facility, were not produced in full until May 20, 2025. These documents lay out what the officers were required to do and not do to ensure that the facility was operated in a secure and safe manner. They are fundamental to this case because once depositions were finally complete and the post orders were provided, it became clear that this assault occurred because the officers at that facility violated numerous internal policies and procedures. This information was key to Judge Coble's August 25, 2025, order granting summary judgment. (*See, e.g.*, August 25, 2025, order at 9: "The failure to follow policies and procedures alone is grounds to find gross negligence.").

STANDARD OF REVIEW

There are two applicable Rules before the Court for review on this appeal: summary judgment under Rule 56(c), SCRCP and reconsideration under Rule 59(e), SCRCP.

I. Summary Judgment

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 769 (2008) (quoting Rule 56(c), SCRCP). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id*.

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Singleton v. Sherer*, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008). The Supreme Court of South Carolina has recently held the "mere scintilla of evidence" standard inapplicable, overruling *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009), *overruled by Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). To withstand summary judgment, there must be a "genuine issue of material fact." *Kitchen Planners, LLC* at 463, 892 S.E.2d at 301. "A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror." *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). "However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." *Id*. "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is

not genuine." *Thompkins v. Festival Ctr. Grp. I*, 306 S.C. 193, 194, 410 S.E.2d 593, 594 (Ct. App. 1991).

II. Rule 59(e) Motion for Reconsideration

The South Carolina Rules of Civil Procedure contemplate two situations in which a party should consider filing a Rule 59(e) motion. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004). A party may wish to file such a motion when the court has misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Id*. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. *Id*. A party cannot use Rule 59(e), SCRCP, to present to the lower court an issue the party could have raised prior to judgment but did not. *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). Rule 59(e) motions are not vehicles for bringing new theories or arguments, nor can a party use a Rule 59(e) motion to present to the lower court an issue that the party could have raised prior to the judgment but did not. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing *Natural Resources Defense Council v. U.S. E.P.A.*, 705 F. Supp. 698, 701 (D.D.C. 1989)). "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76,497 S.E.2d 731, 733 (1998).

ARGUMENT

I. The lower court correctly held that the same gross negligence standard of S.C. Code Ann. § 15-78-60(25) must be applied to all other exemptions and fully explained the grant of summary judgment on that basis.

Despite the various arguments raised by Appellant, at its core this appeal truly concerns a singular issue: application of the gross negligence standard in one Tort Claims Act exemption to the other exemptions. As such, it is conspicuous that Appellant's brief does not discuss or even cite any of the seminal cases that establish the rule that "when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception." *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.").

Appellant begins its first argument by erroneously claiming, "[t]he trial court granted summary judgment as a matter of law to the Respondent as to all Tort Claims Act immunity defenses asserted by SCDC; yet, the trial court only addressed immunity under Section 15-78-60(25)." (App. Br. at 8). However, the lower court discussed the application of subsection (25) and the applicable law—which Appellant simply choses to ignore—in ruling that Appellant cannot avail itself of the Tort Claims Act exemptions. The lower court's explanation was sufficiently succinct and clear as to quote verbatim here:

i. 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.**

(August 25, 2025 Order, pp.7–9 (emphasis added)).

The lower court correctly determined and explained that, because TCA subsection (25) applies in this case, "the correct approach . . . is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard." *Steinke* at 395, 520 S.E.2d at 153. This Court and the Supreme Court's reasoning behind this is fundamentally based in the laws of statutory construction. In interpreting legislative intent, the Court should presume that the Legislature did not intend to do a meaningless or futile thing. *Gaffney v. Mallory*, 186 S.C. 337, 195 S.E. 840, 844 (1938). Instead, the Court should construe a provision in such a way that it is meaningful and is not rendered pointless by the interpretation. *Steinke* at 396, 520 S.E.2d at 154 (citing *Ballard v. Ballard*, 314 S.C. 40, 443 S.E.2d 802 (1994)). Thus, the correct approach "is to allow the government to assert all relevant exceptions, and apply the gross negligence standard to **all** when it is contained in one applicable exception." *Id.* at 397, 520 S.E.2d at 154.

