

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Robin B. Stillwell, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2016-000548
Case No. 2013-CP-23-6522

Madel C. Rivero, as Personal Representative for the
Estate of Lilia Lorena Blandin, Respondent,

v.

Sheriff Steve Loftis, in his capacity as
Sheriff of Greenville County, Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Arguments	6
I. The trial court erred in failing to hold an evidentiary hearing and in concluding based on the limited evidence available that there was no intentional concealment by Juror Burns of events that necessitated her call to 911 just three months prior to jury selection.	6
II. The trial court erred in denying Sheriff Loftis' motions for directed verdict and judgment notwithstanding the verdict given the absence of evidence of causation in fact.	15
III. The trial court erred in denying a directed verdict and JNOV to Sheriff Loftis based upon Tort Claims Act immunities, specifically Sections 15-78-60(4) and 15-78-60(6), neither of which includes a gross negligence exception.	19
Conclusion	23

TABLE OF AUTHORITIES

Cases

<i>Adkins v. Varn</i> , 312 S.C. 188, 439 S.E.2d 822 (1993).	20
<i>Alston v. Black River Electric Cooperative</i> , 345 S.C. 323, 548 S.E.2d 858 (2001).	8
<i>Harris v. Rose's Stores, Inc.</i> , 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).	17
<i>Jones v. Lott</i> , 387 S.C. 339, 692 S.E.2d 900 (2010).	22
<i>McCoy v. State</i> , 401 S.C. 363, 737 S.E.2d 623 (2013).	9, 12, 15
<i>McKnight v. South Carolina Department of Corrections</i> , 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009).	16
<i>State v. Aldret</i> , 333 S.C. 307, 509 S.E.2d 811 (1999).	13, 15
<i>State v. Coaxum</i> , 410 S.C. 320, 764 S.E.2d 242 (2014).	11, 14
<i>State v. Guillebeaux</i> , 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004).	13
<i>State v. Sparkman</i> , 358 S.C. 491, 595 S.E.2d 375 (2004).	10, 11, 12
<i>State v. Woods</i> , 345 S.C. 583, 550 S.E.2d 282 (2001).	<i>passim</i>

<i>Steinke v. South Carolina Department of Labor, Licensing and Regulation,</i> 336 S.C. 373, 520 S.E.2d 142 (1999).	22
<i>Thomas v. South Carolina Department of Highways and Public Transportation,</i> 320 S.C. 400, 465 S.E.2d 578 (Ct. App. 1995).	17, 18, 19
<i>Wells v. City of Lynchburg,</i> 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998).	21

Statutes and Rules

S.C. Code Ann. § 14-17-1020.	8
S.C. Code Ann. § 14-17-1050.	8
S.C. Code Ann. § 15-78-60(4).	<i>passim</i>
S.C. Code Ann. § 15-78-60(6).	<i>passim</i>
Rule 59(e), SCRCP.	5

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in failing to hold an evidentiary hearing and in concluding based on the limited evidence available that there was no intentional concealment by Juror Burns of events that necessitated her call to 911 just three months prior to jury selection?
- II. Did the trial court err in denying Sheriff Loftis' motions for directed verdict and judgment notwithstanding the verdict given the absence of evidence of causation in fact?
- III. Did the trial court err in denying a directed verdict and judgment notwithstanding the verdict to Sheriff Loftis based upon Tort Claims Act immunities, specifically Sections 15-78-60(4) and 15-78-60(6), neither of which includes a gross negligence exception?

STATEMENT OF THE CASE

This is an action brought pursuant to the South Carolina Tort Claims Act for an alleged failure to arrest. The Respondent Madel C. Rivero, as the Personal Representative of the Estate of Lilia Lorena Blandin ("Estate"), filed this action alleging gross negligence against the Appellant Steve Loftis, in his capacity as Greenville County Sheriff.

This action arises out of the murder of Lilia Blandin by her husband, Avery Blandin, which occurred on December 10, 2011, while she was employed by Woodforest National Bank at a branch located within a Wal-Mart store on White Horse Road in Greenville, South Carolina. On the previous day, December 9, 2011, Lilia Blandin called Greenville County 911 and spoke with Patricia Sullivan, a 911 operator. As a result of that call, two Greenville County deputy sheriffs, David Picone and Kevin Tyner, were dispatched to the Blandin residence at 1025 North Orchard Farms Avenue in Simpsonville, South Carolina. Deputies Picone and Tyner spoke with both Lilia and Avery Blandin. No arrests were made. The deputies did ensure that Lilia Blandin was able to leave the premises.

