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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.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in granting partial summary judgment in favor of the Respondent in both the issue of gross negligence and the Tort Claims Act immunities where the same court had denied the same motion based on the same evidentiary record in January 2024?
- II. Did the trial court err in treating the intentional and criminal conduct by Officer Anthony Hall in allowing gang members access to the decedent in order to commit the assault upon him as conduct constituting gross negligence, which is contrary to well-developed South Carolina law?
- III. Did the trial court err in granting partial summary judgment to the Respondent on Section 15-78-60(17) immunity where the evidence supports a finding that the Appellant is entitled to the “crime of moral turpitude” immunity and other bases given the evidence of Officer Anthony Hall’s intentional and criminal conduct for which he was charged?
- IV. Did the trial court err in granting partial summary judgment to the Respondent on the issue of gross negligence where there are genuine issues of material fact that preclude summary judgment on that issue?

STATEMENT OF THE CASE

This is an action brought pursuant to the South Carolina Tort Claims Act by the Respondent Randle Jackson as the Personal Representative of the Estate of Dashaun Simmons against the Appellant South Carolina Department of Corrections (“SCDC”). This tort action alleges causes of action for gross negligence and negligent hiring, supervision, and retention. The action arises from an inmate-on-inmate assault that occurred during the night of July 17-18, 2017, in the Marion Unit at Broad River Correctional Institution (“BRCI”). The Respondent alleges that the decedent was injured when assaulted by four other inmates while he was locked in his cell. In his Amended Complaint, the Respondent alleges that an officer (identified as Officer Anthony Hall) unlocked the cell in which the decedent was sleeping and allowed the assailants to attack him. It is alleged that the officer “was present during this attack, did not interfere with the assailants’ violated actions, and did not attempt to protect the plaintiff [sic] from being assaulted.” *See*, Amended Complaint, ¶ 15. (R. 34). The Respondent similarly alleged that Officer Hall “facilitated the assailants’ attack on the plaintiff [sic], witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff [sic].” *See*, Amended Complaint, ¶ 24. (R. 35).

In April 2023, the Respondent filed a motion seeking partial summary judgement on the issue of gross negligence and the Tort Claims Act immunity defenses asserted by SCDC, including Section 15-78-60(17) immunity. (R. 40-46). That motion was heard and denied by Circuit Court Judge Daniel Coble. In its order filed January 2, 2024, the trial court wrote: “the court finds that there is a genuine issue of material fact as to whether Office Hall acted intentionally. Officer Hall’s actions were the direct cause of the Plaintiff’s injuries, and if Officer Hall acted intentionally, summary judgment is not appropriate as to vicarious liability.”

(R. 3). The trial court also explained that “although Officer Hall’s arrest warrant was ultimately dismissed, his arrest and charge create a genuine issue of material fact as to whether he acted intentionally.” (R. 3).

On May 27, 2025, the Respondent filed an additional motion for summary judgment that sought primarily what may be described as discovery sanctions based on grievances related to a Rule 30(b)(6) deposition of SCDC. (R. 110-111). When the motion was heard, the Respondent included duplicative grounds for summary judgment as were litigated in the earlier motion. A hearing was held on August 4, 2025, before Judge Coble. By orders issued August 7, 2025, and August 25, 2025, Judge Coble ruled as a matter of law that SCDC was grossly negligent. Based thereon, he also granted partial summary judgment as to all of SCDC’s Tort Claims Act immunity defenses, including the Section 15-78-60(17) immunity defense. (R. 6-23).

The Appellant SCDC filed a motion for reconsideration, but that motion was summarily denied. (R. 24-26). SCDC then filed a timely notice of appeal to this court challenging the grant of partial summary judgment.

