IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No.: 2015-UP-333 (S.C. Ct. App. filed July 1, 2015)

Jennifer D. Bowzard, ... Petitioner,

-v-

Sheriff Wayne Dewitt and
Berkeley County Sheriff's Office, ... Respondent.

PETITION FOR WRIT OF CERTIORARI

Lawrence C. Kobrovsky
123 Meeting Street
Charleston, SC 29401
Phone: (843) 853-3703

-And-

John E. Parker
William F. Barnes, III
PETERS, MURDUAGH, PARKER, ELTZROTH,
& DETRICK, P.A.
101 Mulberry Street, East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
ATTORNEYS FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner, Jennifer D. Bowzard, certifies that the Petition for Rehearing was denied by the original panel of the Court of Appeals on October 8, 2015.

QUESTIONS PRESENTED

1. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT BOWZARD DID NOT PRESERVE THE ARGUMENT THAT RESPONDENTS ARE LIABLE FOR GROSS NEGLIGENCE PURSUANT TO S.C. CODE ANN. § 15-78-60(25) BECAUSE ALL APPLICABLE SUBSECTIONS OF § 15-78-60 SHOULD BE READ WITH A GROSS NEGLIGENCE EXCEPTION?

2. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS ARE NOT LIABLE PURSUANT TO S.C. CODE ANN. § 15-78-60(21) WHEN THEY MAY BE LIABLE FOR GROSS NEGLIGENCE BASED ON S.C. CODE ANN. § 15-78-60(25)?

3. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT BOWZARD DID NOT CHALLENGE PROXIMATE CAUSE ON APPEAL WHEN BOWZARD RAISED THE PROXIMATE CAUSE RULING IN AN ISSUE ON APPEAL AND ADDRESSED IT IN HER ARGUMENT?

STATEMENT OF THE CASE

This negligence action arises out of the actions of the Berkeley County Sheriff's Office ("Sheriff's Office") that led to James A. Sanders, Jr. ("Sanders") walking out of the Berkeley County jail (the Hill-Finklea Detention Center) even though there were pending charges which required Sanders' detention and the Sheriff's Office knew he was not to be released. Sanders was incarcerated for criminal domestic violence of a high and aggravated nature (CDVHAN) involving his former girlfriend, Petitioner Jennifer Bowzard ("Bowzard"). During his incarceration, Sanders frequently called, wrote, harassed, and threatened Bowzard, despite a family court restraining order in place and Bowzard's several reports to the Sheriff's Office complaining about the repeated contact. Upon learning of Sanders leaving the Berkeley County jail, Bowzard required medical care to cope with her fear of him because of the extensive history of domestic abuse she previously sustained from Sanders. Bowzard filed a complaint against then-Berkeley County Sheriff Wayne Dewitt and the Sheriff's Office (collectively "Respondents") on April 30, 2012, in the Berkeley County Court of Common Pleas. (R. pp. 12-15). Bowzard's negligence action alleges that the employees of the Sheriff's Office were grossly negligent, which proximately caused Bowzard's injuries and damages. (R. p. 14, ¶¶ 15-16). Specifically, the Complaint alleges the Respondents were grossly negligent in the following nine particulars:

a) In allowing James Sanders to contact Ms. Bowzard from jail in violation of the court's order;

b) In failing to prevent James Sanders from contacting Ms. Bowzard from jail after notice of the harassment;

c) In releasing James Sanders from confinement when the file on James Sanders clearly showed he was not eligible to be released;

d) In failing to follow the policies and established procedures for the release of detainees at the Detention Center;

e) In failing to read the file on James Sanders before releasing him;

f) In failing to timely act on the notification that he was not to be released;

g) In allowing Mr. Sanders to leave the detention center through the wrong door;

h) In violating § 23-15-50, South Carolina Code (1976); and

i) In violating § 23-17-70, South Carolina Code (1976).

(R. p. 14, ¶ 15). The Complaint seeks damages for Bowzard's serious and severe mental anguish, medical expenses, and lost income from her employment. (R. p. 14, ¶ 16).

Respondents' Answer dated September 21, 2012, asserts seven affirmative defenses, including the exceptions to the waiver of immunity under the South Carolina Tort Claims Act. (R. p. 18, ¶ 21).