In its Complaint, the Estate has pled that Sheriff Loftis, acting through the deputies and Patricia Sullivan, failed to follow department protocols and were grossly negligent in failing to place Avery Blandin under arrest. The Estate alleges

that probable cause existed for his arrest and that the arrest was mandated under Section 16-25-70 of the South Carolina Code.

After the completion of discovery and settlements by a number of other Defendants who were sued, the case went to trial on September 28, 2015, with Sheriff Loftis as the sole remaining Defendant. The case was tried before Circuit Court Judge Robin H. Stilwell and jury. At the close of the Estate's case-in-chief and again at the close of all evidence, Sheriff Loftis made directed verdict motions which were denied by Judge Stilwell. After several days of trial, the jury returned a verdict in favor of the Estate. The jury awarded \$750,000 in actual damages on the survival action and \$500,000 in actual damages on the wrongful death action. (R. 1-2).

Sheriff Loftis filed a number of post-trial motions including a motion to reduce the verdicts to the monetary caps under the Tort Claims Act. That motion was granted by Judge Stilwell and a judgment totaling \$600,000 was entered. (R. 15). Sheriff Loftis also filed motions for judgment notwithstanding the verdict and new trial absolute on various grounds. Those motions were denied. (R. 9-15).

It was also learned post-trial that Robin Burns, the foreperson of the jury, had personally called 911 on June 23, 2011, three months prior to jury selection, requesting law enforcement assistance because her husband had twisted her arm and ripped a telephone from her hand during the course of a domestic dispute.

During voir dire which took place on September 28, 2015, Judge Stilwell

had asked the venire the following question: "Is there anyone among you who has been a victim of criminal domestic violence?" (R. 229). Juror Burns did not respond. She was subsequently selected for the jury, and later was made the foreperson. (R. 2, 798). Juror Burns during the course of the trial even interrupted at one point and attempted to ask her own questions of the witness. (R. 704).

In light of the information learned, counsel for Sheriff Loftis obtained the 911 call for Juror Burns' request for law enforcement assistance on June 23, 2015. He also obtained the incident report and affidavits from the responding officers. This information was received into evidence by Judge Stilwell with respect to a motion for new trial that was filed by Sheriff Loftis alleging juror concealment during voir dire. (R. 16). A request was made for an evidentiary hearing. During a motion hearing held on December 17, 2015, Judge Stilwell stated his intentions to schedule an evidentiary hearing to question Juror Burns (and potentially others with relevant information). (R. 243-247).

However, Judge Stilwell instead issued two orders in early February without ever holding the evidentiary hearing. The first order filed February 10, 2016 denied the motion for new trial based on juror concealment. That order also found that "no additional evidentiary hearing in this matter is required." (R. 7). Judge Stilwell also issued a second order that reduced the judgment to \$300,000 on the survival claim and \$300,000 on the wrongful death claim. That order also denied the remaining JNOV motions and motions for new trial. (R. 9-15).

Sheriff Loftis filed an additional motion pursuant to Rule 59(e), SCRCP, with a request that two issues be addressed. That motion was denied by an order filed March 24, 2016. (R. 112-113).

Sheriff Loftis thereupon filed this appeal to the Court of Appeals. No cross-appeal was filed.

ARGUMENTS

- I. The trial court erred in failing to hold an evidentiary hearing and in concluding based on the limited evidence available that there was no intentional concealment by Juror Burns of events that necessitated her call to 911 just three months prior to jury selection.**

The Appellant Sheriff Steve Loftis seeks a new trial absolute on the basis of intentional juror concealment during voir dire that was conducted prior to jury selection. Sheriff Loftis has raised issues with Juror Robin Burns, who was also the foreperson of the jury. During voir dire which took place on September 28, 2015, Circuit Court Judge Robin Stilwell asked the venire the following question: "Is there anyone among you who has been a victim of criminal domestic violence?" (R. 229). Only one juror responded. Juror Burns did not respond.

