THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2018-000894
Case No. 2017-CP-40-0329

Keith L. Montgomery, ... Respondent,

v.

Richland County, ... Appellant.

INITIAL BRIEF OF REPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in denying Richland County's directed verdict and JNOV motions where the record contains evidence to support a finding of gross negligence based upon the conduct of Johnnie Taylor.

II. The trial court did not err in denying Richland County the opportunity to offer evidence to impeach Keith Montgomery or to show bad character or to show that Keith Montgomery had a bias against the Alvin S. Glenn Detention Center for other charges including child support after Montgomery allegedly opened the door on the issue on re-direct examination.

STATEMENT OF THE CASE

Respondent Montgomery was an inmate trustee at Alvin S. Glen Detention Center on March 26, 2013 (Tr 1-287). He was injured working a yard duty that was assigned to him with two other inmate trustees, Brandon Walsh and Charles Bethea (Tr. 63) and (Tr. 207).

The three inmate trustees were assigned on March 26, 2013 to go to the Connex ("storage bin") on the yard of the detention center to retrieve lawnmowers to be repaired (Tr. 63). Johnny Taylor was an employee at the Alvin S. Glen Detention Center on March 26, 2013. He was the supervisor who chose the three inmate trustees and he was the three inmates trustees' supervisor on March 26, 2013 (Tr. 64) and (Tr. 1-287). The three inmate trustees were to assist Mr. Taylor with loading the lawnmowers from the storage bin onto a trailer.

Mr. Taylor was the driver of the truck with a trailer that was hitched behind the truck to load the lawnmowers on March 26, 2013 (Tr. 1-287). The three inmate trustees got out of the truck with Mr. Taylor when they got to the storage bin. Mr. Taylor was talking on his walkie-talkie when he was walking on the outside of the storage bin near the truck and trailer. Montgomery and the other inmate trustees were standing inside and outside of the storage bin and saw Mr. Taylor talking on his walkie-talkie. Inmate trustee Brandon Walsh got inside of the storage bin, inmate

trustee Charles Bethe stood far off on the right side of the steel door, and inmate trustee Montgomery was stood close to the steel door at the entrance of the storage bin. The steel door was a two inches thick solid steel door. Mr. Taylor got into the truck while he was talking on his walkie-talkie. He drove off with the truck while talking on his walkie-talkie and without looking out for the inmate trustees (Tr. 64-66).

Mr. Taylor drove off in the truck and the trailer hit the steel door that caused the door to slam into Montgomery where he was standing (Tr. 64). The steel door slammed into Montgomery and hit his head, left shoulder, and back. (Tr. 66 -68).

Montgomery was injured as the result of the steel door hitting him and he immediately reported his injuries to Mr. Taylor. Montgomery informed Mr. Taylor that the trailer slammed into the steel door when he pulled off with the truck and the steel door slammed onto him. Montgomery informed Mr. Taylor that he could have been killed by the steel door hitting him when Mr. Taylor drove off without a slight care of the consequences. Montgomery informed Mr. Taylor about feeling lightheaded from the steel door hitting him in his head (Tr. 66-68) and (Tr. 1-287).

Montgomery received little medical treatments at the infirmary at Alvin S. Glenn Detention Center. When he was released from the detention center on April 17, 2013 his medical condition was not resolved. He suffered from migraine headaches and pains in his back and shoulder as the result of the accident on March 26, 2013. Once

Montgomery was able to make an appointment with a medical provider, he received additional supplement medical treatments for his injuries that he sustained at Alvin S. Glenn Detention Center on March 26, 2013 (Tr. 1-287). Montgomery injuries were severe enough for an MRI to be done at Palmetto imaging. Montgomery received medical treatments and steroid injections from Zgleszewski, Dr. "Z" (64-76).

Montgomery's medical condition continued so Montgomery filed a cause of action in Richland County Court of Common Pleas on October 1, 2014 against Richland County for gross negligence, other causes of actions, and damages as the result of his injuries from the accident on March 26, 2013 at Alvin Glenn Detention Center. The trial judge dismissed Montgomery's other cause of actions except for gross negligence and damages. The jury heard testimony on Montgomery's gross negligence cause of action and damages (Tr. 1-287). After listening to all the evidence at trial and deliberation, the jury on April 5, 2018 the jury unanimously find for Montgomery and awarded the amount of $48,000 actual damages to Montgomery (Tr. 281).