Respondents moved for summary judgment on February 20, 2013, contending seven different bases as reasons summary judgment was appropriate. (R. pp. 20-21). The trial court held a hearing on Respondents' motion for summary judgment on April 16, 2013, at the Berkeley County Courthouse. (R. p. 38). After hearing oral argument from counsel and reviewing the parties' submissions, the trial court granted Respondents' motion in an order filed June 13, 2013. (R. pp. 5-10). The trial court found Respondents immune from liability based on several statutory provisions of the Tort Claims Act – S.C. Code Ann. §§ 15-78-60(3), (4), (5), (6), (20), and (21). The trial court also found the phone calls from Hill-Finklea could not have been a proximate cause of Bowzard's damages, and found Respondents are not liable for Bowzard's injuries arising out of

violations of S.C. Code Ann. § 23-15-50 and S.C. Code Ann. § 23-17-70. (R. pp. 7-9). Upon receipt of the trial court's order, Bowzard filed the Notice of Appeal with the Court of Appeals on July 2, 2013 (R. pp. 393-394). Following oral argument on March 4, 2015, the Court of Appeals issued a per curiam, unpublished opinion Number 2015-UP-333 on July 1, 2015. Bowzard timely filed her Petition for Rehearing and Suggestion for Rehearing *En Banc* on July 16, 2015. The Court of Appeals denied Bowzard's petition in an Order filed October 8, 2015. Bowzard now seeks a writ of certiorari pursuant to Rule 242, SCACR to review that decision.

FACTS

I. THE SHERIFF'S OFFICE KNOWLEDGE OF SANDERS' CRIMINAL DOMESTIC VIOLENCE HISTORY TOWARD BOWZARD

Bowzard and Sanders previously had a romantic relationship and, around June 2010, Sanders moved into Bowzard's residence located in Ridgeville ("Bowzard residence"). (R. pp. 77-78). Sanders vacated the residence in April 2011. (R. pp. 77-78). On May 14, 2011, law enforcement responded to the Bowzard residence for a report of criminal domestic violence. (R. pp. 77-78). Bowzard informed the officers that she wished to seek a restraining order against Sanders for her protection. (R. pp. 77-78). On July 2, 2011, at approximately 3:23 a.m. officers returned to the Bowzard residence in response to another report of criminal domestic violence. (R. pp. 82-86). Bowzard reported to the officers that Sanders had been assaulting and controlling her for a while. (R. pp. 82-86). She did not call for help because she feared for her life and was terrified of Sanders. (R. pp. 82-86). She appeared skittish and shaky. (R. pp. 82-86). One deputy observed bruising under and around Bowzard's left eye, red marks on both arms in around the inner-biceps. (R. pp. 82-86). There also appeared to be red marks on

Bowzard's neck. (R. pp. 82-86). The bruising to Bowzard's eye occurred a week earlier during a verbal argument with Sanders. (R. pp. 82-86).

Bowzard also reported that earlier that day Sanders started an argument about Bowzard's cell phone ringing. (R. pp. 82-86). She left to go to a friend's house down the road at which time Sanders began chasing her in his vehicle. (R. pp. 82-86). Upon Bowzard arriving at her friend's house, Sanders came to her vehicle, grabbed her by the arms, and drug her out of the vehicle in an attempt to take her cell phone. (R. pp. 82-86).

Later, on July 2, 2011, at approximately 12:54 p.m., officers again responded to the Bowzard residence in regards to a complaint of criminal domestic violence. (R. pp. 82-86). At that time, the Sheriff's Office arrested Sanders for criminal domestic violence. (R. pp. 82-86).

On July 18, 2011, after Sanders posted bond on the July 2, 2011 arrest, the Sheriff's Office again responded to the Bowzard residence for a domestic dispute involving Sanders. (R. pp. 87-89). Sanders fled the scene before officers arrived. (R. pp. 87-89). Bowzard attempted to work things out with Sanders but after leaving, Sanders called Bowzard to tell her that she ruined his life and that he was going to kill her. (R. pp. 87-89). Bowzard collected her belongings and went to stay with a friend due to the fear of Sanders returning. (R. pp. 87-89).

On July 26, 2011, at approximately 6:45 p.m., Sheriff's Office deputies responded to the Trident Medical Center Emergency Room after Sanders had again assaulted Bowzard. (R. pp. 90-93). On that day, Sanders tried to call Bowzard but she did not answer because she was on the phone. (R. pp. 87-89). After being unable to reach Bowzard by phone, Sanders went to the Bowzard residence. (R. pp. 87-89). He was irate.

