

RECEIVED

May 18 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge

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

Otis Owens, Respondent,

v.

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

REPLY BRIEF OF PETITIONERS

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

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

Counsel for Petitioners

TABLE OF CONTENTS

Table of Authorities	ii
Arguments.....	1
I. The Court of Appeals erred in affirming the trial court which erred in allowing the Respondent to present an unpled claim for assault and battery as a converted gross negligence claim. Based thereon, the Court of Appeals further erred in affirming the denial of the Petitioners’ motions for directed verdict and JNOV based on S.C. Code Ann. § 15-78-60(17) of the Tort Claims Act	1
Conclusion	9

TABLE OF AUTHORITIES

Cases

Arthurs v. Aiken County,
346 S.C. 97, 551 S.E.2d 579 (2001) 7

Erickson v. Jones Street Publishers, LLC,
368 S.C. 444, 629 S.E.2d 653 (2006) 2

Madison v. Babcock Center, Inc.,
371 S.C. 123, 638 S.E.2d 650 (2006) 6

Prior v. South Carolina Medical Malpractice Liability Ins. Joint Underwriting Asso.,
305 S.C. 247, 407 S.E.2d 655 (Ct. App. 1991)..... 3

South Carolina Medical Malpractice Liability Ins. Joint Underwriting Asso. v. Ferry,
291 S.C. 460, 354 S.E.2d 378 (1987) 3

State Farm Fire & Cas. Co. v. Barrett,
340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000)..... 4, 7

Steinke v. South Carolina Labor, Licensing & Regulation,
336 S.C. 373, 520 S.E.2d 142 (1999) 6

Summers v. Harrison Construction,
298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989)..... 7

Statutes, Rules, and Other Authorities

S.C. Code Ann. § 15-78-60(17) 1, 3, 5, 6, 7, 8

S.C. Code Ann. § 15-78-60(25) 5, 6, 7

34 U.S.C. § 30309(9) 3

ARGUMENTS

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

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

In his response brief, as he did in the Court of Appeals, the Respondent Owens disavows that this action was brought or should have been brought as an assault and battery claim. He even claims that he did not allege any intentional conduct on the part of Deputy Matthew Gibson, who conducted the frisk search at issue. Owens claims that "the case turned on compliance with governing standards, not any allegation of intent to harm." *See*, Respondent's Brief, p. 13. Those assertions ring hollow. Owens is deliberately ignoring his very own Complaint. As a reminder, the *only* factual allegations pled as the basis for his claims are as follows:

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

See, Complaint, ¶ 9. (R. 19-20). There are no additional allegations in the Complaint as to the *factual basis* of the claims. There are no allegations of “governing standards.” Thus, it is simply incorrect to suggest that Owens did not allege an assault. He used that very word. In fact, in listing his particulars of “gross negligence,” Owens alleges that the Petitioners were grossly negligent “(a) by assaulting the plaintiff, (b) by battering the plaintiff, and (c) by using excessive force.” *See*, Complaint, ¶ 21. (R. 20-21). It is equally incorrect to assert that he did not allege an intent to harm. In reality, he alleged that Gibson “maliciously and aggressively assaulted the plaintiff.” (R. 20). In his response brief, Owens argues that the references in his Complaint to an “assault” were “isolated descriptions of conduct” but are not “assertions of an intentional tort.” *See*, Respondent’s Brief, p. 6.

What is clear and should not be disregarded is that Owens brought what is distinctly and exclusively an assault and battery claim under the guise of a gross negligence claim, and that such “creative pleading” violates this Court’s decision in *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006), holding that an intentional tort *cannot be converted into a negligence claim*. Owens’ tactics were challenged in the trial court to no avail. (R. 918-920).¹ They are challenged again on appeal. In the trial court, Owens’ counsel argued that the causes of action are interchangeable. (R. 919) (“Of course a sexual assault is grossly negligent”).

On appeal, Owens has now taken a different approach – obviously in recognition that the arguments at the trial level were mistaken and not sustainable. On appeal, Owens now claims that he never argued a sexual assault, which is untenable (and quite frankly disingenuous) when

¹ In his response brief, Owens tries to give the impression that the Petitioners have challenged the nature of the cause of the cause of action for the first time after the judgment was entered. That is not the case. The issue was raised at trial as part of the directed verdict motion. (R. 918-920).