Richland County filed post-trial motions including a motion for judgment notwithstanding the verdict (JNOV), a motion for a new trial absolute, and a motion for new trial nisi remittitur. (R. _). Those motions were denied by order filed April 17, 2018. (Order).

Richland County subsequently filed this appeal to this Court.

STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, this Court may correct only errors of law. Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010); *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings. *Townes Assocs.*, 266 S.C. at 85, 221 S.E.2d at 775.

When reviewing the trial court's ruling on a Motion for Directed Verdict and for Judgment Notwithstanding the Verdict. The South Carolina Rules of Civil Procedure, Rule 50 (a) and (b) should be applied.

(a) Motion for Directed Verdict: When Made: Effect. When upon a trial the case presents only the of law the judge may direct a verdict. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence if the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

(b) Motion for Judgment Notwithstanding the Verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

A motion for a directed verdict or JNOV, the South Carolina appellate courts apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam* v. *South Carolina Department of Transportation,* 361 S.C. 9,602 S.E.2d 772, 782

(2004).

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. The trial court must deny the motions when the evidence yields more than one inference, or its inference is in doubt. This Court will reverse the trial court only when there is no evidence to support the ruling below. *Creech v. South Carolina Wildlife and Marine Resources Dep't,* 328 S.C. 24, 491 S.E.2d 571 (1997). This Court will not disturb a trial court's decision granting or denying a new trial unless that decision is wholly unsupported by the evidence or the court's conclusions of law have been controlled by an error of law. *South Carolina Dep't of Highways and Pub. Transp. v. E.S.I. Investments,* 332 S.C. 490, 505 S.E.2d 593 (1998); *Craven v. Cunningham,* 292 S.C. 441, 357 S.E.2d 23 (1987).

In *Steinke v S Carolina Dept. of Labor, Licensing and Regulation,* 336 SC 373 520 S.E.2d 142 (1999), the SC Supreme Court defined gross negligence as "the failure to exercise slight care." The SC Supreme Court also defined it as "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Gross negligence "is a relative term and means the absence of care that is necessary under the circumstances." *Hollins v. Richland County School Dist. One,*310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993) (citations omitted).

ARGUMENTS

I. The trial court did not err in denying Richland County's directed verdict and JNOV motions where the record contains evidence to support a finding of gross negligence based upon the conduct of Johnnie Taylor.

The Appellant Richland County contends that it was entitled to a directed verdict and JNOV because the Respondent Keith Montgomery failed to present evidence to reasonably support a finding that Johnnie Taylor acted with gross negligence when he allegedly backed a trailer into a shed door which in tum struck and injured Montgomery. The trial court denied those motions on the limited basis that "[t]here was evidence to support the jury' s verdict in favor of Plaintiff on the causes [sic] of action." (Order, p. 1), (Initial Brief of Appellant, p. 5).

Under any of those definition cited in the standard of review above, the trial judge properly denied Richland County's directed verdict and post-trial motions when the facts are viewed in the light most favorable to respondent. The evidence shows that Mr. Johnny Taylor was grossly negligence and it was foreseeable that the consequences of Mr. Taylor's gross negligence would harm Montgomery. Mr. Taylor failed to exercise a slight degree of care by talking on his walkie-talkie and not paying alight attention that caused the trailer to slam into the steel door that slam into Montgomery when Mr. Taylor pulled off in the truck with the trailer. The force of the steel door slammed onto Montgomery when the trailer slammed into the steel door on the storage bin (Tr. 1-287). The jury found Montgomery's testimony credible. Mr. Taylor only had to show a slight care degree while pulling off with truck and trailer to avoid injuring Montgomery. Mr. Taylor's conduct was not just a negligent act as the County contends. He was so indifferent to

the consequences of his conduct that he did not give a slight care as to what he was doing or where the inmate trustees were located as he pulled off with the truck and trailer. Mr. Taylor failed to suspect a problem or a hazard or gave a more cursory glance to locate the inmate trustees as he was talking on his walkie talkie as he pulled off with the truck and trailer...

