

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4001047R

Evalena Catoe

City of Columbia

Richard L Catoe Jr

Leon Lott

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

2014 JAN 14 PM 1:11:19  
 JENNIFER C. WILSON  
 CLERK OF COURT  
 RICHLAND COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 14 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Pamela R. Mullis

Robert David Garfield

Danny Calvert Crowe

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Evalena Catoe, individually and as )  
 Personal Representative of the Estate )  
 of Richard L. Catoe, Jr., deceased, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 The City of Columbia )  
 and Leon Lott, in his official capacity )  
 as Sheriff of Richland County, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number: ~~09-CP-40-5132~~

13 1047R

ORDER

RECEIVED

JAN 31 2014

SC Court of Appeals

JEANETTE M. McBRIDE  
 C. C. P. & G. S.  
 2014 JAN 14 PM 1:41  
 RICHLAND COUNTY  
 FILED

This matter came before this Court by way of the Motion for Summary Judgment on behalf of the Defendant Sheriff Leon Lott pursuant to Rule 56, SCRPC. A hearing on this motion was held on November 13, 2013 in Columbia, South Carolina. Present at the time and presenting oral arguments were counsel for Defendant Sheriff, Robert D. Garfield and for the Plaintiff, Pamela R. Mullis.

**I. RELEVANT BACKGROUND**

Taking the facts in a light most favorable to the Plaintiff, on July 22, 2007, at approximately 8:00 a.m., Richland County Sheriff's Department ("RCSD") deputies received an 'officer in need of assistance' call from the Columbia Police Department ("CPD"). A RCSD squadron proceeded in a back-up capacity to a residence at 69 Samson Circle, in the City of Columbia. Upon their arrival, deputies approached the house where the Plaintiff's decedent ("Catoe") was located in the front yard, holding a knife to his throat.

A CPD officer briefed deputies as to two incidences occurring moments before the deputies' arrival. First, that Catoe threatened one of the CPD officers with a knife and, as a

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result, had been shot once in the torso. Secondly, Catoe was threatening to kill any officer who tried to arrest him.

The joint assemblage of officers from the two agencies discussed strategy which centered on potentially administering the Taser devices if in a tactically favorable position. The proposed plan was for the RCSD deputies to obtain a position at the rear of the residence and attempt to maneuver around the side of the house. Thus, by establishing the element of surprise, police may theoretically be in sufficient range to tase and apprehend Catoe.

At that time, RCSD deputies Todd White and Kellye Hendrick positioned themselves at the left rear corner of the house. Initially, both officers had their Tasers drawn. However, after approximately twenty (20) minutes, the deputies were instructed to transition their role from non-lethal to lethal. In so doing, Hendrick holstered her Taser and drew her service weapon, a Model 23 Glock .40 caliber.

At some point, a trained CPD Negotiator arrived and began attempting to negotiate with Catoe. Catoe was provided a chair in which to sit and upon doing so, White no longer had a clear shot with which to administer the Taser. At some point, Bright and Hendrick were informed via radio that a more dynamic approach would be undertaken by CPD SWAT team and that they should maneuver to the side of the house and not give up their position.

While situated at the side of the house, the deputies learned that there was a family confined within the house. Hendrick and her fellow RCSD deputies successfully extricated the family members from the house, removed them to a safe position, and then returned to their position at the side of the house.

CPD officials then sought to utilize a "flash-bang" device in hopes of distracting and subduing Catoe by way of a SWAT ballistic shield. The deputies were informed that upon

deploying the "flash-bang," to be on the lookout for Catoe as he might flee to the rear of the house. In such an event, the deputies should be prepared to take appropriate action.

The "flash-bang" was deployed and the SWAT team directed Catoe to get down on the ground. Catoe failed to comply and proceeded to run into the backyard, at which point he was actively pursued by the SWAT members.

Deputy White was situated the front right corner of the house, holding his Taser. Deputy Hendrick was positioned at the right rear corner of the house, holding her service weapon. As Catoe ran around the corner, Hendrick re-positioned herself at the corner of the house to expand her view as to include the backyard.