Following trial, it was learned that Juror Burns had called 911 and reported a domestic violence incident involving her and her husband. Juror Burns had discussed that incident during jury deliberations which was reported by a fellow juror, Michael Cornish. The investigation conducted by Sheriff Loftis' counsel produced an incident report completed by the Simpsonville Police Department, the 911 call made by Juror Burns, and affidavits from the responding officers. (R. 81-85, 99, 101, 103, 108-110). The 911 call by Juror Burns occurred on June 23, 2015, a *mere three months* prior to jury selection and the trial in this case. (R. 108-110).

Judge Stilwell held a hearing on Sheriff Loftis' motion for a new trial based on juror concealment during voir dire, but he declined to hold an evidentiary hearing and did not summon Juror Burns and other witnesses to examine whether Juror Burns had intentionally concealed that she had made a domestic violence complaint in response to the voir dire question. During the motions hearing held on December 17, 2015, Judge Stilwell indicated that an evidentiary hearing would be scheduled. (R. 243-247). However, when he issued his Order filed February 10, 2016, Judge Stilwell declined to hold an evidentiary hearing finding that "no additional evidentiary hearing in this matter is required." (R. 7). Moreover, without the benefit of sworn testimony from Juror Burns, Judge Stilwell made the determination that existing evidence "indicates clearly and unequivocally that Juror Burns was not a victim of Criminal Domestic Violence." (R. 6). Remarkably, Judge Stilwell ruled that "there is no evidence that Ms. Burns, either objectively or subjectively, concealed information." (R. 6). Yet, he made that finding of "no evidence" without taking the required step of taking testimony from Juror Burns. Without such testimony, the lack of subjective evidence at the very least was pure speculation on the judge's part.

The law in South Carolina on juror concealment and the requirement of an evidentiary hearing are well established in the case law. Sheriff Loftis contends that Judge Stilwell erred (1) in failing to hold an evidentiary hearing and (2) in concluding based on the limited evidence available that there was no intentional

concealment by Juror Burns of events that necessitated her call to 911 just three months prior to jury selection. Moreover, Judge Stilwell erred as a matter of law in concluding that Sheriff Loftis failed to "establish the 'fact of disqualification' of Juror Burns." (R. 6). There was no requirement that Sheriff Loftis establish that Juror Burns was subject only to disqualification; it is sufficient to show that the concealed information would have impacted the party's exercise of its peremptory challenges.

"Under South Carolina law, litigants are guaranteed the right to an impartial jury." *Alston v. Black River Electric Cooperative*, 345 S.C. 323, 548 S.E.2d 858, 859 (2001). *See also*, S.C. Code Ann. § 14-17-1050 ("in all civil cases any party shall have the right to demand a panel of twenty competent and impartial jurors from which to strike a jury"); S.C. Code Ann. § 14-17-1020 (potential juror shall be deemed incompetent to serve on the jury if he has an interest in the lawsuit such that he is "not indifferent in the cause"). "To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282, 284 (2001). "Through the judge, the parties have a right to question jurors on their *voir dire* examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge." *Id.*

In the leading case of *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001),

the South Carolina Supreme Court established a two-part test to determine whether a juror's failure to disclose information during voir dire warrants a new trial. "[A] new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623, 627 (2013), *citing Woods*, 550 S.E.2d at 284.

In *Woods*, the Supreme Court further explained that "intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." *Woods*, 550 S.E.2d at 284. In contrast, unintentional concealment occurs "where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." *Id.*

As stated above, during jury selection, Judge Stilwell asked the venire the following question: "Is there anyone among you who has been a victim of criminal domestic violence?" (R. 229). Only one juror responded. Juror Burns did not respond. That question was reasonably comprehensible to the average juror. Judge Stilwell, in fact, found that the question was "clear and unambiguous." (R. 6). There is also no suggestion that the question posed was not significant. The