The lower court in this matter explained this principle and went on to determine whether Appellant was grossly negligent in the operation of the prison and exercise of duties that evening. The lower court correctly found that "[t]he failure to follow policies and procedures alone is grounds to find gross negligence." (August 25, 2025, Order at 9 citing *Jinks v. Richland Cnty.*, 355 S.C. 341, 348, 585 S.E.2d 281, 285 (2003)). Appellant had numerous policies and procedures in place, and "the only reasonable inference that can be drawn from the evidence presented is that those policies were completely ignored." (August 25, 2025, Order, p. 9). Because Appellant was grossly negligent, that same standard is applied to all other TCA exemptions and Respondent was properly entitled to summary judgment with respect to the TCA exemptions.

Appellant is consciously choosing to simply ignore this well settled law—law with which Appellant's counsel is unquestionably familiar, as his firm has litigated the issue more than once. As the above discussion illustrates, the trial court correctly applied the well settled law of *Repko, Chakrabarti, Steinke*, and their progeny.

II. While Appellant failed to properly raise this issue, the lower court was well within its discretion to entertain and grant a subsequent summary judgment motion, particularly where the evidentiary record was vastly different.

A plaintiff may move for summary judgment at any point 30 days after the action commenced. Rule 56, SCRCP. The rule does not contain a limitation or restriction prohibiting a party from filing successive motions for summary judgment. It is well settled that successive motions for summary judgment may be heard within the discretion of the lower court. *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004). This is particularly true where the adverse party produces new, material evidence that was not produced prior to the initial motion.

Appellant asserts—without any citation to any authority whatsoever—that the lower court committed an error of law by granting Respondent's subsequent summary judgment motion. It appears that this argument is based upon an erroneous assertion that the denial of the initial motion for summary judgment somehow established the law of the case. As our Supreme Court has very clearly stated, "[a] denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial." *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (citing *Parker Oil Co. v. Smith,* 34 N.C.App. 324, 237 S.E.2d 882 (1977)). Thus, the fact that the lower court denied a prior summary judgment motion has no bearing on its decision to grant a subsequent motion. This Court should reject Appellant's argument on this basis alone. Nevertheless, while the lower court owes Appellant no explanation for its decision, the grant of the second summary judgment motion was clearly based upon evidence obtained by

Respondent after the first motion was submitted. Furthermore, this argument, erroneous as it is, was not properly raised and this Court should decline to entertain it.

i. Appellant cannot raise new issues through a Rule 59(e) motion.

The purpose of a motion to alter or amend pursuant to Rule 59(e), SCRCP is to seek a ruling on specific unaddressed issues or clarification of facts or rulings. Such a motion may *not* be used to raise arguments that should have been made prior to the ruling. *Hickman* at 456, 392 S.E.2d at 482 ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not."); *see also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Gartside* at 43, 677 S.E.2d at 625.

Appellant complains that Respondent moved for summary judgment previously on April 7, 2023, that the lower court denied the motion, and that the May 27, 2025, should not have been heard. If Appellant had a cognizable argument that the issues raised in Respondent's May 27, 2025, summary judgment motion had been previously raised, it should have raised that argument during the May 27, 2025, hearing and not after the lower court issued a ruling. However, this argument was made for the first time in Appellant's Rule 59(e) motion. This issue, erroneous as it is, cannot be raised for the first time in a motion to alter or amend, and this Court should not entertain the improperly raised argument.

ii. The motions are different.

Even if this argument is addressed, it should fail nonetheless. Respondent's April 7, 2023, summary judgment motion concerned liability; the May 27, 2025 summary judgment motion concerned Appellant's affirmative defenses. The lower court issued two orders concerning the April 7, 2023, summary judgment motion, a short order on December 27, 2023, and a slightly longer order on January 2, 2024. Neither order makes any ruling with respect to gross negligence

or Appellant's affirmative defenses. Respondent's April 7, 2023, motion for summary judgment argues that the court should find gross negligence as a matter of law, but the lower court did not rule on this issue. The orders deny Respondent's motion without reaching the gross negligence issue, and it was not necessary to reach that issue. Appellant's brief notes that "Respondent previously moved for summary judgment in 2023 as to the applicability of Section 15-78-60(17) immunity." (App. Br., 8). However, Respondent's brief for the 2023 summary judgment motion does not cite Section 15-78-60(17) a single time.

