

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

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SC Court of Appeals

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

v.

South Carolina Department of Corrections, Appellant.

RECORD ON APPEAL - VOLUME II
(pp. 362-544)

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**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

) IN THE COURT OF COMMON PLEAS
) Civil Action No. 2018-CP-40-04850
)
)

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

Plaintiff,

v.

The South Carolina Department of
Corrections,

Defendant.

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION TO STRIKE
SCDC’S ANSWER**

**TO: DEFENDANT, THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
BY AND THROUGH THEIR ATTORNEY OF RECORD WILL DAVIDSON, ESQ.**

Plaintiff, Randle Jackson, as the Personal Representative of the Estate of Dashaun Simmons respectfully submits this memorandum in support of the motion for summary judgment or, alternatively, to strike the South Carolina Department of Corrections’ (“SCDC”) answer. The motion is based on SCDC’s failure to provide evidence supporting its defenses and its repeated violations of discovery obligations.

FACTUAL RECITATION

Deceased Plaintiff 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.”¹ During the times relevant to this action, Simmons was housed at the Marion unit within BRCI. The Marion unit is one of a handful of housing units at the BRCI facility, however Marion was known to be a particularly rough unit within the already high security BRCI prison. **Exhibit A**, 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. **Exhibit B**, Deposition of Evan Garris at 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. **Ex. B** at p.90. The unit is described as housing around 200 inmates on two separate sides. These two sides are separated by a locked sally-port and are not supposed to interact with each other. **Exhibit C**, Deposition of Matthew Kennedy at 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. **Exhibit D**, Deposition of Holden Byrd at p.40 (“Q: How often do inmates end up in unassigned cells? How often do inmates end up in cells they’re not assigned to? . . . A: Happens more than I would like to have seen.”); **Ex. B** at 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

¹ 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>.

assigned to investigate the stabbing at issue in this case admitted, “the inmates essentially ran that unit.” **Ex. B** at p.142. Investigator Garriss went on to concede that this created a dangerous situation:

Q: Why did nobody every 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.

Ex. B at p.142.

On July 17, 2017 at 7:15 pm, Corrections Officer Anthony Hall began his shift at the Marion unit of Broad River Corrections institute. Officer Hall was relieving Officer Matthew Kennedy, who was the day shift officer that day. Ofc. Kennedy was working by himself in the dangerous Marion dorm and testified that he was responsible for locking down inmates in the evening for the evening shift change. **Ex. C** at 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 during the daytime to roam about the unit. Ofc. Kennedy testified that on a typical night he would begin locking down the inmates around 6:00 or 6:30 in the evening. **Ex. C** at p.17.

SCDC policy requires that a level III institution, which includes BRCI, must conduct at least three “formal” counts per day, including one after the inmates are secured for lights out in the evening. **Exhibit E**, SCDC OP 22.06. As a “formal” count, this evening count requires a minimum of two officers to be present and 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. **Ex. E**. So it is obvious that one of the important purposes of doing these formal counts in the evening is to be certain 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 had no control over whether inmates were locked in their cells for the evening or any knowledge of which inmates were in which cells. See **Ex. E**. Ofc. Kennedy testified that normally he would attempt to get inmates into their correct rooms and identify them with their IDs and lock them in their rooms for the night. **Ex. C** at p.17. When the night shift officer relieving him arrives, both officers are required by SCDC policy to confirm the count and ensure the doors are all locked. **Ex. E**. The day shift officer can only leave once the doors are all locked and the count is confirmed. **Ex. C** at p.19. But on the night of July 17, 2017, Ofc. Kennedy testified that he witnessed the relief officer, Ofc. Anthony Hall, opening some of the doors. **Ex. C** pp.20-22; **Exhibit F**, Statement of Kennedy. He reported this to his shift Lieutenant, Clinton Parker, and the superior officer instructed Ofc. Kennedy to go home and that the superior officer would take care of it. **Ex. F**. 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 Ofc. Hall began the night shift.

Ofc. Kennedy's testimony and his voluntary statement to police services indicates that he witnessed the fact that there were unlocked doors in the Marion unit, that he informed his superior officers, and that he 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, Ofc. Kennedy, Lt. Parker—and thus SCDC—were well aware that the unit had not been locked down and that no formal count had

been completed. So what did Lt. Parker do about it? During his deposition Lt. Clinton 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

Exhibit G, Deposition of Clinton Parker at p.8. Notably, the duty roster for that day does show a Lieutenant Clinton Parker on duty during the D1 shift. **Exhibit H**, 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 the Marion unit, and SCDC chose to do nothing about it and leave the night shift officer to his own devices among the inmates.

The night shift officer, Ofc. 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, this night Kennedy left the unit before the inmates were locked up and the count was completed. **Exhibit I**, Deposition of Anthony Hall at pp.23-24. Ofc. 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 can be completed and this was a recurring problem about which he had notified his supervisors and the Warden, yet received no assistance. **Ex. I** at p.110.

As the evening progress, the operations area within the prison started to receive phone calls from prisoners within the prison.² 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. **Exhibit J**, Deposition of Ulysses Collins at 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 somebody did not get him medical attention. **Ex. A** at 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, however, the timing of these calls could easily be confirmed through the operations logbook, which should have been provided in discovery and is required by policy to record matters such as this.³ However, this document has never been produced despite multiple discovery requests seeking its production.

The inmate calls “went on for about an hour or two hours into the shift”, so 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, Lt. Ulysses Collins decided that he would look into things. **Ex. J** at p.12. According to his statement, Lt. Collins went to the Marion unit around 12:15 and found about 20 or 30 doors unlocked in the unit. **Exhibit K**, Statement of Collins. Again, it is unclear how the timeline unfolded, because at some point around 3:00-4:00

² Notably, these calls came from contraband cell phones possessed by prisoners, and the call came 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 than 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.

³ See **Exhibit M**, 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 supplied))

am Lt. 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 the 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 am in both his written statement the next morning and in his deposition testimony. **Exhibit L**, Statement of Byrd; **Ex. D** at p. 21.

Eventually, Lt. 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 Plaintiff Simmons “on the bottom bunk full of holes.” **Ex J** at p.15. Simmons had been brutally assaulted at some point earlier in the evening—around 10:00 pm according to the testimony of Lt. Collins—and despite numerous calls for his aid by inmates throughout the prison, he was left to bleed out “full of holes” until sometime after 4:00 am.

After he was discovered, Simmons was taken to the hospital for treatment. He suffered massive blood loss from multiple stab wounds, bubbling air from his wounds, he lost consciousness on the table at the hospital and was still receiving CPR when he left the hospital for the trauma center. Then next day, Plaintiff was readmitted to the hospital due to infection concerns because of Defendant’s failure to provide medication to Plaintiff.

STANDARD OF REVIEW

Pursuant to Rule 56(c), summary judgment should be granted “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.” SCRCP 56(c). When considering a motion for summary judgment,

the evidence and its reasonable inferences must be drawn in a light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Hackworth v. Greenville County, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006) (citing Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001)).

ARGUMENT

Defendant’s Answer asserts various defenses to Plaintiff’s claims: (1) comparative negligence; (2) intervening criminal acts; (4) TCA immunity pursuant to S.C. Code § 15-78-60 (3), (4), (5), (6), (13), (17), (20), and (25); (5) discretionary immunity; (6) assumption of risk; and (7) joinder. Defendant has the burden of proving these defenses and if the Defendant should fail to articulate evidence sufficient to establish these defenses then summary judgement should be granted.

Because it is incumbent on the Defendant to articulate its own defenses, one might reasonably expect that when discovery requests ask the simple question: “what evidence do you have in support of your affirmative defenses,” the defense would want to articulate that evidence. Strangely, the Defendant in this case has refused to provide any testimony as to its own defenses. In February 2024, in response to Plaintiff’s second Rule 30(b)(6) deposition notice, Defendant asserted that “any information concerning any of the defenses pled by the Defendant’s counsel . . . would invade the mental impression of counsel for the Defendant in the defense of this matter.” Def. Notice of Mot for Protective Order, filed Feb. 5, 2024. In response, this Court quite rightly held that a party asserting an affirmative defense bears the burden of proving those defenses and the Plaintiff is certainly entitled to seek discovery regarding those defenses. Order, filed April

8, 2024. The amount of effort the Defense expended to keep its own affirmative defenses a secret is truly bizarre.

Asserting the ridiculous position that their own defenses are not discoverable in a Motion for a Protective Order is not the only strange attempt to avoid discussing their own defenses. Plaintiff's counsel has noticed the 30(b)(6) deposition of Defendant SCDC multiple times. The most recent notice is captioned the "Seventh Amended SCRCP 30(b)(6) Deposition Notice and Topics List." The Court has been required to intervene and order Defendant to comply with the rules of discovery regarding these deposition three times as the Defendant failed to comply with the Court's orders. Defendant SCDC simply refused to produce knowledgeable witnesses or witnesses that were prepared to testify regarding the enumerated topics. More specifically, as to the defenses asserted by SCDC, their own witness testifying about their own defenses could not articulate a single shred of evidence to support their defenses and had not even bothered to read their own Answer in this case:

(MR. HAWKINS) Okay. As it relates to comparative fault, is there any evidence or facts you want to tell me about that I didn't ask you about?

A. You're using the legal term about fault and stuff, so I'm not exactly - - what you're asking me.

Q. Is there anything you want to tell me about the third defense before I move on to asking you about other defenses?

A. What is the third defense?

Q. Comparative fault.

A. I need a better clarification. I'm not understanding what you're asking.

Q. Well, you were put up to give evidence on this. You're supposed to understand what I'm talking about.

A. I am not aware - - I do not understand your legal terms. Talk - -

Q. It has nothing to do with being a lawyer. An agency or company is not an actual person under Rule 30(b)(6) of the Rules of Civil Procedure - - is required to be knowledgeable about the topics listed in the deposition notice. Right? And this is very straightforward and unambiguous. It's less than two lines. Your attorney has had years to put somebody knowledgeable about this topic.

And every time I ask you a question, you're saying "I don't know what comparative fault means." And that's a defense that you're supposed

to be able to offer testimony about. You can't do it because you're not ready for this topic.

* * *

Q. Just tell me as to comparative fault. SCDC is saying it's my guy's fault that he got killed. Just tell me what evidence you have to support that other than this debt you're saying he owes.

Just tell me that. If you don't have any evidence, say "I can't point to any evidence."

A. I can't point to any evidence at this time that I know of.

Q. Okay. Have you ever read the answer to the amended complaint?

A. Not to my knowledge.

Q. Have you ever seen any of these defenses that you're here to testify about?

A. No, sir.

Q. Do you know anything about the defenses or the facts that SCDC will rely on to support them?

A. No, sir.

Q. You're not prepared to answer these questions at all about defenses, are you?

A. I'm prepared to talk about what I know about this investigation that led to criminal charges.

Q. Well, I'm asking you about defenses, which is what's in Topic 47. And what it says is "all facts in support of each defense pleaded in the answer or upon which the defendant will rely at trial."

You've never seen the answer; right?

A. No, sir.

Q. You don't even know what the defenses are, do you?

When I read these next several defenses, you don't even know what I'm going to say?

A. That is correct.

Deposition of Rayford Miller, 5/21/25, pp.15-20.

Throughout the entirety of this case, SCDC has consistently refused to participate in discovery in good faith and has instead employed a strategy of obfuscating and hiding clearly discoverable information. This case has languished since 2018 largely because of the infuriating bad faith discovery practices employed by defense counsel. Indeed, at this point in time, on the eve of trial, defense counsel has yet to respond to numerous discovery requests which Plaintiffs will seek in a final Motion to Compel to be heard along side the instant motion. However, Defense counsel's stalling and bad faith discovery tactics will have succeeded in preventing Plaintiff from

obtaining discoverable information in a timely manner. As discussed below, Plaintiff submits that the discovery misconduct by Defendant throughout this case merits harsh sanction.

With respect to Defendant's defenses, although Defendant does not seem to be interested in discussing each of them, the Plaintiff will address each of them in turn.

I. Comparative Negligence

Defendant's first defense is that of comparative negligence—that Plaintiff's own negligence was greater than Defendant's negligence. Comparative negligence is an affirmative defense for which the Defendant has the burden of proof. Ross v. Paddy, 340 S.C. 428, 436, 532 S.E.2d 612, 616 (Ct. App. 2000). Comparative negligence is only a bar to recovery if the plaintiff's negligence is greater than the defendant's negligence. Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002).

Plaintiff Simmons was a prisoner in a maximum-security prison. He was housed in a particularly dangerous and chaotic unit within that prison. The unit in which he was housed was supposed to have been on lockdown, however, as discussed above, Defendant had no control over the inmate population of that unit. At the time he was attacked, Plaintiff was asleep in a cell that was supposed to have been locked. While he was asleep, other inmates ran into the room and attacked him with illegal homemade weapons that, yet again, Defendant had absolutely no control over.

Defendant has articulated no evidence to demonstrate that a man sleeping in a locked room was more negligent for being assaulted by other inmates than the prison that had a duty to ensure that prison's safety. Defendant has asserted in its own summary judgement motion that Plaintiff did not tell SCDC about potential threats from other inmates. This is a ridiculous argument, as Plaintiff was locked in a maximum security prison where inmates are constantly under threat.

Plaintiff would have no way of knowing if ‘beefs’ between prisoners would be acted upon or when any assault might occur. Additionally, as the testimony of Defendant’s officers make clear, Defendant had little control over the inmates in that unit. So even if Defendant was aware that the inmates that assaulted Plaintiff presented some sort of threat, it is clear that Defendant’s grossly negligent management of that facility would have been completely incapable of preventing an assault.

Merely asserting that Plaintiff should have told prison guards that he thought he might be in danger when Plaintiff had no way of knowing if or when he might be attacked does not amount to negligence greater than Defendant’s own grossly negligent mismanagement of the Marion unit. Because Defendant has offered no evidence from which a jury could possibly find that Plaintiff more negligent than Defendant, the Court should grant summary judgment as to Defendant’s claim of comparative negligence.

II. Intervening Acts

Defendant claims that Plaintiff’s injuries are the result of intervening criminal acts of third parties and that the claims are barred. Where an intervening act is claimed as a bar to liability the test is whether the act of the third party was reasonably foreseeable given the attendant circumstances. Mellen v. Lane, 377 S.C. 261, 283, 659 S.E.2d 236, 247 (Ct. App. 2008) (citations omitted). An act is reasonably foreseeable if it is a natural and probable consequence of the original actor’s conduct. Id. at 283, 659 S.E.2d 236, 248 (citation omitted). If the action of the third party was foreseeable, the Defendant is still liable. Id.

Again, because Defendant refuses to tell Plaintiff what the basis of its defenses are, either through deposition or through discovery response, Plaintiff can only speculate as to what Defendant claims is the intervening act. To the extent Defendant believes that the assault by other

inmates constitutes an intervening criminal act by third parties, that act is clearly a foreseeable consequence of Defendant SCDC's negligence in this case. SCDC had no control over the inmate population in a maximum-security housing unit, so assaults are clearly a reasonably foreseeable consequence of SCDC's negligence. See Ex. D at p.40 ("Q: How often do inmates end up in unassigned cells? How often do inmates end up in cells they're not assigned to? . . . A: Happens more than I would like to have seen."); Ex. B at p. 141 ("Q: Or why the 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"); Ex. B at 142 ("Q: And that was known amongst – among corrections officers that the inmates essentially ran the unit and assigned themselves cells? A: Yeah, I mean, it was known, and it was known to police services agents as well. . . . I would think it would be essential for the security of the institution for inmates to be in their assigned cells.")

To the extent that Defendant claims that the actions of Ofc. Anthony Hall are an intervening act, Ofc. Hall is not a third party, he was an agent of SCDC working for SCDC at that time in the scope and course of his employment.

Even if Hall was somehow considered a third party, which he is not, his action are again foreseeable in light of the circumstances. The testimony on record demonstrates that SCDC was on notice that when Ofc. Kennedy left the day shift there were still unlocked and opened doors in Marion unit. Defendant was on notice that the unit had not been properly locked down for the evening and did nothing to rectify the situation. Additionally, there was only one officer in the unit. SCDC is keenly aware that guards often engage in improper activity such bringing in contraband and assisting inmates—this is why prison guards are searched before they enter the prison. Thus, even if Ofc. Hall intentionally opened the cells, by failing to follow its own protocols and policies

SCDC should have reasonably foreseen that an assault such as the one that Plaintiff suffered, was a likely outcome.

This Court should grant summary judgment as to Defendant's claim for intervening acts because those acts are a direct and foreseeable consequence of Defendant's own negligence. SCDC has policies in place to prevent the very thing that happened in this case. The rules and policies regarding lockdowns, counts, staffing, and other security measures in places to ensure safety within the Marion unit were simply not followed. The assault that happened to Plaintiff was a foreseeable consequence of Defendant's failure to follow its own policies.

III. TCA Exemptions

Defendant next claims that it is entitled to immunity under enumerated exemptions in the Tort Claims act, S.C. Code § 15-78-60 (3), (4), (5), (6), (13), (17), (20), and (25). Plaintiff submits that Defendant was so grossly negligent in its failure to follow its own policies and procedures that this Court should determine as a matter of law that Defendant was grossly negligent. If Defendant was grossly negligent in its supervision, protection, control, confinement, or custody of Plaintiff, the exemptions to the TCA cited above are inapplicable.

The law regarding application of gross negligence in Tort Claims Act cases is well settled. “[W]hen 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) (“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.”). Failure to read the exceptions in this

manner would render other portions of the TCA a nullity, which is contrary to the legislative intent of the Act. Steinke, 336 S.C. at 398, 520 S.E.2d at 155.

In effect, when a governmental entity is grossly negligent and one of the TCA exceptions containing a gross negligence standard is actually applicable to the facts of the case, other exceptions that may not contain the gross negligence standard are essentially inapplicable. In the instant case, the claims in this case assert gross negligence by SCDC in their custody and confinement of Plaintiff and in their supervision of employees responsible for confining, protecting, and maintaining custody of Plaintiff. In this case, and in most any case that involves the South Carolina Department of Corrections, the exception found at S.C. Code § 15-78-60(25) will always apply. That exception provides that the governmental entity is not liable 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). Because this subsection clearly applies to Defendant, the exceptions found at section 15-78-60(3), (4), (5), (6), (13), (17), (20) cannot absolve Defendant of liability if Defendant was grossly negligent in its supervision, protection, control, confinement, or custody of Plaintiff.

Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). It is the failure to exercise slight care. Id. Gross negligence has also been defined as a relative term and means the absence of care that is necessary under the circumstances. Hollins v. Richland County School Dist. 1, 310 S.C. 486, 427 S.E.2d 654 (1993). “Gross negligence ordinarily is a mixed question of law and fact.” Clyburn v. Sumter County School Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) (citations

omitted). “When the evidence supports but one reasonable inference, however, the question becomes a matter of law for the court.” Id. at 53, 451 S.E.2d at 888-89 (citations omitted).

As discussed in the factual recitation above, Defendant demonstrated an utter lack of concern for the safety of Plaintiff before the assault occurred and after Defendant was made aware of the assault. Defendant has numerous policies in place to ensure the safety of the guards and the prisoners in the institution, and many of those policies were completely ignored. This alone is grounds to rule as a matter of law the Defendant was grossly negligent. See Jinks v. Richland Cnty., 355 S.C. 341, 348, 585 S.E.2d 281, 285 (2003) (detention center officers’ failure to follow policy concerning medical observation is evidence of gross negligence). On the night of the assault, Defendant knew that the cell doors were not all locked down, they knew that Ofc. Kennedy had left for the day without assisting Ofc. Hall in locking the doors, they failed to send a supervisor to assist Ofc. Hall, and they knew that the Marion unit was a dangerous unit where the inmates were in control. These failures and many others can only lead to the singular conclusion that Defendant was willfully indifferent to the potential for an assault to occur and failed to exercise the slightest care to prevent that from happening.

Because Defendant 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—Plaintiff was brutally assaulted. If Defendant had simply exercised the slightest care and, as an example, ensured that all doors were locked for the night shift, ensure that the prisoners were in their correct cells, send a supervisor down to the unit to assist the lone guard with locking down the unit, have more than one guard in the unit to ensure safety, or any of the many other basic safety precautions that they could have taken, this assault never would have occurred.

This Court should hold that Defendant's conscious failures merit a finding of gross negligence as a matter of law. As a consequence of that determination, the Court should further find that the Plaintiff is entitled to summary judgment with respect to Defendant's claim of exemptions under the Tort Claims Act, S.C. Code § 15-78-60 (3), (4), (5), (6), (13), (17), (20), and (25).

IV. Discretionary Immunity

Defendant next claims that its employees were exercising discretionary authority and should be immune from suit. This defense requires a showing that Defendant's employees actually weighed competing alternatives and made a discretionary decision. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994) ("Discretionary immunity is contingent on proof that the Highway Department, faced with alternatives, actually weighed competing considerations and made a conscious choice. The governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before it.").

In the instant case, there is no evidence that Plaintiff's injuries are the result of a discretionary choice conforming to any professional standards. The sold evidence in the case is that Defendant's employees were so unbothered, lazy, and apathetic to the policies and procedures that governed their jobs that they simply ignored established policy. Their failure to follow these policies resulted in the injuries suffered by the Plaintiff. Because Defendant has offered no evidence that its employees were following any sort of professional standards or decision making in the events leading up to Plaintiff's claims, the Court should grant summary judgment on this defense as well.

V. Assumption of Risk

The defense of assumption of risk has four elements: “(1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to the danger.” Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 78, 508 S.E.2d 565, 569 (1998) (quoting Senn v. Sun Printing Co., 295 S.C. 169, 367 S.E.2d 456 (Ct.App.1988)). “The doctrine is predicated on the factual situation of a defendant's acts alone creating the danger and causing the accident, with the plaintiffs act being that of voluntarily exposing himself to such an obvious danger with appreciation thereof which resulted in the injury.” Id.

Obviously, Plaintiff did not voluntarily expose himself to assault by other inmates. Defendant can point to no evidence in this case that would give rise to any inference that Plaintiff knew he was about to be assaulted and voluntarily exposed him to such assault. Even if Plaintiff was aware that some people were out to get him, he was in a locked cell with no expectation that the door would be opened to allow others to attack him. If a prisoner participates in a fight on the yard or in a prison riot, perhaps one might argue that he voluntarily exposed himself to the consequences of that activity. However, if the prisoner is asleep in a locked cell, it cannot be said that he volunteered to be attacked in his sleep. There is clearly no evidence in the record to support this defense and the Court should grant summary judgement.

VI. Joinder

Finally, Defendant claims Plaintiff failed to name a necessary party. Defendant has identified no necessary or indispensable party that should be named. Furthermore, if there were such a party that remains unnamed, which there is not, the proper remedy would be for the unnamed party to be made a party, not to dismiss the action. Charleston Cnty. Parents for Pub.

Sch., Inc. v. Moseley, 343 S.C. 509, 514, 541 S.E.2d 533, 535 (2001) (“the remedy under Rule 19, SCRCF is for the Court to make the Charleston Delegation a party, not to dismiss the action.”). Because the record contains no evidence of any necessary and unnamed party to this matter, this defense should also be stricken and the Court should grant summary judgment.

VII. Motion to Strike

SCDC has repeatedly violated its discovery obligations, warranting sanctions under Rule 37(b)(2)(C), SCRCF. The court has twice issued sanctions against SCDC for failing to make witnesses available for deposition. Despite these sanctions, SCDC has continued to obstruct the discovery process by failing to provide a witness capable of articulating evidence supporting its defenses. In addition to their continued failure to produce knowledgeable witnesses, Defendant has failed to produce many, many discoverable materials that have been requested by the Plaintiff. Plaintiff’s counsel believes that these discovery tactics are an intentional effort to bog down the Plaintiff’s ability to present this case and that this conduct merits a harsh rebuke from the Court.

Plaintiff previously filed a Motion to Compel seeking compliance with the Court’s orders and Rule 30(b)(6) and Defendant continued to present numerous representative witness for this case but these witnesses have no idea about the topics for which they are offered. The purpose of a Rule 30(b)(6) deposition is for a party to have an organizational representative witnesses testify on its behalf regarding the knowledge of that organization. Defendant, however, has produced a confusing morass of witnesses with little or not knowledge about the topics for which they are asked to testify. As one example from above, in the deposition of Rayford Miller, who was presented to testify about their affirmative defenses (among other things) had not even read their Answer and had no idea what an affirmative defense was.

With respect to the written discovery, many discoverable items have simply not been produced. For example, Plaintiff was assaulted in a room with a roommate and was subsequently locked in that room with the another person. Clearly Plaintiff's counsel would like to talk to this other person who was a direct eyewitness to the attack. Defendant has never identified this person who is an absolutely crucial witness. As another example, there is much confusion over the timing of these events. However, SCDC policies require that detailed logs be kept at many posts, including the control room, the shift Lieutenant, and the dorms. Only the Marion log book has been produced in a somewhat incomplete form. None of the other log books have been produced but they have to exist. Either they were intentionally destroyed to prevent their disclosure in this case, or the Defense is intentionally hiding them. As another example, a man was brutally assaulted in a prison cell and the defense has not produced a single picture. It defies belief (and SCDC policy) that there was not a single picture taken of the scene. The defense simply refuses to produce these and other clearly discoverable items.

Unfortunately, the Defendant is in complete control of the discovery materials and the Plaintiff can only guess at what the Defendant has in its possession. Thus, Plaintiff cannot direct the Court to the specific items that Defendant has failed to produce—we can only speculate about what is being withheld. But some items that have not yet been produced must exist and their failure to produce them means that they have either intentionally destroyed them, are hiding them, or through them away against policy. For example, the various log books are required to be kept on a permanent basis. Because they have only produced a handful of pages from the Marion logbook, they are either intentionally withholding the control room and shift Lieutenant's log books, or they were destroyed against policy. There is no other explanation.