As Catoe rapidly approached Hendrick and without delay, Hendrick loudly identified herself as a Sheriff's Deputy and gave clear verbal commands for Catoe to drop the knife. Catoe ignored these repeated and unequivocal instructions and quickly advanced in Hendrick's direction, grasping the knife in an elevated, striking position. At that precise moment, Hendrick brought her service weapon up from the ready position, aimed at Catoe, and fired once. Despite being struck with the bullet, Catoe again quickly closed the distance between himself and Hendrick. Hendrick fired a second round and again struck Catoe. This caused Catoe to turn, ambulate several yards, and then fall to the ground.

Based upon the foregoing events, the Plaintiff brought an action in this Court alleging in the Complaint that Catoe "did not possess the proper mental or physical ability to pose a danger to the armed police officers and deputies present." Accordingly, there existed less violent methods of dealing with the situation. The Plaintiff, Catoe's wife at the time of these events, thereafter brought a wrongful death claim against both the City of Columbia and Sheriff Lott in his official capacity pursuant to the South Carolina Tort Claims Act. The damages include

culpability for Catoe's death, his pain and suffering, and loss of consortium on the part of the Plaintiff.

## II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

## III. SOUTH CAROLINA TORT CLAIMS ACT

### A. Generally

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant

may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. *See*, S.C. Code Ann. §15-78-40.

**B. Section 15-78-60(6)**

The Act further continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit. S.C. Code Ann. § 15-78-60(6) provides that a governmental entity is not liable for a loss resulting from "civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing police or fire protection."

In *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998), the Court of Appeals recognized that a scrivener's error resulted in the omission of the word "or." After revisiting the legislative history, the Court concluded that sovereign immunity under Section 15-78-60(6) extends to "the failure to provide or the method of providing police or fire protection." *Id.*, p. 750.

In his summary judgment motion, the Defendant Sheriff argued that he is entitled to absolute sovereign immunity for the Plaintiff's negligence claim which arise out of actions undertaken to provide police protection. This Court agrees.

C. Authority pursuant to *Huggins v. Metts*

In support of its motion, the Defendant Sheriff primarily relied upon the factual background and authority pursuant to *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct.App. 2006). In *Huggins*, the Lexington County Sheriff's Department responded to a call stating that Huggins had threatened to burn down several homes and to commit suicide. After officers could not locate him at his home, bloodhounds discovered Huggins at in the woods behind his residence. When the officers approached Huggins, they observed that he was armed with two large butcher knives. Officers ordered Huggins to drop the knives. Not only did he fail to do so, he stated to the officers that they were going to have to kill him.

Officers then unsuccessfully attempted introducing a negotiator in an attempt to speak with Huggins. After a period of time, officers radioed for a taser to subdue Huggins; however, upon hearing this, Huggins exclaimed: "you're not going to tase me." Huggins indicated that he was "going home" and began walking towards his residence. Officers attempted to position themselves between Huggins and the house while continuing to demand that Huggins drop the knives. When Huggins continued to advance towards one of the officers, he was expressly warned "do not come any closer or I will shoot." Huggins, still armed with two large butcher knives, continued to approach the officer. Once he closed in within fifteen (15) feet, the officer discharged his service weapon and shot Huggins. After being shot, Huggins continued to advance in the direction of the officer at which point two other officers shot Huggins. Huggins died as a result of these gunshot injuries.

Applying the exception set forth in S.C. Code Section 15-78-60(6), the *Huggins* Court observed that:

Because the Act specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection, we need not address Huggins's other claims. Even were we to accept all of Huggins's assertions as true, it would not remove the immunity which the legislature has bestowed on the Police in this situation. We find no genuine issues of material fact, and, therefore, we affirm the circuit court's granting of summary judgment.<sup>1</sup>

*Id.*, at 467.

Thus, the Court of Appeals held that the immunities as promulgated by the South Carolina Tort Claims are not waived concerning the method of providing police protection.