Owens relied on and made repeated references to the Prison Rape Elimination Act (PREA) which is only applicable where a detainee alleges a “rape” as defined by the Act. *See*, 42 U.S.C. § 30309(9) (defining “rape”). Indeed, in his closing argument, Owens’ counsel even argued to the jury that “[t]he Prison Rape Elimination Act exists to eliminate *sexual assault* in jail by inmates or guards and it’s extremely important.” (R. 979). (Emphasis added). Owens’ counsel followed that by stating that “sexual assault is serious.” (R. 997). He even talked in terms of “if someone accused me of sexual assault,” which demonstrates definitively that Owens was accusing Deputy Gibson of “sexual assault.” (R. 998). In his closing arguments, Owens’ counsel mentioned PREA at least *fifteen times*, including making the statement that “I lost count of how many violations they had against PREA.” (R. 967). Despite the frequent references to PREA, which again pertains only to *prison rapes*, and the frequent references to “sexual assault” in his Complaint and to the jury, Owens has the audacity to assert that “[i]ntent played no role in how this case was presented or decided.” *See*, Respondent’s Brief, p. 12. Quite simply, this Court should not buy what Owens is claiming – he very much tried this case as a sexual assault case but claims it is a “gross negligence” action solely to circumvent Section 15-78-60(17) immunity.

Owens also insists that it is the Petitioners who are improperly trying to “recast” a gross negligence claim as an intentional tort claim, when clearly the converse is true. Strangely, Owens cites to such cases as *South Carolina Medical Malpractice Liability Ins. Joint Underwriting Asso. v. Ferry*, 291 S.C. 460, 354 S.E.2d 378 (1987), and *Prior v. South Carolina Medical Malpractice Liability Ins. Joint Underwriting Asso.*, 305 S.C. 247, 407 S.E.2d 655, 657 (Ct. App. 1991), cases which address the fact that a “negligence” label given to a cause of action for sexual assault is not controlling because sexual assault is an intentional tort. *Ferry* and *Prior*

do not support Owens' position. To the contrary, those cases make the very point that a claim arising from a sexual assault may not be converted into nor treated as a negligence claim by using the mere label of "negligence." That is precisely what Owens has attempted in this case.

Owens, nonetheless, insists that an intentional tort may be pled as a negligence claim where facts are alleged "supporting an independent negligence theory." *See*, Respondent's Brief, p. 8. Owens is mistaken, however, in two key respects. First, in the case at bar, the only facts as pled are that "an Aiken County Detention Center corrections guard, in searching the plaintiff, probed the plaintiff's belly button, ran his hands up the inside of the plaintiff's legs, and grabbed and squeezed the plaintiff's testicles. The guard maliciously and aggressively assaulted the plaintiff, going beyond anything necessary to search the plaintiff." *See*, Complaint, ¶ 9. (R. 19-20). No other facts are pled, and those facts which are pled simply do not support an "independent negligence theory." Second, and most importantly, it is unquestionable that a sexual assault or other forms of sexual misconduct may not be committed in a negligent manner. South Carolina law *definitively* recognizes that "an intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in sexual misconduct towards an adult." *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 136 (Ct. App. 2000).

Recognizing the shortcomings of his position, Owens now attempts to justify the verdict on the basis of gross negligence allegations for the "failure to supervise" and the "failure to provide medical care," as opposed to the allegations of a sexual assault. Owens overlooks, however, that the Court of Appeals already ruled that the Petitioners were entitled to a JNOV on the negligent supervision claim and reversed the trial court on that basis. (App. 5, 9). The "supervision" claim has therefore been dismissed, and all that is left is the "gross negligence"

claim related to the alleged sexual assault by Deputy Gibson. The same is also true with respect to any purported medical claim. The Court of Appeals found that “Owens neither pled a cause of action for failure to provide medical care nor did he argue at trial that he received improper or deficient medical care.” (App. 5). The Court of Appeals further ruled that “the jury did not return a verdict for failure to provide medical care.” (App. 5). The Court of Appeals then concluded that “there is no relief this court can provide on a claim that was not pled or considered by the jury.” (App. 5). Yet, it is quite telling that Owens is trying to convince this Court to uphold the “gross negligence” verdict on a claim that the law of the case holds was unpled and not considered by the jury. Finally, the same is also true for the PREA claim, which Owens now insists was never pled or pursued, although he seeks to uphold the verdict nonetheless based on a deficient PREA investigation. Not surprisingly, like the Court of Appeals, Owens never explains how the allegedly deficient PREA investigation proximately caused the alleged sexual assault of Owens to occur or any other damage or injury sustained by Owens.