(R. pp. 87-89). Bowzard ran outside and Sanders struck her with a paint roller extension pole. (R. pp. 87-89). Only after the neighbors yelled at him to stop attacking her did he flee in his truck. (R. pp. 87-89). The Sheriff's Office arrested Sanders for criminal domestic violence of a high and aggravated nature as a result of his physically assaulting Bowzard. Bowzard's eye socket was fractured and her nose was broken, requiring stiches. (R. pp. 87-89; p. 12, ¶ 3; p. 94; pp. 95-96). Sanders' attack also injured Bowzard's foot. (R. p. 12, ¶ 3). During this attack, Sanders threatened to kill Bowzard, telling her "You are going to die." (R. p. 12, ¶ 3).

On July 30, 2011, Sanders was released from the Hill-Finklea Detention Center ("Hill-Finklea"), which is operated by Sheriff Dewitt and the Berkeley County Sheriff's Office, on a $40,000.00 surety bond. (R. pp. 12-13, ¶¶ 3-4; p. 100). As one of the conditions of his bond, Sanders was required to be on good behavior, wear an ankle bracelet, and was placed on house arrest. (R. pp. 12-13, ¶ 4). Despite these conditions and after being released from Hill-Finklea, Sanders continued to threaten Bowzard. (R. pp. 12-13, ¶ 4).

On August 2, 2011, the Berkeley County Family Court, finding that Sanders presented a credible threat to Bowzard, issued an order restraining Sanders from having any contact with Bowzard. (R. p. 13, ¶ 5). Bowzard contacted the Sheriff's Office on August 5, 2011, to report that Sanders attempted six times to contact her by telephone. (R. p. 109).

Ten days later on August 15, 2011, Bowzard made a statement to the Sheriff's Office regarding Sanders' threats since the August 2, 2011 order. (R. p. 110). Despite the

family court order, Sanders continued to tell Bowzard he was going to abuse and/or kill her, and even threatened to burn her house down. (R. p. 110).

II. SANDERS CONTINUED COMMUNICATIONS FROM HILL-FINKLEA IN VIOLATION OF THE FAMILY COURT ORDER

On August 19, 2011, Sanders was arrested for violating the family court's August 2, 2011, restraining order. (R. pp. 104-107; p. 13, ¶ 6). The Berkeley County Sheriff's Office once again detained Sanders at Hill-Finklea. (R. p. 13, ¶ 6). Once incarcerated, the Sheriff's Office employees at Hill-Finklea allowed Sanders to continue calling and writing Bowzard, in violation the August 2, 2011 order. (R. p. 13, ¶ 8). Sanders continued to threaten Bowzard and specifically repeated his threats to kill her. (R. p. 13, ¶ 7).

On October 13, 2011, the bond on the charges against Sanders for criminal domestic violence of a high and aggravated nature was revoked. (R. p. 13, ¶ 9).

Bowzard filed a petition on October 31, 2011, with the Berkeley County Family Court alleging Sanders was in contempt of court for his repeated communications despite his incarceration. (R. pp. 113-115). The Verification to the Petition stated: "James Sanders has called my work from the jail over & over and also still writing me letter over & over[.] I have called many times & talked w/ Jenny to have this stopped[.]" (R. pp. 113-115). Jenny Smith was Bowzard's victim advocate. In addition to talking with Jenny, Bowzard also put in the petition that she called the Captain at the jail on October 31, 2011, and talked with him about the repeated communications from Sanders in violation of the court order. (R. pp. 113-115).

III. NUMEROUS VIOLATIONS OF SHERIFF'S OFFICE POLICIES THAT RESULTED IN SANDERS WALKING OUT OF THE HILL-FINKLEA JAIL

On January 26, 2012, the Sheriff's Office employees at Hill-Finklea allowed Sanders to walk out of the jail through an improper door, even though there were pending charges which required his detention. The Sheriff's Office knew Sanders was not to be released. (R. p. 13, ¶ 10). Sanders exit from the Hill-Finklea jail was captured by video cameras. (R. p. 149).[1]

The review of Sanders' file on the day he walked out involved numerous employees who were confused about his status. Following the above described events, the Sheriff's Office compiled an Internal Affairs Administrative Investigation Report which detailed the events of January 26, 2012. (R. pp. 124-129). Lieutenant Tony Riley, Sergeant Rosemary Sanders, Sergeant Patricia Diane Collins, and Tyler McWethy were all Sheriff's Office employees who were involved in allowing Sanders to walk out of the jail. (R. pp. 124-129). On January 26, 2012, Sanders went to court for a hearing on the charge for contempt that he violated the family court order. (R. p. 150, ¶ 3). The family court sentenced Sanders to time served. (R. p. 150. ¶ 4). Upon returning from court after receiving the sentence for time served, Lt. Riley went through Sanders' file and it appeared to him that all charges had been resolved. (R. p. 126). Sanders was not placed in a holding cell but was instead left unsupervised and handcuffed to a bench in middle booking. (R. p. 120). Lt. Riley then gave Sanders' file to Sgt. Collins for her to review and to coordinate Sanders' release with the Victim's Advocate, Jenny Smith. (R. p. 126). When Sgt. Sanders received the file, she was told to "kick the man out of the jail." (R. p. 124). Sanders was handcuffed to the bench for approximately thirty minutes when a