#### D. Analysis

The record before this Court reflects that the following events had transpired, even when taken in a light most favorable to the Plaintiff: Officers had repeatedly requested Catoe to put down his knife to no avail. Thereafter, a trained negotiator had tried for an extended period to get Catoe to comply without success. Moreover, the presence of or threat to administer the Taser device was rendered ineffective. Hendrick was aware of Catoe's previous announcement that he

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<sup>1</sup> The personal representative initially brought state law causes of action in the United States District Court contending, *inter alia*, that deadly force should be used only when all other alternatives have been exhausted. See, *Huggins v. Weider, et al.*, 3:02-cv-02361-JFA. In dismissing these state claims, the Honorable Joseph F. Anderson, Jr. held:

The constitutional test, however, is not whether other alternatives were available to the officers, but whether *at the moment they fired their weapons*, the officers reasonably believed they were in imminent threat of harm. The Fourth Circuit holds that "the Fourth Amendment's objective reasonableness' standard require[s] that the officer's liability be determined exclusively upon an examination and weighing of the information [the officers] possessed *immediately prior to and at the very moment [they] fired the fatal shot[s].*" (See, *Greenridge v. Ruffin*, 927 F.2d 789,792 (4th Cir. 1991), *reaff'd* *Drewitt v. Pratt*, 999 F.2d 774, 780 (4th Cir. 1993) (internal quotations omitted)).

would try to kill any law enforcement officer who attempted to apprehend him. (This proclamation was made despite having been shot by a CPD officer before her arrival).

Hendrick issued loud, clear, and repeated warnings to Catoe that he would be shot if he advanced toward her. Hendrick observed Catoe rapidly closing in on her without hesitation. He was armed with a straight bladed, hunting-type knife raised up to strike her. Despite the warnings, Catoe advanced and was shot and killed. At the time Hendrick fired her service weapon, Catoe was less than half such distance and as close as 6-7 feet. Finally, Hendrick's testimony included: "I know that the actions taken by the subject not only put me in fear for my life but, also, put the other officers and the citizens who had gathered out in the street in grave danger ... If I had not been able to stop him, there is no doubt in my mind that others who were nearby could have been seriously hurt by the subject." This Court views these observations by Hendrick and her beliefs formulated at the moment she fired the fatal shot was not only reasonable and justified, but uncontroverted by the record in this matter.

This Court agrees with the Defendant Sheriff that the precedent as set forth in *Higgins* is authoritative with respect to the instant matter. Similar to the *Huggins*' Court evaluation, the key issue in the case at bar centers on the manner in which Hendrick chose to provide police protection. The Tort Claims Act contains clear, plain, and unambiguous language specifically exempting the police from liability concerning the methods which the officer chose to utilize. *See, e.g., Curiel v. Hampton County E.M.S.*, 401 S.C. 646, 737 S.E.2d 854 (Ct App. 2012). Accordingly, this Court recognizes that Hendrick's decision to fire her weapon in order to stop the threat as an act of self-defense or in defense of third parties constitutes an immune function. Therefore, the Defendant Sheriff is entitled to absolute sovereign immunity for the Plaintiff's


negligence claim which arises out of these specific actions undertaken to provide police protection.<sup>2</sup>

#### IV. CONCLUSION

Viewing the facts and reasonable inferences therefrom in the light most favorable to the Plaintiff, this Court finds that there is an absence of evidence to support the Plaintiff's case and that the Defendant Sheriff is entitled to summary judgment.

**IT IS THEREFORE ORDERED** that the Motion for Summary Judgment with respect to Defendant Leon Lott, in his official capacity as Sheriff of Richland County is **GRANTED** and that the pending causes of action against this Defendant are hereby dismissed with prejudice.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
The Honorable Eugene C. Griffith, Jr.  
Circuit Court Judge

January 9<sup>th</sup>, 2014

Columbia, South Carolina

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<sup>2</sup> The Defendant Sheriff has alternatively argued that he cannot be held liable under a negligence theory for the intentional acts of his deputies. This Court concurs. In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The *Wyatt* Court held that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation. Therefore, since an allegation of intent to commit a wrongful act is irrelevant in a negligence action, the Defendant Sheriff cannot be held liable for its intentional acts at the relevant times and there is no claim for negligence flowing therefrom.