The South Carolina Supreme Court has recognized that striking a party's pleadings is an appropriate sanction for discovery abuse when the noncompliance is willful, in bad faith, or grossly indifferent to the opposing party's rights. Innovative Waste Mgmt., Inc. v. Crest Energy Partners GP, LLC, 445 S.C. 19, 911 S.E.2d 406 (2025). In Innovative Waste, the Supreme Court upheld the circuit court's decision to strike the violating party's answer and counterclaims because they did not comply with three motions to compel, two discovery sanctions, and wasted nearly seven years of time and money. *Id.* at 21, S.E.2d at 407.

In Barnette v. Adams Bros. Logging, Inc., the South Carolina Supreme Court held "Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just," including an order dismissing the action or proceeding, or any part thereof." Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003).

Here, SCDC's repeated failure to comply with discovery obligations demonstrates willful disobedience and gross indifference to the plaintiff's rights, justifying the striking of its answer. It is clear that Defendant is intentionally engaging in bad faith, deceptive discovery practices in an effort to stymie the Plaintiff's ability to litigate this case. So for these reasons, and others presented at a hearing on this matter, Plaintiff requests the Court strike the Defendant's Answer.

Conclusion

For the reasons discussed above and for those that may be discussed at a hearing on this matter, the Plaintiff respectfully requests the Court grant this motion and that the defenses raised in Defendant's Answer be foreclosed by Summary Judgment. Liability in this matter should be determined in favor of the Plaintiff, and this matter should proceed to trial on damages alone. In

the alternative, Plaintiff requests the Court strike the Defendant's pleadings as a sanction for their bad faith, deceptive discovery practices.

(signature page follows)

Respectfully submitted,

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Charleston, South Carolina
August 1, 2025

Attorneys for Plaintiff

Exhibit A

Deposition of Brittany Livingston

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO.: 2018-CP-40-04850

RANDLE JACKSON, PERSONALLY AND AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF DASHAUN SIMMONS,
Plaintiff,

VS.

THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Defendant.

V I D E O D E P O S I T I O N

WITNESS: BRITTANY LIVINGSON
DATE: Friday, April 28, 2023
TIME: 10:28 a.m.
LOCATION: Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, South Carolina 29010
TAKEN BY: Attorney for the Plaintiff
REPORTED BY: Donna Cheryl Kyzer
 South Carolina Court Reporter

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Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 anybody in danger.

2 Q. In Marion unit, were there a lot of
3 weapons?

4 A. I can't speak for the Marion unit, per se,
5 because during that time frame, in 2017, I worked at
6 a lot of the -- like, out of areas; maybe, like,
7 front gate or the control room or the yard, like,
8 running the yard, so I never really was in the Marion
9 unit, you know.

10 Q. How many -- how many times did you hear of
11 there being weapons recovered in Marion unit or -- or
12 anywhere at Broad River?

13 A. Woo. At that time, it's so hard to say.

14 Q. Because it was dangerous?

15 A. What?

16 Q. It was dangerous at Broad River at that
17 time?

18 A. I mean --

19 MR. DEMASTERS: Object to the form.

20 But go ahead.

21 THE WITNESS: So I --

22 MR. DEMASTERS: You can answer.

23 THE WITNESS: It's -- its danger at every
24 prison which -- at any time, but -- and that
25 particular unit was a rough unit. It was -- you

1 considered that a high alpha unit, and they really
2 only put males in that unit at that time --

3 BY MR. HAWKINS:

4 Q. Okay.

5 A. -- so it was a rough unit.

6 Q. Yeah. And despite -- and despite knowing
7 how rough it is, and whether it's due to shortages or
8 whatever, despite it being rough and there being
9 weapons, Hall was still the only officer in that
10 unit when the stabbing took place as far as you
11 know?

12 A. Yes, sir.

13 Q. Okay. All right. Is there any doubt that
14 Hall, as far as you know --

15 A. Uh-huh.

16 Q. -- was wearing his uniform and working as a
17 SCDC corrections officer when the stabbing happened?
18 Any doubt in your mind about that?

19 A. As far as I know, he was fully clothed.

20 Q. Yeah.

21 A. I would hope, yes.

22 Q. Yeah. The reason I'm asking you is -- so
23 it was kind of a weird question, but the Tort Claims
24 Act, which is what this case is, is a --

25 A. Uh-huh.

1 there to the Marion unit.

2 So what raised, I guess, a red flag with
3 them was when an officer who has nothing to do with
4 or knows anything about anything we've got going on
5 up here calls them and say an inmate has told them
6 that, you know, something is going on in the Marion
7 unit.

8 So I guess it was, you know, like, Well,
9 how does this person know that we just got this call,
10 and he said -- so that's when, I guess, they said,
11 Well, we're going to go down there and lay eyes for
12 ourself. They didn't tell me that. The only thing
13 they did was come shooting out of operations and say,
14 We're going to the Marion unit --

15 Q. Okay.

16 A. -- and then they went down there, and then,
17 you know, when --

18 Q. Let -- let me ask you about the timeline.
19 I want to make sure I have it right.

20 A. Uh-huh.

21 Q. You tell me if I've got anything wrong.

22 A. Okay.

23 Q. At some time in the early morning --

24 A. Uh-huh.

25 Q. -- you get a phone call that says, There is

1 an inmate stabbed, and he's going to bleed out.

2 A. Yeah. Well, I wouldn't definitely say
3 bleed out. It was just something to the nature of,
4 Somebody's been stabbed, and pretty much, If you
5 don't get down there, he will die, or something to
6 that --

7 Q. Yeah.

8 A. -- nature. Yeah.

9 Q. And that -- and -- and I'm -- I'm sorry
10 if -- I may -- I think I've got "bleed out" from
11 somebody else's --

12 A. Oh --

13 Q. -- report.

14 A. -- okay.

15 Q. What you said in your statement was, He
16 could die if somebody doesn't get down there.

17 A. Yeah.

18 Q. Is that --

19 A. Something of that nature.

20 Q. Okay. All right. So somebody -- so you
21 get this phone call, it says -- and from an illegal
22 cell phone, Somebody in this unit has been stabbed --

23 A. Uh-huh.

24 Q. -- and they're going to die if somebody
25 doesn't get here. Something like that?

1 long ago --

2 Q. Yeah.

3 A. -- and, you know, the institution puts
4 things on lockdown, and you might not know exactly
5 the detail. Like, if you come and tell me, Hey, this
6 unit is on lockdown, I'm not going to go to you and
7 say, Why? Why? They're on lockdown. Okay?

8 So this is what I would say to some of this
9 stuff. It's the first time I've seen Hall's
10 statement, and then you asked me about opening doors
11 during a lockdown.

12 To make it easier, and maybe for you to
13 come up with your next question, that unit, at the
14 time, was the worst unit. We were on night shift.
15 Okay? So no matter if the inmate went to heat up
16 food, go to a shower, the door shouldn't have been
17 opened. Okay?

18 Q. Yes, ma'am.

19 A. Definitely not without a second person.

20 Q. Right.

21 A. And, for that unit, it would be more than
22 just a second person. It would be probably, like,
23 a -- a lot of people off your shift because if we had
24 to go in and feed due to, at that time, the cells
25 didn't have flaps where we could put the food in, you

Exhibit B

Deposition of Evan Garris

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO.: 2018-CP-40-04850

RANDLE JACKSON, PERSONALLY AND AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF DASHAUN SIMMONS,
Plaintiff,

vs.

THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Defendant.

V I D E O D E P O S I T I O N

WITNESS: EVAN GARRIS
DATE: Friday, April 14, 2023
TIME: 10:07 a.m.
LOCATION: Hawkins & Jedziniak, LLC
 1225 South Church Street
 Greenville, South Carolina 29605
TAKEN BY: Attorney for the Plaintiff
REPORTED BY: Donna Cheryl Kyzer
 South Carolina Court Reporter
 Legal Eagle
 P. O. Box 5682
 Greenville, SC 29606
 864-467-1373
 depos@legaleagleinc.com

1 nightmare.

2 A. Yeah.

3 Q. Does -- from having talked to Hall, does it
4 surprise you that he is trying to evade service?

5 A. No.

6 Q. Did he indicate to you that he would
7 cooperate or not cooperate with -- with the
8 investigation or -- or civil litigation?

9 A. He didn't -- he didn't speak to that. I
10 mean, he cooperated with me, but, you know, the --
11 the last time that I had any communication with Hall
12 was when I served those warrants on him when I
13 arrested him, so he didn't -- he didn't say whether
14 he would be cooperative or not moving forward.

15 Q. It looks like Simmons indicated that he
16 was -- that the unit was locked down because of a
17 gang riot. Do you have any information about that?

18 A. To be honest with you, that unit was
19 constantly on lockdown because of -- of gang
20 violence, so it's hard to determine exactly what
21 incident -- for what incident they were on lockdown
22 for at that -- at that time.

23 Q. Okay. So that's -- that -- you don't have
24 any reason to disbelieve -- to disbelieve?

25 You don't have any reason to not believe

1 action?

2 A. I believe they have policies on that, but I
3 don't know what those -- like, I don't know what that
4 process would be necessarily --

5 Q. Right.

6 A. -- on an institutional level.

7 Q. And the reason I'm asking you is if we find
8 out -- and I think there is some documents somewhere
9 that indicate Simmons told corrections officers about
10 the -- the hit that was coming.

11 A. Uh-huh.

12 Q. If they knew that and then got alerted that
13 Hall was coming in opening doors, I'm trying to
14 figure out why they didn't do anything or -- or
15 figure out immediately why Hall was doing something
16 fishy.

17 A. I -- I can't answer that question because I
18 don't know.

19 Q. Or why they allowed Simmons to be in a -- a
20 non-assigned dorm room. Do you know any of that?

21 A. That was fairly common for the unit at the
22 time.

23 Q. Tell me about that because I -- I don't
24 understand why that is.

25 A. I don't know why, but the -- the inmates

1 essentially ran that unit, so they just kind of went
2 to whichever cell they -- they almost assigned
3 themselves cells.

4 Q. Wow.

5 A. The -- it was -- it was fairly common.

6 Q. And was that known amongst -- among
7 corrections officers that the inmates essentially ran
8 the unit and assigned themselves cells?

9 MR. DEMASTERS: Object to the form.

10 Go ahead.

11 BY MR. HAWKINS:

12 Q. You can answer.

13 A. Yeah, I mean, it was known, and it was
14 known to police services agents as well.

15 Q. Why did nobody ever do anything about that?

16 A. I don't know.

17 Q. Should something have been done about that?

18 A. I would think it would be essential for the
19 security of the institution for inmates to be in
20 their assigned cells.

21 Q. Yeah. Right. For safety reasons?

22 A. For several -- for many reasons, but --

23 Q. Do those reasons --

24 A. -- one of them --

25 Q. -- include safety?

1 but before the event happened, before the stabbing, I
2 can't find where SCDC did anything to prevent the
3 stabbing, a stabbing that, by all accounts, they knew
4 was coming because Simmons said he knew that the hit
5 was coming days before.

6 Do you know of anything that SCDC did
7 before the stabbing to investigate potential danger,
8 to keep Simmons safe, to make sure that the unit
9 was -- was appropriately staffed? Any effort what so
10 off- -- any effort whatsoever by SCDC to prevent this
11 attack?

12 MR. DEMASTERS: Object to the form.

13 You can answer.

14 THE WITNESS: All I know of is that the
15 unit was placed on lockdown prior to the stabbing for
16 some reason.

17 BY MR. HAWKINS:

18 Q. A gang riot or --

19 A. Some -- some violent act that occurred.

20 Q. Okay. And did you ever talk to Kathy
21 Epting about Hall's records or discipline?

22 A. I don't believe so.

23 Q. So, was that -- should that be part of an
24 investigation in, like, Hall's? Hall, unlocked a
25 door where other people came in and attacked

Exhibit C

Deposition of Matthew Kennedy

* * * * *

11:19 a.m. - 11:55 a.m.

The deposition of MATTHEW N. KENNEDY taken before Andrea R. Taylor, a notary public in and for the State of South Carolina, commencing on Tuesday, September 3, 2024, at office of Davidson & Wren, PA, pursuant to Notice of Deposition.

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1 because you're not supposed to let them go from
2 side to side.

3 Q. Okay. So Marion unit has two sides that do not
4 mix?

5 A. Yeah. That's how it is in every dorm at SCDC.

6 Q. Okay. So the two sides don't mix?

7 A. No, they don't mix.

8 Q. Ah, understood. See, again, I've never been to
9 the prison before.

10 A. Yeah.

11 Q. I haven't been to that part of the prison.
12 Okay. Do you just do a general head count to
13 make sure that nobody's remained behind?

14 A. Yep. I always counted as they were coming back,
15 kept a mental check, and then just in case, you
16 know, I'd have like a little notebook in my
17 pocket with me, so.

18 Q. Okay. After lunch, what's next?

19 A. Usually they do more rec, or sometimes, you
20 know, you have -- like you'd have the different
21 religious groups in there. They'd get together
22 in spots in the dorm and do their little thing
23 that they did. And then dinner would roll
24 around and you'd let them all go to dinner.
25 It'd be the same process as breakfast and lunch.

1 his captain at one point in time that he had
2 back then, and she told him, you know, I'll take
3 care of it.

4 Q. Okay. Part of my job is getting into the
5 details.

6 A. Uh-huh.

7 Q. The end of your shift is you've taken the amount
8 of time that it takes to lock everyone in. That
9 takes 30 to 50 minutes if there's no problems.
10 If it takes longer, then you're past your shift,
11 correct?

12 A. Yeah.

13 Q. What is the handoff to the night shift officer?
14 What are you required to do with the night
15 shift?

16 A. Make sure all the doors are locked before you
17 leave, even if that meant staying. There were
18 times I would stay until 9:30, ten o'clock at
19 night just to make sure all the doors were
20 locked.

21 Q. Does that mean double checking what you'd
22 already done?

23 A. Yep.

24 Q. And does that mean both of you do it together?

25 A. Sometimes, yes.

1 Q. Okay. The evening in question, do you recall
2 going with Hall and doing the double check?

3 A. I do not.

4 Q. Okay. Let's talk about your statement again.
5 This is Plaintiff's Exhibit 1. So it says, "As
6 we were locking down, I noticed Officer Hall
7 unlocking a few doors that were locked." As we
8 were locking down, is this the confirmation
9 check, or is this that he was helping you do the
10 initial lockdown that time?

11 A. See, I don't even know if that was him helping
12 me lock down because sometimes I did have
13 another officer come in and help me lock down
14 before night shift got there, so I could have
15 had someone else in there and just don't
16 remember who it was.

17 Q. Okay. Well, tell me a little bit about that.
18 Why would you have somebody come help you?

19 A. Because sometimes they would, you know, you'd go
20 to tell them to lockdown, you know, time to
21 lockdown, night shift's coming on, and they'd
22 argue with you and not want to go in your room.
23 So I'd get on the radio, call for like a yard
24 sergeant or a lieutenant would come in and help
25 get them in their rooms to lock down.

1 Q. So the people that come help you directly are
2 the sergeant or lieutenant, that's not the
3 rover?

4 A. Not usually, no.

5 Q. Okay. What is a rover's job?

6 A. They usually patrol the outside of the prison in
7 a vehicle, make sure, you know, nothing's being
8 thrown over the fence and stuff from out there,
9 no one's trying to sneak onto the premises.

10 Q. Okay. So if you needed help, then it was a
11 sergeant or a lieutenant?

12 A. Yep, or whoever was on the yard at the time.

13 Q. I just don't understand what the yard means.

14 A. The general population area where they walk from
15 dorm to dorm.

16 Q. Oh, okay.

17 A. Yep.

18 Q. How many people are walking the yard, as you
19 describe it?

20 A. At any given time, you usually have one yard
21 sergeant, sometimes two yard sergeants, and we
22 usually had a couple officers with the yard
23 sergeant.

24 Q. Okay. Had you ever worked night shift, or were
25 you only day shift?

1 A. Just day shift.

2 Q. Okay. Do you know if there is a difference in
3 the way night shift does things as opposed to
4 day shift as far as staffing?

5 A. Not that I'm aware of, no.

6 Q. Okay. The statement in here, "I noticed Officer
7 Hall unlocking a few doors that were locked." I
8 mean, do you remember visually what you --

9 A. I do remember seeing him do it a few times,
10 yeah. I don't remember that exact night, but I
11 do remember him doing it quite a few times when
12 I walked in. I went to the dorm just to double
13 check, and he'd be unlocking doors.

14 Q. Do you remember your conversations with him?

15 A. Not really, no.

16 Q. Did you have conversations with him?

17 A. A couple times I did. A couple times I did say
18 something about him unlocking the doors, and
19 he'd be like, oh, it's okay, so.

20 Q. Okay. I'm not trying to put you in a corner
21 here. I'm just trying to understand.

22 A. Right.

23 Q. Do you remember any other details about those
24 previous times?

25 A. Not really.

Exhibit D

Deposition of Holden Byrd

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

RANDLE JACKSON, PERSONALLY AND
AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF DASHAUN SIMMONS,
Plaintiff,

Case No.: 2018-CP-40-04850

VS

THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Defendant.

D E P O S I T I O N

WITNESS: HOLDEN BYRD
DATE: Friday, August 30, 2024
TIME: 1:23 p.m.
LOCATION: Law Offices of
Davidson & Wren, P.A.
1611 Devonshire Drive, Second Floor
Columbia, South Carolina
TAKEN BY: Attorneys for the Plaintiff
REPORTED BY: GINA M. JOHNSON
Certified Shorthand Reporter
Registered Professional Reporter

LEGAL EAGLE, INC.
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 happened in my unit that night when I called
2 Sergeant Wright.

3 Q. Okay. All right. That's it. Do you
4 recall -- do you recall what time you were told
5 about the -- because Collins says sometime after
6 9 p.m. he starts getting these calls. Do you
7 recall if it was about 9 p.m. when you were told by
8 an inmate that somebody got stabbed?

9 MR. DAVIDSON: Object as to form.

10 THE WITNESS: I wrote on my incident
11 report at the time because I also had a notepad.

12 BY MR. HAWKINS:

13 Q. Okay.

14 A. So I made sure to take detailed notes.

15 Q. Okay.

16 A. And I had put it was approximately around
17 3:55 a.m. when this incident happened when I was
18 told.

19 Q. Okay. So you didn't find out about it
20 until way later in the -- in this whole stream of
21 events?

22 A. Correct.

23 MR. DAVIDSON: Object as to form.

24 BY MR. HAWKINS:

25 Q. Okay. All right. Because -- yeah,

1 a cell without a cellmate in Marion unit? Have you
2 ever seen that?

3 MR. DAVIDSON: Object to the form.

4 THE WITNESS: In Marion unit?

5 BY MR. HAWKINS:

6 Q. Yeah.

7 A. There are a couple -- couple rooms like
8 that.

9 Q. Why would somebody be housed by
10 themselves?

11 A. Might be violent, might have mental health
12 problem. There are loads of different reasons. If
13 they get the paperwork approved to be by
14 themselves, then that's what it is.

15 Q. How often do inmates end up in unassigned
16 cells? How often do inmates end up in cells
17 they're not assigned to?

18 MR. DAVIDSON: Object as to form.

19 THE WITNESS: How often do they end up in
20 cells they're not assigned to?

21 BY MR. HAWKINS:

22 Q. Yeah.

23 A. Happens more than I would like to have
24 seen.

25 Q. What's a reason for that?

Exhibit E

SCDC Policy OP 22.06

Exhibit F

Statement of Matthew Kennedy



South Carolina Department of Corrections Police Services

Page 1 of 1
Case No: 55-2017-130

VOLUNTARY STATEMENT

I, Matthew N Kennedy, ID Number 059968, do hereby voluntarily provide this statement to Agent Garris, who has identified him/herself as an Agent with the South Carolina Department of Corrections Police Services.

On July 17th 2017, Officer Hall came into Marion unit to relieve me of all duties. As we were locking down I noticed Officer Hall unlocking a few doors that were locked. I had proceeded to call Shift Lieutenant Parker to let him know of the situation and he told me to come on up front and go home and they would take care of it.

M.H.
M.H.
M.H.
M.H.

I have read this statement consisting of 1 pages, or have had it read to me. It is true and correct to the best of my knowledge. I have provided this statement freely and voluntarily without threats, coercion, or promises. I have been advised that I will be provided a copy of this statement.

Signature: Matthew Kennedy Witness: [Signature]
Date: 10/2/17 Time: Approx. 1:34pm Witness: _____

Exhibit G

Deposition of Clinton Parker

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
CASE NO.: 2018-CP-40-04850

RANDLE JACKSON, PERSONALLY AND
AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF DASHAUN SIMMONS,
Plaintiff,

VS

THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Defendant.

D E P O S I T I O N

WITNESS: CLINTON PARKER
DATE: Tuesday, July 30, 2024
TIME: 11:08 a.m.
LOCATION: Law Offices of
Davidson & Wren, P.A.
1611 Devonshire Drive, Second Floor
Columbia, South Carolina
TAKEN BY: Attorneys for the Plaintiff
REPORTED BY: GINA M. JOHNSON
Certified Shorthand Reporter
Registered Professional Reporter

LEGAL EAGLE, INC.
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF

3 RANDLE JACKSON, PERSONALLY AND AS THE
4 PERSONAL REPRESENTATIVE OF THE ESTATE OF
5 DASHAUN SIMMONS:

6 REMBERT LAW FIRM

7 BY: ANDRE DuBOSE REMBERT, ESQ.

8 P.O. Box 20341

9 Charleston, SC 29413

10 843-779-5688

11 arembert@rembertlaw.com
12

13 ATTORNEYS FOR DEFENDANT

14 THE SOUTH CAROLINA DEPARTMENT OF
15 CORRECTIONS:

16 DAVIDSON & WREN, P.A.

17 BY: WILLIAM H. DAVIDSON, II, ESQ.

18 1611 Devonshire Drive, Second Floor

19 P.O. Box 8568

20 Columbia, SC 29202-8568

21 803-806-8222

22 wdavidson@dml-law.com
23

24 (INDEX AT REAR OF TRANSCRIPT)
25

1 STIPULATION: It is stipulated by
2 and between Counsel that this deposition is being
3 taken in accordance with the South Carolina Rules
4 of Civil Procedure, and that the deponent waives
5 the right to read and sign the deposition
6 transcript.

7 - - - - -

8 CLINTON PARKER, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. REMBERT:

12 Q. Captain Parker, my name's Andre Rembert of
13 the Rembert Law Firm. I'm working in association
14 with Hawkins & Jedziniak. We represent Randle
15 Jackson who is the representative of the estate of
16 Dashaun Simmons. We are here today about a 2017
17 stabbing of Dashaun Simmons.

18 Before we start, have you ever been
19 deposed before?

20 A. No.

21 Q. Okay. A deposition is an interview on the
22 record. You are under oath, so that means that you
23 have to give me true answers. Do you understand?

24 A. Yes.

25 Q. Part of this -- and when I say it's on the

1 record, means we have this nice court reporter here
2 and she has to write down everything we say. Do
3 you understand?

4 A. Yes.

5 Q. Because of that, please do your best to
6 remember to give verbal answers and not gestures
7 because she can't annotate gestures. Do you
8 understand?

9 A. Yes.

10 Q. Okay. From time to time if I ask you a
11 question, your attorney may interject and say
12 object to the form. If he does this, wait until he
13 finishes saying that and then you still give me the
14 answer.

15 Now, if he says objection and for a
16 different reason, he and I will probably go off the
17 record, have a discussion about it and then he will
18 instruct you whether to respond or not. Do you
19 understand?

20 A. Yes.

21 Q. I ask you to look to me and only to me
22 when I ask you questions. Please don't look to
23 your attorney. From time to time I will also --
24 actually I will not. I was going to say I'll give
25 you a document to refresh your memory, but I don't

1 have one for you today.

2 A. Okay.

3 Q. I believe this is going to be very brief.
4 It should not be very difficult at all. And
5 frankly I almost apologize for having to bring you
6 down, but this is my opportunity to get the
7 information that I think I need to know before we
8 eventually go to trial on this case.

9 So now that I've got that out of the way,
10 in July of 2017, where were you working?

11 A. Broad River Corrections.

12 Q. All right. And what was -- what was your
13 title and job duties at the time?

14 A. I believe I was sergeant at the time, to
15 be correct, in 2017 because I did get promoted to
16 lieutenant I believe -- I got promoted in 2018 as
17 lieutenant.

18 Q. Okay. What was your role in 2017?

19 A. My role? Could you rephrase the question?

20 Q. What was your job description? What was
21 your duties? What was your title? Outside of
22 sergeant, I mean, what was your job?

23 A. Well, I was sergeant over lockup.

24 Q. Okay, sergeant over lockup. What shift
25 did you work?

1 A. D1.

2 Q. You were D1. Do you know who Matthew
3 Kennedy was at the time?

4 A. No, sir.

5 Q. Do you have any knowledge whatsoever about
6 the attack that this lawsuit's about, the attack on
7 Dashaun Simmons?

8 A. Common knowledge after the incident.

9 Q. What was the common knowledge after the
10 incident that you're aware of?

11 A. The inmate was assaulted and there were
12 cell doors that was left open by Officer Hall.

13 Q. Did you have -- in lockup, is that where
14 inmates that have committed assaults are put?

15 A. Yes.

16 Q. Did you oversee any of the inmates who
17 were accused of assaulting Simmons after this
18 attack?

19 A. I didn't know which inmates they were to
20 be honest.

21 Q. Okay. Do you remember -- correction.
22 Allow me to explain myself. I just did a
23 deposition of Officer Collins. Do you know Officer
24 Collins?