[1] The video of Sanders walking out the door to the jail are submitted to the Court and included with the Record on Appeal.

problem with his paperwork became apparent, after Jenny Smith contacted Bowzard to let her know that Sanders was scheduled to be released later in that afternoon. (R. p. 124; p. 127). Bowzard advised Smith that there was still a pending charge against Sanders and that he should not be released. (R. p. 124). Smith advised Bowzard that she would look into the situation. (R. p. 127). Smith contacted Lt. Riley to see what was going on while she and Sgt. Collins kept looking through the file. (R. p. 127).

At approximately 2:30 p.m. on January 26, 2012, Victim Advocate Carole Grunsky received a call from Bowzard regarding Sanders' impending release. (R. pp. 127-128). Grunsky called the jail and asked to speak with Lt. Riley or Jenny Smith. (R. p. 128). Smith advised Ms. Grunsky that Lt. Riley was looking at the paperwork and telling her that Sanders' bond had been met. (R. p. 128). Grunsky advised Smith that was not accurate and they should not let Sanders out of the jail. (R. p. 128). After Grunsky advised Smith, Smith agreed to get the situation resolved. (R. p. 128).

In response to the concerns raised by Grunsky and Smith, Lt. Riley looked at Sanders' file again and concluded the dates did not match. (R. p. 126). He checked with the Clerk of Court, got Sanders paperwork, and noticed the CDVHAN charge was still pending due to bond revocation. (R. p. 126).

Pfc. McWethy and Sgt. Collins both worked in middle booking at Hill-Finklea on the day Sanders was permitted to walk out. (R. p. 124). Lt. Riley gave Pfc. McWethy, Sanders' file and said Sanders had just come back from court and was ready to be released. (R. p. 124). Pfc. McWethy gave Sanders' file to Sgt. Collins and told her Lt. Riley had reviewed it and dropped it off. (R. p. 124). During the time the Sheriff's Office

was reviewing the file, Sanders told Pfc. McWethy his handcuffs were tight and Pfc. McWethy loosened them. (R. p. 124; p. 149).

Once the handcuffs were loosened on Sanders right hand, he was able to slide his hand out as shown on the video surveillance. (R. p. 149). After remaining on the bench for a short period of time, Sanders got up and walked to a door that leads outside but was locked electronically. (R. p. 149; p. 125). At that time, Sgt. Sanders was going to pick up the car wash crew. (R. p. 125). She walked past Sanders but was not at first able to exit because the door had to be opened electronically by the front desk. (R. p. 149; p. 125). Once the door was opened she exited, with Sanders immediately following her. (R. p. 149; p. 125). Once outside, she asked Sanders about his wrist band that inmates at Hill-Finklea wear. (R. p. 125). Sanders came back and gave Sgt. Sanders the wrist band. He was then allowed to walk away. (R. p. 125). By the time Pfc. McWethy came outside and asked about James Sanders, Sgt. Sanders was already in her vehicle. (R. p. 125).

About thirty minutes after their last conversation, Jenny Smith called Victim Advocate Grunsky and told her that Sanders had been allowed to walk out of Hill-Finklea. (R. p. 128). Grunsky called Bowzard to tell her that Sanders was no longer in custody at Hill-Finklea. (R. p. 128). Upon learning this, Bowzard drove herself to the Sheriff's Office for protection. (R. p. 128). The Sheriff's Office determined the situation was extremely dangerous and took Bowzard into protective custody for fear of her life. (R. p. 14, ¶ 12). In addition to the repeated harassment by Sanders while he was incarcerated, Bowzard suffered extreme fear and mental anguish due to Sanders release from custody. Bowzard sought and received medical care to cope with the fear and

mental anguish she continued to suffer, and was diagnosed with post-traumatic stress disorder. (R. p. 14, ¶ 12; pp. 143-147).