STATEMENT OF FACTS

The Respondent's decedent Deshaun Simmons -- a gang member since he was fifteen years old and convicted of attempted murder and armed robbery and multiple prison weapon possession charges -- was housed in the Marion Unit at Broad River Correctional Institution (BRCI) in July 2017. He learned that there was a bounty on him to be killed, and he received death threats. Yet, he did not take them seriously. (R. 152). He notified no one of the threats to his life. (R. 118-119). On the night of July 17-18, 2017, Correctional Officer Anthony Hall had the Marion Unit night shift. (R. 330-331). He had had the shift for months without leaving cell doors open or committing other infractions. (R. 257-258). He had attended the Correctional Academy, where he was trained to deal with inmates, gangs, and emergency and medical situations. He also had received on-the-job training as a correctional officer. (R. 127-128, 349).

Hall was the only officer on night shift on July 17-18, 2017, because of a staff shortage in Marion Unit. Accordingly, he was the only officer with keys to the cells. (R. 227, 261, 331, 352-353). He had locked all the inmates in their cells around 9:00 p.m. and completed security checks with the inmates locked in their cells at 9:00 p.m. and midnight. (R. 352, 356). He did not give anyone his keys that night. (R. 356).

Later that evening, a call came into the control room saying someone had been stabbed in Marion Unit. In response to an inquiry from the control room, Hall reported that everything was fine. (R. 159, 205). Other security officers, however, came to Marion Unit to inspect cell-by-cell to ensure that everyone was safe. As Lt. Ulysses Collins approached the decedent's door, he heard banging on the cell door, and Hall commented, "don't worry about it, they don't want shit, you can leave." (R. 245). Collins instead had Hall unlock the decedent's cell. (R. 253, 357). He

found the decedent bleeding from multiple stab wounds. Collins immediately took the decedent to medical, then had him transported to the hospital. (R.245). As he was escorted to medical, the decedent told Collins that Hall had allowed other inmates into his cell, unlocking his door so they could attack him. (R. 261).

As part of the Police Services investigation, the decedent was later interviewed. He reported that Hall let several inmates into his room so they could attack him, then stood by and allowed the assault to occur. After the assailants finished, Hall then locked the decedent back into his cell and denied his requests for medical attention. (R. 164, 171-172). The Amended Complaint filed on March 8, 2023, also alleges, referring to Hall, that “an officer facilitated the assailants’ attack on the plaintiff, witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff.” *See*, Amended Complaint, ¶ 24. (R. 35).

Importantly, the cell doors could only be locked with a key when closed – preventing inmates from shutting pre-locked doors. (R. 115). In other words, Hall had to lock the decedent’s cell after the attack thereby ignoring his pleas for aid. Police Services Investigator Evan Garriss and Lt. Collins both concluded that Hall facilitated the attack and tried to hide it. (R. 150-153, 258).

Hall was promptly suspended and eventually terminated. (R. 147-148, 358). He was also criminally charged with Accessory Before the Fact to Attempted Murder and Misconduct in Office. (R. 148, 186-187). During his federal court deposition, when asked whether he showed inmates into the decedent’s cell to attack him, Hall asserted his Fifth Amendment right not to answer. (R. 281, 294).

STANDARD OF REVIEW

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

When reviewing the grant of summary judgment, the appellate court applies the same standard used by the trial court under Rule 56(c), SCRPC. *Peterson v. West Am. Ins. Co.*, 336 S.C. 889, 518 S.E.2d 608, 610 (Ct. App. 1999). Rule 56(c), SCRPC, provides that a circuit court may grant a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kunst v. Loree*, 404 S.C. 649, 746 S.E.2d 360, 362 (Ct. App. 2013).

The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, , 548 S.E.2d 868, 874 (2001). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Service Auth. of South Carolina*, 354 S.C. 397, 581 S.E.2d 161, 165 (2003).

ARGUMENTS

I. The trial court erred in granting partial summary judgment in favor of the Respondent in both the issue of gross negligence and the Tort Claims Act immunities where the same court had denied the same motion based on the same evidentiary record in January 2024.

The 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). SCDC's principal immunity defense is based on Section 15-78-60(17), which provides that a "governmental entity is not liable for a loss resulting from ... employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17). The trial court did not even address the Section 15-78-60(17) immunity while he granted partial summary judgment and struck all Tort Claims Act immunity defenses.

