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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.

**RESPONDENT'S RETURN IN OPPOSITION
TO APPELLANT'S MOTION TO STRIKE
MATERIALS DESIGNATED BY RESPONDENT FOR
INCLUSION IN RECORD ON APPEAL**

Respondent respectfully submits the following return in opposition to Appellant's Motion to Strike Materials Designated by Respondent for Inclusion in Record on Appeal. For the reasons discussed more fully below, the Court should deny the instant Motion to the extent that it seeks to exclude SCDC Policy/Procedure OP-22.06 and Post Order 6 because these materials were presented to the lower court. Additionally, the Court should grant Appellant's motion to the extent that it seeks to limit deposition transcripts to specific excerpts.

I. Deposition excerpts

Appellant asserts that the full deposition transcripts for Evan Garriss, Matthew Kennedy, and Holden Byrd were not filed or presented to the lower court and should be limited to only those excerpts that were presented to the lower court. Respondent intended to include these excerpt citations when the Designation of Matter was submitted. However, it appears that the excerpt citations were removed in error. Because this was an error, Respondent agrees that the depositions should be limited to only the relevant excerpts. The intended excerpts are listed as follows:¹

14. Deposition of Brittney Livingston, pp. 19–20, 29–30, 60

15. Deposition of Evan Garriss, p. 141–142, 146

16. Deposition of Matthew Kennedy, p. 16–17, 19, 20–22

17. Deposition of Holden Byrd, p. 21, 40

* * *

20. Deposition of Clinton Parker, p. 8

* * *

22. Deposition of Anthony Hall, pp. 23–24, 110

23. Deposition of Ulysses Collins, pp. 12–13, 15

Respondent respectfully requests the Court grant Appellant’s request to limit the deposition material in the Record on Appeal to the citations listed above. The above citations include more deposition materials than Appellant requested in the instant motion. However, in the interest of including only relevant material in the Record on Appeal, it is appropriate to limit the other deposition transcripts as well, which was the original intention before the citations were inadvertently removed.

II. Post Order and SCDC Policy

Pursuant to Rule 210, SCACR, the Record on Appeal shall include any matter designated to be included by a party. The sole limitation upon this is that the record shall not include matters

¹ Consistent with Appellant’s motion, the numbering of the documents is the same as the numbering of the Designation of Matter.

that were not presented to the lower court. Appellant's Motion to Strike claims that SCDC Policy/Procedure OP-22.06 and Post Order 6, which Respondent has included in his designation of matter, were not presented to the lower court during the August 4, 2025 hearing. This is simply not true. Counsel for Respondent presented these policies to the lower court during the hearing and explained their relevance.

Prior to the August 4, 2025 hearing at the heart of this appeal, counsel for Respondent had requested a complete set of all relevant policies and procedures that govern the operation of Appellant's prisons. These policies and procedures are clearly relevant, as Respondent alleges that the egregious policy violations committed by Appellant's officers and employees are a root cause of the injuries suffered by the decedent while in SCDC's custody. However, counsel for Appellant raised concerns regarding the confidentiality of some of the security procedures, which is reasonable given the high risk nature of Appellant's operations. Eventually, the missing policies, procedures, and post-orders were produced and Respondent was able to move forward with the summary judgement motion that was ultimately granted by Judge Coble.

Respondent submitted SCDC Policy OP 22.06 and Post Order 6 as exhibits to the summary judgement motion that was heard during the August 4, 2025 hearing. In a good faith effort to prevent unwanted disclosure of these procedures and to give Appellant an opportunity to request they be filed under seal, Respondent did not file the documents themselves with the intention of filing them under seal at the hearing. Instead, Respondent included exhibit coversheets for both SCDC Policy OP-22.06 and Post Order 6 as placeholders. At the outset of the August 4, 2025 hearing, counsel for Respondent explained, "so the [memorandum] I filed on Friday, there are two exhibits in there that are SCDC policies. I filed those with the redacted [coversheet] I just didn't file the actual exhibits . . . because I presume [that] SCDC will ask to file those under seal. . . .

And so, we have no problem. That's why I brought those here so if I could file those with the clerk now under seal." August 4, 2025 Hearing at p.5, lns. 14–24, attached as **Exhibit A**. Counsel for Appellant agreed that they wished to file them under seal. Rather than file them at that moment in the courtroom, the court requested that Respondent's counsel file them electronically after the hearing. **Ex. A** at p.5, ln. 25–p.6, ln. 8. Unfortunately, it appears that there was some confusion and the exhibits were not filed after the hearing.