While Appellant's brief makes a tortured argument that the orders concerning the first summary judgment motion make the opposite ruling as the orders concerning the second summary judgment motion, this is simply not the case. The prior summary judgement orders find an issue of fact with respect to vicarious liability and negligent hiring and supervision, which Appellant does not mention or argue in its brief. The orders make no findings with respect to gross negligence. Indeed, the term "gross negligence" does not appear in either order concerning the first summary judgment motion. On the other hand, the orders regarding the May 27, 2025, summary judgment motion (the second motion) find, *inter alia*, that Appellant SCDC was grossly negligent and that due to the well settled law regarding Tort Claims Act exemptions as discussed in Section I *supra*, Appellant cannot avail itself of those exemptions. As such, the lower court awarded summary judgment with respect to Appellant's affirmative defenses.

Even if the issues in the two summary judgment motions were exactly the same, the denial of a summary judgment motion does not preclude a ruling on a subsequent summary judgment motion. Nevertheless, the rulings in the instant case differ. Furthermore, to the extent that the rulings differ from one another, as discussed below, the evidentiary record between the two motions was materially different, and the lower court cited specific reasoning for its ruling. *See,*

e.g., May 27, 2025 Order, p. 9 ("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 polices were completely ignored."). These polices were not available to the Respondent until the second summary judgment motion because Appellant had not produced them.

iii. The evidentiary records were different.

Despite Appellant's incorrect assertion that the evidentiary record is 'substantially' the same between the 2023 and 2025 summary judgment motions, there was a significant amount of evidence adduced in the time between the two motions that shed light on important issues—particularly gross negligence. Respondent had requested SCDC policies and post orders since the inception of this case. Appellant, however, did not produce these important documents until May 20, 2025, well after the April 7, 2023, hearing on the Respondent's summary judgment motion and the lower court's ruling on that motion. These documents revealed that SCDC violated many of its own policies and procedures during the time relevant to this matter. These newly discovered policy violations were central to Respondent's argument in the second summary judgment motion. The order at issue explains that the primary basis for the finding of gross negligence is the numerous policy violations committed by Appellant during the relevant time period. Policy violations alone are sufficient to support the finding of gross negligence as a matter of law, as the lower court's order makes clear. *Jinks* at 348, 585 S.E.2d at 285.

Appellant is simply misrepresenting the record in this case by stating that the same evidence was available in both summary judgment motions. To assert that "[t]he same record evidence was available to the trial court in August 2025 as it was in January 2024" is a boldfaced misrepresentation to this Court about the history of this case.

Respondent received the first discovery responses from Appellant on October 27, 2022. Respondent then served the first supplemental discovery requests on February 3, 2023. After a month passed and the case began appearing on trial dockets, Respondent was forced to move to compel discovery responses and did not receive a response to these discovery requests for an additional *seven months*, until November 10, 2023, When those responses did come, they were grossly deficient. Because the case was appearing on trial rosters and Respondent had no confidence that Appellant would provide timely discovery responses, Respondent filed the first summary judgement motion on April 7, 2023 with what had been produced at that time.

Between the first and second summary judgment motions, Respondent has been required to fight tooth-and-nail to get basic discovery, such as the policies and procedures that govern the conduct of the prison guards, the post orders that govern the duties of the individual posts within the prison, the depositions of the individuals present that night, the 30(b)(6) deposition of SCDC, and other clearly discoverable material. Much of this material painted a picture of SCDC and the Broad River Correctional Institution as a woefully inept and mismanaged institution that was charged with the responsibility of securing some of the most dangerous individuals in the State of South Carolina.

Among the most notable newly obtained evidence, which Judge Coble cited as one of the grounds for finding Appellant grossly negligent, was evidence of SCDC's failure to follow its own policies and procedures, which "alone is grounds to find gross negligence." (Aug. 25, 2025 Order, p. 9 (citing *Jinks* at 348, 585 S.E.2d at 285)). Appellant did not produce the SCDC policies and procedures or post orders in its initial discovery responses. Indeed, Respondent did not have access to these materials—which are obviously relevant and discoverable—until well after the initial

summary judgment motion was filed. So for Appellant to assert that the evidentiary record for both summary judgment motions was the same is, to be charitable, a gross misrepresentation.

III. Appellant misstates the law concerning Tort Claims Act exemptions, and the lower court correctly determined that Appellant cannot avail itself of the Section 15-78-60(17) exemption due to Appellant's gross negligence.