Owens is also mistaken in his argument that Section 15-78-60(17) is not applicable because it should be read as having a gross negligence exception interpolated therein. Of note, neither Owens nor the Court of Appeals cited any South Carolina appellate decision that “interpolates” the gross negligence exception of Section 15-78-60(25) into Section 15-78-60(17). Frankly, the reason for that is such an interpolation is both illogical and unworkable. Section 15-78-60(17) is designed to provide immunity to the government for conduct constituting the intent to harm, crimes of moral turpitude, acts of actual malice, and acts of actual fraud. Those constitute intentional conduct by a governmental employee, and the General Assembly has determined that the government (i.e., the taxpayers) may not be held liable for such intentional

conduct. From a logical and legal standpoint, intentional conduct may not be committed in a grossly negligent manner. The Petitioners have cited numerous cases in their briefs clearly stating that negligence and intentional torts are mutually exclusive. In other words, an intentional tort may not be committed negligently, and accordingly, there is no such thing as a negligent assault and battery in our jurisprudence. Thus, it defies logic as well as the legislative intent and public policy underlying Section 15-78-60(17) immunity to conclude that Section 15-78-60(17), which provides immunity from liability for an employee's intentional conduct, should be read as bearing a gross negligence exception. As indicated, there is no precedent whatsoever for reading and applying Section 15-78-60(17) as having a gross negligence exception *under any scenario*.² As such, the Court of Appeals' refusal to apply Section 15-78-60(17) immunity should be reversed.

Additionally, to that point, it should further be observed that, citing *Madison* and *Steinke*, Owens argues that the reference to "supervision, protection, control, confinement, or custody" of an inmate in Section 15-78-60(25) "reflects the Legislature's decision to preserve liability for failures of care in custodial settings." *See*, Respondent's Brief, p. 15. Yet, that is incorrect on several levels. First, neither *Steinke* nor *Madison* includes such a "holding." As noted above, both *Steinke* and *Madison* are not custodial cases; the decedents in *Steinke* were not prisoners or detainees – rather they were riders of a bungee ride – and the plaintiff in *Madison* was a special needs resident of a private residential treatment center. *Steinke* does not even include a citation to Section 15-78-60(25), and the statute is cited only in passing in *Madison* but not analyzed.

² Owens references this Court's decision in *Madison v. Babcock Center, Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006). *Madison* does not involve a custodial relationship or intentional conduct, and Section 15-78-60(17) is not cited, let alone addressed, in the case. The same is true for *Steinke v. South Carolina Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), which is likewise not a custodial case and does not even include a citation to Section 15-78-60(25) or Section 15-78-60(17) for that matter.

Second, the exceptions in Section 15-78-60 do not create legal duties. In *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579 (2001), this Court held that “[t]he TCA does not create causes of action, but only removes the common law bar of sovereign immunity in certain circumstances.” 551 S.E.2d at 583. *Accord, Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493, 495 (Ct. App. 1989) (“[t]he South Carolina Tort Claims Act does not create causes of action”). Thus, the Tort Claims Act, which does not create causes of action, likewise does not create nor establish any legal duty of care actionable under South Carolina law. The language in Section 15-78-60(25), where it refers to “supervision, protection, control, confinement, or custody,” was not intended by the General Assembly to establish any particular legal duty owed by the Sheriff’s Office or its employees operating the Detention Center. In fact, the very language in Section 15-78-60(25) does not specify any particular legal duty of care. Thus, contrary to Owens’ suggestion, the language of Section 15-78-60(25) does not evince any legislative intent that conduct constituting an “intent to harm” is carved out of Section 15-78-60(17) if that conduct was committed in a correctional setting. Moreover, there is no “collapsing” of the “framework of the Tort Claims Act” as claimed. Instead, the dichotomy is clear: governmental entities are entitled to immunity for conduct constituting an “intent to harm” under Section 15-78-60(17) and are entitled to immunity for conduct constituting simple negligence under Section 15-78-60(25).

Finally, it is noteworthy that Owens fails to even address, let alone refute, the holding in *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000), which adopts an inferred intent to harm for cases involving allegations of sexual assault or other sexual misconduct when committed against an adult. Earlier, in opposing the issuance of a writ of certiorari, Owens did try to distinguish *Barrett* by stating that it is an “insurance case.” He

suggested that the meaning of “intent to harm” is somehow different under the law for an insurance case vis-a-vis a Tort Claims Act case. Clearly, he has now abandoned that argument, which is a good development. As discussed above, South Carolina law recognizes that “an intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in sexual misconduct towards an adult.” *Barrett*, 530 S.E.2d at 136. That holding is binding precedent and is controlling in construing the term “intent to harm” in Section 15-78-60(17) in the context of the present case.

Without question, this case was factually pled and tried as a sexual assault case. No “gross negligence” label changes that. As much as Owens tries to hide from the way the case was factually pled and tried to the jury, he cannot. As soon as Owens pled and presented to the jury that he was the victim of a sexual assault, all of his assertions that this case does not involve an “intent to harm” were rendered meaningless and mere gaslighting. What should be clear from our jurisprudence is that creative pleading cannot convert an intentional tort into a negligent tort and cannot be used to contravene the immunity provision of Section 15-78-60(17). Accordingly, the Petitioners are entitled to a JNOV on the remaining claims.

CONCLUSION

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

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

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

Counsel for Petitioners

May 18, 2026