On January 26, 2012 prior to Sanders being allowed to walk away, Jenny Smith argued with Lt. Riley and asked him to keep Sanders incarcerated due to a perceived mistake in the paperwork that needed to be investigated. (R. p. 128). Smith confirmed that she had to use "persuasion" with Sgt. Collins to get her to look further into Sanders release. Sgt. Collins initially told her "We have the discharge paper, we can't keep him here forever, it is what it is." (R. p. 128).

The Investigation Report highlights the following regarding the actions of Lt. Riley, Sgt. Collins, Sgt. Sanders, and Pfc. McWethy on January 26, 2012:

> Lt. Riley ordered the release of inmate Sanders without sufficiently checking the file, there was paperwork already in the file showing inmate Sanders was not eligible for release. Sgt. Collins at first took it at face value that inmate Sanders was to be released without checking the file thoroughly, and put up some resistance with the Victims Advocate when she was trying to point out a problem. Sgt. Sanders didn't question inmate Sanders about being released out the wrong door and let him leave without further checking. Pfc. McWethy failed to handcuff inmate Sanders properly.

(R. p. 129).

Following the internal investigation, Sheriff Wayne Dewitt terminated Sgt. Collins on February 1, 2012, because as a supervisor she "should have read James Sanders' complete file prior to his release." (R. p. 120). Sheriff Dewitt demoted Lt. Riley to the rank of Sergeant based on his "failure to read the complete file. . . ." (R. p. 121). Sgt. Sanders and Pfc. McWethy were each suspended one week without pay for policy violations. (R. pp. 122-123).

STANDARD OF REVIEW

Under Rule 242(b), SCACR, a "writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The Rule states further that "the character of reasons" to be addressed when considering review includes where "the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court." Id.

ARGUMENT

Pursuant to Rule 242, SCACR, Bowzard moves for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals Unpublished Opinion 2015-UP-333 of July 1, 2015. The Court of Appeals erroneously affirmed the trial court's grant of summary judgment on the basis of other subsections of the Tort Claims Act that do not contain a gross negligence standard, and improperly applies the two-issue rule in conflict with prior decisions from this Court. On both issues addressed, the Court of Appeals' Opinion conflicts with existing precedent and in the analyses undertaken, creates novel issues for which no precedent exists. On each issue, the Court of Appeals' analysis is fatally and fundamentally flawed, and this Court should review the issues and reverse.

I. PETITIONER PRESERVED THE ARGUMENT THAT THE RESPONDENTS ARE LIABLE FOR GROSS NEGLIGENCE PURSUANT TO S.C. CODE ANN. § 15-78-60(25)

The Court Appeals incorrectly held that Bowzard failed to preserve the argument that all defenses based on the Tort Claims Act should be read with a gross negligence standard. (Opinion p. 2). In so holding, the Court departed from well-established preservation rules to avoid addressing the main issue that would give rise to liability –

whether Respondents were grossly negligent under § 15-78-60(25).[2] By failing to address the applicability of Respondents' liability pursuant to § 15-78-60(25), the Court of Appeals permits a governmental entity to selectively assert exceptions to the waiver of immunity which do not contain a gross negligence standard, instead of reading § 15-78-60 as a whole and applying all applicable subsections. Liberty Mut. Ins. Co. v. S.C Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) ("Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction.").

A. Bowzard Preserved the Issue that Respondents Are Liable if Grossly Negligent Because the Gross Negligence Exception Should Be Interpolated to All Applicable Subsections

Bowzard properly raised to the trial court the argument that Respondents are liable if grossly negligent because the gross negligence exception should be interpolated to all applicable subsections. Bowzard's Complaint alleges that Respondents were grossly negligent in proximately causing her injuries and damages. (R. pp. 13-14). In their Answer, Respondents denied they were grossly negligent. (R. 20, ¶ 1). At the hearing before the trial court, Respondents' counsel argued that "there's no gross negligence . . . ." as a basis for summary judgment. (R. p. 42, ll. 14-16). Under the South Carolina Tort Claims Act, Respondents are liable for any "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . prisoner, [or] inmate" when the responsibility or duty is exercised in a grossly

[2] In its Order, the trial court grants summary judgement on six particular subsections of § 15-78-60 – (3), (4), (5), (6), (20), and (21). As was fully briefed before the Court of Appeals, these subsections are not applicable to this action. Bowzard incorporates all arguments regarding those subsections into this Petition.

negligent manner. S.C. Code Ann. § 15-78-60(25). The trial court in its statements at the hearing specifically noted: "Now, whether or not they were grossly negligence (sic) in allowing him to escape, maybe there is an issue there." (R. p. 62, ll. 15-17). Petitioner expressly presented the opinion in Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999), to the trial court at the hearing, which holds all subsections of § 15-78-60 should be read with a gross negligence standard. (R. p. 64).