25 A. I do.

1 Q. He explained he was the D2 supervisor. Do
2 you recall who D1 supervisor was the day of this
3 attack?

4 A. No, I don't.

5 Q. In general do you remember who the D1
6 supervisor was?

7 A. No.

8 Q. Did you know who the other officers that
9 were overseeing the units in D1 were at the time?

10 A. No. You said overseeing the unit? Could
11 you rephrase the question for me?

12 Q. The way that Officer Collins explained was
13 that on D2 -- and, again, this may be different
14 from D1 and he wasn't sure about -- a hundred
15 percent certain about D1. I'm not trying to play
16 any games here, I'm just telling you how I
17 understand it.

18 On D1 he was the overall supervisor -- or
19 D2 he was the overall supervisor. He had two other
20 supervisors underneath him that rotated around and
21 did spot checks. He said there were seven units,
22 Marion unit being one of the units. We learned
23 Monticello was one of the other units. That he had
24 one or two officers overseeing lockup. He had
25 somebody in the operations room and I think he said

1 he had a rover. If I have the numbers wrong, then
2 I got the numbers wrong. I assume that there's a
3 similar group of people working during D1. Is that
4 correct?

5 A. Yes.

6 Q. Do you remember who any of the supervisors
7 were for D1?

8 A. No.

9 Q. It is my understanding, and my
10 understanding can be incorrect, that Matthew
11 Kennedy was the D1 officer overseeing Marion unit,
12 and it's my understanding, and my understanding can
13 be incorrect, that he reported to his supervisor
14 that he witnessed Anthony Hall opening cells. It's
15 my understanding, and it may be correct, that he
16 said he reported that to Clinton Parker who I
17 thought was the supervisor. Would you have had any
18 reason for Matthew Kennedy, the Marion unit D1
19 officer, to tell you anything about Matthew Hall?

20 A. No.

21 Q. Okay.

22 A. We never had a conversation.

23 Q. I apologize, his name's not Matthew Hall.
24 I'm tired and I'm messing up names. I'm not trying
25 to play a trick.

1 A. Okay.

2 MR. DAVIDSON: It's Kennedy just for the
3 record.

4 MR. REMBERT: Yes, Matthew Kennedy. I
5 apologize.

6 BY MR. REMBERT:

7 Q. I'd like to go off the record for a
8 minute.

9 (A recess transpired.)

10 (PLAINTIFF'S EXH. 1, 10448-F-00035 CONFIDENTIAL,
11 was marked for identification.)

12 BY MR. REMBERT:

13 Q. We're on the record. This is Plaintiff's
14 Exhibit Number 1 for Clinton Parker. Officer
15 Parker, what I have presented to you is a voluntary
16 statement by Officer Matthew Kennedy. In this it
17 describes him speaking to a Shift Lieutenant
18 Parker. Do you know who that is?

19 A. No.

20 Q. Do you --

21 A. Not Lieutenant Parker. I think at the
22 time I was sergeant over lockup.

23 Q. Okay. Were there any other Parkers that
24 were -- that were working at that time at D1?

25 A. No, not to my knowledge.

1 Q. Does anything about this document refresh
2 your memory as to somebody speaking to you about
3 any of this?

4 A. No.

5 Q. I guess there's really not much more for
6 me to ask you other than you're a hundred percent
7 certain that you were -- you were in charge of
8 lockup, that you weren't a supervisor at the time,
9 correct?

10 A. Correct.

11 Q. You were not shift lieutenant, correct?

12 A. No, not to my knowledge at that year in
13 time, no.

14 Q. I think that's as clear as can possibly
15 be.

16 MR. REMBERT: You know, Will --

17 MR. DAVIDSON: I don't have anything.

18 MR. REMBERT: That's all we have.

19 (The deposition concluded at 11:20 a.m.)
20
21
22
23
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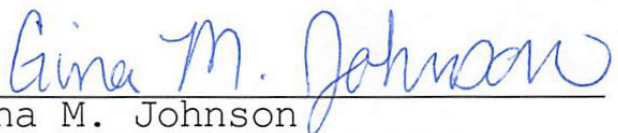
1 CERTIFICATE OF REPORTER

2
3 I, Gina M. Johnson, Registered Professional
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify:

6 That the foregoing deposition was taken
7 before me on the date and at the time and location
8 stated on page 1 of this transcript; that the
9 deponent was duly sworn to testify to the truth,
10 the whole truth and nothing but the truth.

11 I further certify that I am neither related
12 to nor counsel for any party to the cause pending
13 or interested in the events thereof.

14 Witness my hand, I have hereunto affixed my
15 official seal this 9th day of August, 2024, at
16 Columbia, Richland County, South Carolina.

17
18
19
20
21 
22 Gina M. Johnson
23 RPR, CSR, Notary Public,
24 State of South Carolina
25 at Large.
My Commission expires
January 26, 2034.

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I N D E X

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Exhibit H

Broad River Correction Institute Duty Roster

NAME	EFF DATE	SHIFT CODE	POST CODE	SUB CODE	POST AREA	POST DESC
IRONS JOCELYN F	7/17/2017	D1	AA	AA		
WILLIAMS JOHN C	7/17/2017	D1	AA	AA		
WRIGHT HERMAN L	7/17/2017	D1	AA	AA		
PATE JULIETTE	7/17/2017	D1	AL	AL		
DAVIS CAMILLE D	7/17/2017	D1	ML	ML		
WINGARD JR RODNEY T	7/17/2017	D1	ML	ML		
DANIELS DOMINIQUE J	7/17/2017	D1	SL	SL		
BURNS ANTONIO L	7/17/2017	D1		1 A	PERIMETER (OUTER)	ROVER
GATHERS ROBERT A	7/17/2017	D1		4 B	FRONT GATE	
HUGGINS GALE A	7/17/2017	D1		4 B	FRONT GATE	
JOHNSON JANICE N	7/17/2017	D1		4 A	FRONT GATE	
MITCHELL KENDRA	7/17/2017	D1		6 A	MAIN CONTROL ROOM	BRCI MAIN
SMITH ALICIA N	7/17/2017	D1		32 A	YARD OFFICER	F1/F2 GATE
HEYWARD NICOLE S	7/17/2017	D1		35 K	HOUSING UNIT	GREENWOOD/R
KENNEDY COLBY R	7/17/2017	D1		35 C	HOUSING UNIT	MARION
MCBRIDE TONYAL M	7/17/2017	D1		35 A	HOUSING UNIT	MURRAY
MORTON DOMINIQUE S	7/17/2017	D1		35 I	HOUSING UNIT	MOULTRIE/R
REED ADAM L	7/17/2017	D1		35 G	HOUSING UNIT	MONTICELLO/R
TENEYEK WARRIOUS R	7/17/2017	D1		35 E	HOUSING UNIT	WATEREE/R
DRAYTON SHAQUAVIN S	7/17/2017	D1		41 A	OUTSIDE HOSPITAL	A
HILL JASMINE A	7/17/2017	D1		41 A	OUTSIDE HOSPITAL	A
KENNEDY MATTHEW N	7/17/2017	D1		41 A	OUTSIDE HOSPITAL	A
MCRAE CHELSEA K	7/17/2017	D1		41 A	OUTSIDE HOSPITAL	A
SMITH FONTA M	7/17/2017	D1		41 A	OUTSIDE HOSPITAL	A
WHITE CARMELLA	7/17/2017	D1		41 A	OUTSIDE HOSPITAL	A
COAXUM TYREESE P	7/17/2017	D1		55 A	RHU/SMHU WING OFFICER	RHU/DHU
RUSSELL LATRINA S	7/17/2017	D1		58 A	RHU/SMHU CONTROL RM	SMU
JONES FLORAVIA V	7/17/2017	D1		89 A	ASST SHIFT SUPV (LT)	
PARKER III CLINTON	7/17/2017	D1		93 A	RHU/SMHU LIEUTENANT	
WILLIAMS TIFFANY S	7/17/2017	D1		108 A	YARD SERGEANT	
DOUGLAS PHILLIP J	7/17/2017	D2	AL	AL		
CORBITT AUDREY C	7/17/2017	D2	SL	SL		
FOGLE KYSHA R	7/17/2017	D2	SL	SL		

MIDDLETON JR ROGERS	7/17/2017 D2	SL		SL	
TARTE JERRY	7/17/2017 D2		1 A	PERIMETER (OUTER)	ROVER
BLUNT BARBARA A	7/17/2017 D2		4 A	FRONT GATE	
LIVINGSON BRITTANY M	7/17/2017 D2		6 A	MAIN CONTROL ROOM	BRCI MAIN
ALNATAS JOHNNY	7/17/2017 D2		33 A	TRANSITIONAL HOUSING UNIT	
BRIGHT TAMYRA S	7/17/2017 D2		35 A	HOUSING UNIT	MURRAY/RIGHT
BYRD HOLDEN A	7/17/2017 D2		35 G	HOUSING UNIT	MONTICELLO/R
DURST WILLIAM C	7/17/2017 D2		35 E	HOUSING UNIT	WATEREE/RIGHT
HALL II ANTHONY H	7/17/2017 D2		35 C	HOUSING UNIT	MARION/RIGHT
MORRIS ERIC	7/17/2017 D2		35 K	HOUSING UNIT	GREENWOOD/RIGHT
SIMS YVETTE D	7/17/2017 D2		35 I	HOUSING UNIT	MOULTRIE/RIGHT
ARRINGTON JR WILLIAM M	7/17/2017 D2		41 A	OUTSIDE HOSPITAL	PRMH
DAVIS TYATTA S	7/17/2017 D2		41 A	OUTSIDE HOSPITAL	PRMH
JACK WILLIAM G	7/17/2017 D2		41 A	OUTSIDE HOSPITAL	PRMH
MILLS EBONY S	7/17/2017 D2		41 A	OUTSIDE HOSPITAL	PRMH
PETERSON ANTON C	7/17/2017 D2		55 A	RHU/SMHU WING OFFICER	RHU/DHU
ZIOLKOWSKI SHANE A	7/17/2017 D2		55 B	RHU/SMHU WING OFFICER	RHU/DHU
COLLINS JR ULYSSES	7/17/2017 D2		89 A	ASST SHIFT SUPV (LT)	
HENRY ARTHURINE A	7/17/2017 D2		103 A	RHU/SMHU SGT	SALUDA
WRIGHT RENEE	7/17/2017 D2		108 A	YARD SERGEANT	
IRONS JOCELYN F	7/18/2017 D1	AA		AA	
WILLIAMS JOHN C	7/18/2017 D1	AA		AA	
WRIGHT HERMAN L	7/18/2017 D1	AA		AA	
PATE JULIETTE	7/18/2017 D1	AL		AL	
DAVIS CAMILLE D	7/18/2017 D1	ML		ML	
WINGARD JR RODNEY T	7/18/2017 D1	ML		ML	
KENNEDY COLBY R	7/18/2017 D1	SL		SL	
GATHERS ROBERT A	7/18/2017 D1		1 A	PERIMETER (OUTER)	ROVER
HUGGINS GALE A	7/18/2017 D1		4 B	FRONT GATE	
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MCBRIDE TONYAL M	7/18/2017 D1		35 A	HOUSING UNIT	MURRAY
REED ADAM L	7/18/2017 D1		35 F	HOUSING UNIT	WATEREE
TENEYEK WARRIOUS R	7/18/2017 D1		35 E	HOUSING UNIT	WATEREE/R
WHITE CARMELLA	7/18/2017 D1		35 I	HOUSING UNIT	MOULTRIE/R
DRAYTON SHAQUAVIN S	7/18/2017 D1		41 A	OUTSIDE HOSPITAL	A
HILL JASMINE A	7/18/2017 D1		41 A	OUTSIDE HOSPITAL	A
KENNEDY MATTHEW N	7/18/2017 D1		41 A	OUTSIDE HOSPITAL	A
MCRAE CHELSEA K	7/18/2017 D1		41 A	OUTSIDE HOSPITAL	A
MORTON DOMINIQUE S	7/18/2017 D1		41 A	OUTSIDE HOSPITAL	A
SMITH FONTA M	7/18/2017 D1		41 A	OUTSIDE HOSPITAL	A
COAXUM TYREESE P	7/18/2017 D1		55 A	RHU/SMHU WING OFFICER	RHU/DHU
RUSSELL LATRINA S	7/18/2017 D1		58 A	RHU/SMHU CONTROL RM	SMU
JONES FLORAVIA V	7/18/2017 D1		89 A	ASST SHIFT SUPV (LT)	
PARKER III CLINTON	7/18/2017 D1		93 A	RHU/SMHU LIEUTENANT	
SMITH ALICIA N	7/18/2017 D1		103 A	RHU/SMHU SGT	SALUDA
WILLIAMS TIFFANY S	7/18/2017 D1		108 A	YARD SERGEANT	
DOUGLAS PHILLIP J	7/18/2017 D2	AL		AL	
CORBITT AUDREY C	7/18/2017 D2	SL		SL	
DAVIS TYATTA S	7/18/2017 D2	SL		SL	
FOGLE KYSHA R	7/18/2017 D2	SL		SL	
ARRINGTON JR WILLIAM M	7/18/2017 D2		1 A	PERIMETER (OUTER)	ROVER
TARTE JERRY	7/18/2017 D2		1 A	PERIMETER (OUTER)	ROVER
MILLS EBONY S	7/18/2017 D2		6 A	MAIN CONTROL ROOM	BRCI MAIN
ALNATAS JOHNNY	7/18/2017 D2		33 A	TRANSITIONAL HOUSING UNIT	
LIVINGSON BRITTANY M	7/18/2017 D2		33 A	TRANSITIONAL HOUSING UNIT	
BLUNT BARBARA A	7/18/2017 D2		35 A	HOUSING UNIT	MURRAY/RIGHT
BYRD HOLDEN A	7/18/2017 D2		35 G	HOUSING UNIT	MONTICELLO/R
DURST WILLIAM C	7/18/2017 D2		35 C	HOUSING UNIT	MARION/RIGHT
MIDDLETON JR ROGERS	7/18/2017 D2		35 E	HOUSING UNIT	WATEREE/RIGHT
MORRIS ERIC	7/18/2017 D2		35 K	HOUSING UNIT	GREENWOOD/RIGHT
SIMS YVETTE D	7/18/2017 D2		35 I	HOUSING UNIT	MOULTRIE/RIGHT
BRIGHT TAMYRA S	7/18/2017 D2		41 A	OUTSIDE HOSPITAL	PRMH
JACK WILLIAM G	7/18/2017 D2		41 A	OUTSIDE HOSPITAL	PRMH
PETERSON ANTON C	7/18/2017 D2		55 A	RHU/SMHU WING OFFICER	RHU/DHU

ZIOLKOWSKI SHANE A	7/18/2017 D2	55 B	RHU/SMHU WING OFFICER	RHU/DHU
COLLINS JR ULYSSES	7/18/2017 D2	89 A	ASST SHIFT SUPV (LT)	
HENRY ARTHURINE A	7/18/2017 D2	103 A	RHU/SMHU SGT	SALUDA
WRIGHT RENEE	7/18/2017 D2	108 A	YARD SERGEANT	

Exhibit I

Deposition of Anthony Hall

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

2018-CP-40-04850

RANDLE JACKSON, Personally and)
as the Personal Representative)
of the Estate of Dashaun)
Simmons,)

Plaintiff,)

v.)

SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS,)

Defendant.)
_____)

VIDEOTAPED DEPOSITION
OF
ANTHONY HOWARD HALL, II

This is the videotaped deposition of ANTHONY HOWARD HALL II, taken at 8300 Falls of Neuse, Raleigh, North Carolina, pursuant to Notice of the parties and in accordance with the South Carolina Rules of Civil Procedure before Kathleen M. Van Voorhis, RPR, on the 11th day of July, 2025, beginning at 10:52 A.M.

The reading and signing of this transcript is waived.

1 Q. Did you say anything to anybody about Kennedy leaving
2 without assisting you with the count?

3 A. It was so much going on so I'm going to say no.

4 Q. What, describe for the jury the process for how a
5 count is conducted when you come on shift?

6 A. Count is conducted when we come on shift. We have
7 everybody locked behind doors and you have one officer on the
8 left wing, one officer on the right wing, and we have our
9 roster and we are supposed to go by our roster and we are
10 supposed to physically see two inmates. If I'm not mistaken,
11 they're supposed to have their ID badge on them too. It has
12 been a minute. I know there's supposed to be one officer on
13 each side conducting the count and then once counting the
14 opposite sides we switch sides and then we do another count
15 that just to double check to make sure our numbers is right
16 and then after we both count both sides we come together and
17 we're supposed to count to make sure we have the exact numbers
18 for the left and the right wing.

19 Q. Okay. Was this something that happened routinely or
20 let me back up. Did you typically relieve Kennedy? Was that
21 the person you typically relieved?

22 A. Most of the time, yes.

23 Q. In your observations about how Kennedy did his job,
24 was it common for Kennedy to have people out of their cells
25 when you got to work?

1 MR. DAVIDSON: Object to the form.

2 A. Yes.

3 Q. Was it common for Kennedy to leave without assisting
4 you with the count?

5 MR. DAVIDSON: Same objection.

6 A. That was the first time he did that. That was the
7 first time where he actually just left, but other times I
8 can't remember him doing that but that time he did just
9 leave.

10 Q. Did you ever report to your supervisors or anybody
11 else at SCDC that Kennedy would have people out of their cells
12 when you got to work?

13 MR. DAVIDSON: Object to form.

14 A. Yes.

15 Q. Who did you report that to?

16 A. My supervisor, I believe.

17 Q. Which supervisor?

18 A. Lieutenant Collins.

19 Q. Okay. So, did Collins do anything to correct the
20 issue with Kennedy having people out of their cells?

21 A. Well, the first time I made a complaint they did
22 bring, his shift did come in there.

23 Q. Who is his?

24 A. Excuse me. I apologize. Officer Kennedy's shift,
25 they did send officers down there to help put the inmates away

1 Q. Okay. Did you ever interfere with the attack?

2 A. Kennedy left me with a bunch of people outside of the
3 cell doors. That unit was supposed to have been locked down
4 already. They wasn't supposed to have been out. Kennedy left
5 without helping me with count. I went to the warden and I
6 went to Ms. Unthank. I went to my supervisor. I feel like I
7 need to reiterate myself. I took the proper procedures and
8 letting them know the problems that I was having in the Marion
9 unit.

10 Q. Okay let's go back. Mr. Collins, Lieutenant Collins
11 called you around 9:00 and asked you to check the cells, see
12 if you saw anyone that was injured, stabbed, hurt, anything,
13 correct?

14 A. Correct.

15 Q. You checked all of the cells, correct?

16 A. The cells that I was able to check, yes.

17 Q. All right. Well, now, wait a minute. You're changing
18 your story.

19 A. No. No. No. No.

20 Q. I asked you did you check the cells to make sure there
21 was no one injured in the cells at the Marion unit when
22 Mr. Collins called you?

23 A. Yes. I checked the cells. Lieutenant Collins even
24 came down himself and we checked the cells. Collins also left
25 and Collins came back again. So, I checked it. Collins and

Exhibit J

Deposition of Ulysees Collins

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
CASE NO.: 2018-CP-40-04850

RANDLE JACKSON, PERSONALLY AND
AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF DASHAUN SIMMONS,
Plaintiff,

VS

THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Defendant.

D E P O S I T I O N

WITNESS: ULYSSES COLLINS
DATE: Tuesday, July 30, 2024
TIME: 9:14 a.m.
LOCATION: Law Offices of
Davidson & Wren, P.A.
1611 Devonshire Drive, Second Floor
Columbia, South Carolina
TAKEN BY: Attorneys for the Plaintiff
REPORTED BY: GINA M. JOHNSON
Certified Shorthand Reporter
Registered Professional Reporter

LEGAL EAGLE, INC.
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 for Livingston?

2 A. That's more for Livingston. I don't
3 monitor the cameras.

4 Q. Okay. Well, let's get down to brass
5 tacks. What do you recall about the -- about the
6 night of the incident that we're here about?

7 A. I was receiving a call from an inmate in
8 Monticello unit. This went on for about an hour or
9 two hours into the shift. So when I finally
10 told -- I told Livingston to ask the inmate where
11 is he calling from, what unit, what side.

12 So I went to Monticello unit to the left
13 side and yelled for the guy and I had the officer
14 open up the cell. He said he had a friend in
15 Marion unit that I needed to get out of there, that
16 he may not be living in the morning. I said okay.

17 Q. When you say received a call, how did the
18 call come in?

19 A. He probably had a cell phone.

20 Q. Got you. He had a cell phone. Who did he
21 call or how did he --

22 A. He called control room.

23 Q. Okay. So he called a landline?

24 A. Yes.

25 Q. And was it you that picked up the phone or

1 Officer Livingston?

2 A. Officer Livingston. I don't pick up
3 phones.

4 Q. Okay. Sorry, I know Army, I don't know
5 prison details.

6 A. I don't do phones.

7 Q. Understood. Do you recall what time --
8 what time those phone calls started?

9 A. Oh, probably about -- maybe ten o'clock,
10 2200 hours.

11 Q. There was an officer in Monticello unit.
12 Had he contacted you prior to these phone calls you
13 were receiving?

14 A. No.

15 Q. Do you know why the prisoner would have
16 called the control room instead of telling the
17 officer that was there with him?

18 A. No.

19 Q. Do you remember the name of the officer
20 that was in Monticello unit?

21 A. No.

22 Q. Layout-wise, where is Monticello unit in
23 relation to Marion unit?

24 A. As you face Monticello, it's two whole
25 units to the left.

Exhibit K

Statement of Ulysees Collins



South Carolina Department of Corrections Division of Police Services

Page 1 of 2
Case No: 83-2017-130

VOLUNTARY STATEMENT

I, ULYSSES COLLINS JR, ID Number 059435, do hereby voluntarily provide this statement to Agent Barrios, who has identified him/herself as an Agent with the South Carolina Department of Corrections Division of Police Services.

ON JULY 18, 2017 Sometime after the 9pm count was clear, the Control Room Officer Cpl. Livingston, B. stated that she was receiving phone calls from an unknown male. This male made statements to Cpl. Livingston that a inmate in Marion Unit had been stabbed and may be bleeding out. if he does not get help soon. After about a few of these phone calls I, Lt. Collins went to Marion Unit. AT approximately 1215am I, Lt. Collins while conducting a security checks in Marion Unit I observed 20 to 30 room doors not secured on the left side of Marion Unit AT that time I instructed Officer Hall to secure those room doors and I observed Officer Hall secure at least 20 of those doors. I did not find a victim on the left side of Marion Unit. I then waited on Officer Hall

I have read this statement consisting of 2 pages, or have had it read to me. It is true and correct to the best of my knowledge. I have provided this statement freely and voluntarily without threats, coercion, or promises. I have been advised that I will be provided a copy of this statement.

Signature: Ulysses Collins Jr

Witness: [Signature]

Date: 7-18-17

Time: 11:25am

Witness: [Signature]

SCDC Form 23-56 (Rev. April, 2017)

VOLUNTARY STATEMENT CONTINUATION

To come to the right side of Marion Unit.

A inmate started beating on a room door, so I instructed officer HALL to open said door.

At this time I observed inmate Simmons, Deshawn SCDC# 362125 sitting on the bottom rack with blood all over his uniform.

I instructed inmate to stand up and I looked under his shirt observed multiple stab wounds to his neck, head, right and left hands. Inmate Simmons was removed from Marion Unit and escorted to medical to be medically assessed. During that time Inmate Simmons stated to this officer that officer HALL had allowed other inmates into his room unlocking his door so that they could attack him.

Initials

Exhibit L

Statement of Holden Byrd

93

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Page 01 of 01

Institution/Center: <u>BRC I</u>		Date of Report: <u>7-18-2017</u>	
Reporting Official (Full Name): <u>Officer Holden Byrd</u>		Time of Report: <u>Approx 7:28 am</u>	
Employee ID #: <u>058510</u>		Date of Incident: <u>7-18-2017</u>	
Location of Incident: <u>Monticello Right Side Infront of cell 161</u>		Time of Incident: <u>Approx 3:55 am</u>	
Inmate(s)/Resident:	SCDC #	Age:	Sex: Race: Employee(s)/Witnesses Involved:
1. <u>Dontavius Jackson</u>	<u>343868</u>	<u>M</u>	<u>IS</u>
2.			1. <u>Sgt. Wright</u>
3.			2.
4.			3.
5.			4.
			5.

On the above date and approximate time: I, Officer Holden Byrd (058510), was conducting a security check when Inmate Dontavius Jackson (343868) knocked on his cell door, cell 161, and called me over. When I walked over to see what he needed he proceeded to tell in his words that other inmates were yelling through the vents that the officer in Marion Unit had let some inmates out of their cells and one inmate got stabbed. He also told me that he thinks that the inmate who got stabbed is bleeding out. After hearing this I immediately contacted and informed Sgt. Wright of what I had been told. She then told me to write an incident report and that she would check on Marion Unit. /// End Report ///

Signature: H. Byrd Title: Officer

Evidence:

Disposition of Evidence:

Supervisor's Comments: <u>Forwarded FOR Further Action</u>	STG Related - Refer to STG Committee ☐ Yes ☐ No ☒ Unknown
Printed Name: <u>Ulysses Collins JR</u> Signature: <u>[Signature]</u> Title: <u>Lt</u> Date/Time: <u>7-18-17 1025AM</u>	This incident is DRUG related ☐ Yes ☐ No ☒ Unknown
Major/Responsible Authority:	Responsible Authority Action Taken ☐ Informal Resolution ☐ Administrative Resolution ☐ Refer to Disciplinary Hearing
Printed Name: Signature: Title: Date/Time:	

Exhibit M

Post Order 6

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 18-CP-40-04850

Randle Jackson, Personally and as the
Personal Representative of the Estate of
Dashaun Simmons,

Plaintiff,

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT**

v.