Although the actual policy and post order exhibits themselves were not filed under seal, they were provided to the lower court during the hearing and discussed by Respondent's counsel during the hearing. Later in the hearing, counsel for Respondent handed the policies at issue to the lower court, stating, "Now, I want to briefly talk about some of the policy issues going on here, Judge, because a lot of this case boils down to this is a gross negligence case . . . based largely on a complete failure to follow their own policies. . . . and, Judge, I might go ahead and hand these up so you can look at them. May I approach?" **Ex. A** at p.18, lns. 11–22. At this point, the lower court had the policies at issue here in his hands for review. Counsel for Respondent went on to discuss the policy and post order and their application to the case. **Ex. A** at p.19, ln.24–p.21, ln.14.

Rule 210, SCACR, does not require that the requested material designated for inclusion in the record on appeal be filed in the case. The rule only requires that the material be presented to the lower court. Appellant's assertion that these materials were not presented to the lower court is simply not true, as discussed above. Therefore, these matters should be included in the record on appeal as designated by Respondent.

Conclusion

For the reasons discussed above, the Court should deny Appellant's motion to strike SCDC Policy/Procedure OP-22.06 and Post Order 6 from the Record on Appeal, as these materials were

presented to the lower court during the August 4, 2025 hearing. Additionally, the Court should grant Appellant's request to include only the excerpts of the depositions as shown in Section I above.

Respectfully submitted,

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Greenville, South Carolina

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STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-002478

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

v.

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

PROOF OF SERVICE

I hereby certify that a copy of Respondent's Return in Opposition to Appellant's Motion to Strike Materials Designated by Respondent for Inclusion in Record on Appeal has been served electronically upon the South Carolina Court of Appeals at ctappfilings@sccourts.org, and upon the attorneys of record for the Appellant at their respective email addresses listed below, on this 20th day of July 2026:

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 FIFTH JUDICIAL CIRCUIT

3 COUNTY OF RICHLAND) DOCKET NO.: 2018-CP-40-04850
4

5 -----
6 RANDLE JACKSON as the Personal)
Representative of the ESTATE OF)
DASHAUN SIMMONS,)

7 Plaintiff,)
8)

9 versus)
10)

11 THE SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS,)

12 Defendant.)
13 -----

14 M O T I O N S H E A R I N G
15

16 DATE: August 4, 2025
17 LOCATION: South Carolina Circuit Court No. 5
18 JUDGE: Daniel Coble
19 TRANSCRIBED BY: Sandra J. Early
20

21 LEGAL EAGLE

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MOTIONS HEARING

1 MR. DAVIDSON: No. It rings a bell. They asked
2 a question about he learned about X, Y, and Z. He learned
3 it from me, and I objected and instruct him not to answer,
4 because it gets into a attorney-client privilege. That's
5 what we were doing is Mr. Hawkins was asking him about how
6 he learned about certain events, and the witness said
7 basically, I learned and, I stopped him and said he
8 learned it from me, raising the attorney-client privilege.

9 THE COURT: Well, why don't we come back to that
10 motion and address it --

11 MR. ALLEN: That's fine.

12 THE COURT: -- if necessary. All right. Next
13 up, we have plaintiff's motion for summary judgment.

14 MR. ALLEN: Yes, sir. At the outset, Judge, so
15 the motion I filed on Friday, there are two exhibits in
16 there that are SCDC policies. I filed those with the
17 redacted (unintelligible) I just didn't file the actual
18 exhibits, like the (unintelligible) because I presume the
19 SCDC will ask to file those under seal.

20 MR. DAVIDSON: That's correct, Your Honor.
21 They're restrictive policies.

22 MR. ALLEN: And so, we have no problem. That's
23 why I brought those here so if I could file those with the
24 clerk now under seal.

25 THE COURT: Yeah, that's fine this. And the

MOTIONS HEARING

1 best way to do it is you can both e-file them, and if you
2 let the clerk know that they're there under seal. We wont
3 take anything here paper-wise.

4 MR. ALLEN: Okay, sure.

5 THE COURT: But if you reach out to the clerk's
6 office after this, they'll be able to help you --

7 MR. ALLEN: Yes, sir.

8 THE COURT: -- get that done.

9 MR. ALLEN: I'll do it that way. All right.
10 Judge, I want to briefly go through the background on this
11 case. So, this is an SCDC case, obviously. Our client is
12 DaShaun Simmons -- our deceased client, is DaShaun
13 Simmons. He has since died in SCDC's custody as a result
14 of another assault down the line. There are three
15 cases -- or there were three cases in which Mr. Simmons
16 was assaulted while in SCDC, and the third one, he was
17 killed. This is the first one. Now, at this time this --
18 so this case is from November of 2017. At this time,
19 Mr. Simmons is housed in the Marion unit of the Broad
20 River Correctional Facility. Broad River, as the Court
21 knows, is a maximum-security facility here in Columbia,
22 what they call a level three facility, but it's
23 maximum-security. The Marion unit is one of a handful of
24 units, and they're all separate buildings. The Marion
25 unit east is -- is a building, a northward building that's

MOTIONS HEARING

1 So, think about that. A guy in a maximum-security prison
2 is brutally assaulted, they find him in a locked room, and
3 they never tell us who the roommate is. I don't even know
4 if they even talked to the guy or asked the guy. I mean,
5 the guy is locked in a cell with him, he was clearly an
6 eyewitness to the whole thing. And I assume they know who
7 he is, they should know who he is. They certainly haven't
8 told us. But you know, that again is just something that
9 is indicative of the utter incompetence of the department
10 of corrections in handling this whole thing.