The issue in this case is that Respondents did not assert the most applicable exception to the Tort Claims Act - § 15-78-60(25) – as a basis for summary judgment because if Respondents are grossly negligent, then they are potentially liable. The Record before the Court is replete with evidence of gross negligence, including the discipline and demotion of Sheriff's Office personnel for their inactions in allowing Mr. Sanders to escape. Respondents' own Investigation Report highlights inactions of Lt. Riley, Sgt. Collins, Sgt. Sanders, and Pfc. McWethy on January 26, 2012. (R. p. 129).

Despite the applicability of subsection (25), the trial court held the Respondents are immune from liability pursuant to several provisions of the South Carolina Torts Claims Act – specifically S.C. Code Ann. §§ 15-78-60(3), (4), (5), (6), (20), and (21). (R. pp. 7-9). The Tort Claims Act contains multiple layers as it involves the waiver of sovereign immunity by governmental entities. First, the South Carolina Tort Claims Act waives sovereign immunity. S.C. Code Ann. § 15-78-20. Second, the Tort Claims Act contains forty exceptions to the waiver of immunity. S.C. Code Ann. § 15-78-60. Third, there are exceptions to the exceptions to the waiver of immunity. Some of the exceptions to the waiver of immunity provide that the exception does not apply when a

governmental entity is deemed to be grossly negligent. Others contain no exception for gross negligence. Under this scenario, a governmental entity could argue it is immune from liability based on exceptions contained in § 15-78-60, but would be liable if the jury found the governmental entity acted in a grossly negligent manner. A conflict arises within § 15-78-60 when, under the facts of a case such as this, an action would be barred by an exception which would be applicable while another applicable exception provides that the exception does not apply if the governmental entity acted in a grossly negligent manner.

This Court in Steinke, 336 S.C. at 395, 520 S.E.2d at 153, resolved this dilemma when it noted that "when a governmental entity asserts various exceptions to the waiver of immunity, [the court] is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard." "It would make no sense to say Department may be found grossly negligent in a licensing decision, yet allow Department to escape liability because the inspection powers exception does not contain a gross negligence standard." Id. at 396, 520 S.E.2d at 154.

One of the clearest applicable subsections to the facts of this case is subsection (25) which provides that the governmental entity is not liable for a loss resulting from "***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*** . . . ." (emphasis added).

Although subsection (25) is clearly applicable to the facts of this case because the allegations in the complaint and evidence pertain to the custody of a prisoner, the

Respondents failed to plead it as grounds for immunity in their Answer. Subsection (25) would provide liability in this case if the jury found the Respondents acted in a grossly negligent manner. Respondents' attempt to avoid the intent of the Tort Claims Act by only asserting exceptions of § 15-78-60 that do not contain a gross negligence exception should be rejected. Bowzard contends the Court should interpolate a gross negligence exception into all of Respondents' asserted defenses, as mandated by Steinke. It is illogical to permit a governmental entity to omit a particular applicable subsection even though it is directly applicable to the facts of the case because it may be liable if the jury finds it is grossly negligent. See Steinke, 336 S.C. at 397, 520 S.E.2d at 154 ("we conclude the better practice is to allow the government to assert all relevant exceptions, and apply the gross negligence standard to all when it is contained in one applicable exception"). Moreover, the exceptions to the waiver of immunity contained in S.C. Code Ann. § 15-78-60 must be read as a whole and cannot be selectively asserted by the governmental entity. Liberty Mut. Ins. Co. v. S.C Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) ("Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction."). Since subsection (25) is applicable to the facts of this case and Respondents may be liable if found to be grossly negligent related to the custody and care of a prisoner, Bowzard contends all other subsections of the Tort Claims Act relied upon by the Respondents must also be read with a gross negligence exception.

Because the Complaint alleged Respondents were grossly negligent, Respondents, in their Answer, denied gross negligence, and Respondents' counsel argued at the hearing

before the trial court that there was no gross negligence, the Court of Appeals incorrectly and improperly held the interpolation of gross negligence on all subsections was not preserved. Bowzard's counsel provided the trial court with Steinke, which holds all subsections are to be read with a gross negligence standard. (R. p. 64). While the particular statement "All subsections must be read with a gross negligence standard" does not appear in the transcript before the trial court, such a statement is not required under this Court's issue preservation decisions. See Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("a party is not required to use the exact name of a legal doctrine in order to preserve the issue"). Under the Court of Appeals holding, such an exact statement is now required in order to properly preserve issues despite the understanding before the trial court that gross negligence was an issue.