Importantly, the Respondent previously moved for summary judgment in 2023 as to the applicability of Section 15-78-60(17) immunity. In that same motion filed April 7, 2023, the Respondent argued "the only reasonable inference that can be drawn from the evidence is that SCDC was grossly negligent." (R. 43). However, that motion was denied by the trial court's Order filed January 2, 2024, wherein the court wrote: "the court finds that there is a genuine issue of material fact as to whether Office Hall acted intentionally. Officer Hall's actions were the direct cause of the Plaintiff's injuries, and if Officer Hall acted intentionally, summary judgment is not appropriate as to vicarious liability." (R. 3). The trial court explained that "although Officer Hall's arrest warrant was ultimately dismissed, his arrest and charge create a genuine issue of material fact as to whether he acted intentionally." (R. 3). The trial court also

cited to evidence that demonstrates that Officer Anthony Hall acted intentionally in allowing the decedent to be assaulted by other inmates. Specifically, the Police Services investigation supports SCDC's account of what occurred, as well as witness testimony stating that Hall intentionally allowed other inmates access to the decedent's cell for purposes of assaulting him, and then the decedent was locked in where he could not escape the beating. The decedent himself reported to the Police Services investigator as follows: "He [Simmons] was asleep in his bunk when Cpl. Hall opened the cell door. ... Several inmates came into his cell and assaulted him with an axe type weapon. The inmates were all members of the gang Bloods." (R. 164). Similarly, inmate Timothy Rainey reported as follows: "He [Rainey] was living on the right side of the Marion Unit on July 18, 2017. He observed CO Hall standing in front of inmate Simmons' cell with four inmates that had weapons. He observed CO Hall open the door to allow the inmates to assault Simmons. He observed CO Hall lock the door back after the assault had ended." (R. 166). Further, in his initial deposition taken in the federal court action, Hall asserted his Fifth Amendment rights when asked both "did you open a cell door during lockdown" and "do you think anything you did contributed to Deshaun Simmons' injuries." (R. 281). That testimony gives rise to an adverse inference in civil cases. *See, Griffith v. Griffith*, 332 S.C. 630, 506 S.E.2d 526, 532 (Ct. App. 1998) ("it is permissible for the fact finder to draw an adverse inference in a civil case against a party invoking the Fifth Amendment privilege against self-incrimination").

Yet, in the trial court's subsequent order filed August 25, 2025, the trial court makes no mention of the order filed January 2, 2024, or the evidence in the record that supports SCDC's position as to what transpired and specifically Hall's intentional and criminal conduct. Despite having this inconsistency in ruling called to its attention, the trial court also failed to explain why

the court was making the opposite ruling *as a matter of law* based on the same or at least substantially the same evidentiary record. The Respondent certainly has not demonstrated that the evidentiary record changed in such a dramatic way to justify summary judgment for the Respondent when the record in January 2024 indicated that there remained genuine issues of material fact as to Hall's conduct and the applicability of Section 15-78-60(17) immunity. Likewise, the trial court did not explain why summary judgment was denied on the issue of gross negligence in January 2024; yet that ruling changed in the Court's later order. In sum, the evidentiary record had not changed. The same record evidence was available to the trial court in August 2025 as it was in January 2024. There was no basis for the trial court to issue inconsistent rulings on the Respondent's duplicative summary judgment motions. Clearly, the partial summary judgment as to the finding of gross negligence as a matter of law and striking the Section 15-78-60(17) immunity defense should be reversed on this basis.

II. The trial court erred in treating the intentional and criminal conduct by Officer Anthony Hall in allowing gang members access to the decedent in order to commit the assault upon him as conduct constituting gross negligence, which is contrary to well-developed South Carolina law.