The South Carolina Department of
Corrections,

Defendant.

Defendant, the South Carolina Department of Corrections (SCDC) files this memorandum in support of its motion for summary judgment.

STATEMENT OF FACTS

Plaintiff—a gang member since he was 15 and convicted of attempted murder and armed robbery and multiple prison weapon possession charges—was imprisoned in Marion Unit at Broad River Correctional Institution. Ex. 5, Simmons Records at 1, 5. He learned that there was a lot of money on him to be killed and he received death threats. He did not take them seriously. Ex. 9, Investigation at 22. He notified no one of the threats to his life. Ex. 2, Livingston Aff.

A couple of days later, Correctional Officer Anthony Hall had the Marion Unit night shift. Ex. 14, 2d Hall Dep. at 5:10-13, 6:3-6. He had had the shift for months without leaving cell doors open or committing other infractions. Ex. 11, Collins Dep. at 64:14-65:16. He had attended the Correctional Academy, where he was trained on dealing with inmates, gangs, and emergency and medical situations and had received on-the-job training. Ex. 14, 2d Hall Dep. at 78:1-79:15; Ex. 4, Training Records at 1-2.

Hall was alone because of a staff shortage. Ex. 1, Collins Aff. at ¶ 3; Ex. 10, Livingston Dep. at 16:22-17:4; Ex. 14, 2d Hall Dep. at 95:12-19.¹ Hall was the only one with keys to the cells. Ex. 10, Brittany Livingston Dep. 103:22-104:08; Ex. 11, Collins Dep. at 80:7-11; Ex. 12, 1st Hall Dep. at 218:5-219:11; Ex. 14, 2d Hall Dep. at 93:21-94:6. He had locked all the inmates in their cells around 9:00 p.m. and done security checks with the inmates locked in their cells at 9:00 p.m. and midnight. Ex. 14, 2d Hall Dep. at 90:1-4, 107:10-14. He did not give anyone his keys that night. *Id.* at 107:4-7.

Later a call came into the control room saying someone had been stabbed in Marion Unit. Hall reported that everything was fine. Ex. 10, Livingston Dep. at 15:12-16:6; Ex. 9, Investigation at 10. Staff later inspected the unit cell-by-cell to ensure that everyone was safe. As Lt. Collins approached Plaintiff's door last, he heard banging on the cell door, and Hall commented, "don't worry about it, they don't want shit, you can leave." Ex. 11, Collins Dep. at 14:25-15:5. Collins instead had Hall unlock Simmons's cell. Ex. 11, Collins Dep. at 44:5-11; Ex. 14, 2d Hall Dep. at 111:3-9. He found Plaintiff bleeding from multiple stab wounds. Collins immediately took Plaintiff to medical, then had him transported to the hospital. Ex. 11, Collins Dep. at 15:6-19. As he escorted Simmons, Simmons told him, that Hall had allowed other inmates into his room, unlocking his door so they could attack him. *Id.* 78:24-79:4.

A few days after his admission, the hospital discharged Plaintiff on an antibiotic and painkillers with instructions merely to follow up with a family practitioner. Ex. 6, First Discharge at 55-57. SCDC returned Plaintiff to the hospital the next day when complications arose, but he was discharged again 16 hours later with the same medicines. Ex. 7, Second Discharge at 37-39.

¹ SCDC was constantly holding job fairs and offering pay increases in efforts to hire and retain more correctional officers. Ex. 1, Collins Aff. at ¶ 2; Ex. 14, 2d Hall Dep. at 122:17-22.

Plaintiff reported that Hall let several inmates into his room so they could attack him, then stood by. Hall then locked him back in his cell and denied his requests for medical. Ex. 9, Investigation at 15, 22-23. The Amended Complaint (“Complaint”) filed on March 8, 2023, alleges, “an officer facilitated the assailants’ attack on the plaintiff, witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff.” Complaint at ¶ 24. The Complaint further alleges that, “[s]ome or all of the defendant’s actions were motivated by unreasonable financial gain.” Complaint at ¶ 28.

Importantly, the cells doors could only be locked with a key when closed—preventing inmates from shutting pre-locked doors. Ex. 1, Collins Aff. ¶ 6. In other words, Hall had to lock Plaintiff’s cell after the attack ignoring his pleas for aid. Investigator Garriss and Lt. Collins both concluded that Hall facilitated the attack and tried to hide it. Ex. 11, Collins Dep. at 65:17-25; Ex. 9, Investigation at 4. Hall was promptly suspended and eventually terminated. Ex. 8, Suspension and Termination Letters; Ex. 14, 2d Hall Dep. at 117:1-8.

During his first deposition, Hall, when asked whether he showed inmates into Plaintiff’s cell to attack him, asserted his Fifth Amendment right not to answer. Ex. 12, 1st Hall Dep. at 121:3-22. He denied opening the cell door in his second deposition.

STANDARD OF REVIEW

A motion for summary judgment should be granted where the Court is satisfied 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.” Rule 56(c), SCRCP. A party opposing a motion for summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.’” *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T*

Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (emphasis in original). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Id.* at 355, 559 S.E.2d at 336. Reliance on self-serving allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e).

ANALYSIS

Plaintiff’s action should be dismissed because: (I) Defendant is immune for any failure to implement or enforce policies; (II) Defendant is immune for Hall’s conduct outside the scope of his official duties, which included actual malice, intent to harm, and a crime involving moral turpitude; (III) Defendant was not grossly negligent in its protection of Plaintiff; (IV) Plaintiff’s claims are barred because he assumed the risk of great bodily injury or death when he failed to notify Defendant of the threats to his life; (V) Plaintiff’s claim is barred because his negligence in failing to notify Defendant of the threats exceeds that of Defendant; and (VI) Plaintiff’s requested punitive damages are barred by the TCA.

I. Defendant is immune for any failure to implement or enforce policies.

SCDC is immune insofar as Plaintiff’s Complaint is premised on its failure to comply with applicable policies and procedures. The Tort Claims Act (TCA)—which is liberally construed in favor of limiting liability of political subdivisions, S.C. Code § 15-78-20(f)—provides that governmental entities are “not liable for a loss resulting from: ...

adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies

Id. at § 15-78-60(4).

The exception to liability was applied in *Adkins v. Varn*, 312 S.C. 188, 189, 439 S.E.2d 822, 823 (1993). Several residents called the county animal control to complain of dogs roaming unrestrained and making unprovoked attacks. Animal control did nothing. And the dogs chased a

cyclist into a street, where she was struck and killed by an automobile. *Id.* at 189. The Supreme Court found that the county failed to enforce a dangerous dog ordinance. *Id.* at 191. The Court continued that section 15–78–60(4) clearly and unambiguously exempted the county from liability for the failure and that the county was immune from suit. *Id.* at 192.

Here, Defendant is immune for its alleged failures to ensure that the officers complied with applicable policies and procedures. Complaint ¶¶ 33a., 40a-b.

II. Defendant is immune for Hall’s conduct outside the scope of his official duties, which included actual malice, intent to harm, and a crime involving moral turpitude.

The TCA immunizes SCDC for Hall’s conduct either outside the scope of his official duties or constituting actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code § 15-78-60(17). “Scope of official duty” is defined as “(1) acting in and about the official business of a governmental entity and (2) performing official duties.” § 15-78-30(i). The term “scope of official duty” is narrower than the term “scope of employment.” *See Frazier v. Badger*, 361 S.C. 94, 102, 603 S.E.2d 587, 591 (2004). Thus, acts not within the “scope of employment” are not within the “scope of official duties.” *Id.*

“An act is within the scope of a servant’s employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master’s business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). “On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master’s business, his conduct falls outside the scope of his employment.” *Crittenden v. Thompson–Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct.App.1986).

Pridgen v. Ward, 391 S.C. 238, 244-45, 705 S.E.2d 58, 62 (Ct. App. 2010).

Uniformed, on-duty employees can step out of the course of their official duties in an instant. *See Doe v. S.C. State Budget & Control Bd., Office of Ins. Servs., Ins. Reserve Fund*, 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).

Here, it is abundantly evident that Hall acted outside the scope of his official duties and with actual malice, intent to harm, and a crime involving moral turpitude when he committed what Plaintiff labels negligence:

- b. by allowing violent inmates to access the plaintiff's cell;
- c. by failing to provide the plaintiff with immediate and/or appropriate medical care;
- e. by allowing dangerous inmates to assault, batter, and injure the plaintiff;
- k. by assaulting the plaintiff;
- l. by battering the plaintiff;

Complaint at ¶ 33.

Hall was the only one with a key to the cells. Ex. 10, Brittany Livingston Dep. 103:22-104:08; Ex. 11, Collins Dep. at 80:7-11; Ex. 12, 1st Hall Dep. at 218:5-219:11; Ex. 14, 2d Hall Dep. at 93:21-94:6. The inmates were supposed to be locked in their cells. Plaintiff reported that Hall let several inmates into his room so they could attack him, then stood by. Plaintiff reported that Hall then locked him back in his cell and denied his requests for medical. Ex. 9, Investigation at 15, 22-23. Lt. Collins found Plaintiff's cell locked. Ex. 11, Collins Dep. at 44:5-11. Importantly, the cells doors could only be locked with a key when closed—preventing inmates from shutting pre-locked doors. Ex. 1, Collins Aff. ¶ 6. In other words, Hall had to lock Plaintiff's cell after the attack ignoring his pleas for aid. As Lt. Collins approached Plaintiff's door last, he heard banging on the cell door, and Hall commented, “don't worry about it, they don't want shit, you can leave.” Ex. 11, Collins Dep. at 14:25-15:5. Investigator Garriss and Lt. Collins both concluded that Hall

facilitated the attack and tried to hide it. Ex. 11, Collins Dep. at 65:17-25; Ex. 9, Investigation at 4.

During his first deposition, Hall, when asked whether he showed inmates into Plaintiff's cell to attack him, asserted his Fifth Amendment right not to answer. Ex. 12, 1st Hall Dep. at 121:3-22. In the civil context, as here, the Court should draw an adverse inference against Hall. *Griffith v. Griffith*, 332 S.C. 630, 640-41, 506 S.E.2d 526, 531-32 (Ct. App. 1998).

The Complaint, itself, alleges, "an officer facilitated the assailants' attack on the plaintiff, witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff." Complaint at ¶ 24. The Complaint further alleges that, "[s]ome or all of the defendant's actions were motivated by unreasonable financial gain." Complaint at ¶ 28.

Hall stepped outside his official duties to facilitate an attack acting with malice, intent to harm, and committed a crime of moral turpitude. SCDC is not liable for his actions.

III. Defendant was not grossly negligent in its protection of Plaintiff.

Negligence requires a duty, breach, causation, and injury. The TCA establishes a duty and standard for breach. SCDC is not liable for "supervision, protection, control, confinement, or custody of any ... prisoner, inmate ... of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner...." S.C. Code § 15-78-60(25).

Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. In other words, it is the failure to exercise slight care. Gross negligence has also been defined as a relative term, and means the absence of care that is necessary under the circumstances. Normally, the question of what activity constitutes gross negligence is a mixed question of law and fact. However, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000) (internal quotations, ellipsis, and citations omitted). For example, in *Hamilton v. Charleston Cnty. Sheriff's*

Dep't, an unsupervised male correctional officer sexually assaulted a female inmate, and the inmate sued for grossly negligent supervision. 399 S.C. 252, 254, 731 S.E.2d 727, 729 (Ct. App. 2012). The Court of Appeals affirmed a directed verdict to the defendant because its supervisors exercised at least slight care in trusting an officer with no prior misconduct they had trained. *Id.* at 255-58.

Here, Plaintiff alleges several theories of gross negligence, but he cannot demonstrate an absence of slight care on any.

First, Plaintiff alleges that SCDC failed to adequately investigate its employees' conduct prior to the incident. Complaint ¶¶ 33.h, 40.c-e, g. But Plaintiff can adduce no background on Hall suggesting he would unlock an inmate's cell for murderous inmates to enter and then lock the injured inmate back in. Hall had a clean background check. Ex. 13, Background Check. He had had the Marion night shift for months. He had no infractions or done anything suggesting he could not perform his duties. He had no history of leaving doors unlocked, much less conspiring with inmates. Ex. 11, Collins Dep. at 64:14-65:16.

Second, Plaintiff alleges that SCDC failed to require sufficient education and training before hiring employees. Complaint ¶ 40.f. But at the time of the incident, Hall had attended the Correctional Academy, where he was trained on dealing with inmates, gangs, and emergency and medical situations and had received on-the-job training. Ex. 14, 2d Hall Dep. at 78:1-79:15; Ex. 4, Training Records at 1-2. Regardless, no lack of training caused Hall to facilitate the attack.

Third, insofar as Plaintiff alleges that SCDC failed to provide him with immediate and/or appropriate medical care, Complaint ¶ 33.c, he cannot demonstrate gross negligence. There is conflicting testimony and record evidence about when Plaintiff was stabbed and how long it took to discover him, but any dispute is immaterial. When a call came in saying someone had been

stabbed in Marion Unit, Hall reported that everything was fine. Ex. 10, Livingston Dep. at 15:12-16:6; Ex. 9, Investigation at 10. It was not gross negligence to believe him. Staff later inspected the unit cell-by-cell to ensure that everyone was safe. Upon discovering Plaintiff, Collins immediately took him to medical, then had him transported to the hospital. Ex. 11, Collins Dep. at 15:6-19. It was the hospital that discharged Plaintiff on an antibiotic and painkillers with instructions merely to follow up with a family practitioner. Ex. 6, First Discharge at 55-57. SCDC returned Plaintiff to the hospital the next day when complications arose, but he was discharged again 16 hours later with the same medicines. Ex. 7, Second Discharge at 37-39.

Fourth, Plaintiff alleges that SCDC authorized, adopted, and ratified the correctional officers' conduct toward the Plaintiff. Complaint ¶ 33.i. But all the cells were supposed to be locked at the time of the incident. Ex. 11, Collins Dep. at 33:10-35:2; Ex. 10, Livingston Dep. at 35:11-12. Hall was promptly suspended and eventually terminated. Ex. 8, Suspension and Termination Letters; Ex. 14, Hall Dep. at 117:1-8.

Fifth, Plaintiff alleges that SCDC placed extremely dangerous inmates near him. Complaint ¶¶ 33.d, f-g. But Plaintiff—a gang member since he was 15 and convicted of attempted murder and armed robbery and multiple prison weapon possession charges—was dangerous himself. Ex. 5, Simmons Records at 1, 5. He was appropriately placed with comparably dangerous inmates.

Sixth, Plaintiff alleges that SCDC failed to take reasonable measures to protect inmates such as Plaintiff. Complaint ¶ 33.j. But all inmates were supposed to be locked in their cells at the time of the incident, left in the charge of Hall, who had no indications that he would cooperate with inmates to kill another. Reasonable measures were in place to prevent the nighttime attack.

Even if SCDC was negligent on the fifth and sixth theories, Hall's actions were a superseding cause. "If the original tortfeasor's negligence appears merely to have brought about a

condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause.” *Dawkins v. Sell*, 434 S.C. 572, 581, 865 S.E.2d 1, 6 (Ct. App. 2021) (internal quotation omitted), *reh’g denied* (Dec. 2, 2021). Any negligence on SCDC’s part in placing Plaintiff in the unit and failing to ensure Hall locked all the cells doors was superseded by Hall unlocking Plaintiff’s cell so inmates could attack him in the middle of the night. This was the last opportunity to prevent Plaintiff’s injuries and fully capable of doing so. Plaintiff would have been safe in his cell but for Hall unlocking it for his attackers. Therefore, only Hall’s actions are the proximate cause of Plaintiff’s injuries. Plaintiff cannot demonstrate a genuine dispute of gross negligence.

IV. Plaintiff’s claims are barred because he assumed the risk of great bodily injury or death when he failed to notify Defendant of the threats to his life.

Plaintiff assumed the risk of being attacked when he declined to notify SCDC of the threats to his life.

“Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are *inherent* in a particular activity.” The doctrine of primary implied assumption of risk “goes to the initial determination of whether the defendant’s legal duty encompasses the risk encountered by the plaintiff.”

Cole v. Boy Scouts of Am., 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011) (quoting *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998)).

In *McGill v. Duckworth*, the Seventh Circuit found that a correctional officer was entitled “to assume that the prisoners will exercise care for their own safety.” 944 F.2d 344, 353 (7th Cir. 1991). The plaintiff prisoner “knew, far better than his guards, of a risk of attack.” *Id.* He had received numerous threats, failed to report them, and assumed the risk of assault when he went to shower alone with the threateners on his heels, walking right by guards to whom he could have reported the threats. *Id.*

Here, Plaintiff reported that there was a lot of money on him to be killed and that he received death threats a couple of days before. He, nevertheless, did not take it seriously. Ex. 9, Investigation at 22. Capt. Livingston attests that Plaintiff notified no one of the threats to his life. Ex. 10, Livingston Aff. Plaintiff also filed no grievances regarding the threats. Ex. 3, Anderson Aff. Accordingly, Plaintiff failed to apprise Defendant of the particular threat to his safety and assumed the risk of being targeted.

V. Plaintiff's claim is barred because his negligence in failing to notify Defendant of the threats exceeds that of Defendant.

Summary judgment is appropriate in comparative negligence cases when “the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710, 713 (S.C. 2000). Here, Plaintiff’s stabbing was a reasonably foreseeable consequence of declining to notify anyone of his death threats. Collins attests that threatened inmates are promptly transferred either to protective custody or a different unit. Ex. 1, Collins Aff. ¶ 8. Had Plaintiff alerted SCDC officials, he could have been moved, and the attack averted. Plaintiff’s negligence exceeds any negligence of SCDC in trusting Hall, and summary judgment should be granted.

VI. Plaintiff’s requested punitive damages are barred by the TCA.

If nothing else, Plaintiff cannot recover punitive damages from Defendant. S.C. Code § 15-78-120(b) (“No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.”). Therefore, Defendant is entitled to summary judgment on the punitive damages claim in the alternative.

CONCLUSION

For the above reasons, Defendant respectfully requests summary judgment on all Plaintiff’s claims and dismissal of the action with prejudice.

DAVIDSON & WREN, P.A.

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ATTORNEYS FOR DEFENDANT SCDC

COLUMBIA, SOUTH CAROLINA

August 1, 2025

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 18-CP-40-04850

Randle Jackson, Personally and as the
Personal Representative of the Estate of
Dashaun Simmons,

Plaintiff,

**RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

v.)

The South Carolina Department of
Corrections,

Defendant.

On May 27, 2025, Plaintiff moved for summary judgment on Defendant's defenses or to strike the Answer on the basis that the most recent 30(b)(6) witness designated to testify about the facts supporting each defense was unprepared. Defendant responds in opposition to Plaintiff's Motion as follows.

Rayford Lee Miller, Assistant Chief of SCDC's Office of Inspector General, is the 30(b)(6) witness in question. He was prepared to discuss the criminal investigation, which, as discussed below, made him well qualified to discuss the facts supporting Defendant's defenses.

Plaintiff's counsel first inquired whether SCDC had evidence of comparative fault (3rd defense). Ex. 1, Miller Dep. at 228:17-20. Miller struggled with the legal terminology but testified that some of Plaintiff's behaviors put him at jeopardy. *Id.* at 230:14-18. He explained that Simmons owed money to other inmates, which

h may have led to his assault for not paying his dept. *Id.* at 234:8-15. Plaintiff's counsel eventually asked, "SCDC is saying it's my guy's fault that he got killed," and asked if Miller had any other evidence in support of SCDC's theory. Miller said no. *Id.* at 241:11-17.¹

Plaintiff next turned to the intervening criminal acts defense (4th defense). Miller expressed confusion over the term. *Id.* at 242:4-19. And Plaintiff's counsel had had enough. He established that Miller had not read the Answer and did not know about the defenses. *Id.* at 242:20-243:17. Plaintiff's counsel could have continued explaining the legal terms, but he declined.

Counsel's behavior was typical for the multiple 30(b)(6) depositions. In short, if a witness cannot answer questions as he phrases them, he considers the witness unprepared, ends the deposition on the topic, and moves for sanctions. He does not care whether he receives the answers he seeks asked a different way preferring to play "gotcha."

Only Defendant's counsel who have entered their appearances in this case understand the application of the facts to the asserted legal defenses in this case. To force defense counsel to give a 30(b)(6) witness a crash course on the defenses and their application to the facts and then force the witness to divulge those communications would violate attorney-client privilege and work product confidentiality. Plaintiff's counsel was free to do what all lawyers do during depositions: inquire about the facts of the case and apply them to the claims and defenses himself.

Any fault on Defendant's part was harmless. Miller also testified about his investigation during which Plaintiff's counsel learned, as he had many times before, that Hall opened Simmons's cell door, allowing armed inmates to enter and stab him, then locked Simmons back in. Miller Dep. at 249:15-251:20. Thus, Miller testified about how Hall committed an intervening crime (4th

¹ Comparative fault and assumption of risk (8th defense) are closely related. Plaintiff could have gotten the same answer on the assumption of risk defense had he tried.

defense) and one involving moral turpitude outside the scope of his duties with actual malice and intent to harm (6th defense (citing S.C. Code § 15-78-60(17))).

Immunity pursuant to S.C. Code § 15-78-60(4) and (25) (6th defense) are purely legal questions, outside the scope of the 30(b)(6) topic, and exclusively the Court's purview. Plaintiff could learn nothing factual from a witness about SCDC's immunity for "failure to adopt or enforce any [policy]." S.C. Code § 15-78-60(4). Likewise, section 15-78-60(25) merely imposes the gross negligence standard for failure to protect inmates. It is up to Plaintiff to demonstrate gross negligence. That said, Plaintiff inquired, apparently to his satisfaction, about violations of policies and whether Hall was grossly negligent. Miller Dep. at 30:2-31:6.

The fifth and eleventh defenses—the Tort Claims Act's statutory cap on damages and bar on punitive damages—are also strictly legal.

Finally, Miller was hardly the only source of evidence supporting the defenses. Defendant offers conclusive support for some of the above defenses in its motion for summary judgment, which it incorporates.

CONCLUSION

For the above reasons, Defendant respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment and Motion to Strike.

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ATTORNEYS FOR DEFENDANT SCDC

COLUMBIA, SOUTH CAROLINA

August 1, 2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
Randle Jackson,) Case No: 2018-CP-40-04850
Personally and as the)
Personal Representative)
of the Estate of)
Dashaun Simmons,)
)
Plaintiff,)
)
v.)
)
The South Carolina) 30(b)(6) DEPOSITION OF
Department of Corrections,) South Carolina
) Department of Corrections
Defendant.) (Rayford Lee Miller, Jr.)

CERTIFIED COPY

Date: Wednesday, May 21, 2025
Time: 4:19 p.m.
Location: Davidson & Wren, PA
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204

Reported by:
Darlene Pastel, CVR-CM

APPEARANCES

For the Plaintiff: Hawkins & Jedziniak, LLC
Joshua T. Hawkins, Esq.
Sulaiman S. Ahmad, Esq.
Greenville, South Carolina

For the Defendant: Davidson & Wren, PA
William H. Davidson, II, Esq.
John P. Grimes, Jr., Esq.
Columbia, South Carolina

Also Present: Sydney Keesee

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STIPULATIONS

It is stipulated by and between counsel for the
respective parties that all objections are reserved
until the time of trial, except as to the form of
the questions.

- - -

The reading and signing of this deposition is
reserved by the deponent and counsel for the
respective parties.

Whereupon,

Rayford Lee Miller, Jr., being duly sworn and
cautioned to speak the truth, the whole truth, and
nothing but the truth, testified as follows:

EXAMINATION

(Plaintiff's Exhibit No. 1 marked for identification.)

BY MR. HAWKINS:

Q Do you know anything about this lawsuit?

A Just that I'm being deposed.

Q Do you know anything about the facts of the lawsuit
or the allegations or anything like that?

A I know it stems from a 2017 case that was worked by
the ...

Q That was what?

A That was worked by the, at that time, police
services.

Q Okay.

A Through SCDC.

Q All right. So we have a client, and he was
stabbed. We allege that it was a failure to
protect case basically, that SCDC guards violated
civil policies and are both directly and
vicariously liable for our client's injuries. He
was stabbed while in the custody and care of SCDC.

So we filed a complaint, and then SCDC
asserted several defenses. One of the topics that
we set forth is the facts or evidence that supports
those defenses. SCDC has the burden of proving
those defenses.

So I'm going to ask you what facts or evidence
SCDC has to support those defenses. Okay?

A Yes, sir.

Q In this case, what facts or evidence does SCDC have
to assert or rely on at trial that shows that my
client was comparatively negligent?

MR. DAVIDSON: Object as to the form.

MR. HAWKINS: And I've let this go all day,
Will, but I'm going to ask you the basis of that
objection, because it is directly on point.

MR. DAVIDSON: I'm just noting an objection.

MR. HAWKINS: Do you have a basis for it?

Or do you have any reason to do it other than to just say it to every question?

MR. DAVIDSON: I'm not going to give you specifics as to --

MR. HAWKINS: I didn't think you would, because you don't have even one. You don't have any basis for any of them.

MR. DAVIDSON: It's against In Re: Anonymous. You keep telling me that.