Appellant's second issue on appeal takes issue with the application of the gross negligence standard of Section 15-78-60(17). Appellant argues that, "neither the Respondent nor the trial court cited any South Carolina appellate decision that 'interpolates' the gross negligence exception of Section 15-78-60(25) into Section 15-78-60(17)" and that "there is no precedent for reading and applying Section 15-78-60(17) as having a gross negligence exception." (App. Br., p. 13–14). This is simply an incorrect statement of the law. Appellant's argument, once again, completely ignores the well settled law of *Repko*, *Chakrabarti*, and *Steinke*, which was cited and discussed in Respondent's August 1, 2025, memorandum as well as the lower court's August 25, 2025, order. (August 1, 2025 Memo, p. 14–17; August 25, 2025 Order, p. 7–10).

Appellant simply refuses to recognize the crystal clear precedent of the South Carolina Supreme Court that, "when an exception containing the gross negligence standard applies, that same standard will be read into **any other applicable exception**," not just some exceptions or the exceptions that SCDC would prefer. *Repko*, 424 S.C. at 506, 818 S.E.2d at 750 (emphasis added). Appellant is asking this Court to issue a ruling that is directly contrary to binding Supreme Court precedent, and the Court should decline to do so.

Perhaps more importantly, Appellant failed to raise this issue in a timely manner. Appellant cannot raise new arguments in a motion to alter or amend simply because it failed to raise the argument at the appropriate time. While Appelant's supplemental memorandum mentions that scope of official duties is discussed in other sections of the Tort Claims Act, that is a different

matter altogether than arguing that the gross negligence standard of subsection (25) should not be read into subsection (17) in spite of the *Repko* and *Chakrabarti* line of cases. Appellant's argument is both incorrect and improper in the context of a motion to alter or amend, and the Court should not consider it.

i. Officer Hall's conduct

Appellant spends a great deal of energy arguing that assault and battery is an intentional act. This is a red herring, as (1) the complaint in this matter does not assert that Officer Hall committed assault and battery, and (2) SCDC's gross negligence in supervising, protecting, and controlling Hall, the other officers at Broad River Correctional Institute, and the inmates at that facility render the exemption ineffective as discussed thoroughly above.

The complaint in this matter asserts the following regarding Hall:

> 13. On or about July 18, 2017, during a shift change, an unknown officer opened the door to the plaintiff's cell, as well as the doors to a number of unknown assailants' cells.
>
> 15. The officer who opened the cell doors was present during the attack, did not interfere with the assailants' violent actions, and did not attempt to protect the plaintiff from being assaulted.
>
> 24. Upon information and belief, an officer facilitated the assailants' attack on the plaintiff, witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff.

(Amended Compl. ¶¶13, 15, 24).

There is no allegation that Hall opened the cell doors with the intent to cause harm to Respondent or that Hall had knowledge of the intention of other inmates at that time. While Hall may have been present at the time of the assault, there is no allegation that he participated in the assault. The allegation is that he did not attempt to stop the assailants, which would have been reasonable in light of the fact that they were armed with a variety of bladed weapons. What Hall

did do was open a cell door in violation of SCDC policy and stand aside as an overwhelming force of armed assailants attacked another prisoner. These allegations are a far cry from an actionable criminal charge, which was recognized by the Fifth Circuit Solicitor's Office when it dismissed the charges against Hall.[7]

Appellant's efforts to characterize Hall's conduct as clearly intentional and therefore exempt under Section 15-78-60(17) fails because, (1) the gross negligence standard does apply to that subsection, as already discussed at length, and (2) the amended complaint does not allege that Hall acted intentionally. Appellant's brief regarding this argument asserts that, "the key error committed by the trial court involves its conclusion that Section 15-78-60(17) should be read as having a gross negligence exception interpolated therein." Appellant argues that it is unworkable and illogical, but Appellant continues to completely ignore the clear and binding precedent of our Supreme Court on this matter. *Repko,* 424 S.C. at 506, 818 S.E.2d at 750 ("when an exception containing the gross negligence standard applies, that same standard will be read into **any other applicable exception**.") (emphasis added). This is because Appellant is simply incorrect about the law. The Supreme Court and this Court were well aware of the existence of Section 15-78-60(17) when they issued rulings in *Repko*, *Chakrabarti*, *Steinke*, and their progeny.

IV. Appellant again fails to correctly state the law, and the lower court correctly determined that the numerous violations of internal policie constituted gross negligence within the meaning of the Tort Claims Act exemptions.