11 Now, I want to briefly talk about some of the policy
12 issues going on here, Judge, because a lot of this case
13 boils down to this is gross negligence case, but -- and --
14 and a tort claims act, gross negligence case based largely
15 on a complete failure to follow their own policies. And
16 I'm not going to go through all of them because we'll be
17 here all day. But just as an example -- and I cited some
18 in -- in -- in -- the brief and one of the policies that
19 I've attached. It's an important one. And one of the
20 policies that I'm attaching here is the -- and, Judge, I
21 might go ahead and hand these up so you can look at them.
22 May I approach?

23 THE COURT: Yes.

24 MR. ALLEN: And so, this one policy, Judge, just
25 take it as an exemplar. This one, just for example, the

MOTIONS HEARING

1 policy on counts -- or, I'm sorry, it's the policy on
2 (unintelligible) for the operations room person. In the
3 -- in the policy itself about counts, it describes that
4 two officers have to be present for a count, right? It
5 describes that a count should be done in a maximum
6 security -- in a level three facility, which this is a
7 level three facility -- a count should be done -- a formal
8 count -- three times a day, one of which is at the evening
9 change over, right, from day shift to night shift.

10 And the importance of that is pretty obvious, that
11 when before they put these guys down for the night, they
12 need to have two officers count them and make sure they're
13 in the right places, make sure that, you know, nobody has
14 gone out of the -- out of the facility, report that to the
15 central control room so that the central control room
16 knows that everything is okay. And then, they have to
17 double-check each other because, you know, one of the big
18 issues in this case is guards have to look after other
19 guards. And you know, and no -- no count was done at all
20 on this night, which is an egregious violation of policy
21 and the superior -- and SCDC's superior officer
22 (unintelligible) that night. I mean, they knew that, and
23 it apparently never seemed to bother them.

24 So you know -- and then I'll go through some of these
25 other policies. I don't want to belabor this point. The

MOTIONS HEARING

1 other policy says that inmates have to report to their
2 cell (unintelligible) now, right, that the shift
3 supervisor has to clear that count in post orders. And
4 the reason I added the post order in there has to do with
5 logbooks. You know, I mentioned that one of things we
6 don't have in this case are the logbooks for the full
7 room. There's supposed to be one for the shift
8 lieutenant. There's supposed to be -- excuse me -- yes,
9 that's right -- two in the Marion unit. This is something
10 we just learned from Hall's deposition, I believe, is that
11 the Marion unit apparently is supposed to have had two
12 logbooks. Those logbooks are supposed to be records of
13 anything odd that happens in the night.

14 I would think getting a call from a prisoner's cell
15 phone to control room desk would be worth writing down in
16 the log. I would think that a prisoner reportedly being
17 brutally assaulted and bleeding out on the floor would
18 probably be worth putting in a log somewhere. But we
19 don't have it. And what that policy very clearly states
20 somewhere towards the beginning is that these logs are
21 supposed to be clear and concise and current, right? I
22 mean, the -- the rule itself says that these things are
23 permanent. In other words, there's only two options here;
24 either they destroyed them for whatever reason in
25 violation of policy, or they just never gave them to us.

MOTIONS HEARING

1 But, at any rate, I'll save that for when we get into the
2 discovery piece of this.

3 But, Judge, it is abundantly clear, based on all of
4 the testimony and -- and the various policies that we've
5 been provided to the extent that there are all of them,
6 that that evening they were not following policy, that the
7 inmates were -- according to their own police services
8 investigator -- were running that dorm. That dorm was on
9 a lock down, so it should have been even more secure, and
10 it was not secure. And as a result -- a result of all of
11 this just intentional failure to have any control over a
12 maximum-security facility, I mean, it is entirely
13 foreseeable that, yeah, somebody is going to get stabbed,
14 and that's exactly what happened in this case.

15 So, in terms of arguing the summary judgment aspect,
16 I want to start with what were their defenses. Now, one
17 of the issues, as I've said, is 30(b)6 depositions, right?
18 We have done -- I think we've sat three times for 30(b)6
19 depositions. Our last notice was our seventh amended
20 notice. I think most every judge in Richland County has
21 written an order telling them that they are required to do
22 these things. You have written an order yourself, Your
23 Honor, Judge Culbertson had written in order, and Judge
24 Newman actually got on the phone and ordered them in the
25 midst of a deposition.