As discussed above, there exists evidence in the record, as previously noted by the trial court when it denied an earlier motion for summary judgment by the Respondent in January 2024, that indicates that Anthony Hall acted intentionally in allowing gang members access to the decedent in order to commit the assault upon him. The Respondent cannot deny this account as to what transpired in the Marion Unit on July 18, 2017. In his Amended Complaint, the Respondent, in fact, alleges that "an officer facilitated the assailants' attack on the plaintiff, witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff."

See, Amended Complaint, ¶ 24. (R. 35). The Respondent is judicially bound by the allegations in his Amended Complaint.¹ Nonetheless, despite record evidence to the contrary, the trial court ruled as a matter of law that the actions by Hall leading to the decedent's assault constitute gross negligence rather than intentional conduct.

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

¹ In *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322 (Ct. App. 1992), this Court held that “parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise.” 418 S.E.2d at 323. “The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.” *Id.* See also, *Johnson v. Alexander*, 413 S.C. 196, 775 S.E.2d 697, 700 (2015); *Kitchen Planner, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020).

Complaint.

In effect, gross negligence does not *per se* include intentional conduct. As indicated, South Carolina law recognizes that intentional torts may *not* be committed in a negligent manner. In other words, negligence and battery are mutually exclusive; there is no such cause of action for a negligent assault and battery or a grossly negligent assault and battery. *See, State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (Ct. App. 2000) (recognizing that "an intentional tort ... by definition cannot be committed in a negligent manner"); Restatement (Second) of Torts, § 262, cmt. d ("The definition of negligence given in this Section includes only such conduct as creates liability for the reason that it involves a risk and not a certainty of invading the interest of another. It therefore excludes conduct which creates liability because of the actor's intention to invade a legally protected interest of the person injured or of a third person"). Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), the Supreme Court explained that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liability for injury to person or property, when such injury is not the result of premeditation and formed intention." 134 S.E. at 235. Thus, intent and negligence are mutually exclusive, and there is no claim of gross negligence that flows from intentionally tortious conduct, such as what the Respondents has pled against Officer Hall in paragraph 24 of his Amended Complaint.

Similarly, in *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), this Court recognized that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, this Court concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id.*

The case of *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020), is particularly instructive. In that case, the plaintiff sued for an arrest and included causes of action for false arrest, malicious prosecution, and gross negligence. In affirming summary judgment on the gross negligence claim, this Court wrote: “*There is also no viable claim for negligence or gross negligence.* Seabrook contends the officers negligently arrested him without probable cause. This is indistinguishable from his malicious prosecution claim.” 853 S.E.2d at 510. (Emphasis added). Thus, *Seabrook* is yet another case where our appellate courts correctly recognized that an intentional tort, like malicious prosecution, cannot be pled and prosecuted as a “gross negligence” claim.

In the present case, the trial court did not address nor refute nor distinguish the existing case law as cited herein and instead implied that South Carolina law allows a plaintiff to pursue a gross negligence claim premised on an assault and battery theory or other similar intentional conduct. That is clearly not an accurate recitation of the law, as the foregoing discussion demonstrates.

However, 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. That constitutes clear error that warrants the reversal of the grant of partial summary judgment on liability. Of note, 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). 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 intentional acts, crimes of moral turpitude, acts of actual malice, and acts of actual fraud. Those constitute intentional conduct by a governmental employee. From a logical and legal standpoint,

intentional conduct may not be committed in a grossly negligent manner. The foregoing discussion of controlling South Carolina law makes that clear.

Thus, it defies logic as well as the legislative intent and public policy underlying Section 15-78-60(17) immunity for the trial court to have ruled, at least implicitly, 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 for reading and applying Section 15-78-60(17) as having a gross negligence exception. Accordingly, the trial court's grant of partial summary judgment as to Section 15-78-60(17) immunity should be reversed. While the trial court denied summary judgment to SCDC on that issue, and while that denial is not immediately appealable, SCDC should still be entitled to reassert its Section 15-78-60(17) immunity defense at trial based on findings of fact to be made by the jury.