Appellant's third argument once again raises the red herring of Hall's conduct and again fails to even acknowledge binding Supreme Court precedent. In this argument, it appears Appellant has moved away from Respondent's amended complaint and seeks to reference the arrest warrants

[7] Hall was charged with Accessory Before the Fact of Attempted Murder (2017a4010300034) and Statutory Misconduct in Office (2017a4010300033). Both charges were dismissed.

issued for Hall. Again, for the reasons discussed in Section III *supra*, Hall's conduct does not change the precedent of the *Repko* and *Chakrabarti* line of cases. Additionally, the charges against Hall were dismissed, so the arrest warrants are effectively irrelevant to the case.

In spite of Appellant's assertions regarding Hall's conduct, the same gross negligence standard of Section 15-78-60(25) must be read into 15-78-60(17) and any other applicable exception to the Tort Claims Act exemptions. As discussed in the factual recitation above, Appellant demonstrated an utter lack of concern for Simmons before the assault occurred and after Appellant was made aware of the assault. Appellant has numerous policies in place to ensure the safety of the guards and the prisoners in the institution, as well as the supervision of guards, and many of those policies were completely ignored. This alone is grounds to rule as a matter of law the Appellant was grossly negligent. *See Jinks* at 348, 585 S.E.2d at 285 (detention center officers' failure to follow policy concerning medical observation is evidence of gross negligence).

On the night of the assault, Appellant, through its employees and representatives, knew that Marion unit was a dangerous unit where inmates were in control, that Kennedy had left for the day without assisting Hall in locking doors, and that cell doors were not all locked down and nevertheless failed to send a supervisor to assist Hall. These failures, among many others, can only lead to the singular conclusion that Appellant was willfully indifferent to the potential for an assault to occur and failed to exercise the slightest care to prevent that from happening.

Because Appellant so clearly intentionally and consciously failed to do what was incumbent upon it to do—which was to simply follow its own procedures to ensure the safety of the inmates and the guards—Respondent was brutally assaulted. If Appellant had simply exercised the slightest care and, as an example, ensured that all doors were locked for the night shift, ensured that the night shift officer was adequately supported, ensured that the prisoners were in their correct

cells, sent a supervisor down to the unit to assist the lone guard with locking down the unit, had more than one guard in the unit to ensure safety, or any of the many other basic safety precautions mandated by Appellant's own polices and procedures, this assault never would have occurred.

V. Appellant's assertion that the lower court's grant of summary judgment went beyond what Respondent requested is patently and obviously false.

Appellant's brief erroneously asserts that "a grant of summary judgment as a matter of law on the issue of gross negligence goes *far beyond* what the Plaintiff sought in his Motion for Summary Judgment." (App. Br., p. 17). Appellant goes on to claim that Respondent sought summary judgment "essentially as a sanction" for Appellant's improper Rule 30(b)(6) conduct. (App. Br., p. 17). This is an egregious and boldfaced misrepresentation of Respondent's May 27, 2025, motion. Firstly, the motion itself is captioned: **Motion for Summary Judgment or, in the Alternative, Motion to Strike SCDC's Answer**. The title of the motion makes clear that Respondent was seeking summary judgment **or** sanctions—this is the very definition of 'in the alternative'. Quite frankly, it is difficult to understand what the basis or purpose of Appellant's assertion on this point is.[8]

Secondly, both Respondent's May 27 motion and the August 1 memorandum in support of that motion make absolutely clear that summary judgement was the primary request. (*See* Aug. 1, 2025, Memorandum in Support, p. 17 ("This Court should hold that Defendant's conscious failures merit a finding of gross negligence as a matter of law.") and May 27, 2025 Motion ("the plaintiff . . . respectfully requests that the Court grant summary judgment as to defenses pled by the defendant . . . . In the alternative, the plaintiff requests that SCDC's answer be stricken.")). It

[8] Indeed, Appellant's brief appears to attempt to make the same argument in each of its issues presented, which creates a challenging organizational situation.

is difficult to understand why Appellant would make such a patently false argument to the Court. Needless to say, the Court should not consider this argument.

CONCLUSION

As discussed more fully above, Appellant has failed to cite applicable law on issues raised to this Court, misrepresented the record, bizarrely misrepresented the very title and request of Respondent's summary judgment motion, and generally conducted itself in bad faith throughout the litigation of this case, which has been pending since 2018. For the reasons and arguments presented herein, Respondent respectfully requests this court affirm the lower court's grant of summary judgment and denial of Appellant's Motion to Alter or Amend.

Respectfully submitted,

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