Richland County contends that the only cause of action submitted to the jury was one for gross negligence brought pursuant to the South Carolina Tort Claims Act. The trial court and the parties agreed that, in accordance with Section 15-78-60(25), the County is not liable for ordinary negligence, and as a result, Montgomery was required to prove gross negligence by Johnnie Taylor to prevail (Initial Brief of Appellant, p.5).

Further, Richland County contends that under South Carolina law, "[g]gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Clyburn v. Sumter County School District No. 17,* 317S.C. 50, 451 S.E.2d 885, 887 (1994). "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." *Id.,* "Where a person is so indifferent to the consequences of his conduct as not to give slight care to what he is doing, he is guilty of gross negligence." *Staubes v. City of Folly Beach,* 331S.C. 192, 500 S.E.2d l 60, 167 (Ct. App. 1998). "Gross negligence involves a conscious failure to exercise due care." *Id.* "Gross negligence ordinarily is a mixed question of law and fact." *Clyburn,* 451 S.E.2d at 887. "When the evidence supports but one reasonable inference, however, the question becomes a matter of law for the court." *Id.* at 887-888 (Initial Brief of Appellant, p. 6).

Admittedly, Montgomery agrees that under Richland County's definition cited in its case laws above, the trial judge properly charged the jury (Tr. 277-278). The jury found that. Montgomery's testimony was credible and that there was evidence to show them that Mr. Taylors's conduct was grossly negligent that was the direct cause of Montgomery's injuries. The facts are

viewed in the light most favorable to Montgomery on appeal that the standard of liability at trial had been gross and not ordinary negligence, the evidence presented yield only one inference to the jury as to whether Mr. Taylor failed to exercise a slight degree of care.

Montgomery did not have to bring a host of witnesses to show that Mr. Taylor was injured although he searched diligently to locate Walsh and Bethea. Montgomery was present at the storage bin when he was injured (Tr. 1-287). Michael Allen Smith, Facility Manager at Alvin S. Glen Detention Center, testified that he investigated the accident that occurred on March 26, 2013. He testified that Mr. Walsh, witness number 1, did not indicated that he did not see any incident or injury. Mr. Smith did not say that Walsh did not witnessed the trailer hitting the steel door or that Montgomery was injured. Walsh is only saying that he did not see the incident or when the injury occurred. Therefore, the possibility of the accident that Montgomery testified to occurred at the storage bin (Tr. 178 – 214).

Mr. Smith testified that Bethea, witness number 2, said that he did not see anything pertinent or relevant. Mr. Smith did not testify that Bethea did not see Montgomery was injured. Mr. Smith never checked with the infirmary to investigate the extent of Montgomery's injuries on March 26, 2013. Mr. Smith did a report (Defendant Exhibit 2, Incident Report) that did not show where the inmate trustees were standing when the accident occurred. Montgomery testified that he and inmate trustee Walsh were threatened by Mr. Smith that he would take their days away that they gained to shorten their detention at Alvin S. Glen Center if they would lie about what happened on March 26, 2013 (Tr. 178-214).

Richland County contends that there is no evidence that Mr. Taylor was still on the walkie-talkie when he began maneuvering the truck and trailer. Montgomery testified that Mr. Taylor got into the truck while he was talking on the walkie-talkie. Montgomery was standing by the storage bin watching Mr. Taylor when he pulled off with the truck and trailer (Tr. 66 -67). Montgomery saw when Mr. Taylor started moving the truck forward and that Mr. Taylor was talking on his walkie-talkie at the time. Montgomery testified that Mr. Taylor intentionally drove off with the truck and trailer without exercising a slight degree of care about the consequences of his conduct that was foreseeable to cause Mr. Montgomery's injuries (Tr. 1-287).

Richland County contends that Mr. Taylor's actions in the truck were while he was backing the truck (Initial Brief of Appellant, p.9). The fact is that there was not any evidence presented at trial that Mr. Taylor was backing the truck when the accident occurred on March 26, 2013. Montgomery was injured when Mr. Taylor was driving the truck forward. Montgomery testified that Mr. Taylor was pulling off and not backing up when he caused the trailer to slam into the steel door that slam onto Montgomery (Tr. 1-287). Mr. Taylor was not driving on a South Carolina public highway. This accident occurred at a detention center where the rules of the road may not be applied differently. Moreover, Richland County's contention that Mr. Taylor using a cell while driving does not amount to reckless indifference is not relevant under the facts in this matter. Mr. Taylor was the supervisor of three inmate trustees on March 26, 2013. He did not use slight care to avoid the accident and as the result Montgomery

Montgomery's credible account of his injuries on March 26, 2013 was not an issue of bias against the detention center. The detention center had nothing to do with Montgomery's detention at Alvin S. Glen Detention Center. He was detained at the detention center on March 26, 2013 and other times by the court and not by Alvin S. Glen Detention Center. Montgomery testified that his detentions at the detention center were due mostly to delinquent child support (Tr. 1-287) and (Tr. 167-168).