MR. HAWKINS: It is against In Re: Anonymous. That's never stopped you before. But In Re: Anonymous says you make a short form objection, which means you can in three words or less give me the basis for the objection. And you can't even give me three words, because you don't have one, do you?

Q (MR. HAWKINS) Do you have any facts or evidence to support the defense set forth by Mr. Davidson that my client was comparatively negligent or at fault for his own injuries?

A Clarify for me.

Q Yeah. We say "SCDC, it's your fault that we got stabbed to death because you violated policy." You opened a door. You let other inmates come in. You weren't watching your guards. You had too few

guards on a post. A bunch of different policy violations.

SCDC says in its answer "it's not our fault that your client was hurt. It's his fault he was hurt." He was comparatively negligent. He did something himself that caused his injuries.

So I'm asking you, what facts or evidence does SCDC have to support that claim?

A In the first part of your question, you used a term like -- terminology of the inmate, your client, I suppose --

Q Yes, sir.

A -- Mr. Simmons' death. This was an assault. My part of the job with SCDC was to do an investigation for that. So I'm not sure exactly what you're asking me.

Q Okay.

A Because a lot of this is rambling on to me. It sounds rambling. I can tell you about the criminal investigation that we did.

Q Okay. Well, you're put up to testify about 25, which is Topic 47, and that's all facts in support of each defense pleaded in the answer or upon which the defendant will rely at trial. You are who SCDC has put up for that topic.

So I'm asking you about this first offense, which is comparative fault. Does SCDC have any evidence you can point to? And there's --

A I'm not following what you're specifically asking me.

Q Do you have any evidence in support of the defense of comparative fault?

A Define the "fault" part.

Q That my client caused his own injuries.

A Not per se.

Q Okay. So there's no evidence that you can point to or facts that would support that defense?

MR. DAVIDSON: Same objection.

A I'm not exactly sure how you want me to answer that. If you take in the totality of the circumstances, then I would say, based on what I have read, that some of his behaviors put him at jeopardy.

Q (MR. HAWKINS) Whose behaviors?

A Mr. Simmons.

Q Okay. Is that your evidence?

A I -- you asked me a question. I'm trying to answer it the best -- you want to call it "evidence." You want to call it my "answer." That's fine.

You're using the term "evidence."

Q Yeah.

A Okay. I'm just telling you an answer to your question.

Q Okay. Is that -- is your contention that my client did something to jeopardize himself?

Is that your evidence that supports the defense of comparative fault?

A My statement will be the same. I believe, according to what I have read through the investigative report --

Q Okay.

A -- that some of the inmate's behaviors may have led to his assault.

Q Okay. Did any of those behaviors cause him -- cause Hall to open the cell door and let inmates in to stab him?

A Not that I have knowledge of.

Q Okay. Did any of those behaviors that you read about cause SCDC to have Hall down in this area by himself?

A I have nothing to do with the staffing of the institution.

Q Well, no, you told me that your evidence to support this defense is the behavior of the inmates.

I'm asking you if the behavior of the inmate

caused SCDC to have one guard in Marion Unit at the time my client was stabbed?

Did he have anything to do with SCDC's decision to have one guard in Marion Unit?

A Are you talking about did Simmons' action cause --

Q Yeah.

A -- SCDC to only put one -- I have no idea of knowing that.

Q Well, how could it? He's an inmate. How could he influence what SCDC does on Marion Unit?

A How can he determine which guard covers that unit at night?

Q That's exactly my point.

A But I'm not following your point.

Q I know. Because I don't think you're prepared to answer questions about this topic. That's not your fault.

MR. DAVIDSON: Object as to the form.

THE DEPONENT: Now, we can get this adversarially, or you can just ask me a straight question that I understand. I will answer to the best of my ability and knowledge. But keep it simple. Okay?

Q (MR. HAWKINS) Well, it's real simple.

A No.

Q It's real simple. Let me tell you what I'm asking you, and then you give me an answer. This is very simple. You told me that your evidence that my client caused his own -- yes, you did. What did you say, if I got it wrong?

A You keep terming it "evidence." I don't like that word in this thing. I said -- well, you can call it what you want to.

Q Well, it -- I mean, we're dealing with a lawsuit. We have to talk about evidence and facts.

A You asked me what I thought. I told you what I thought. And you keep changing my answer to basically as evidence. Evidence is a proved, true fact in my opinion.

I'm just saying to you his behaviors may have led to that, him being assaulted.

Q Okay. Well, let's get our terminology defined. Evidence is something that tends to show something happened or didn't happen. Evidence is not a proven fact. Those are two different things. Okay? Evidence is -- you know that my client said something that indicates something else happened. That's not what I'm asking you.

I'm asking you as far as the defense of comparative fault goes -- because y'all have the

burden of proving that. What proof -- what proves that my client was comparatively at fault?

You said something earlier about "I read in the report" -- that he is somehow responsible for his own damages.

MR. DAVIDSON: Object as to the form.

A I said his behaviors.

Q (MR. HAWKINS) His -- okay. What behaviors? Tell me that first, and we'll go from there.

A From what I have read, was that this inmate, your client or the State or whatever, owed money to other inmates.

Q Okay.

A That may have led to him being assaulted for not paying his, quote/unquote, "debt."

Q Okay. Now my question to you is: Did that behavior, him owing money or not owing money, have anything to do with Hall opening the cell door to the cell he was in when he got stabbed?

MR. DAVIDSON: Object to the form.

A Not to my knowledge.

Q (MR. HAWKINS) Okay. Did that behavior -- and you tell me if there's anything else in addition to him owing a debt. Did that have anything to do with SCDC placing Hall by himself in Marion Unit on

July 17, 2017?

A Not to my knowledge.

Q Okay. Did my client owing money have anything to do with Hall allowing 20 to 30 inmates out of their cells on July 17, 2017?

MR. DAVIDSON: Object to the form.

A I don't have any knowledge of that.

Q (MR. HAWKINS) Okay. Does that mean -- well, I'm asking you. Does the debt or whatever have anything to do with Hall having people out of their cells when they were not supposed to be?

MR. DAVIDSON: Object to the form.

A I don't have knowledge of that.

Q (MR. HAWKINS) Okay. So you don't have any evidence to support that?

A Rephrase.

Q Yeah. Hall had 20 or 30 people out of their cells --

A Uh-huh.

Q -- when they weren't supposed to be. Some of those people stabbed my client. Did my client's debt to another inmate have anything to do, as far as you know, with SCDC or Hall or anybody having all these people out of their cells?

Can you point to anything that shows a causal

1 connection or relationship between a debt owed by
2 my client and all these people out of their cells
3 against policy?
4 MR. DAVIDSON: Object to the form.
5 A Not the way you explained it.
6 Q (MR. HAWKINS) Okay. Well, at all, in any way?
7 Explained by anybody?
8 A I can't answer that.
9 Q Okay. So you don't have anything you can point to?
10 A I don't -- you are --
11 Q If you have anything you can point to that shows a
12 connection between a debt owed by my client and
13 people being out of their cells against policy,
14 tell me what that is. Give me that evidence.
15 MR. DAVIDSON: Objection.
16 A I cannot say if there's a correlation or not.
17 Q (MR. HAWKINS) Okay. Do you know of any evidence
18 that's a correlation?
19 A Rephrase.
20 Q Do you know if there's any evidence that there's a
21 correlation between a debt owed by my client and
22 inmates out of their cells against policy?
23 A I do not know that.
24 Q Okay. So you can't point to anything specific? If
25 you can, tell me.

1 A If I can't answer that, then I can't answer that.
2 So how you going to point to something if I
3 can't answer it?
4 Q That's my point. All you have to say is -- this is
5 real simple and real straightforward -- "I don't
6 have any evidence" or "no," when I say "do you have
7 any evidence?"
8 Because I asked you that very simple question
9 -- "can you point to any evidence of a connection
10 between the two" -- and you said something like
11 "well, I think," "if you need to rephrase," "if you
12 could possibly go back."
13 And if there's -- I mean, you just give me
14 this soliloquy of nonresponsive ...
15 MR. DAVIDSON: Objection.
16 A I believe I responded to every question and asked
17 for clarification, number one. So I am not
18 nonresponsive. It may not be the response you're
19 looking for. But I am responding to the question
20 the best that I can.
21 But you say the word evidence, "what evidence
22 do I have?" I'm relying on the facts that we
23 determined from this case.
24 Okay? Talk to me about this case, and I'll
25 answer everything I can.

1 Q (MR. HAWKINS) Well, I was asking you about the
2 debt that you told me that my client allegedly
3 owed.
4 A That's what the talk was, yes.
5 Q Okay. Do you think that debt caused SCDC to
6 violate policy?
7 A Which policy?
8 MR. DAVIDSON: Object to the form.
9 Q (MR. HAWKINS) Well, they violated a bunch of them.
10 The inmate policy. The lockdown during count
11 policy. The two-guard policy. The supervision
12 policy. The frequency of rounds policy. Any of
13 those policies that was violated by SCDC.
14 Did my client or the debt he owed cause SCDC
15 to violate all these policies?
16 MR. DAVIDSON: Object to the form.
17 A Not to my knowledge.
18 Q (MR. HAWKINS) Okay. As it relates to comparative
19 fault, is there any evidence or facts you want to
20 tell me about that I didn't ask you about?
21 A You're using the legal term about fault and stuff,
22 so I'm not exactly -- what you're asking me.
23 Q Is there anything you want to tell me about the
24 third defense before I move on to asking you about
25 other defenses?

1 A What is the third defense?
2 Q Comparative fault.
3 A I need a better clarification. I'm not
4 understanding what you're asking.
5 Q Well, you were put up to give evidence on this.
6 You're supposed to understand what I'm talking
7 about.
8 A I am not aware -- I do not understand your legal
9 terms. Talk --
10 Q It has nothing to do with being a lawyer. An
11 agency or company is not an actual person under
12 Rule 30(b)(6) of the Rules of Civil Procedure -- is
13 required to be knowledgeable about the topics
14 listed in the deposition notice. Right? And this
15 is very straightforward and unambiguous. It's less
16 than two lines. Your attorney has had years to put
17 somebody up knowledgeable about this topic.
18 And every time I ask you a question, you're
19 saying "I don't know what comparative fault means."
20 And that's a defense that you're supposed to know
21 about. That's a defense that you're supposed to be
22 able to offer testimony about. You can't do it,
23 because you're not ready for this topic.
24 A Number one, do not belittle me. Number one.
25 Q Well, no, no. There's no "number one."

MR. DAVIDSON: Let him finish --

MR. HAWKINS: And I'll tell you what else.

This is my deposition, and I have the burden of proof in this case. And you're not going to twist this and gaslight everything by saying I'm belittling you by asking you if you're prepared for a topic that you are supposed to be prepared for. That's not belittling. That is telling you you're supposed to be prepared and asking you why you're not prepared.

Because we have gone to a lot of trouble to get you here to answer questions about this. We've had to have multiple meetings with a judge. The judge has determined that you are supposed to be here or somebody is supposed to be here who's knowledgeable about this topic.

And you can't give me any responsive information. And you're acting like it's my fault. And it's not my fault. It's your fault and it's SCDC's fault for not being prepared to testify about this very simple and straightforward topic.

MR. DAVIDSON: Move to --

MR. HAWKINS: Now go ahead with what you want to -- and I don't care if you move to strike. There's not a judge in here.

Go ahead with what you want to tell me.

MR. DAVIDSON: I'm going to make my note for the record. Object to the soliloquy by Mr. Hawkins. And number two, please allow the witness to respond before you talk over him.

If he asks you a question, answer it. The best you can.

THE DEPONENT: Rephrase the question so I can understand it. And I might.

BY MR. HAWKINS:

Q Just tell me as to comparative fault. SCDC is saying it's my guy's fault that he got killed. Just tell me what evidence you have to support that other than this debt that you're saying he owes.

Just tell me that. If you don't have any evidence, say "I can't point to any evidence."

A I can't point to any evidence at this time that I know of.

Q Okay. Perfect. Fine. The debt that you're talking about, you found that in Garriss' report?

A I read it someplace. I don't remember where I read it.

Q Do you have any knowledge about a debt owed other than what you read in a report that was written by someone else?

A No, I do not.

Q You don't have any firsthand knowledge about that?

A I do not.

Q All right. Tell me how -- tell me how intervening criminal acts would absolve SCDC of any liability?

A Can you rephrase that a little bit more? Could you dumb the question down for me?

Q In any -- one of the defenses set forth is "intervening criminal acts." So what evidence does SCDC have to support that defense?

A Can you rephrase your question?

Q Yeah. What evidence does SCDC have to support its defense of intervening criminal acts?

A Intervening criminal acts? As far as this investigation goes or in general?

Q I mean, it's y'all's defense. You tell me.

A I mean, we got notified of this -- of the incident, and we responded and conducted a criminal investigation.

Q Okay. Have you ever read the answer to the amended complaint?

A Not to my knowledge.

Q Have you ever seen any of these defenses that you're here to testify about?

A No, sir.

Q Do you know anything about any of the defenses or the facts that SCDC will rely on to support them?

A No, sir.

Q You're not prepared to answer these questions at all about defenses, are you?

A I'm prepared to talk about what I know about this investigation that led to criminal charges.

Q Well, I'm asking you about defenses, which is what's in Topic 47. And what it says is "all facts in support of each defense pleaded in the answer or upon which the defendant will rely at trial."

You've never seen the answer; right?

A No, sir.

Q You don't even know what the defenses are, do you?

When I read these next several defenses, you don't even know what I'm going to say?

A That is correct.

MR. HAWKINS: Okay. I don't see any point in belaboring -- we can go through each defense, but he doesn't know about them. We're going to have to come back and talk to somebody who knows about facts or evidence that SCDC will rely on in support of its answer and defenses.

THE DEPONENT: I can talk about the investigative case.

1 MR. HAWKINS: The reason I'm doing -- I'm
2 just giving you an explanation. We have to file a
3 dispositive motion. Because there's no facts or
4 evidence to support these defenses. I have to get
5 on the record before we make a dispositive motion
6 that SCDC doesn't have any evidence to rely on.
7 Because it's their burden to prove these defenses.
8 Q (MR. HAWKINS) You don't know about any of it. So
9 I can't ask you about it. Because you don't know
10 what the defenses are even. That's not your fault.
11 You just -- I can't ask you about something you've
12 never seen and don't know about.
13 A I mean, I can tell you that the criminal
14 investigation was conducted. I can tell you
15 that --
16 Q That's a different issue, though. I'll ask you
17 some more questions -- that's a different issue.
18 I'll ask you questions about Topic 32, which
19 is -- which is -- relates to the criminal
20 investigation. Because that is -- Topic 32 looks
21 to be like what you're prepared to testify about.
22 And it looks like you don't know anything
23 about Topic 47. If I'm wrong about that, tell me.
24 But I'm going to --
25 A I was told -- dealing with Topic 25 and another

1 one.
2 Q Well, 25 is the one I was asking you about, which
3 is -- it's Number 25 but it's Topic 47. And that's
4 "all facts in support of each defense pleaded in
5 the answer upon which the defendant will rely at
6 trial." And you said you've never seen the answer.
7 So what I'm going to do is make a motion with
8 the court so I can talk to somebody who knows about
9 that. And I'm going to ask you about Number 10,
10 which is Topic 32. And that's "all records,
11 documents, images, and materials stored in any
12 form -- communications, investigations related to
13 the July 18, 2017, attack." Okay?
14 A Yes.
15 Q Is that stack of paper all the stuff that you
16 gathered in response to Topic 32, which is
17 Number 10 on the Seventh Amended Notice?
18 A No.
19 Q Okay. What else is there?
20 A Reading everything I could find, I asked my
21 evidence custodian -- the case agent did take some,
22 quote/unquote, "evidence" over to SLED for
23 analysis. I have a copy of that report. And
24 everything that's over there is still pending, DNA
25 stuff.

1 Q So there are materials related to this topic and
2 this investigation that you don't have with you
3 right now?
4 A It's in the other room.
5 Q Okay. Can you go get that?
6 A If you wish. If I'm allowed to.
7 Q Yeah, sure. Thank you.
8 MR. HAWKINS: Will, while he's gone, on the
9 record, let me -- I'll go ahead and put my
10 consultation -- I've got to obviously depose
11 somebody who knows about Topic 47. So this is my
12 consultation.
13 MR. DAVIDSON: That's fine. I'll consider
14 it your consultation.
15 MR. HAWKINS: Let me know if we can work it
16 out without court intervention in the next five
17 days or so.
18 MR. DAVIDSON: That's fine.
19 (Off the record from 4:41 p.m. until 4:42 p.m.)
20 Q (MR. HAWKINS) Okay. Thank you for going and
21 getting that. And so with these materials that
22 you've just retrieved, along with the materials
23 that you already had with you, is that all the
24 documents that SCDC has that are responsive to
25 Topic 32?

1 A I believe so, yes.
2 Q Which is Number 10 on the amended notice?
3 A Yes.
4 Q Okay. Can I see them, please?
5 Have you talked to Mr. Garriss about any of
6 this?
7 A No, sir, I have not.
8 Q Do you know why these criminal charges related to
9 these other inmates who stabbed Mr. Simmons were
10 dropped? Do you have any idea about that?
11 A I did reach out to the solicitor's office and spoke
12 to the assistant solicitor on it, and he informed
13 me as to why the decision was to dismiss the
14 charges.
15 Q And what was that?
16 A Basically, given the totality of the circumstances,
17 the witnesses and all that, he said that would be a
18 hard case to prove.
19 Q Didn't they have some DNA evidence?
20 A Not that I know about. The only thing I know of is
21 right there. And it looks like everything is still
22 pending. I don't know if there's anything else
23 received back yet.
24 Q Okay. And I don't know a lot about criminal law.
25 Can they re-bring these charges?

1 A That would be a legal decision. But I believe they
2 could. Unless it was -- something about prejudice
3 or no prejudice. I'm not exactly sure --
4 Q Right.
5 A -- which one it is.
6 Q Okay. Who was most directly responsible for the
7 decision not to press those charges?
8 Because it looks like -- to me it seems like
9 Garriss should have had some say in it. Or at least
10 some influence over whether the solicitor dismissed
11 them or not.
12 A The assistant solicitor made that decision.
13 Q Who was that? Who was the assistant solicitor?
14 A Hans Pauling, H-a-n-s Pauling.
15 Q And did you talk to Mr. Pauling about -- well, just
16 tell me about your conversation with Mr. Pauling.
17 A In reading over them, his name -- and it was
18 dismissed. Don't know why it was dismissed. So I
19 asked him why it was dismissed. So he explained to
20 me the process of why they dismissed the charges.
21 Q Well, what did he say? Other than the totality of
22 the circumstances.
23 A That was my terminology.
24 Q Oh. Well, what did Mr. Pauling say? Did he say,
25 "Well, the victim is dead now, so it would be hard

1 to prove"? Or --
2 A No. The eyewitness testimony would be hard to
3 collaborate. I don't know if that's the right
4 word.
5 Q Corroborate what happened?
6 A Corroborate. Thank you.
7 Q What about the charges against Mr. Hall? Do you
8 know why those were dropped? Was it the same
9 solicitor that brought the charges?
10 A Yes, sir, I believe that's the same solicitor. And
11 I'm not exactly sure. But if you look at all the
12 cases combined -- the eyewitness and everything.
13 So your question, it was left up to him. For
14 clarification.
15 Q Do -- you read a lot about the investigation
16 related to this event. What do you think happened
17 from your review of the materials?
18 A That Hall did open the door to Mr. Simmons' cell.
19 That Mr. Simmons was -- and that inmates with
20 weapons went into the cell and assaulted him.
21 That Mr. Hall did not allow the inmate to
22 get -- close the door, locked him back into the
23 cell until later on. And other events happened.
24 And they came and found him, and they took him to
25 medical. That's in a nutshell.

1 Q Yeah. Does -- is there any evidence that Hall --
2 does SCDC have any evidence that Hall was in the
3 area, in the vicinity of the stabbing when it took
4 place?
5 A It's my understanding he was at the door.
6 Q And your understanding is based on what?
7 A This investigative report.
8 Q Well, what I'm asking for is specifically --
9 because it matters. It may be something to talk
10 about whether Hall was in the vicinity or whether
11 he opened the door and then he was somewhere else.
12 So what evidence do you know about that
13 Mr. Hall was in the vicinity of the stabbing?
14 A Based on --
15 Q What specific fact are you aware of?
16 A Based on the eyewitness.
17 Q And that would be the person who was in the cell
18 sort of across or catty-corner from --
19 A It's my -- yes.
20 Q Okay. Did that -- was it your understanding that
21 that person said Hall was near the stabbing or that
22 he watched the stabbing?
23 A Give me a minute to --
24 Q Take as much time as you need.
25 A He watched Hall unlock the door, and he said he

1 walked off the wing and came back after all the
2 inmates -- it's hard reading his writing. He said
3 he walked off the wing and came back "after all was
4 done. The inmate that was in there" --
5 Q So he -- let me stop you just for a second and ask
6 a question. From what you're saying, he opens the
7 door. He walks off. So he's not in the vicinity?
8 A Well, according to the victim's statement, that
9 Mr. Hall refused to let him off -- opened the door.
10 He was standing there. He had inmates out there
11 with weapons. He refused to let him out.
12 And then he got assaulted. And according to
13 the witness statement, Hall walked off.
14 Q After the stabbing?
15 A And then came back. Well, yeah, or during it.
16 However.
17 Q No way to tell where Hall was when really.
18 A Correct.
19 Q Not exact -- because we don't have a camera --
20 A Correct.
21 Q -- or a video. Okay. All right. Based on what
22 you've seen, the investigative report -- I mean,
23 that's -- I've seen some of the stuff that's
24 included in there. And it includes the factor that
25 Kennedy had been working before, and then there

1 were 20 or 30 cell doors open. Maybe it wasn't
2 Kennedy. Maybe he's the one who relieved Hall.
3 But in any event, Kennedy was there at some
4 point; right?
5 A Kennedy was working -- Kennedy was working. Hall
6 relieved him.
7 Q Right.
8 A And then Hall was -- he was -- Kennedy was locking
9 doors and Hall was coming behind him and unlocking
10 some doors. I believe that's what it says.
11 Q Right, right. And because -- because depending on
12 who you believe, Kennedy left doors open, or Hall
13 started to unlocking doors that Kennedy had closed.
14 Depending on who you believe.
15 A Okay.
16 Q Does that sound consistent with what you saw?
17 Because -- well --
18 A I don't --
19 Q And one of the people who was -- I had the benefit
20 of deposing Hall, and so I know kind of what he
21 says. And you don't know --
22 A I don't know anything about -- I can read -- what
23 I've read, Kennedy was locking doors.
24 Q Yeah.
25 A Hall was coming back and opening up some of the

1 doors after Kennedy locked them.
2 Q Right, right. Okay. Based on all those doors
3 being open and being open late at night and being
4 open during count and -- do you think SCDC has any
5 culpability or liability for this policy?
6 MR. DAVIDSON: Object to the form.
7 Q (MR. HAWKINS) You can answer.
8 A I believe there was issues with some things that
9 were violated policy-wise.
10 MR. HAWKINS: Yes, sir.
11 A Does it relate to the level that you're asking? I
12 don't know. I can just report the facts.
13 Q (MR. HAWKINS) Do you think it's -- amounts to
14 recklessness to let 20 or more inmates roam free at
15 night -- 9:00 at night?
16 MR. DAVIDSON: Object to the form.
17 A Do I think it's reckless?
18 MR. HAWKINS: Yeah.
19 A I think it's not a safe practice.
20 Q (MR. HAWKINS) Do you think it's reckless?
21 A Definitely not a safe practice. But does it meet
22 the level of reckless? I don't know.
23 You're talking about this specific
24 institution? This particular --
25 Q Yeah.

1 A It's not a safe practice, no.
2 Q Based on everything you did, does it look like Hall
3 or -- well, let's just go with Hall. Based on
4 everything you saw that Hall did, does it look like
5 Hall exercised even slight care?
6 A From what I have read, it appears not.
7 MR. HAWKINS: Okay. All right. That's all
8 the questions I have. Thank you.
9 If you're the same person they put up when
10 we reconvene for Topic 47, we'll see you again. If
11 it's somebody else, then we won't see you.
12 THE DEPONENT: I'll make sure that I'm more
13 prepared in line with what you want to ask.
14 MR. DAVIDSON: I've got one question.
15 THE DEPONENT: Yes, sir.
16 EXAMINATION
17 BY MR. DAVIDSON:
18 Q Was there an arrest warrant sworn out for Hall?
19 A Yes.
20 Q What was that arrest warrant for?
21 A I believe it was misconduct and accessory before
22 the fact. But I can -- give me one second.
23 All right. Accessory before the fact of
24 attempted murder, misconduct in office. That was
25 the two for Mr. Hall.

1 Q Did it appear from police services' investigation
2 that Mr. Hall opened the cell door -- he's the only
3 one who would have had a key; right?
4 A Yes, sir.
5 Q He opened the cell door and allowed four inmates to
6 go into the cell and stab, whatever, Mr. Simmons?
7 A Yes, sir.
8 Q And walked off and left him?
9 A Yes, sir.
10 Q And I think you said Mr. Simmons gave a statement?
11 A Yes, sir.
12 Q And his statement was what?
13 A Mr. Simmons did -- I did a recorded interview,
14 talking to Mr. Simmons that night. And then he
15 also gave a statement. So which one do you want to
16 talk about?
17 Q Either one. Where he goes into the facts of the
18 case.
19 A Okay. When I spoke to him at the hospital that
20 evening -- or night, he said he was sleeping in a
21 bunk. "Hall opened the cell door. He was standing
22 at the door and not allowing me to leave."
23 Several inmates came in and assaulted him with
24 an ax-type weapon. He gave nicknames and said they
25 were all Blood members -- or members of the Blood

1 gang. Gave their nicknames. And he sustained
2 lacerations to his head, forehead, and a laceration
3 to his left palm and possible broken jaw. That's
4 what he told me, and that's why I did a recorded
5 interview.