B. *A Rule 59(e) Motion Was Not Necessary as the Trial Court Rejected Petitioner's Arguments Regarding Gross Negligence*

In addition to holding that Petitioner's argument regarding gross negligence was not made to the trial court, the Court of Appeals also held that the trial court did not rule on this argument and Petitioner did not file a motion to alter or amend pursuant to Rule 59(e), SCRCP. As noted above, Petitioner pled gross negligence as the basis of liability in the Complaint, argued it at the hearing, and presented the trial court with Steinke. By granting summary judgment to Respondents, the trial court ruled on and rejected Petitioner's arguments. See Pryor v. Northwest Apts., 321 S.C. 524, 528, 469 S.E.2d 630, 632 n.2 (Ct. App. 1996) (noting that pleadings asserted the Residential Landlord and Tenant Act was applicable and that by holding Northwest had no duty to warn of dangerous conditions, the trial court implicitly ruled on and rejected this argument). Given the arguments presented to the trial court and evidence of gross negligence in the

the Court of Appeals decision affirming the trial court's grant of summary judgment should be reversed.

II. AS RESPONDENTS ARE LIABLE FOR GROSS NEGLIGENCE UNDER SUBSECTION (25), SUBSECTION (21) SHOULD BE READ WITH A GROSS NEGLIGENCE EXCEPTION

The Court of Appeals also incorrectly affirmed the trial court's grant of summary judgment pursuant to S.C. Code Ann. § 15-78-60(21) in light of the evidence of gross negligence in the Record. Subsection (21) provides that the governmental entity is not liable for a loss resulting from "the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons . . . ." Subsection (21) directly conflicts with subsection (25). While subsection (25) makes the governmental entity liable if it acts in a grossly negligent manner related to the "control, confinement, or custody of . . . [a] prisoner [or] inmate", subsection (21) may remove liability despite grossly negligent conduct. As noted above, subsection (21) should be read with a gross negligence standard. The Internal Investigation Report and the affidavit of Mr. Dixon, among other evidence in the Record, present a question of fact as to whether Respondents acted in a grossly negligent manner.

The Record shows that Sanders was not properly handcuffed and once he removed the handcuffs he was allowed to walk out of the jail. Although Sanders may have escaped, it is not a typical escape since he was allowed to exit through an unauthorized door and came back to give his wrist band to Sgt. Sanders once outside. It is well established that at the summary judgment stage, all evidence is viewed in a light most favorable to Bowzard as the non-moving party. Koester v. Carolina Rental Ctr., 313

S.C. 490, 493, 443 S.E.2d 392, 394 (1994) (noting the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party).

In the Opinion, the Court of Appeals notes that "it is not reasonable to argue [Sgt. Sanders] knowingly allowed Sanders to walk away from custody." In determining reasonableness, the Court of Appeals improperly weighs the evidence, at the summary judgment stage and performs a function normally an issue for jury determination. Ravan v. Greenville County, 315 S.C. 447, 464, 434 S.E.2d 296, 307 (Ct. App. 1993) ("the question of reasonableness is ordinarily a question of fact for the jury").

The Record before the Court is replete with evidence of gross negligence that presents a question of fact as to whether Respondents are liable under § 15-78-60(25). As Steinke mandates, subsection (21) should be read with a gross negligence standard. For this reason, the Court of Appeals Unpublished Opinion affirming the trial court's grant of summary judgment on this ground should be reversed.

III. BOWZARD EXPRESSLY CHALLENGED PROXIMATE CAUSE AS AN ISSUE ON APPEAL

The Court of Appeals Opinion misapplies the two-issue rule and incorrectly states that "Bowzard does not challenge th[e] determination of proximate cause on appeal." The claim regarding Sanders' phone calls and letters to Ms. Bowzard as a proximate cause of her injuries was expressly raised in Petitioner's Brief. (Appellant's Br. pp. 28-29). Within the argument captioned, "Sanders Calls and Letters to Bowzard While Incarcerated ***Proximately Caused*** Her Damages," the facts and causal chain leading to Ms. Bowzard's injuries are explicitly detailed. (emphasis added). Additionally,

Petitioner's challenge of proximate cause is also stated as her second issue on appeal.[3] (Appellant's Br. p. 1). Thus, the issue was properly before the appellate court. See Jinks v. Richland Cnty., 355 S.C. 341, 344, 585 S.E.2d 281, 283 n.3 (2003) (finding that issues on appeal must be argued in the body of a brief).