III. The trial court erred in granting partial summary judgment to the Respondent on Section 15-78-60(17) immunity where the evidence supports a finding that the Appellant is entitled to the "crime of moral turpitude" immunity and other bases given the evidence of Officer Hall's intentional and criminal conduct for which he was charged.

The trial court also erred in refusing to address the "crime of moral turpitude" immunity which is part of Section 15-78-60(17) and particularly applicable in this case given the alleged criminal conduct by Officer Hall. The record reflects that Officer Hall was criminally charged as a result of his actions on July 18, 2017, that resulted in injury to the decedent. Officer Hall was charged with Accessory Before the Fact to Attempted Murder and Misconduct in Office. (R. 148, 186-187).

In *Baddourah v. McMaster*, 433 S.C. 89, 856 S.E.2d 561 (2021), the Supreme Court addressed in detail the current law in South Carolina on crimes of moral turpitude. As the

Supreme Court explained, “A crime of moral turpitude is a term of art that has been defined by South Carolina law, and whether an offense qualifies as a crime of moral turpitude is a question that is appropriate for the courts.” 856 S.E.2d at 568. The Supreme Court explained that “South Carolina has applied a traditional framework, defining moral turpitude as ‘an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’” 856 S.E.2d at 571. Moreover, the Supreme Court observed:

Making the issue somewhat more complex, South Carolina courts have held that whether some offenses are a crime involving moral turpitude can depend on the facts of the case. In those cases, determining whether an offense qualifies as a crime involving moral turpitude involves consideration of the nature of the crime as defined by law as well as the particularized facts contained in the indictment.

Id. Additionally, the Supreme Court stated “that crimes involving primarily self-destructive behavior generally do not implicate moral turpitude; rather, in determining whether a crime is one involving moral turpitude, the Court focuses primarily on the duty to society and fellow man which is breached by the commission of the crime.” 856 S.E.2d at 572.

The Supreme Court in *Baddourah* was asked to determine whether second-degree domestic violence is a crime of moral turpitude. In concluding that the offense does qualify as a crime of moral turpitude, the court rejected the plaintiff’s “suggestion to require a threshold of ‘extremely grave acts of violence and depravity’ or to restrict our analysis to *malum in se* offenses.” 856 S.E.2d at 573. Instead, the court “focus[ed] primarily on the duty to society and fellow man that is breached by the commission of the crime.” *Id.* Ultimately, the Supreme Court concluded as follows: “Under the circumstances presented here, in which it is alleged that an individual engaged in conduct that was ‘likely to result in moderate bodily injury,’ we

conclude the charge of second-degree domestic violence qualifies as a crime involving moral turpitude.” 856 S.E.2d at 574.

Applying the framework from *Baddourah* to the present case, it is clear that the alleged criminal conduct committed by Officer Hall rises to the level of a crime of moral turpitude. The fact that Hall was criminally charged and those charges were dropped does not negate the applicability of “crime of moral turpitude” immunity. That was a prosecutorial decision not based on the merits of the offense. Moreover, as the trial court acknowledged in its January 2, 2024 Order, there is sufficient evidence in the record that Hall acted intentionally in order to allow the decedent to be physically assaulted by other inmates. Moreover, the severe injuries claimed by the decedent certainly meet the “likely to result in moderate bodily injury” component of the analysis. (R. 139-140). Notably, South Carolina does recognize that assault and battery or misconduct in office may be a crime of moral turpitude depending on the facts contained in a warrant or indictment. *See, In Matter of Lee*, 313 S.C. 142, 437 S.E.2d 85 (1993). Indeed, if the charge of second-degree domestic violence qualifies as a crime involving moral turpitude as determined in *Baddourah*, certainly the alleged conduct by Hall constitutes a crime of moral turpitude. There is, at the very least, a sufficient issue of fact in dispute that warrants the denial of the Respondent’s motion for partial summary judgment on the Section 15-78-60(17) defense.