6 When Mr. Garris interviewed him, he said that
7 his unit was on lockdown because of the, quote,
8 "gang riot." There are a lot of -- there was a lot
9 of money on his -- for him to be killed, from his
10 understanding. And a couple of days before he was
11 receiving threats from people saying "I was going
12 to be killed." He didn't take it seriously.

13 And on 7/18/17, Officer Hall opened his door
14 and "let a bunch of guys try to kill me. I don't
15 remember too much, but I remember a couple of their
16 faces of the guys who tried to kill me. I remember
17 Shoestring, Maserati, Ray-Ray were the first ones.
18 And I saw before and -- it was too many to make
19 out. Officer Hall locked -- refused to let me out
20 of the dorm after he witnessed the stabbing. I
21 asked him -- if he told me to wait until shift
22 change, and they were waiting for me to bleed out
23 and die in my room.

24 "Officer Hall locked me in the room after the
25 stabbing, and the only reason I didn't die was

1 because somebody called the front office on their
2 cell phone and told operations that -- what was
3 happening. The yard officer, a female, then came
4 to the unit, opened the door, and escorted me to
5 medical." And then he went to the hospital.

6 MR. DAVIDSON: That's all I have.

7 MR. HAWKINS: Can I see those, please, that
8 stack of paper?

9 MR. DAVIDSON: For the record, I believe it
10 has Bates numbers on it.

11 MR. HAWKINS: Can I see that?

12 THE DEPONENT: This is the DNA stuff.

13 MR. HAWKINS: That will be his exhibit.

14 (Plaintiff's Exhibit No. 8 marked for identification.)

15 MR. HAWKINS: Thank you very much.

16 FURTHER DEPONENT SAITH NOT.

17 (Whereupon, there being no further questions, the
18 deposition was concluded at 4:56 p.m.)

19 (*This transcript may contain quoted material.
20 Such material is reproduced as read or quoted by
21 the speaker.)
22
23
24
25

State of South Carolina)
County of York) CERTIFICATE

Be it known that Darlene Pastel took the foregoing
proceeding and hereby attests:

That I was then and there a notary public in and
for the State of South Carolina at-large and that
by virtue thereof I was duly authorized to
administer an oath;

That the deponent/witness was first duly sworn to
testify to the truth, the whole truth, and nothing
but the truth concerning the matter in the
controversy aforesaid;

That the foregoing transcript represents a true,
accurate, and complete transcription of the
testimony so given at the time and place aforesaid
to the best of my skill and ability;

That I am neither a relative nor an employee of any
of the parties hereto, nor of any attorney or
counsel employed by the parties hereto, nor
interested in the outcome of this action.

Unless otherwise noted, this notary public
administered the oath. Please refer to the
transcript for any exceptions.

For details on reading and signing, please refer to
the transcript.

In witness thereof, I have hereunto affixed my
signature and title.

Darlene Pastel
Darlene Pastel, CVR-CM

Date: 05/29/2025
Notary public for South Carolina
My Commission expires 09/20/2027

CERTIFICATE OF WITNESS

I, _____, a witness in the above
entitled action, do hereby certify that I have reviewed
the foregoing transcription of my deposition and have
made corrections, if any were deemed necessary, on the
enclosed addendum.

Signed this ____ day of _____, 2025.

(Deponent's name)

This deposition was signed in my presence by
_____ on the ____ day of _____, 2025.

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 18-CP-40-04850

Randle Jackson, Personally and as the
Personal Representative of the Estate of
Dashaun Simmons,

Plaintiff,

v.

The South Carolina Department of
Corrections,

Defendant.

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT**

Defendant wanted to be sure the Court had an opportunity to read its response to Plaintiff's motion for summary judgment in a timely fashion and therefore filed it late Friday afternoon. Plaintiff filed his memorandum in support of summary judgment too late for the clerk to publish and emailed it to defense counsel Sunday afternoon. Plaintiff did not respond to Defendant's cross-memorandum in support of summary judgment. Under the circumstances, Defendant believes this supplemental memorandum is appropriate.

First, Plaintiff ignores the standard of review when he admits that the evidence cited in his brief is disputed or uncertain, but he nevertheless selects the version of events and inferences most favorable to him, as the movant. For example, Plaintiff admits that Lt. Parker denied having a conversation with Kennedy about Hall unlocking doors. Plaintiff also admits that Control Room Operator Brittney Livingson placed the calls reporting the stabbing later in the evening. In fact, she testified that the first call came in about the stabbing 10-15 minutes before Plaintiff was discovered. Ex. 10, Livingson Dep. at 12, 27-28.

Next, Plaintiff's memorandum confuses the loss of records in violation of SCDC policy as violations of the discovery rules. As argued, SCDC has produced the relevant, responsive records in its possession.

As to policy violations on the night of the incident, this is not a case of a supervisor making an ad hoc decision to only have one officer in Marion Unit. Testimony established that there was only one correctional officer per regular unit during the night shift for some time because of staff shortages. Policies can be written and unwritten. The written policies did not need to be amended to reflect how SCDC's higher echelons were forced to adapt to staff shortages.

The rest of the alleged policy violations are a red herring. Plaintiff emphasizes the failure to enforce cell assignments. But, if Plaintiff placed himself in proximity to rival gang members, he assumed that risk.¹ That said, he should have been safe locked in his cell whatever prior policy violations. The parties agree that Officer Hall facilitated the attack.

Exception (17) immunizes government entities from vicarious liability for "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 § 15-78-60. Certainly, if an employee's conduct merely rises to gross negligence, the exception does not apply. The parties agree, however, that Hall opened Plaintiff's cell door the morning of July 18 for his attackers, stood by, and then locked him back in, telling him he would have to wait for shift change for medical. Ex. 9, Investigation at 15, 22-23 (Plaintiff's statement); Original Verified Complaint at ¶¶ 11, 13, 22, 26. Plaintiff does not dispute that Hall reported everything was fine when asked.

¹ Plaintiff's memorandum cites the elements of secondary implied assumption of risk, which *Davenport* abandoned. Defendants' memo in support of summary judgment explains the law of primary implied assumption of risk.

Hall's actions were not grossly negligent; they were malicious, criminal, and most definitely outside the scope of his official duties.

The TCA states in three other places that government entities are only liable for their employees' actions within the scope of their official duties. *See* S.C. Code §§ 15-78-20(b), 15-78-50(a), 15-78-200. Employees are on their own for their conduct "not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code § 15-78-70(a)-(b). SCDC is not vicariously liable for Hall's actions. And its other employees 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. Ex. 10, Livingston Dep. at 15:12-16:6; Ex. 9, Investigation at 10.

CONCLUSION

For the above reasons, Defendant respectfully requests summary judgment on all Plaintiff's claims and dismissal of the action with prejudice.

DAVIDSON & WREN, P.A.

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ATTORNEYS FOR DEFENDANT SCDC

COLUMBIA, SOUTH CAROLINA

August 6, 2025

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 18-CP-40-04850

Randle Jackson, Personally and as the
Personal Representative of the Estate of
Dashaun Simmons,

Plaintiff,

v.

The South Carolina Department of
Corrections,

Defendant.

**DEFENDANT’S MOTION TO ALTER
OR AMEND JUDGMENT**

The Defendant South Carolina Department of Corrections moves pursuant to South Carolina Rule of Procedure 59(e) for reconsideration of the Court’s Order denying its Motion for Summary Judgment and granting Plaintiff’s Motion for Summary Judgment. *See, Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004) (holding that Rule 59(e) permits arguments to reconsider and requests that the court address all arguments). The Defendant’s counsel received written notice of entry of the Order on August 25, 2025.

The Defendant’s motion is based upon the following grounds:

I. The Order Does Not Address Immunity Pursuant to S.C. Code Ann. § 15-78-60(17).

In its Order, the Court grants summary judgment as a matter of law to the Plaintiff as to all Tort Claims Act immunity defenses asserted by the Defendant; yet, the Court only addresses immunity under Section 15-78-60(25). The Defendant’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 Order does not even address Section 15-78-60(17) immunity. The Court is respectfully requested to address that defense on reconsideration.

Importantly, the Plaintiff previously moved for summary judgment in this case as to the applicability of Section 15-78-60(17) immunity. In that same motion, the Plaintiff argued “the only reasonable inference that can be drawn from the evidence is that SCDC was grossly negligent.” *See*, Plaintiff’s Motion for Summary Judgment filed April 7, 2023. However, that motion was denied by this Court’s Order filed January 2, 2024, wherein this Court writes: “the court finds that there is a genuine issue of material fact as to whether Officer 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.” *See*, Order filed January 2, 2024, p. 1. This Court explained that “although Officer Hall’s arrest warrant was ultimately dismissed, his arrest and charge creates a genuine issue of material fact as to whether he acted intentionally.” *See*, Order filed January 2, 2024, p. 1. The Court also cited to evidence that demonstrates that Hall acted intentionally in allowing the decedent to be assaulted by other inmates. The Police Services investigation also supports that theory, as well as witness testimony stating that Hall intentionally allowed other inmates access to the cell in which the decedent was located for purposes of assaulting him, and then the decedent was locked in where he could not escape the beating.

In this Court’s most recent Order filed August 25, 2025, the Court makes no mention of the Order filed January 2, 2024, and fails to explain why the Court is now making the opposite ruling *as a matter of law* based on the same or at least substantially the same evidentiary record. The Plaintiff has certainly not demonstrated that the evidentiary record has changed in such a

dramatic way to now justify summary judgment for the Plaintiff when the record in January 2024, indicated that there remain genuine issues of material fact as to Hall's conduct and the applicability of Section 15-78-60(17) immunity. Likewise, the Court does not explain why summary judgment was denied on the issue of gross negligence in January 2024; yet that ruling changes in the Court's current order. The Court is respectfully requested to address this dichotomy and to reconsider its latest ruling in light of the previous Order.

Moreover, to the extent that the Court has concluded that Section 15-78-60(17) should be read as having a gross negligence exception interpolated therein, the Court is in error. Of note, neither the Plaintiff nor this Court has 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.

In fact, South Carolina law recognizes that intentional torts may not be committed in a negligent manner. *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. Moreover, in *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), the South Carolina Court of Appeals recognized that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, the Court of Appeals concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id.* Additionally, as to this point, the Court is urged to consider the case of *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020), where the plaintiff was suing 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, the Court of Appeals 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, it defies logic as well as the legislative intent and public policy underlying Section 15-78-60(17) immunity for this Court 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 for reading and applying Section 15-78-60(17) as having a gross negligence exception. Presumably, this Court previously recognized that very premise in denying the earlier Motion for Summary Judgment on the Section 15-78-60(17) defense, as addressed in the Order filed January 2, 2024.

On reconsideration, the Court is also requested 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. 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 this 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 injuries claimed by the decedent certainly meet the “likely to result in moderate bodily injury” component of the analysis. 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 Office Hall constitutes a crime of moral turpitude. There is, at the very least, a sufficient issue of fact that warrants the denial of the Plaintiff’s Motion for Summary Judgment on the Section 15-78-60(17) defense.

The same is true for the other components of Section 15-78-60(17). The Defendant may not be held liable for Hall’s malicious, criminal actions outside the scope of his official duties of opening Plaintiff’s cell door for his attackers, standing by, locking him back in, and reporting that

everything was fine. *See, Doe v. S.C. State Budget & Control Bd., Office of Ins. Servs., Ins. Reserve Fund*, 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 this Court previously recognized in its January 2, 2024 Order, to deny summary judgment to the Plaintiff on the issue of Section 15-78-60(17) immunity.

II. The Order Erroneously Finds Gross Negligence.

In its January 2, 2024 Order, this Court also found that there was sufficient evidence to deny summary judgment to the Plaintiff on the issue of gross negligence. Again, the Court does not address why it makes the opposite ruling *as a matter of law* based on the same or at least substantially the same evidentiary record.

Additionally, the Court fails to recognize 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. That motion filed May 27, 2025, seeks summary judgment as to the Defendant's affirmative defenses essentially as a sanction based on the testimony in a Rule 30(b)(6) deposition. In essence, the Plaintiff 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 the Defendant, 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.

To that point, the Court is respectfully requested to reconsider that the Plaintiff, at most, moved for summary judgment as to the affirmative defenses alone. The Plaintiff did not move for summary judgment on the gross negligence cause of action itself, on which he has the burden of proof, not the Defendant. Importantly, under the *Celotex* standard, in defending summary judgment on its affirmative defenses, the Defendant does not have the obligation to present evidence to disprove or negate the Plaintiff's allegations of gross negligence. That is a separate issue from the affirmative defenses themselves. Rather, that is the Plaintiff's theory of liability, on which the Plaintiff, not the Defendant, must sustain the burden of production and the burden of persuasion in order to obtain summary judgment. The existence, however, of genuine issues of material fact preclude that ruling as a matter of law.

Moreover, as to the merits, beginning with the Order's reliance on policy violations, this is not a case of a supervisor making an ad hoc decision to only have one officer in Marion Unit. Testimony established that there was only one correctional officer per regular unit during the night shift for some time because of staff shortages. Policies can be written and unwritten. The written policies did not need to be amended to reflect how SCDC's higher echelons were forced to adapt to staff shortages.

Next, the Order does not address how violations of any of the policies failed to prevent (caused) the attack. The parties agreed that the Plaintiff was locked in a cell at the time of the attack, where he should have been safe whatever preceding policy violations. Officer Hall's actions were the superseding, but-for cause of the Plaintiff's attack.

The other employees 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. Compare *Hamilton v. Charleston Cnty. Sheriff's Dep't*, 399 S.C. 252, 255-58, 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).

The Order's findings of fact having any tendency to undercut trust in Hall favor Plaintiff as the non-movant, violating the standard of review. The Plaintiff's motion admitted that Control Room Operator Brittney Livingston placed the calls reporting the stabbing later in the evening than Lt. Collins. In fact, she testified that the first call came in 10-15 minutes before the Plaintiff was discovered. MFSJ, Ex. 10, Livingston Dep. at 12, 27-28. Therefore, the facts, read most favorably to Defendant, reflect that the response to the report of a stabbing was swift, despite Hall's assurance that everything was fine.

The Defendant's employees also were not negligent in their medical care of Plaintiff. Whatever confusion over Plaintiff's medications after he was discharged from the hospital the first time, SCDC sent him back the next day. Clearly, they were sensitive to his condition.¹

III. The Order Erroneously Finds No Evidence to Support an Assumption of Risk Defense.

The Order quotes the standard for secondary assumption of risk when it states, "In order for the doctrine of assumption of the risk to apply in a particular case, the injured party must have freely and voluntarily exposed himself to a known danger which he understood and appreciated." Order at 11; *see Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 82, 508 S.E.2d 565, 571 (1998) ("Secondary implied assumption of risk ... arises when the plaintiff knowingly encounters a risk created by the defendant's negligence."). Primary assumption of risk

¹ The Order also is incorrect in stating that the Defendant "insur[es] the safety of those living and working within the institutions." *See*, Order filed August 25, 2025, p. 2. The use of the term "insure" suggests some form of strict liability, which is clearly not applicable. There is no legal basis for the Court to rule that the Defendant "insures" anyone's safety. No authority is cited for that premise.

remains a complete bar to a negligence claim and “arises when the plaintiff impliedly assumes those risks that are *inherent* in a particular activity.” *Cole v. Boy Scouts of Am.*, 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011). Insofar as Plaintiff’s relocation to the wrong side of the unit caused his stabbing, he assumed that risk. Plaintiff cannot complain that SCDC failed to prevent him from relocating. Correctional officers are entitled “to assume that the prisoners will exercise care for their own safety.” *McGill v. Duckworth*, 944 F.2d 344, 353 (7th Cir. 1991).

IV. The Order Erroneously Finds No Evidence to Support an Comparative Negligence Defense.

The Order contradictorily finds no genuine dispute that Plaintiff—locked in his cell—reasonably did not foresee the attack but that Defendant was grossly negligent for not foreseeing it. Yet only Plaintiff had the benefit of the death threats. *Compare id.* (finding plaintiff prisoner “knew, far better than his guards, of a risk of attack.”). Plaintiff did not need to know the time, place, or manner of assault to know he was in danger. He would have been transferred from the unit if he had warned Defendant. MFSJ, Ex. 1, Collins Aff. ¶ 8. Plaintiff was further negligent by relocating to the other side of the unit, placing himself in proximity to his attackers. Plaintiff’s negligence outweighed Defendant’s fault.

CONCLUSION

For the above reasons, the Defendant South Carolina Department of Corrections respectfully requests that the Court reconsider its Order granting the Plaintiff’s Motion for Summary Judgment, including its ruling as a matter of law that the Plaintiff has proven that the Defendant acted with gross negligence. The Defendant maintains that summary judgment in its favor is appropriate.

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*ATTORNEYS FOR DEFENDANT SOUTH
CAROLINA DEPARTMENT OF CORRECTIONS*

Columbia, South Carolina

September 4, 2025

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)
7 DASHAUN SIMMONS,)
Plaintiff,)
8)
versus)
9)
10)
THE SOUTH CAROLINA DEPARTMENT OF)
11 CORRECTIONS,)
Defendant.)
12 -----
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

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E X H I B I T S

(None offered or admitted.)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL.
SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY
THE SPEAKER.)

MOTIONS HEARING

1 P R O C E E D I N G S

2 THE BAILIFF: All right. First off, we have a
3 (unintelligible) motion, we have Simmons versus SCDC,
4 4850.

5 THE COURT: At least the docket says it's a
6 motion for protective order and then we have a motion for
7 a summary judgment. I believe there are a couple of
8 amendments that (inaudible).

9 MR. ALLEN: And we added some. We'll see how
10 much -- if we have enough time to get to those.
11 Otherwise, we'll have to reschedule and we'll
12 (unintelligible) see long these go.

13 THE COURT: Yes, sir. First off, we have
14 defendant's motion for a protective order, protection from
15 discovery.

16 (Unintelligible cross-talk.)

17 MR. ALLEN: It's been kind of repeated, I think,
18 on the deposition issue. What motions do you all have and
19 which ones do you all want to hear?

20 THE BAILIFF: Well (unintelligible) touched on
21 it briefly, Judge, and that may be sort of representative
22 of the issues that we can talk about later. We've got
23 some discovery issues that go one through the motion, but
24 they know -- they made that motion during 30(b)6
25 deposition one in May. I mean, did you want to --

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 separated into two sides. And this is the facility, and
2 just last week, we confirmed the two sides were separated
3 by a sally port. So, in other words, the two sides --
4 there's testimony in the case that the two sides aren't
5 supposed to mix. You know, if -- if an inmate leaves to
6 go over to the other side, they've got to be taken over
7 there by the guards.

8 Now, during the time relevant to this case -- so,
9 this would be July of 2017 -- the Marion unit was in a
10 state of (inaudible). The police services investigator
11 who investigated the assault in this case is a fellow by
12 the name of Evan Garris. He gave some interesting
13 testimony to that point. His testimony was that the unit
14 was basically locked down all the time because it was so
15 out of control, right? and that's a big part of what
16 we're going to talk about here. A big part of the
17 plaintiff's case here is that this -- that SCDC had no
18 ability to keep inmates safe from each other. You know,
19 they had no ability to keep an eye on what was going on in
20 that unit, right?

21 So, one of the key issues that some of the guards
22 talked about -- a handful of the guards talked about --
23 I've cited Mr. Garris's testimony on this point in here --
24 is that the inmates were never in their assigned cells,
25 right? As Mr. Garris put it, he says they just kinda went

MOTIONS HEARING

1 to whichever cell they wanted to. They always assigned
2 themselves cells. He would later go on to say that the
3 inmates essentially ran that unit. Now, Judge, this is
4 the police services investigator for Broad River
5 Correctional Facility being very candid in saying that
6 that unit was an absolute mess. We talk to the other
7 guards. The dayshift officer that days Kennedy. I
8 believe he also testified that, yeah, they basically just
9 went wherever they wanted to, including different sides of
10 the prison. I mentioned earlier that they -- the two
11 sides are separated by a sally port. Our client was
12 assaulted while he was in his cell. It was not his
13 assigned cell, and it was in a completely different unit.

14 And so, the thing that's important (inaudible) this
15 is a maximum-security facility. This should be one of the
16 most secure facilities in the State of South Carolina.
17 They should know where every single one of these guys is
18 because they've got to count them. They've got make sure
19 they're there, right? They should know exactly where
20 these guys are. You know, they're supposed to count them
21 every day and do all these things, but they have no idea
22 where these guys are. They're not even on the right side
23 of a locked door back in that facility, and that's a real
24 problem.

25 Now -- and I'm going to talk about some policies that

MOTIONS HEARING

1 define that in a moment. But when we talk about what
2 actually occurred that day, how that day unfolded, to the
3 best that we can say. One of the problems in this case is
4 that it's been really difficult to piece together how
5 things actually happened. There's a lot of conflicting
6 stories. The timeline is real hard to put together. And
7 part of this a motion to strike, a discovery motion, and
8 we've got a motion to compel going on. We have had
9 discovery issues throughout this case, and that has made
10 it very difficult to get a clear picture what's going on.
11 Now, as I'll talk about in a minute, you know, we don't
12 know what they have (inaudible) know what they should
13 have, and there's a lot of things that they should have
14 that they haven't given us that tell us about this, in
15 particular, logbooks. The timeline should be in all of
16 the logbooks. We've got one for Marion. There are at
17 least three others that we absolutely should have that we
18 don't, so this timeline I'm going to give you based on the
19 testimony that some of the officers give, and it's a
20 little disjointed because they memories are all over the
21 place.

22 So, with that, the -- the evening in question was
23 July 17 of 2017. The dayshift officer was a fellow by the
24 name of Kennedy. Now, the (unintelligible) for that day
25 has a different (unintelligible) than the one being

MOTIONS HEARING

1 deposed on this topic working in the Marion dorm.
2 Nevertheless, the one that we deposed did testify about
3 doing the transfer at the time, so there is some confusion
4 about who was working where. This is another point of
5 confusion in this case. But what officer Kennedy tells us
6 is that at about 7:15 -- or, around 6:00 going into 7:00,
7 part of his duties are to lock all the prisoners in their
8 cells for the night to transfer the -- the unit over to
9 the night shift guy. The night shift guy is in Anthony
10 Hall.

11 Now, one of the reasons that they -- that the night
12 shift -- excuse me -- the day shift officer is supposed to
13 get these guys behind locked doors -- and this is SCDC
14 policy that they've got to do it this way -- they're
15 supposed to get these guys locked into their cells so that
16 they can do a count, a formal count. As part of that
17 formal count, they should be at their assigned cells and
18 they're (unintelligible) guards so they can say, all
19 right, all these guys are where they supposed to be. By
20 SCDC policy, there must be two guards to do that count,
21 because the way that they do counts is each guard will
22 walk up and down the -- the aisles, do them separately,
23 then they'll flip sides, check each other's work, and then
24 they'll get together and compare notes. That's how SCDC
25 requires them to do it.

MOTIONS HEARING

1 Now, on this night, the testimony of Officer Kennedy
2 is that when he got there, he says that when Hall got
3 there for the night shift, that he sees Paul unlocking
4 some of the doors, the implication being that some of the
5 guys were in there cells, a lot of get the guys were not
6 in their cells. So basically, he hadn't locked down the
7 dorm for the night. Kennedy's testimony is that he tells
8 a superior officer, a Lieutenant Parker. And we deposed
9 Lieutenant Parker, and Mr. Parker says I don't know what
10 you're talking about < wasn't even working that day.
11 Well, the (unintelligible) officer says he was working
12 that day in the capacity that Kennedy says, so again,
13 another point of just difficult discovery issues.

14 Nevertheless, Kennedy's testimony is that he tells
15 his superior officers that Hall has unlocked some other
16 doors (unintelligible) inmates. Superior officers say
17 just go home for the day, don't worry about it, we'll deal
18 with it. Well, there's no evidence in a case that anybody
19 ever came and did, in fact, deal with it. Nobody came
20 down there to help Hall lock those guys into their cells.
21 So, the state of affairs from Kennedy's perspective is he
22 has abandoned his post, or he has left his post for the
23 day at the instruction of SCDC superior officers, knowing
24 that no formal count has been done and cannot be done
25 because he is not there, knowing that prisoners were not

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1 in their cells for the night and, as I've alluded to
2 before, knowing that prisoners where they were supposed to
3 be. They're on either side, they're all over the place.
4 So that's the state of affairs as he knew it.

5 Now, Hall tells a little bit of a different story.
6 We very recently deposed Mr. Hall only matter of weeks
7 ago. We were finally able to depose Anthony Hall. Now,
8 we had him set for a deposition earlier, but the
9 deposition in this case occurred, we've had a real
10 difficult time getting him served. Nevertheless, we got
11 it. His version of events is that when he shows up for
12 his night shift that evening, he -- it's -- it's bedlam
13 there. All these inmates were out of their cells. He can
14 hear it when he's walking into thing. Kennedy doesn't
15 have it all locked down as he should.

16 So, whichever sob story, whether Hall opened them or
17 Kennedy had them opened when he got there, either way,
18 prisoners are out of their cells and they are not locked
19 down for the night. Again, Hall's testimony confirms that
20 no formal count was done, no supervisor came down to help
21 him get things locked down. He was basically on his own
22 trying to lock down an unruly maximum-security facility at
23 Broad River by himself.

