

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-40-1047R

RECEIVED

DEC 29 2015

SC Court of Appeals

Evalena Catoe, individually and as Personal Representative
of the Estate of Richard L. Catoe, Jr., deceased, Appellant,

v.

The City of Columbia and Leon Lott, in his
official capacity as Sheriff of Richland County, Defendants,

Of Whom, Leon Lott, in his official capacity
as Sheriff of Richland County, is Respondent.

**RESPONDENT'S RETURN TO
PETITION FOR REHEARING**

On December 2, 2015, this Court issued an unpublished decision affirming the Circuit Court's grant of summary judgment in favor of the Respondent Leon Lott, in his official capacity as Sheriff of Richland County.

The Appellant Evalena Catoe, as Personal Representative of the Estate of Richard L. Catoe, Jr., has now filed a petition for rehearing. In response, Sheriff Lott submits that this Court correctly and appropriately addressed each of the issues raised by the Appellant on appeal and that the arguments now asserted in the petition for rehearing lack merit. In her petition for rehearing, the Appellant asserts literally dozens of points that she contends that this Court "may have" overlooked or misapprehended. Sheriff Lott declines to address each and every one of those points because quite frankly it is clear that this Court understood the issues raised and correctly applied the applicable law. Therefore, instead of offering argument as to each of those points, Sheriff Lott offers the following brief analysis that is applicable to the petition as a whole:¹

1. This Court correctly ruled that Section 15-78-60(6) of the South Carolina Tort Claims Act provides absolute sovereign immunity for the "method of providing police protection" and that the conduct that forms the basis for the Appellant's negligence action against Sheriff Lott falls within that immunity provision. Like the Circuit Court, this Court was correct in relying substantially on this Court's decision in *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App.

¹ To the extent that the Court requires any analysis on any specific point raised by the Appellant, Sheriff Lott is willing upon request to address any specific points made in the petition for rehearing.

2006), which involved a substantially similar factual scenario and is controlling precedent.

2. The attempt by the Appellant to distinguish *Huggins* on the facts is not persuasive. The operative facts of both cases which underlie the application of Section 15-78-60(6) immunity are remarkably the same. In both cases, the officer who used deadly force was assailed by a mentally unstable individual wielding a knife. In both cases, the force was employed as part of a multi-officer operation designed to respond to the decedents' conduct. A negotiator was used to no avail in both situations. Alternative tactics, including the use of a taser, were explored to subdue the decedents. The decedent in both cases made actual threats to harm the officers. Likewise, the decedents were requested on multiple instances to put down their weapons. As both decedents advanced on the officers wielding a knife, they were warned in clear, concise terms to stop and drop their weapons. Both decedents refused and continued to advance, which resulted in the officers' use of force.

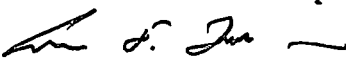
Moreover, the plaintiffs in both cases had similar, if not identical, theories of liability. As in *Huggins*, the Appellant in the case at bar offered expert testimony challenging the operation as a whole and specifically the police tactics that were employed. The plaintiffs in both cases questioned the method of force that was employed and why a non-lethal method was not used instead.

3. The Appellant's theory of liability in this case falls squarely within the plain and ordinary meaning of "method of providing police protection" as stated in Section 15-78-60(6). The Appellant presented an affidavit of Jon B. Blum, a law enforcement expert with 22 years of experience in "law enforcement practices" including "the use of force, high risk situations, and joint agency operations." (R. 166). Blum was critical of the law enforcement operation. He opines that the "Defendants failed to establish any semblance of command and control needed for joint operations" and more specifically that "[t]here was no established method or action plan for coordinating efforts between agencies on the same scene." (R. 167-168). He further was critical that "[t]he Defendants had no established procedure, protocol, or systematic plan within reasonable law enforcement standards on July 22, 2007." (R. 168). Based on Blum's testimony, the Appellant complained about the "lack of organization and communication within and among the RCSD and the CPD." *See*, Appellant's Brief, p. 11. Thus, the acts and omissions asserted by the Appellant using expert testimony are clearly immune functions under Section 15-78-60(6).

Based on the foregoing discussion, the Respondent Leon Lott respectfully requests that this Court deny the petition for rehearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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December 28, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-40-1047R

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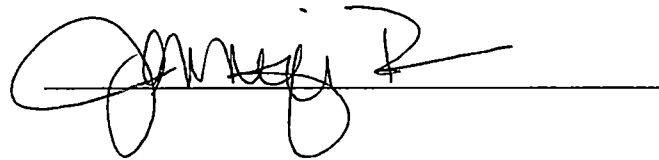
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, does hereby certify that service of **Respondent's Return to Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 29th day of December 2015:

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A handwritten signature in black ink, appearing to read "Danny C. Crowe", is written over a solid horizontal line. The signature is stylized and cursive.

DAVIDSON & LINDEMANN, P.A.

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December 29, 2015

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Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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SC Court of Appeals

RE: Evalena Catoe, individually and as Personal Representative of the Estate of Richard L. Catoe, Jr., deceased v. The City of Columbia and Leon Lott, in his official capacity as Sheriff of Richland County
Appellate Case Number: 2014-000194
Civil Action Number: 2013-CP-40-1047R
Our File Number: 314.8165

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Respondent's Return to Petition for Rehearing** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
December 29, 2015
Page Two

cc: (w/ Enclosure)

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