very crux of the lawsuit revolves around whether law enforcement properly responded to a criminal domestic violence call and the decedent was clearly a victim of criminal domestic violence having been murdered by her husband. Thus, citing the test from *State v. Woods*, the only remaining issue asks whether the "subject of the inquiry" is "so far removed in time that the juror's failure to respond is reasonable under the circumstances." *Woods*, 550 S.E.2d at 284. Clearly, that is not the case. The evidence in the record, including Juror Burns' 911 call, shows that she called 911 and requested police assistance for an incident where her husband twisted her wrist and ripped a telephone from her hand during an argument. (R. 109). The events caused Juror Burns to leave the marital home for at least a night and possibly longer, which information is not ultimately available because Judge Stilwell denied the request for an evidentiary hearing. (R. 103). At the very least, this conduct, as described by Juror Burns to the 911 operator, qualifies as criminal domestic violence, and certainly the opportunity to question the juror in an evidentiary hearing would have brought more information to bear on the issue. Most importantly, the incident was not remote in time where it would not be immediately recollected by the juror. The events occurred on June 23, 2015, which was a mere three months prior to jury selection.¹ In short, in applying

¹ The length of time clearly distinguishes the Supreme Court's decision in *State v. Sparkman*, 358 S.C. 491, 595 S.E.2d 375 (2004), where the offending juror failed to recall during voir dire a crime that occurred approximately forty years earlier although he did then remember

the *State v. Woods* test to the information known without an evidentiary hearing being conducted, the evidence supports a finding of intentional rather than unintentional concealment, and Judge Stilwell erred in concluding otherwise.

Moreover, Judge Stilwell erroneously ruled that Sheriff Loftis needed "to establish the 'fact of disqualification' of Juror Burns" and then concluded that the "fact of disqualification" was not demonstrated. (R. 6). But, juror disqualification is not an absolute requirement under the *Woods* test. To the contrary, the Supreme Court requires a showing "that the information concealed would have supported a challenge for cause *or would have been a material factor in the use of the party's peremptory challenges.*" *Woods*, 550 S.E.2d at 284. (Emphasis added). *See also, State v. Coaxum*, 410 S.C. 320, 764 S.E.2d 242, 245 (2014) ("Should jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been excused by the court, challenged for cause by counsel, or stricken through the exercise of a peremptory challenge"). Later, Judge Stilwell, in fact, "agree[d] that had the Defendant known of Juror Burns' experience with the police concerning an argument with her husband, the Defendant would surely have used a peremptory challenge to strike Ms. Burns." (R. 7). Thus, by Judge Stilwell's own ruling, the second prong of the *State v. Woods* test was clearly

that crime during jury deliberations. There is an obvious distinction between forty years and three months. Memories do not typically fade in three months.

satisfied. It is absolutely immaterial that Sheriff Loftis did not establish the "fact of disqualification."

At any rate, the threshold and most critical error committed by Judge Stilwell was his denial of an evidentiary hearing, which is an error of law rather than one subject to an abuse of discretion standard. The case law in recent years from this Court and the Supreme Court have directed trial judges to hold evidentiary hearings so that claims of juror concealment or other juror misconduct may be properly examined to ensure due process and fundamental fairness to the litigants. The Supreme Court has emphasized that "[n]ecessarily, whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." *Woods*, 550 S.E.2d at 284. In *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013), the Supreme Court explained that "juror concealment claims are governed by the analysis set forth in *Woods*, and such case-by-case determinations *are most appropriately made after a hearing, which allows the factual circumstances to be more fully developed.*" 737 S.E.2d at 371. (Emphasis added). Similarly, in *State v. Sparkman*, 358 S.C. 491, 595 S.E.2d 375 (2004), the trial judge conducted a post-verdict evidentiary hearing to address allegations of juror concealment where, like the present case, the jury foreperson failed to disclose during voir dire that he himself had been a victim of a crime. In that case, the crime had occurred approximately forty years earlier, which distinguished it from the present case, but it is significant that the trial judge

nonetheless conducted an evidentiary hearing. Moreover, in *State v. Woods, supra*, the seminal case on the issue, the trial judge held an evidentiary hearing to address the basis for the claim of juror concealment. Likewise, in *State v. Guillebeaux*, 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004), the trial judge held an evidentiary hearing post-verdict in order to assess whether a juror had intentionally failed to disclose her relationship with a key prosecution witness.

It is also worth pointing out that the Supreme Court has stressed the necessity for an evidentiary hearing to properly address other types of juror misconduct allegations in order to ensure the fundamental fairness of a trial. See, *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999).