24 Now, sometime throughout the night, our client is
25 brutally assaulted while he is inside of a cell in the

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1 Marion facility. There was testimony that -- well, so
2 there's -- at this point, there's effectively two stories.
3 The second story revealed itself once Mr. Hall testified,
4 so it's very fresh. But the original story is -- and
5 SCDC's story -- is that sometime during the night, Hall
6 unlocked the door in which our client was sleeping, that
7 he allowed other inmates to rush in and assault our
8 client, that he locked the door after the assault
9 occurred. Hall's version of events on that is that he did
10 not open the door to do that. I think he gave a specific
11 explanation of how it occurred, but he says that's not
12 what happened.

13 And I think -- and I'll go into this -- I think
14 the -- the -- the story is that Hall's testimony is also
15 compelling is -- and what I think, the jury could very
16 easily find what I think are the facts that testimony to
17 support would be that it's bedlam back there. All these
18 inmates are out, they won't go to their cells. All he can
19 do is say inmate, go to your cell, and they can say no. I
20 mean, that's all he can do. He doesn't have anybody to
21 help him. So, an assault occurs at some point while all
22 of this madness is going. His testimony is that
23 eventually, he does get them behind the cell doors. And
24 we know that he does a count, or at least he writes in the
25 logbook entry that we have that he does a count at about

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1 midnight, which would imply that by that time he got
2 (unintelligible). He testified that around 9:00 maybe he
3 thought they got them in, that he had them all in.
4 There's some equivocation on the timeline there.

5 But I think the compelling story is that his
6 testimony is, is that the assault occurs and as he's just
7 trying to deal with madness back there, he probably just
8 locks these guys in a cell and doesn't even know that he's
9 been stabbed. I think the jury could see it either way.
10 But the problem, Judge -- well, before I get to that, let
11 me finish the remainder of the evening. So, at some point
12 in the night -- there's a control room and the operations
13 room, right? So, there's an operations and control room.
14 It's sort of a central facility that's monitoring all of
15 the other units. At some point, they start getting phone
16 calls from prisoners within the facility through
17 contraband cell phones. The shift lieutenant is a fellow
18 by the name of Ulysses Collins. He puts it around 10:00.
19 An operations person, Livingston, she puts it at a little
20 later.

21 Again, these are things that we would know if we had
22 their logbooks, but we don't have their logbooks, so we
23 just have to go by what they've told us. At any rate, at
24 some point around that time in the evening, they start
25 getting phone calls, multiple phone calls, according to

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1 the testimony of Mr. Collins. Again, these -- these are
2 inmates within a maximum-security prison calling the
3 operations room. Judge, I've been a solicitor for 10
4 years, I wouldn't know how to call the operations room in
5 my county jail, right? But somehow, prisoners have a
6 direct line to the control room in the middle of the night
7 using contraband cell phones.

8 Well, when the calls first come in, they call over to
9 Hall, right? And these calls are saying, hey, a guy has
10 been stabbed in the Marion unit and he's bleeding out on
11 the floor, if you don't get down there, then he will die
12 before, you know (inaudible). So they call down to the
13 Marion unit. They call Hall and say see if anybody's been
14 stabbed, and Hall's like no, everything is fine here.
15 Fair enough. But more calls come in. They keep getting
16 more and more calls. And again, these are from inmates in
17 the prison telling them what's happening. And it takes
18 them hours to even go down and investigate.

19 By the testimony of Collins, Collins goes down, and
20 he puts this at around 4:00 in the morning when an inmate
21 in a different unit is beating on the door to get the
22 attention of the officer in that unit -- I believe it's
23 the Monticello unit -- and he gets the attention of the
24 officer working in that unit, a fellow by the name of
25 Berg, and says, hey, some guy has been stabbed over in

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1 Marion, you all need to go help him. And, of course,
2 Collins goes down to talk to this inmate, and that's when
3 they go over to the Marion and he and Wright, I believe,
4 the yards or the maintenance man go down. But they go and
5 they check the doors, and that's when they find the
6 defendant, despite what are, presumably, closed doors.
7 It's as they're leaving the facility -- they were leaving
8 because they didn't find anything, they're like oh,
9 nothing around here -- they hear a banging on the door,
10 and they go to the door to unlock it, and there is
11 Mr. Simmons, our client, on the ground with -- as Tom put
12 it -- full of holes.

13 He had been brutally assaulted; a broken jaw, I think
14 some facial lacerations as well, I think he had a hand
15 injury. It was a very brutal assault. They eventually
16 get him to the hospital. And, of course, when he's
17 released from hospital, he has to go back the next day, we
18 allege, because he wasn't given adequate medication and he
19 had some infection issues and things like that. But a
20 couple things I want to back up and point out there. As
21 to, you know, this Monticello unit.

22 Just to make sure that it's burned in your brain in
23 terms of what's going on back there, this is a
24 maximum-security prisoner. This is some of the worst
25 people in the state. And a prisoner locked in a cell in a

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1 completely different building within the department of
2 corrections knows more about what's going on in a cell in
3 a different building than the prisoner, right? And that,
4 in and of itself, is I think very characteristic of the
5 level of control that they had going on back there,
6 their -- their complete inability to follow any of their
7 own policies and procedures that are in place to prevent
8 this sort of thing and control this sort of thing.

9 And the other important point that I want to mention
10 about when he opens the door -- and this is a relatively
11 new thing, and it kind of drives me crazy -- so the
12 initial -- actually, it wasn't the report. Well, it
13 wasn't in the report at all. We always assumed that he
14 was in that cell by himself because nobody ever mentioned
15 anything about a cellmate. In fact, Evan Garriss, the
16 police services investigator, in his deposition, indicated
17 that that he thought that there was only one guy in the
18 cell.

19 But when we deposed Collins last year, I think -- I
20 want to say it was last September -- Mr. Rembert deposed
21 him and asked him the question, you know, okay, well, you
22 said Mr. Simmons was beating on the door. Yeah. And
23 Collins says, well, Simmons was in no condition to be
24 beating on the door, it was the roommate in the cell.
25 That's -- there's another guy in his cell with him, Judge.

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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

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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

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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.

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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.

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1 And a lot of this stems from the fact that they will
2 not put up somebody who has any knowledge of what they're
3 supposed to come testify about, right? And these are
4 their witnesses, right? This is SCDC telling us their
5 story, right? I mean, I don't have to tell you what a
6 30(b)6 deposition is. And I bring that up at this point,
7 because the first argument I ever made for summary
8 judgment in May, we put up -- or Mr. Hawkins deposed
9 Rayford [ph] Miller. Now, they were supposed to be there
10 to talk about the defendants and they're case, and
11 Mr. Hawkins asks him -- asks him "As to your comparative
12 fault defense, do you have any evidence to support that,"
13 and he said "I can't point to any evidence, I don't know."
14 Eventually, Mr. Hawkins says "Have you ever even read the
15 complaint in this case?" The guy had never even read the
16 complaint in this case. This guy is here to -- as a
17 representative of SCDC to tell us these are the facts that
18 support our defenses, right? We are entitled to know
19 that, you know, and that's obviously discoverable.

20 And they put up a witness who states that it's the
21 position of SCDC that they have no idea of what evidence
22 supports their defenses (unintelligible) to the point that
23 they have no evidence. So I mean, the first argument I'll
24 make to you is that, Judge, it's the position of SCDC that
25 they have no evidence to support their defenses. I mean,

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1 it's truly bizarre for somebody to approach it that way,
2 but that's what they've done. They've put up people who
3 have no idea what they're talking, who can't tell us what
4 they're -- and in their discovery responses, when we say
5 please tell us anything that supports your affirmative
6 defenses, they refuse to answer it, right? They say it
7 would invade their mental impression, as if it's a big
8 secret.

9 In fact, Your Honor in -- in one of the first orders
10 on a motion to compel in this case ordered them. The
11 order was written by Mr. Hawkins, but signed by you. You
12 ordered them that, yes, the plaintiffs are entitled to ask
13 questions about what the affirmative defenses are. They
14 still won't tell us. So, Judge, we would ask you to
15 say -- ask you to order that if they're not going to tell
16 us what affirmative defenses are, then we should get
17 summary judgment, and that that should be held against
18 them.

19 Now, in the event Your Honor doesn't want to go that
20 far and do it that way, let me just walk through their
21 defenses in their case, and I'll try to be as quick as I
22 can so the parties can move on. The first defense they
23 offer, Judge, is comparative negligence. Now, this one,
24 until I got their summary judgment motion, obviously, we
25 didn't know what the basis of that was, right, because

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1 they wouldn't tell us. But I can glean from their summary
2 judgment at random that the basis of that is that
3 Mr. Simmons knew that he owed some folks money and they
4 had it out for him and he didn't tell the prison guards.
5 Judge, I mean the -- the -- the absurdity that a man
6 locked in a prison cell, asleep at night in a
7 maximum-security facility, is somehow responsible for
8 somebody else coming into that locked cell and stabbing
9 him, it makes absolutely no sense, certainly not the
10 defendant. That him being negligent for not telling
11 somebody is somehow greater than SCDC's negligence for
12 having zero control over a maximum-security facility.

13 I guess I won't belabor that point much beyond that,
14 but again, Judge, if he was out the yard and says
15 something bad about one of these guys' mothers while he's
16 out in the yard and a fight ensues, I think that's a
17 closer case. But that didn't happen. he was asleep in
18 his cell, as far as the evidence goes. So, Judge, there's
19 no way that he can be at fault for -- for being stabbed.

20 Now, the second defense they offer is an intervening
21 act, but that's again -- I would speculate that this is
22 based on either the inmates that came in and stabbed him,
23 those third parties intervening, and -- or as to the
24 gentleman who came into the cell and stabbed him, again,
25 the defense of intervening acts, it really comes down to

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1 foreseeability, right, this was a foreseeable event.
2 Given the complete and utter lack of control that they had
3 over that unit, they knew -- the shift supervisors and the
4 lieutenant, they all knew that these inmates were not
5 locked down, they were not in, I mean, the right side of
6 the building that they should have been in. They were not
7 in their cells. They had no control over whatever was
8 going on back there. So, the fact that somebody would
9 have gotten stabbed is pretty doggone foreseeable. So, I
10 would suggest there's no evidence to support the fact that
11 somehow they didn't know that at that time.

12 As to Hall -- I mean, Hall is not a third party, he's
13 part of SCDC, I mean, so they can't have an intervening
14 acts defense with respect to him, you know. But to the
15 extent that the Court would be of the mind to say, well,
16 maybe he's not a third party, I mean, there again, the
17 lack of control. (Unintelligible) and I'm glad to get to
18 that part, the lack of control, the complete and utter
19 failure to follow their own policies, these policies which
20 are in place to prevent this exact sort of thing, makes
21 all of this incredibly foreseeable. And so, I would ask
22 for summary judgment with respect to the intervening acts
23 defense, because there's no evidence in this case to
24 suggest that it was not a foreseeable consequence of their
25 failures.

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1 Now, going chronologically here, we get to the tort
2 claims act exemptions, and this is kind of the meat of
3 this case, Judge. As Your Honor I think knows, the way
4 the tort claim (inaudible) in this case. There is an
5 exemption that contains a gross negligence standard, which
6 follows SCDC. It's always going to have subpart 25.
7 Subpart 25 states that a governmental entity, SCDC, is not
8 liable from responsibility or duty, including but not
9 limited, to supervision, protection, control, confinements
10 or custody of any prisoner, except when that
11 responsibility or duty is exercised in a grossly negligent
12 manner.

13 I'm sure Your Honor is familiar with Chakrabarti
14 versus City of Orangeburg, the Stahnkey [ph] case, and --
15 and the Recto [ph] case, all of which stand -- it's a very
16 clear point of law at this point. If the gross negligence
17 standard applies in one of the exceptions, it applies to
18 all. And the effect of that is if there is a finding of
19 gross negligence, none of these exceptions apply, because
20 just as a logical argument, none of these exceptions could
21 apply as long as this gross negligence standard applies.
22 And so, that's why I say this is a gross negligence case,
23 Judge.

24 Our case is that SCDC followed none of its policies
25 and procedures -- maybe they followed one or two. But

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1 they didn't follow a lot of the procedures that night,
2 procedures that are in place for the purpose of preventing
3 exactly what happened. And as a result of that gross
4 failure, conscious failure -- I mean, it is -- it is a
5 conscious failure to do it because the supervisor knew
6 this wasn't happening, they knew this was not happening.
7 They still didn't insist on following the procedures.
8 Now, the gross negligence we all know very well, but it is
9 defined as an intentional and conscious failure to do what
10 is incumbent upon one to do. Again, they knew about it.
11 It was an intentional and conscious failure because SCDC
12 knew that they weren't following their policies and had no
13 control over that facility.

14 The way gross negligence works is it is both a
15 question of fact and law, and when there is only one
16 reasonable inference to be drawn upon the facts of a case,
17 the Court may rule as a matter of law that they were
18 negligent. Additionally, there are plenty of cases --
19 I'll cite the Jinks versus Richland County. It stands for
20 the principle that failure to follow the policy is
21 evidence of gross negligence. There's plenty of -- plenty
22 of case law that says that fact. And then I'll mention
23 Mr. Hawkins just won a court of appeals case where this
24 was one of the issues. Now, it's an unpublished opinion,
25 so I won't cite it to you as precedent. But the court of

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1 appeals in that case, part of it was whether gross
2 negligence is evidenced by failure to follow a policy, and
3 they confirmed that it was.

4 So, in this case, you have so much failure to do
5 what's incumbent upon the department of corrections to
6 lock that unit down, to control it, to keep it safe for
7 the inmates, for the guards, to make sure the guards are
8 doing what they're supposed to do. All of these things
9 that I would submit, Judge, that there is clearly only one
10 conclusion that can be drawn, and that is that SCDC was
11 consciously failing to do what it was supposed to do and,
12 therefore, they were grossly negligent, I believe, as a
13 matter of law. So I'm going to ask the Court to determine
14 (inaudible) and, in so doing, we would ask you to grant
15 summary judgment, certainly with respect to the tort
16 claims act exemptions. And that would be all of it, not
17 just item 25. As Stahnkey [ph] and Chakrabarti make
18 clear, if you grant it with respect to 25, you grant it
19 with respect to all of it.

20 Now, I'm going to try and quickly go through the last
21 couple here. Discretionary immunity, I think it requires
22 them to establish that they had made some sort of
23 discretionary choice resulting in these injuries. They
24 have no evidence in this case that there was no evidence
25 in this case that there was any discretion used, and so I

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1 think very clearly we find summary judgment on that
2 aspect. There's simply no evidence to support that.
3 Assumption of risk, this doesn't make a lot of sense.
4 Assumption of risk is if the defense is trying like a
5 hockey case, if a person has to -- and again, amongst the
6 elements, the plaintiff must voluntarily expose himself to
7 the danger. I don't think that it can be said, and
8 there's certainly no evidence that Mr. Simmons voluntarily
9 exposed himself to being stabbed in a locked room.

10 (Unintelligible.)

11 Finally, they have a joint defense here. They have
12 not identified any -- any necessary party that hasn't been
13 named in this matter. And just to clean things up in
14 anticipation of trial next week, we'd like to ask for
15 summary judgment on that as well because there's simply no
16 evidence for it. Judge, in our mind, it's -- it's clear
17 how grossly negligent they were. But you know, I expect
18 that they're going to tell you well, we were
19 short-staffed, there was nobody available, there was only
20 one guy (unintelligible) in that prison.

21 And to that point, you know, I'll go ahead and say,
22 one, that's not an excuse. I mean, the fact that SCDC has
23 an inability to properly staff its facilities to ensure
24 that they're safe is not Mr. Simmons' fault. You know,
25 SCDC had, what, was it \$400 million that they got last

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1 year. They've got plenty of money. They had more money
2 to do whatever they have to do. But SCDC's responsibility
3 is to ensure that these units have enough staff in them to
4 keep them safe. That's not just me saying that. There is
5 a policy to that effect, Judge. I beg the Court's
6 indulgence.

7 I can't put my hands on it right now. But it's part
8 of the policy and part of the responsibility of SCDC is to
9 properly staff these facilities and to ensure that they're
10 safe. In fact, one of the post orders for the housing
11 unit sergeant, I believe, explicitly says that part of
12 their responsibility is ensuring that an adequate number
13 of officers are in the prison to meet the needs of that
14 unit. That's post order 100. They didn't have a housing
15 unit sergeant that evening, I guess, as part of the cuts.
16 But what I would like to make on that point is that just
17 because you can't get enough people to man the prison
18 doesn't mean that the jobs that are essential that are the
19 subject of some these post orders go away. Those will
20 still apply. And so, it's incumbent on the department of
21 corrections to make sure that the facility is safe. And
22 again, they knew it was out of control, they knew that it
23 was unsafe.

24 Exemption No. 17 being outside the scope of
25 responsibility, it just doesn't apply here, right, because

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1 if they're grossly negligent, it doesn't apply. So,
2 Judge, we would ask for summary judgment on all of these
3 defenses. I mean the evidence in this case is so
4 overwhelming that -- that I don't think we should waste
5 the jury's time with that aspect of it. We would ask for
6 a damages trial, obviously, if you granted summary
7 judgment. But -- but we would ask that.

8 Now, the second part of this motion of ours is the
9 motion to strike. And so, this -- and I will be as quick
10 with this as possible, because I know nobody like to talk
11 about discovery stuff. But as I've alluded to a few
12 times, it has been pulling teeth to get discovery in this
13 case. In fact, I think just a moment ago they sent us
14 another piece of the -- a general order, something
15 general -- yeah, the general narrative that they had. It
16 was something that got pulled out in a deposition and
17 Mr. Hawkins said, well, wait a minute, what's that, don't
18 we have that, and later they just now submitted it to us,
19 I think, this morning. Yeah, it was only five pages.

20 The post orders, right? These post orders are
21 essential. We have asked for them since day one. I mean,
22 that is -- should (unintelligible) a case of this nature.
23 We only got those pursuant to a May 2025 deposition that
24 would made it an exhibit to it. And the thing about that
25 is, this was after our date-certain trial. We had to

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1 cancel our date-certain trial because we couldn't get
2 through these 30(b)6 depositions because they wouldn't
3 have anybody that knew anything. And if we had gotten
4 (unintelligible) trial, we would have had to do it without
5 key evidence, evidence that they've had from day one, and
6 they just for whatever reason refused to give it to us.

7 You know, I don't like to be disrespectful to other
8 lawyers, Judge, so I will be very brief on this. You
9 know, Mr. Davidson has a reputation for bad-faith
10 discovery and doing this very thing, (unintelligible)
11 discovery. I know it's frustrating, but he's got a
12 reputation. In a prior motion, we cited some orders where
13 he did exactly that. The -- in the (unintelligible) case
14 down in Dorchester. I mean, there was one where they --
15 yeah, the Clemson case where he -- they literally found
16 the smoking gun e-mail, and it had never been turned over.
17 Mr. Hawkins has experience with this sort of thing.

18 Listen, reputations come from somewhere, and that's
19 what we're experiencing in this case. So, the reason we
20 throw on this motion to strike, Judge, is because we can
21 only do so much. We don't know what we haven't been
22 given. We don't know what they have. They are in control
23 of everything. All we can do is say, have you given us
24 everything, and they say yeah, yeah, sure, and then more
25 stuff shows up. And so, I mean, at this point, it's been

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1 what, seven years into this case, and now we're still
2 getting new discovery that we haven't seen. And so, I
3 mean, at some point, some Court has to put their foot down
4 and say you can't keep doing this, right? I mean, bad
5 reputations come from somewhere, Judge. We've personally
6 experienced it. So we would ask you to strike their
7 answer in its entirety because of the constant bad-faith
8 discovery practices that we've experienced on this case.
9 In fact, unless Defense Counsel tells me to something
10 else, I'll sit down, Judge.

11 THE COURT: Well, just briefly, in the motion
12 for summary judgment, you asked for to strike their
13 affirmative defenses and then just do a damages hearing,
14 but that's not striking their answer. I mean, you would
15 still have to prove liability, correct?

16 MR. ALLEN: Yes, sir. Yes, sir, if we struck
17 their answer.

18 THE COURT: So you would still have to have a
19 full trial. They could still defend themselves, but these
20 affirmative defenses would -- would just be gone.

21 MR. ALLEN: Yes, sir, I believe that's -- I
22 believe that's true.

23 THE COURT: And then, the other issue as well
24 which has come up where I've actually seen a motion
25 granted as to liability, a summary judgment granted as to

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1 liability. But the judge still charged on comparative
2 negligence. And that's something we talked about, and
3 apparently it's a legal issue because it's something
4 different. But I was going to rule the other way from
5 other judges who are doing that, but that's something --
6 whether that's relevant or not.

7 MR. ALLEN: Yes, sir. You know, I think our
8 position on that would be that we would certainly argue --
9 I mean, I don't think that there would be evidence to
10 support a comparative negligence charge, you know, again
11 based on the fact that the guy was just -- there's no way
12 that he could have been responsible for his own assault in
13 a locked cell. But your point is well taken, Judge. I
14 mean, with all of this stuff here, we have always
15 understood that this doesn't mean it takes forever and we
16 get done. I mean, this means we still have to try a case
17 on damages, one way or the other. Thank you.

18 THE COURT: All right. I'll hear from the
19 Defense.

20 MR. DAVIDSON: Thank you. First, the Clemson
21 case. Well, in that case, it was a suicide involving a
22 doctor in Clemson. In that case, there were e-mail
23 requests sent from Clemson. We requested plaintiff's
24 counsel to provide us what we call a (unintelligible). We
25 produced e-mails. There was one e-mail that was not

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1 produced, and we found it. I can't remember if it was the
2 second or third search. I don't do the searching. I
3 couldn't tell you, much less do a search of the entire
4 system at Clemson to find an e-mail. Now, we produced
5 that e-mail. And Judge (unintelligible). But here's the
6 interesting fact in that case. That case was already
7 called for trial. It was actually in December, right
8 before COVID hit.

9 Now, if I was trying to hide an e-mail, would I -- if
10 the plaintiff made a mistake in his opening argument
11 (unintelligible) bonus trial. It seems to me if I'm
12 devious and immoral, that I would essentially have not
13 opened my mouth, proceeded with the trial, and the e-mail
14 would have never been discovered. But, in fact, that
15 e-mail was discovered after the mistrial was declared,
16 during the period the case was kind of sitting around. We
17 ended up trying the case. They had the e-mail. The case
18 (unintelligible). But then that Darland's [ph] case in
19 Dorchester dealt with the question of whether or not the
20 department of agriculture had produced certain records,
21 which they had. We had a full-blown hearing in front of
22 Judge Murphy where the plaintiff's counsel asked for
23 attorney's fees, I want to say, of \$20,000 against the agg
24 department for not producing records. We produced
25 everything we did. We explained to Judge Murphy what we

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1 done. plaintiff's counsel indicated similar to what's
2 being alleged here, that we had been dragging the case
3 out.

4 Well, in fact, the case had gone up on appeal by
5 another codefendant to the Supreme Court, and I didn't
6 have a thing to do with it. And that took almost nine,
7 ten months before that decision came down. Judge Murphy
8 in her order only quote/unquote "sanctioned", because
9 there was a question because I had done in that case
10 similar to what I've done in this case. But there were
11 questions I thought invaded the attorney-client privilege
12 and objected. She said, okay, they can take two
13 depositions -- well, they said they could take the
14 deposition of the Hugh Weathers [ph] again. The problem
15 was, Hugh Weathers [ph] has never been deposed, and it was
16 on that very issue. Well, plaintiff's counsel -- when I
17 talked, I presented the two individual witnesses who I
18 objected to, and they testified. The deposition in that
19 case lasted 30 minutes, and it was by Zoom, and it was to
20 clarify some questions.

21 Now, I'm trying to think of what else I did horrible.
22 Mr. Hawkins and I had some rather serious litigation in
23 Aiken. He accused me of everything (unintelligible) also.
24 He just got an opinion from the court of appeals affirming
25 his judgment, and that's being reviewed my clients to

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1 determine whether or not whether they'll ask for a
2 rehearing certain, because there's some issues with that.
3 But that's a whole (unintelligible). So, I have done
4 nothing in my almost 50 years of practicing law that has
5 resulted in any kind of quote/unquote "bad reputation" or
6 sanction.

7 Now, having now dealt with that issue, let's talk
8 about what this case really involves. The department in
9 this case, when it was presented back in '17, there has
10 been a federal case brought -- well, a state case brought
11 against the individual officers, which were
12 (unintelligible) to federal court due to the pendency of
13 this case litigation. In fact, Mr. Hall was deposed in
14 that case in May of '23. And, in that case, they
15 (inaudible) deposed him in North Carolina. And,
16 amazingly, when he was questioned about what happened in
17 that -- in this case, he took the Fifth Amendment on the
18 majority of the questions dealing with the events in this
19 case.

20 Mr. Hawkins then moved to redepose Mr. Hall, which he
21 did May 11th -- July 11th in North Carolina. I believe
22 (unintelligible) Mr. Swirling [ph] was not notified of
23 that deposition, nor was his civil attorney. Mr. Hall was
24 not aware until I told him that although the charges
25 against him for misconduct in office and accessory to

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1 murder after the fact, accessory to assault and battery
2 after the fact -- I can't remember the exact charges --
3 had only been (unintelligible) crossed without prejudice.
4 That was after he testified about the facts and didn't
5 take the Fifth Amendment like he did before. I knew that
6 was going to happen.