Furthermore, Montgomery was chosen to become an inmate trustee a week or three days after he was detained at the detention center (Tr. 64). There was no reason for Montgomery to feel any bias toward the detention center or that the detention center was picking on him when he was chosen to have duties outside in the yard and to be able to get out of his dorm. Common sense would dictate that inmates are happy to have an opportunity to go outside in the yard at Alvin S. Glen Detention Center.

Richland County contends that the trial court abused its discretion and committed reversible error in denying the County the opportunity to prove that Montgomery's testimony was false particularly given that he opened the door to such testimony (Appellant Initial Brief p. 13).

The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. *State v Mattison*, 352 S.C. at 583, 575 S.E.2d at 855. There was enough evidence presented at trial that the booking information was not relevant to Montgomery's injuries as well as Montgomery's testimony

on re-direct examination was not an open door to an admission of his prior convictions for criminal charges as Richland County contends. The trial judge found Montgomery had not placed a character trait in issue and did not allowed the County to impeach him with a list of booking and not convictions for criminal felonies conduct.

As indicated by the supporting evidence in the trial, Montgomery testified that most of his detainment at the detention center was on domestic matters (Tr. 150 -153). The County contends that it should had the opportunity to impeached Montgomery. However, the booking list was not any convictions to impeach Montgomery. It is well settled in the courts that generally, evidence of a defendant's character is not admissible to show a propensity to act in conformity therewith; however, it is well settled that if a defendant places his character in issue, the State may offer evidence of the defendant's bad character. See Rule 404(a)(1), SCRE ("Evidence of a person's character or a trait of character is not admissible for proving action in conformity therewith on a particular occasion, except: (1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same[.]").

Montgomery was not a defendant and the case at hand is not a criminal case. The County contends that it did not get an opportunity to cross-examined Montgomery on his booking list. However, the County did cross–examined Montgomery on the booking list and the jury did not find that Montgomery was dishonest or not credible. The County's questions on the times that he was detained at Alvin S. Glenn Detention Center was established by the County (Tr. 151-153). The County's inferences of opening the door were not relevant to bad acts or bias that prejudiced the County because there were no convictions on the booking list that would be able to impeach Montgomery with. Montgomery testified that most of his detentions were due to

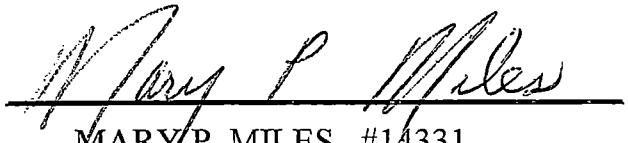
delinquent child support and that testimony was not a lie (Tr. 1-287).

CONCLUSION

Based on the foregoing statement of issues on appeal, statement of the case, standard of review, and arguments, Respondent Montgomery respectfully requests that this Court affirm the jury's verdict in favor of Respondent. Montgomery and for the County to immediately pay the jury's award of $48,000, plus interest from April 5, 2018, attorney fees, and costs. Montgomery requests that this court deny the County's appeal, motion for a new trial absolute, and affirm the jury's verdict.

Respectfully submitted,

LAW OFFICE OF MARY P. MILES.



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October 21, 2018

THE STATE OF SOUTH CAROLINA
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Alison Renee Lee, Circuit Court Judge

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Keith L. Montgomery, ... Respondent,

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CERTIFICATE OF SERVICE

The undersigned attorney of the Law Office of Mary P. Miles, counsel for the Respondent Keith L. Montgomery, does hereby certify that service of the **Initial Brief of Respondent and Respondent's Designation of Matter to be included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record by personal delivery at the below listed addresses this 22nd day of October 2018.

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