Furthermore, the issue was also preserved by raising it before the trial court. See Bazzle v. Green Tree Fin. Corp., 351 S.C. 244, 269 (2002) ("In order to preserve an issue for appellate review, the issue must be (1) raised to and ruled upon by the lower court, (2) by the appellant, (3) in a timely manner, and (4) with sufficient specificity."). The Complaint alleges that Ms. Bowzard notified the Berkeley County Sheriff's Office that Mr. Sanders was continuing to contact and threaten her while he was incarcerated at the Hill-Finklea Detention Center, and the threats and harassment caused Ms. Bowzard to fear for her life. These are the specific allegations:

> 7. Even though the Court ordered Mr. Sanders to not have any contact with Ms. Bowzard, Mr. Sanders continued to threaten her and he told her he was going to kill her. Ms. Bowzard reported these threats to the Berkeley County Sheriff's Office. ***She told the Berkeley County Sheriff's Office that she feared for her life.***
>
> 8. After August 19, 2011, Mr. Sanders was allowed by the employees of Hill-Finklea to continue to contact Ms. Bowzard in violation of the court's order. Ms. Bowzard ***notified the Sheriff's Office of the continued harassment, but the harassment by Mr. Sanders from inside the jail continued.***

(R. p. 13, ¶¶ 7-8) (emphasis added). The Court of Appeals omitted these allegations from its Opinion in holding that the calls, threats, and harassment from jail could not be a proximate cause. Instead, the Court quoted allegations related to Sanders escape or

[3] "DID THE TRIAL COURT ERR IN HOLDING SANDERS' CALLS, LETTERS, AND THREATS FROM THE BERKELEY COUNTY JAIL IN VIOLATION OF A COURT ORDER COULD NOT BE A ***PROXIMATE CAUSE*** OF BOWZARD'S DAMAGES?" (Appellant's Br. p. 1) (emphasis added).

release. If having an issue on appeal and argument section in the brief as required by Rule 208(b)(1), SCACR, is not sufficient to challenge an issue, then counsel is at a loss as to properly raising and preserving an issue on appeal.

The Complaint also alleges that the employees of the Berkeley County Sheriff's Office proximately caused Ms. Bowzard's injuries by allowing Mr. Sanders to contact Ms. Bowzard from jail in violation of the court's order. (R. p. 14, ¶¶ 15(a-b)). As there are two different allegations of gross negligence – one before Sanders escape and one after – they cannot be two independent bases for summary judgment on the same issue as they are two different issues. Therefore, the two-issue rule is not implicated. Since the issue was properly raised before the trial court, as well as within Appellant's Brief and Issues on Appeal, the two-issue rule would not be applicable as a ground for affirming the trial court's decision. Given the clear evidence in the Issues on Appeal and body of the brief, the Court should reverse the Court of Appeals holding that Bowzard failed to challenge an alternate ruling of the court.

CONCLUSION

For the reasons stated, Petitioner asked the Court to grant the petition for writ of certiorari and reverse the Court of Appeals unpublished opinion affirming the trial court's grant of summary judgment.

[SIGNATURE PAGE BELOW]

Lawrence C. Kobrovsky, Esquire
123 Meeting Street
Charleston, SC 29401
(843) 853-3703
kobrovskyl@bellsouth.net

-AND-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

John E. Parker
William F. Barnes, III
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111
jparker@pmped.com
wbarnes@pmped.com

ATTORNEYS FOR PETITIONER

November 4, 2015
Hampton, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No.: 2015-UP-333 (S.C. Ct. App. filed July 1, 2015)

Jennifer D. Bowzard, ... Petitioner,

-v-

Sheriff Wayne Dewitt and
Berkeley County Sheriff's Office, ... Respondents.

CERTIFICATE OF SERVICE

This is to certify that I, ***Megan C. Davis***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Appellant/Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within the ***Petition for Writ of Certiorari and Appendix*** to:

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk of Court
Post Office Box 11330
Columbia, SC 29211

Sandra J. Senn, Esquire
Robin L. Jackson, Esquire
Senn Legal, LLC
Attorneys at Law
P. O. Box 12279
Charleston, SC 29422

This is to certify further that I, ***Megan C. Davis***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Appellant/Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within the ***Petition for Writ of Certiorari*** to:

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211-1629

Megan C. Davis

Megan C. Davis

November 6th, 2015
Hampton, South Carolina