By denying a post-verdict evidentiary hearing, Judge Stilwell quite clearly denied Sheriff Loftis due process. The Supreme Court has emphasized that a determination of juror concealment is a "fact intensive determination" and must be made on a case-by-case basis. That cannot be accomplished without an evidentiary hearing where the juror, at a minimum, is subject to questioning. This is needed to learn the underlying facts and to obtain the juror's explanation for why the information was not disclosed. In this case, it was known that Juror Burns just three months prior to jury selection called 911 because of a domestic incident with her husband. The facts relayed in the 911 call support the conclusion that the call was for criminal domestic violence. From the evidence obtained to this point, it is known that Juror Burns' husband twisted her wrist and ripped a telephone from her

hand during an argument. (R. 109). It is known that Juror Burns was having prior domestic issues with her husband. (R. 103). It was also known that she had left the marital home for at least one night to stay with her sister and possibly longer. (R. 103). What is not known given the failure to conduct the evidentiary hearing is why Juror Burns did not disclose that information, what was the extent and scope of that incident, whether there were additional domestic violence incidents before and after, and whether Juror Burns even returned home after the June 23, 2015 incident, among other relevant and material inquiries that could have been made if a hearing had been held as required. Judge Stilwell found that Juror Burns did not "subjectively" conceal any information, but that determination cannot be made without, at a minimum, obtaining testimony from the juror. She may have very well intentionally failed to disclose that information due to privacy concerns or embarrassment or a host of possible reasons – that is simply not known because the question was never asked of her and the issue was not probed by a proper examination.

In *State v. Coaxum*, 410 S.C. 320, 764 S.E.2d 242 (2014), the Supreme Court recognized that "trial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information." 764 S.E.2d at 245. That duty cannot likewise be fulfilled post-trial in light of an allegation of juror concealment where the court and litigants lack accurate information or the ability to obtain such information. Such information must be obtained by way of an evidentiary hearing,

which Judge Stilwell expressed his intent to hold during the December 17, 2015 motion hearing and which the Supreme Court has clearly stated is the "most appropriate" way to proceed. *McCoy*, 737 S.E.2d at 371.

In sum, Sheriff Loftis is entitled, at the very least, to a remand for an evidentiary hearing to be held. However, given the passage of time since the September 2015 trial, the proper result is most likely to grant a new trial. *See, Aldret*, 509 S.E.2d at 815 (if the court "finds it impossible to conduct an adequate post-trial inquiry due to the passage of time, a new trial may be ordered").

II. The trial court erred in denying Sheriff Loftis' motions for directed verdict and judgment notwithstanding the verdict given the absence of evidence of causation in fact.

Judge Stilwell erred in denying Sheriff Loftis' directed verdict and JNOV motions based on the failure of proof of proximate cause. Sheriff Loftis sought judgment as a matter of law because the evidence does not support a finding that the failure of the deputies to arrest Avery Blandin on December 9, 2011, proximately caused the death of Lilia Blandin. In ruling on this issue, Judge Stilwell writes: "There was evidence that had Avery Blandin been arrested on December 9, 2011, he would likely have still been in jail on December 10, 2011 when he killed Lilia." (R. 14). Judge Stilwell's reasoning is in error.

Under South Carolina law, proximate cause requires evidence of causation in fact and legal cause. *McKnight v. South Carolina Department of Corrections*, 385 S.C. 380, 684 S.E.2d 566, 569 (Ct. App. 2009). "Causation in fact is demonstrated by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence, while legal cause is proved by establishing foreseeability." *Id.* "[L]egal cause is proved by establishing foreseeability." *Id.* "The court looks to the natural and probable consequences of the complained of act to determine foreseeability." *Id.*

Sheriff Loftis submits that the Estate failed to present evidence of causation in fact. In other words, there is no evidence that establishes that Lilia Blandin would not have been murdered by her husband if he had been arrested by the deputies for criminal domestic violence on December 9, 2011. Judge Stilwell cites evidence that Avery Blandin may have been in jail and not released on bond as yet when the murder occurred on December 10, 2011. However, that evidence, even if not wholly speculative, is insufficient to establish causation in fact under the facts of a failure to arrest case such as this. The Estate needed to present evidence that Avery Blandin would never have been released on bond or otherwise would no longer have had the motive and opportunity to murder his wife. There is no such evidence presented. It is very likely that Avery would have been released on bond – if not on December 10th, then some time shortly thereafter. He would have then had the same motive and capacity to kill his wife. This is why failure to arrest

claims are inherently flawed. Unless it can be shown within a reasonable level of probability that the arrest would prohibit any further opportunity to commit the crime, then there is not sufficient evidence of causation in fact. *See, Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993) (causation based upon a possibility rather than a probability is not sufficient for a plaintiff to recover in tort).