The same is true for the other components of Section 15-78-60(17). SCDC may not be held liable for Hall’s malicious, criminal actions outside the scope of his official duties in opening the decedent’s cell door for his attackers, standing by, locking him back in, and reporting that everything was fine. *See, Doe v. South Carolina State Budget & Control Bd.*, 337 S.C. 294, 297, 523 S.E.2d 457, 458 (1999) (finding police officer who stopped female motorists

on suspicion of DUI and gave them the option of being arrested or providing sexual favors acted outside the scope of his official duties).

In sum, the Tort Claims Act, and specifically Section 15-78-60(17), provide that the government should not be held liable for such intentional and criminal conduct committed by governmental employees. In the case at bar, there is sufficient evidence, as the trial court previously recognized in its January 2, 2024 Order, and the current record also substantiates, to deny summary judgment to the Respondent on the issue of Section 15-78-60(17) immunity.

IV. The trial court erred in granting partial summary judgment to the Respondent on the issue of gross negligence where there are genuine issues of material fact that preclude summary judgment on that issue.

In its January 2, 2024 order, the trial court also found that there was sufficient evidence to deny summary judgment to the Respondent on the issue of gross negligence. Again, the trial court refused to address why it made the opposite ruling *as a matter of law* based on the same or at least substantially the same evidentiary record.

Additionally, the trial court failed to recognize that a grant of partial summary judgment as a matter of law on the issue of gross negligence *goes far beyond* what the Respondent actually sought in his motion for summary judgment. That motion filed May 27, 2025, seeks summary judgment as to SCDC's affirmative defenses as a discovery sanction based on the testimony in a Rule 30(b)(6) deposition. (R. 110-111). In essence, the Respondent was not satisfied with the testimony of a Rule 30(b)(6) designee, who was not a lawyer or trained in the law, regarding questions related to the legal defenses asserted by SCDC, including the immunity defenses under the Tort Claims Act. That is a far cry from moving for summary judgment once again, as he did in 2023, on the issue of gross negligence as a matter of law. Yet, the trial court treated the

motion as seeking summary judgment on the merits, including the existence of gross negligence and the Tort Claims Act immunity defenses.

Further, the trial court's order does not address how violations of any of the SCDC policies failed to prevent or otherwise caused the attack. The trial court spoke only in generalities in its order. The court did not specifically identify any SCDC policies that were violated as a matter of law and also never addressed how any violated policies proximately caused the harm to the decedent. This is particularly critical if the jury resolves the case based on SCDC's account of what occurred, specifically that Anthony Hall intentionally and criminally opened the decedent's cell door to allow other inmates to attack him. Indeed, it is undisputed that the decedent was locked in a cell at the time of the attack, where he should have been safe regardless of any claimed policy violations that may have occurred. In effect, Hall's conduct was the superseding, but-for cause of the attack on the decedent.

Moreover, the other SCDC employees, including the supervisors, were not grossly negligent for trusting an experienced officer to not (1) deliberately unlock Plaintiff's cell for his attackers and (2) lie when asked about a stabbing. *See, Hamilton v. Charleston County Sheriff's Dept.*, 399 S.C. 252, 731 S.E.2d 727, 729 (Ct. App. 2012) (affirming directed verdict to the defendant because its supervisors exercised at least slight care in trusting an officer with no prior misconduct they had trained).

In sum, the trial court's grant of partial summary judgment on the issue of gross negligence should be reversed and allowed to be decided at trial.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant South Carolina Department of Corrections respectfully requests that the Court reverse the orders issued by Circuit Court Judge Daniel Coble granting partial summary judgment as to liability, including his finding as a matter of law that the Appellant is liable for gross negligence and his ruling as a matter of law as to all Tort Claims Act immunity defenses, including Section 15-78-60(17) immunity.

Respectfully submitted,

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October 21, 2026

CERTIFICATE OF COUNSEL

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The undersigned counsel for the Appellant South Carolina Department of Corrections certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant South Carolina Department of Corrections certifies that the Final Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant, does hereby certify that service of the **Final Brief of Appellant** in the above-captioned appeal was made upon all counsel of record by email only this the 21st day of October 2026, as follows:

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