7 But that's sad, because in this case, Your Honor,
8 there's been no discovery dispute. I'm not hiding the
9 ball. I can't find the logs. I've asked. Nobody knows
10 who the individual roommate was in that room that night
11 because they pulled that individual and got him out of
12 there, and I don't know where he went and I have no idea.
13 I haven't been able to get them now. The investigators
14 are going to have to get them now. Having said that, most
15 orders we produced. We gave them an index
16 (unintelligible) and said tell us what you want, here's
17 the index. They could easily have called -- they say it
18 wasn't -- it didn't tell us anything. Well,
19 (unintelligible) they talk about reproduce the
20 (unintelligible), the orientation, we've got operations,
21 registration, protocol, contraband, visiting shakedown,
22 infirmary, outpatient clinic. They did produce access to
23 the gate, the main gate. all kinds of things: chaplain,
24 education, library, program services. And then we go
25 through, and as you can see, we produced the majority of

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1 the post orders that were in play. I'll be glad to end
2 this up and (unintelligible). We did not produce the
3 perimeter offices, which is the one that goes around the
4 outside of the penitentiary facility.

5 All right. And so, in this instance, Judge, we have
6 produced a majority of the post orders, and they've got
7 them and they've used them in this case. Policies we
8 produced in 2017. It's taken a good bit of time to try to
9 recreate what those policies were back in 2017, so we've
10 had to look at various places within the department. And
11 we're not talking about a small department. We're talking
12 about 23, I believe institutions, 15,000 inmates and a
13 approximately 4,000 employees. And so, they've been --
14 and stuff goes to the headquarters. Sometimes the
15 retention policy is six years, and the documents after six
16 years are destroyed (unintelligible) they say permanent.
17 But, quite honestly, after six years, I think probably
18 what the department, at least from what I have been trying
19 to figure out, probably got rid of the logs. I don't
20 know. But we did produce the log for Marion, where this
21 event happened on the side where Mr. Hall resided -- I
22 mean, Mr. Simmons resided.

23 That log shows at 12:00, a count was complete and
24 accurate, which means he had to have everybody in their
25 cells so he could count them. In fact, the record will

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1 show Ulysses Collins, who was the lieutenant, went down
2 around midnight and saw some inmates out and told him to
3 get them put up, and he was standing there while they did
4 that. Then, supposedly, according to Ms. Livingston, who
5 was in the control room, at around 3:00, she gets a call
6 about somebody being in a cell and bleeding. Now, the
7 timeline we're talking seven, eight years ago. We've got
8 statements from people. We've got statements from Ms.
9 Livingston. We've got statements from Collins, you know,
10 it was around a hectic night who kept some of the times
11 (unintelligible). It happens all the time.

12 But we produced all that. We produced -- they talked
13 about the 30(b)6 depositions. We produced -- hang on a
14 minute, Your Honor -- approximately 15 people over three
15 days. One was here in Columbia. We had it set up for
16 several days. The plaintiff got upset about some of the
17 answers that were being given. We called Judge Newman.
18 Judge Newman said finish up what you can today, and the
19 next time you have to (unintelligible). Didn't finish
20 (unintelligible), had to come back down here. Judge
21 Kimpson said they need to ask some more questions about X,
22 Y, and Z. We did a third set. I don't believe it was a
23 seventh notice. I think it was around four, because we
24 had problems coordinating. However, now, I'm not talking
25 just my calendar, I'm talking about the department of

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1 corrections peoples' calendar o get them available so they
2 could go at one time. Rather than trying to go here a
3 day, there a day, we tried to get them all to go at one
4 time, and we were able to pull that off.

5 The individuals who were deposed were asked questions
6 about their areas of responsibilities and what they did
7 and why, policies and procedures. Like John Loveless
8 [ph], he was the camera guy. He's the one that installed
9 the cameras at the department of corrections. Mr. Hawkins
10 got back down and we did (unintelligible) Mr. Douglas. He
11 also deposed Ms. Carter. Ms. Carter was the associate
12 warden. She was the individual actually working for Broad
13 River at that time, and still does, and was in security
14 and could talk about the security situation, and did in
15 fact talk about the security situation, how they handle
16 things.

17 Now, I would like an opportunity somewhat since we
18 didn't get their brief 'til Saturday night, I think, or
19 was it Sunday? I can't remember when we all would have
20 got it (unintelligible) maybe he'll respond to it and
21 point out some things that are in the record. But we had
22 -- yes, we had (unintelligible). We had Dan Mullens,
23 who's the medical person, come and talk about the medical
24 records and what was in the medical records. They took
25 their doctor's deposition this week. The doctor said he

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1 had five puncture wounds, and that when he saw him three
2 days after he had been in the hospital -- he had been in
3 the hospital for three days. He went back to the
4 department of corrections and came back. Those stab
5 wounds were in good condition while they went to healing.
6 He did have a broken jaw, which had been totally fixed.
7 Okay. It had been wired, it was fixed. There was some
8 issue about did he have an infection or not. They put him
9 back on some medicine. And the doctor freely admitted
10 (unintelligible) Charleston (unintelligible). But you
11 don't give narcotics to inmates like oxycodone and
12 Percocet, that you have to make other arrangements, and
13 you have to make sure the drugs are what they call
14 formulated at the department and (unintelligible).

15 Yes, there was a delay of about 18 hours getting him
16 his (unintelligible). That's we're talking about. And
17 then, Mr. Miller -- they didn't read this part.
18 Mr. Hawkins, and he -- he -- with all due respect, he
19 asked questions like, do you think the department should
20 be held liable in this case, do you think the department
21 owes my client money in this case, none of which are
22 30(b)6 topics, but he does it. But he doesn't get down to
23 what these people do and why they do it and how they do it
24 by giving them (unintelligible). Mr. Hawkins: "okay.
25 In relation to comparative fault, is there any evidence or

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1 facts you want to tell me about that I didn't ask you
2 about?" Mr. Miller said, "You're using the legal term
3 about fault and stuff, so I'm not so exactly what you're
4 asking." "Is there anything you want to tell me about the
5 deferred defense before we move on to the other defenses?"
6 "What's the third defense?" "Comparative negligence." "I
7 need better clarification. I'm not understanding what
8 you're asking."

9 And then there's some additional discussion.
10 Mr. Hawkins gets frustrated and basically says Mr. Miller
11 doesn't understand the defenses. Well, I can't sit in a
12 room and tell my witness comparative negligence, and this
13 is what you need to testify to. His question in his
14 request for 30(b)6 is facts that relate to the defenses.
15 Now, all these people that gave 30(b)6 depositions gave
16 information that relate to the defenses, like Ms. Carter
17 talking about the problems the department has had with
18 staffing. I don't deny that the department is
19 understaffed, okay? I don't think there's a person in
20 this room who would go to work at a maximum-security
21 facility as a correctional officer for \$40,000 year. They
22 get people to go down there. They don't get enough.
23 There's testimony in the record they have job fairs, they
24 have bonuses, but they still can't hire people. And
25 that's not to date when there's been an increase in

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1 someone pledging. This case was in 2017, when there was
2 no (inaudible), but that doesn't matter. They can't hire
3 enough people, so they lock down Marion at night, which is
4 what they're supposed to do. Yes, they had one
5 correctional officer in that building because that's what
6 they were staffed at. But if they lock it down --
7 record -- and I find you this -- it was an opportunity.
8 If they have to open a cell, they call another
9 correctional officer down to open the cell.

10 Now, there is -- and I'm not going to -- like I say,
11 I'm not going to (unintelligible) department has policies
12 that says there has to be two correctional officers, or
13 post orders that say there needs to be (unintelligible).
14 But the reality is -- the reality is -- there are not
15 enough people to staff that facility, so at night they
16 lock down all the units. Marion's may know of [ph] two
17 sides. That one correctional officer is responsible for
18 those two sides. They're both supposed to be locked up.

19 Now, but all of that is nothing but a red herring.
20 Why? Because in the early morning hours of July the 18th,
21 2017, Correctional Officer Hall opened the cell and
22 allowed four Bloods to enter the cell where Mr. Simmons
23 was and stabbed him. Then those inmates left Mr. Hall to
24 lock the cell back up. Now, what do we know from
25 Mr. Hall? Number one, in his first deposition to all the

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1 questions: did you open the door, did you allow the
2 inmates in, did you lock the door? Take the Fifth, take
3 the Fifth. (Unintelligible) then he starts to testify.
4 But really, it's interesting what his testimony is. His
5 testimony is, he is the only correctional officer in that
6 dorm in Marion that has keys to the cell.

7 Well, we found Mr. Simmons in a locked cell. How did
8 he get locked in when he'd been stabbed? Okay. How did
9 that happen? The records that we have produced include an
10 investigative report, which is essentially a public record
11 held by the department of corrections with the
12 (unintelligible) exception. It indicates, okay, that in
13 fact, inmates -- (unintelligible) statement in the file --
14 said that Mr. Hall's -- he saw Mr. Hall open the cell for
15 the other inmates. The inmates couldn't have got in
16 there. Remember, at 12:00, count was cleared. That means
17 the inmates were locked. So Collins, who went down there
18 found some cells open and told him to close them, and he
19 stayed 'til they got closed, according to his testimony.

20 Mr. Collins also testified that when he went in the
21 cell, he went down there and was looking and found
22 Mr. Simmons. He heard knocking. Mr. Hall said don't
23 worry about it, they don't want anything. But Collins
24 told Wright to go check it, and that's how they found him.
25 Because earlier, they had called down there when there was

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1 information that indicated that there had been a stabbing
2 and that somebody was hurt. Collins called Hall to go
3 check because Hall was over that unit. He was the eyes
4 for Collins at that point. Collins -- Hall called back
5 and said everything is A-okay, 10-4. Well, it wasn't
6 10-4.

7 When Mr. Collins went into the cell to get
8 Mr. Simmons, Mr. Simmons was bleeding, he was obviously in
9 fear for his life, and tells him that Hall had opened the
10 gate and allowed the individuals into the cell, and closed
11 the gate, they go out, and walked, Mr. Hall
12 (unintelligible) and told him when Simmons asked, can I go
13 to medical, wait until first shift. Simmons, in the
14 investigative report, gave the same statement, same thing;
15 Hall opened the gate and let them come in the door, and
16 let them come in and stab me. Hall, when he did that, was
17 not acting in the scope of his official duties. Nothing
18 in furtherance of the department's obligation at that
19 point. He is doing something totally outside the
20 framework of what the tort claims act is. If you look at
21 the tort claims act (unintelligible) 15-78-20 talks about
22 that the employee has to be in the scope of official
23 duties. Okay, 30 defines the scope of official duties is.
24 I want to make sure about this.

25 MR. ALLEN: Your Honor, while he's trying to

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1 find that, I have the deposition excerpt he was referring
2 to if the Court wants to see it.

3 THE COURT: (Unintelligible.)

4 MR. DAVIDSON: All right. "Prior to January 1,
5 1989, employee means any officer, employee, agent of the
6 State or political subdivision, including elected federal
7 staff, law enforcement, and persons acting on behalf of or
8 in service of a governmental entity in the scope of their
9 official duties." And then, it defines scope of official
10 duties under subsection(i). "Scope of official duties, or
11 scope of state employee duties, okay, acting in and about
12 the business of a governmental entity." Okay, close call.
13 He's a correctional officer. Two, "performing the
14 official duties." I don't think opening a cell is an
15 official duty, to allow inmates to come in and stab
16 someone.

17 Under section 60 -- 15-78-60(17), "employee conduct"
18 -- this is what was stated (unintelligible) -- 'employee
19 conduct outside of the scope of his official duties or
20 which constitute actual fraud, actual malice, intent to
21 harm, or a crime involving moral turpitude." He committed
22 a crime of moral turpitude because he allowed inmates to
23 come in and stab someone. He actually, if you look at it,
24 he did something with actual malice, and he was outside
25 the scope of his official duties. That's 17. Now, they

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1 want to make a proposition that you have to read 17 in
2 light of 25. That makes no sense. How can he be grossly
3 negligent, with which makes you inside (inaudible). How
4 can you be grossly negligent and commit a crime of moral
5 turpitude?

6 Now, it's interesting -- and I know what the Court
7 has done with gross negligence. I handled the Jones
8 (unintelligible). I did Stagheap [ph]. I've done,
9 unfortunately, a lot of these cases. But if you read
10 Retco [ph], it's kind of interesting. Retco [ph] says in
11 many instances (unintelligible) of the instances that --
12 particularly unities -- but ultimately nullify to the
13 facts in the case. In such a case, the gross negligence
14 standard contained in that immunity is not to be read into
15 applicable subsections that do not contain (inaudible).

16 Now, I'll give you a couple of bad examples.
17 Somebody chosen for you or a volunteer, unless they
18 (unintelligible) immunity (unintelligible), and you decide
19 to let them out on bond, and they go out and kill
20 somebody. I'm not sure, but I think that's happened
21 before. And they sue you because, clearly under 25, it's
22 the control of an inmate or a control of a person because
23 of your judicial decision. It makes no sense to say gross
24 negligence applies when you're dealing with the issue of
25 scope of official duties or actual malice, actual harm, or

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1 a crime of moral turpitude. I don't think you can commit
2 a crime of moral turpitude by gross negligence. But the
3 cases we cite deal with many of these issues. They talk
4 about power and official duties or, essentially, scope of
5 employment. It has to be in furtherance of the business
6 of the entity. And the scope of official duty for a
7 governmental agency is a much narrower look than scope of
8 intent, and we've cited that.

9 Now, let's take the idea that, okay, we nullify gross
10 negligence as to 17. That's their argument. I don't
11 think it makes sense, but that's their argument. I think
12 that's what Retco [ph]. But, having said that, 70 --
13 15-78-70, liability for the acts of government employees.
14 "Nothing in this chapter shall be construed to give an
15 employee of a governmental entity immunity from suit and
16 liability if it is proven that the employee's conduct was
17 not within the scope of official duty and -- or, excuse
18 me -- that it constitutes actual fraud, actual malice,
19 intent to harm, or a crime of moral turpitude." That's
20 70. It's not -- it's not, in fact, under 60 where you've
21 got this gross negligence aberration, it's 70, and it
22 clearly says employees around you if they act not within
23 the scope of official duties.

24 Let's jump on over (inaudible) 15-78-200, almost the
25 last provision. "Notwithstanding any provision of law,

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1 this chapter, the South Carolina Tort Claims Act, is the
2 exclusive and sole remedy for any tort committed by an
3 employee of a governmental entity while acting within the
4 scope of the employee's official duties."

5 (Unintelligible) four times in the (inaudible). The
6 legislature was clear that if an employee was not acting
7 in the scope of his official duties in the business of
8 government, like Mr. Hall who opened that cell door and
9 then locked it back, and he's the only one that had keys
10 in that unit that night, the State is not responsible for
11 it. Just like in the case of Doe -- I think it's Doe
12 versus (unintelligible) insurance (unintelligible).

13 Obviously, it is an insurance case. But, in the end, they
14 talk about the fact that a police officer who had sex with
15 an individual in the backseat of his patrol car was not in
16 the scope of his official duty.

17 So, in all instances, Your Honor, policy violation,
18 the issue of whether or not there is a question of some
19 sort of risk -- and I think there (unintelligible) an
20 assumption of risk may be (unintelligible) comparative
21 discretionary meaning. The nut of this case is, Mr. Hall
22 did something that was not in the (inaudible) of his
23 official duty and, because of that, the State cannot be
24 held liable for it.

25 Lastly, I know Mr. Hall -- I know Mr. Simmons gave a

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1 statement to (inaudible). His statement to the police
2 services where he outlined what Mr. Hall. There have been
3 three complaints in this case. Yes, this case has taken
4 awhile to work its way. We've had COVID. One of the
5 lawyers who was handling this case, the file went with him
6 to Riley, Pope and Laney. It stayed with him awhile, and
7 then it had to come back us because of a conflict.
8 It's -- it's had a torture trail, I don't (inaudible).
9 But the original complaint on or about July 18th, 2017,
10 the (unintelligible) an unknown officer, who we know now
11 is Hall, opened the door to the plaintiff's cell, as well
12 as the doors of a number of unknown assailants. The
13 officer who opened the cell door was present during the
14 attack, did not interfere with the assailants' violent
15 act, and did not attempt to protect plaintiff from the
16 assault. That's the original complaint. That's their
17 allegation. We don't deny it. In the light most
18 favorable to the plaintiff, we don't deny that. That was
19 7/13 of 2018, the last page of the complaint.

20 (Unintelligible) a duly sworn statement. He provided
21 the facts, the information for the allegations that are
22 the basis for the complaint. The allegations in the
23 complaint are true to his own knowledge, except those
24 stated therein to be based upon information as to those he
25 believes them to be true. Verified, Dashaun Simmons,

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1 notarized 2nd of May, 2018. Mr. Simmons said in his
2 complaint that Hall opened the door. He said
3 (unintelligible) discovery when it was, the only person
4 that had the keys. I think when Mr. Collins went and
5 found Mr. Simmons, who had been stabbed in his cell
6 (inaudible). From the department's point of view, we're
7 entitled to summary judgment, given all of the policies,
8 all of the post orders, all of the -- the unit is out of
9 control, the department is out of control, we don't have
10 enough people. It doesn't matter. What matters is
11 Mr. Hall did something criminal, did something outside the
12 scope of his employment, and the State shouldn't be held
13 responsible for it. Blame Mr. Hall, not the State. Thank
14 you.

15 THE COURT: All right. Thank you. Briefly?

16 MR. ALLEN: Yes, Your Honor. Your Honor, I do
17 want to hand up, if I may --

18 (Unintelligible crosstalk.)

19 MR. DAVIDSON: Oh, is that the unpublished
20 opinion? Well, Your Honor --

21 MR. ALLEN: What happened in this case -- well,
22 we can't talk over each other.

23 MR. DAVIDSON: -- it's an unpublished opinion
24 and it has no precedential value and ought not to be
25 considered by this Court either.

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1 THE COURT: Noted for the record.

2 (Unintelligible)

3 MR. ALLEN: Thank you, Judge. Your Honor, this
4 exact same argument about this intentional act, outside
5 the scope, all that stuff, was argued by them and
6 (unintelligible) case against each other in Aiken who made
7 all these arguments to the court of appeals that he's
8 making to Your Honor right now. And what I've done is
9 highlighted every time the word "assault" is used by the
10 court of appeals.

11 Now, I agree that this is an unpublished opinion, but
12 all the cases that the court of appeals provided on an
13 issue in that unpublished opinion are obviously still good
14 law. The court of appeals said no, you're wrong. The
15 fact that it could be intentional tort in some context,
16 the fact that you think it was an intentional act does not
17 bar recovery under the tort claims act. It's plain and
18 simple. Our supreme court and the court of appeals have
19 said it repeatedly -- Retco, Stahnkey, Chakrabarti -- that
20 is the law. And I understand it's not good for the
21 department of corrections, but that's the law.

22 And we've got cross motions here, and so as Your
23 Honor knows, we can decide this matter -- this -- this
24 issue as a matter of law, is that an applicable defense.
25 Our courts have said no repeatedly. The fact that a guard

MOTIONS HEARING

1 messed something that's real messed up and he might get
2 criminally charged for it, the department is not shielded
3 because of that. In fact, he's pretty much conceding that
4 we should get summary judgment on liability, or at least
5 as to that defense, because I asked him, and it's
6 uncontested -- for a summary judgment motion, I'm going to
7 talk about what (unintelligible): Did you do that with
8 state-issued keys? Yes. Did you have on a uniform? Yes.
9 Were you clocked in? Yes. Did you report to a superior
10 at SCDC? Yes. I'm not going to mention the negligent
11 supervision.

12 So, all this stuff about he's outside the scope and
13 that's just -- it's all been decided, and they make the
14 same arguments in every case and every time we come to
15 court, and it's not the law. The same thing with
16 (unintelligible) versus Richland County. Part of their
17 motion is that we can't talk about policies. Violations
18 of a policy, that's not gross negligence. That case went
19 to the United States Supreme Court. It's well settled.
20 And I also highlighted every time the Court used the word
21 "policy" in that opinion as evidence to support the
22 verdict policy violations.

23 It's not going to be contested that Hall violated
24 policy in a bunch of different ways. His superiors
25 violated policies in a bunch of different ways. This

MOTIONS HEARING

1 could be decided as a matter of law. So, the gross
2 negligence standard obviously applies in this case, it has
3 to be read into all the other exceptions. They don't get
4 out on 17 or any of the any of the other exceptions. And
5 we don't need to know -- I would say as a matter of
6 practically when we try the case, we don't need to waste
7 three days on evidence related to was he in the scope of
8 official duties when the law on that is crystal clear.
9 And so, that's our response to their presentation.

10 THE COURT: Thank you.

11 (Discussion between judge and
12 parties unrelated to this case
13 regarding other motions on the
14 docket.)

15 THE COURT: All right. As to -- so we
16 essentially addressed those in the summary judgment
17 motions. There is a -- the motion to -- to apply for the
18 subpoena.

19 MR. DAVIDSON: That can be heard if and when we
20 get to trial, Your Honor.

21 THE COURT: Are there any other motions that
22 were filed that need to be heard?

23 MR. DAVIDSON: That was it.

24 THE COURT: Okay.

25 MR. ALLEN: Judge, the only other thing we had

MOTIONS HEARING

1 was a motion to compel, but that motion to compel really
2 is -- is -- I mean, the only thing I think I would add to
3 that -- you know, Judge, it's hard for us to know what we
4 don't have, as I mentioned before. I know we addressed
5 the logs, and I guess they don't exist.

6 MR. DAVIDSON: If they do, I'll find them and
7 I'll give them to you.

8 MR. ALLEN: You know, so that was more of a
9 generalized, you know, let's just go ahead and have a
10 motion to compel and say everything that we've asked for
11 in discovery, and all these motions along the way, and
12 everything we've asked for in 30(b)6 depositions, because
13 there's been a number of those. Can we just get a court
14 order that says if they've asked for it, give it to them,
15 if you don't (unintelligible). That's the best we can do
16 with that.

17 THE COURT: All right. As to -- so, we have the
18 motion -- the first motion from the Defense, which I think
19 is moot and resolved, about the 30(b)6 deposition issues.
20 We've marked that as resolved. The plaintiff's motion for
21 summary judgment is under advisement. The defendant's
22 motion for summary judgment is under advisement. Any
23 motions to compel, if -- if you need something -- trial is
24 coming up soon -- you're just going to have to reach out
25 to the Court. And, obviously, everyone is under an

MOTIONS HEARING

1 ongoing obligation to turn over anything discoverable, so
2 that can be addressed in Court as well. But, at this
3 point, I think the issue isn't is he going to appear the
4 week before, it's going to be part of the sanctions are
5 there limiting instructions, are there issues related to
6 that which can be addressed at trial --

7 MR. ALLEN: Yes, sir.

8 THE COURT: -- or -- or not (unintelligible).

9 MR. DAVIDSON: And they requested -- I want to
10 make sure I've got this. They wanted the general
11 narrative, which I was able to track down.
12 (Unintelligible) so we find a way to track it
13 (unintelligible). They wanted the telephone log or they
14 wanted the telephone records for Broad River Corrections
15 (unintelligible) and for the control room. And we
16 actually sent them and identified it as Bates No. 04482001
17 through 4, which it is actually an e-mail from my client
18 -- which we redacted some of the information -- which
19 shows that those records no longer exist. Okay. They
20 were -- I doubt if they had all the records of Broad River
21 Correctional Institute phone calls. But, you know,
22 landlines, things like that, we can give them that so they
23 know that. What was the other one? Post orders, I think
24 we've provided all of those that we have, Your Honor. And
25 I'm going to ask again, if they can find something

MOTIONS HEARING

1 (unintelligible/inaudible) I can well imagine.

2 THE COURT: All right. Well, I'll take these
3 under advisement. I'll try to get something to you as
4 soon as possible since we're on the eve of trial, and
5 we'll go from there. So, I appreciate you all being here.

6 (The proceeding was concluded.)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO: 2018-CP-40-04850
 Randle Jackson, Personally	)	
and as the Personal	)	
Representative of the Estate	)	
of Dashaun Simmons,	)	
Plaintiff,	)	
v.	)	
	)	
The South Carolina Department	)	
of Corrections,	)	
Defendant.	)	
_____	)	

DEPOSITION OF
MATTHEW N. KENNEDY

Tuesday, September 3, 2024

11:19 a.m. - 11:55 a.m.

The deposition of MATTHEW N. KENNEDY taken
before Andrea R. Taylor, a notary public in and for the
State of South Carolina, commencing on Tuesday,
September 3, 2024, at office of Davidson & Wren, PA,
pursuant to Notice of Deposition.

LEGAL EAGLE

Post Office Box 5682

Greenville, South Carolina 29606

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1 And then usually after dinner got done, you
2 know, they would do -- well, you'd do a count
3 between dinner and lunch, and then you'd do
4 another count after dinner, and that's when you
5 start locking doors down for night shift to come
6 on.

7 Q. Okay. So about what time does the evening
8 lockdown start?

9 A. Usually it would start around 6:30ish, 6:00,
10 6:30ish, somewhere around there.

11 Q. And you did it by yourself?

12 A. A lot of the time, yes, because we were
13 short-staffed.

14 Q. Okay. And again, just describe the step-by-step
15 procedure for locking them down.

16 A. Get them to go to their rooms. You'd make sure
17 you got the right people in their rooms, because
18 sometimes you would get people where they'd try
19 and sneak into a room they weren't supposed to
20 be in, you know, and then you'd lock the door.
21 Move to the next door, check the people, you
22 know, make sure they got the right IDs and stuff
23 and the matches the picture on the ID and all
24 that, make sure they're in the room, lock the
25 door, and then you just move down the line like

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Oct 21 2026

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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October 1, 2026