This Court's decision in *Thomas v. South Carolina Department of Highways and Public Transportation*, 320 S.C. 400, 465 S.E.2d 578 (Ct. App. 1995), is dispositive. In that case, the plaintiff was a pedestrian who was severely injured when a motorist whose motor vehicle registration had been suspended ran over him. The trial court granted the Highway Department a directed verdict, "holding the Department's failure to recover the motorist's license plates and motor vehicle registration was not a proximate cause of Thomas's injuries." 465 S.E.2d at 579.

In affirming the directed verdict, this Court explained:

To establish causation in fact, Thomas was required to present evidence that showed the accident would not have occurred had the Department complied with the statute in question. He failed to do this. There is no evidence at all that even if the Department had taken Green's license tag and car registration, Green, who had a valid driver's license, would not have been negligently operating either the uninsured vehicle or some other vehicle at the time he ran over Thomas. We can only speculate about what he would or would not have done had the Department recovered his license tag and car registration.

465 S.E.2d at 580. This Court thus concluded: "Because Thomas failed to present any evidence of a connection between the Department's failure to enforce § 56-10-40 and Green's negligent operation of his automobile, there was no jury issue on the question of causation in fact and the trial court properly directed a verdict in the Department's favor." *Id.*

In effect, this Court held that speculation about the criminal actions of a third party tortfeasor in relation to the enforcement of a statute was insufficient to establish causation for a plaintiff's injuries. The same issue is present in this case. It is entirely impossible to know what would have occurred if Avery Blandin had been arrested on December 9, 2011. There is certainly no evidence that, had he been arrested on that date, Avery would have been precluded from having any further opportunity to commit the murder of his wife. He would clearly have been bonded out of jail, if not by December 10th, then on some later date and would have had the same motive and opportunity to murder Lilia. As a result, the question as to whether Lilia's death could have and/or would have been prevented by his arrest on December 9th is simply a matter of speculation. Like this Court ruled in *Thomas*, there was no jury question presented by the evidence on causation in fact. The Estate was unable to establish at any requisite level of probability that Avery Blandin would not have committed the murder of his wife had he been arrested for criminal domestic violence on December 9th. In fact, he

had previously been arrested, and that certainly had not prevented him from committing further offenses against his wife.

As this Court's decision in *Thomas* demonstrates, failure to arrest cases are inherently problematic. In *Thomas*, the issue was failure of the government to recover license plates and a registration which is analogous to the failure to arrest or enforce a criminal statute. Unless that government action removes the opportunity and motive to commit the criminal act, there is no causation in fact.

In sum, Sheriff Loftis is entitled to a directed verdict and JNOV based upon the absence of evidence of causation in fact. Judge Stilwell erred in not so ruling.

III. The trial court erred in denying a directed verdict and JNOV to Sheriff Loftis based upon Tort Claims Act immunities, specifically Sections 15-78-60(4) and 15-78-60(6), neither of which includes a gross negligence exception.

Judge Stilwell also erred in denying a directed verdict and JNOV to Sheriff Loftis based upon Tort Claims Act immunities, specifically Sections 15-78-60(4) and 15-78-60(6), neither of which includes a gross negligence exception.

Section 15-78-60(4) provides absolute sovereign immunity for the "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." S.C. Code Ann. § 15-78-60(4). Sheriff Loftis is thereby entitled to sovereign immunity for

any alleged failure to enforce any law including the criminal domestic violence statutes.

In the leading case of *Adkins v. Varn*, 312 S.C. 188, 439 S.E.2d 822 (1993), the Supreme Court explained that "[t]he provisions of Section 15-78-60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation. The statute clearly exempts from liability any loss resulting from the failure to enforce an ordinance." 439 S.E.2d at 824. In *Adkins*, the estate of a thirteen year old bicyclist presented evidence that the decedent was killed when she was chased by several vicious dogs into a public street where she was struck and killed by an automobile. The facts showed that Greenville County had prior notice of these vicious dogs in the neighborhood but did not enforce the animal control laws on those animals. Thus, the animals were allowed to remain at large. In affirming summary judgment by the trial court, the Supreme Court absolved Greenville County from liability for failing to enforce animal control ordinances in accordance with Section 15-78-60(4). The Supreme Court concluded that "the County is immune from suit for any loss as a result of their non-enforcement of the animal control ordinance." *Id.*

The similarity between *Adkins* and the present case is obvious. Greenville County's failure to enforce the animal control laws and lock up vicious animals is entitled to absolute sovereign immunity. Likewise, Sheriff Loftis and his deputies' alleged failure to enforce the criminal domestic violence laws and arrest Avery

Blandin should also be entitled to absolute sovereign immunity under Section 15-78-60(4).

Sheriff Loftis is also entitled to absolute sovereign immunity in accordance with Section 15-78-60(6) of the Tort Claims Act, which provides: "The governmental entity is not liable for a loss resulting from ... (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection." S.C. Code Ann. § 15-78-60(6). In *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998), this Court recognized that a scrivener's error resulted in the omission of the word "or." After looking at the legislative history, this 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." 501 S.E.2d at 750. In short, the failure to provide police protection is an immune act or omission.

In the context of the case at bar, the Estate contends that Sheriff Loftis and his deputies failed to arrest Avery Blandin on December 9, 2011. The crux of the Estate's claim is that the deputies failed to protect Lilia Blandin from her husband by failing to arrest him. A governmental entity, including Sheriff Loftis, cannot however be held liable for the failure to provide police protection. Consequently, Sheriff Loftis is entitled to absolute sovereign immunity under Section 15-78-60(6).

It is anticipated that the Estate will argue that a gross negligence exception must be applied or "interpolated" to Sections 15-78-60(4) and (6). The Supreme Court has held that "[w]hen a governmental entity asserts multiple exceptions to the waiver of immunity and at least one of the exceptions contains a gross negligent standard, we must interpolate the gross negligence standard into the other exceptions." *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900, 904 (2010). In *Steinke v. South Carolina Department of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), the Supreme Court explained that a governmental defendant may select which immunity provisions to assert as defenses, and if no gross negligence exception is included, then there is no basis for limiting the immunity to acts of simple negligence. The *Steinke* Court further explained that "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." 520 S.E.2d at 154. In *Jones*, the Supreme Court found that Section 15-78-60(21) was not subject to a gross negligence exception because the defendant did not assert a section containing a gross negligence standard. *Jones*, 692 S.E.2d at 905. The same is true in the present case. Sheriff Loftis asserted immunity under Sections 15-78-60(1), (2), (3), (4), (5), (6), and (20). (Tr. 476-477). None of those immunity provisions within Section 15-78-60 contain a gross negligence exception.

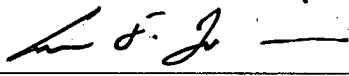
In sum, Sheriff Loftis did not assert at trial or rely on any Tort Claims Act exception set forth in Section 15-78-60 which includes a gross negligence exception. As a result, it was error for Judge Stilwell to apply a gross negligence exception to the absolute immunity provisions set forth in Sections 15-78-60(4) and (6) which clearly and indisputably absolve a governmental entity of liability for failing to enforce a law or failing to provide police protection. On this additional basis, the Court is respectfully requested to reverse with instructions that Sheriff Loftis is entitled to a directed verdict and JNOV on all Tort Claims Act claims.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Steve Loftis, in his official capacity as Greenville County Sheriff, respectfully requests that this Court reverse the Orders of the trial court and remand for entry of a directed verdict and/or judgment as a matter of law in favor of Sheriff Loftis. In the alternative, Sheriff Loftis respectfully requests that the Court remand for a new trial absolute or, at a minimum, remand for an evidentiary hearing to be held on the issue of juror concealment by Juror Robin Burns.

Respectfully submitted,

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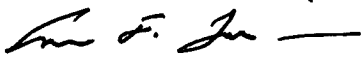
August 24, 2017

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant Steve Loftis, in his official capacity as Greenville County Sheriff, certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Steve Loftis, in his official capacity as Greenville County Sheriff, certifies that the Final Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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