

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

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.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of the Case 1

Statement of Facts 2

Arguments 6

 I. The trial court correctly granted summary judgment to Sheriff Lott on the basis of absolute sovereign immunity under Section 15-78-60(6) of the South Carolina Tort Claims Act. 6

 A. Plaintiff's Allegations of Negligence 6

 B. Section 15-78-60(6) 9

 C. Huggins v. Metts 9

 D. Huggins as Controlling Authority 12

 E. Huggins was Correctly Decided 13

 II. The trial court correctly ruled that Sheriff Lott may not be held vicariously liable under a negligence theory for any intentional act committed by his deputies, including the use of deadly force. 18

Conclusion 22

TABLE OF AUTHORITIES

Cases

<i>Abraham v. Palmetto Unified School District No. 1</i> , 343 S.C. 36, 538 S.E.2d 656 (Ct. App. 2000).	15
<i>Baker v. Sanders</i> , 301 S.C. 170, 391 S.E.2d 229 (1990).	14
<i>Bayle v. South Carolina Department of Transportation</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).	14
<i>Clark v. South Carolina Department of Public Safety</i> , 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002).	16
<i>Clark v. South Carolina Dept. of Public Safety</i> , 362 S.C. 377, 608 S.E.2d 573 (2005).	16
<i>Faille v. South Carolina Department of Juvenile Justice</i> , 350 S.C. 315, 566 S.E.2d 536 (2002).	14
<i>Horton v. City of Columbia</i> , 408 S.C. 27, 757 S.E.2d 537 (Ct. App. 2014).	18
<i>Huggins v. Metts</i> , 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006).	passim
<i>Jones v. Lott</i> , 387 S.C. 339, 692 S.E.2d 900 (2010).	21
<i>Kengys v. United States</i> , 485 U.S. 759 (1988).	15
<i>Matter of Decker</i> , 322 S.C. 215, 471 S.E.2d 462 (1995).	15

<i>Rayfield v. South Carolina Dept. of Corrections,</i> 297 S.C. 95, 374 S.E.2d 910 (1988).	7
<i>State Farm Fire and Cas. Co. v. Barrett,</i> 340 S.C. 1, 530 S.E.2d 132 (2000).	19
<i>Steinke v. South Carolina Department of Labor,</i> <i>Licensing and Regulation,</i> 336 S.C. 373, 520 S.E.2d 142 (1999).	21
<i>Wannamaker v. Traywick,</i> 136 S.C. 21, 134 S.E. 234 (1926).	19
<i>Watson v. Sellers,</i> 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989).	14
<i>Wells v. City of Lynchburg,</i> 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998).	9
<i>Wyatt v. Fowler,</i> 326 S.C. 97, 484 S.E.2d 590 (1997).	19

Statutes and Rules

S.C. Code Ann. § 15-78-20(f).	14
S.C. Code Ann. § 15-78-30(f).	19
S.C. Code Ann. § 15-78-60(4).	15, 16
S.C. Code Ann. § 15-78-60(5).	16
S.C. Code Ann. § 15-78-60(6).	passim
S.C. Code Ann. § 15-78-60(21).	21
S.C. Code Ann. § 15-78-60(25).	20

Rule 59(e), SCRCP. 1

Miscellaneous

Restatement (Second) of Torts, § 282 cmt. d (1965). 20

STATEMENT OF THE CASE

This is a wrongful death action. The Appellant Evalena Catoe, as Personal Representative of the Estate of Richard L. Catoe, Jr., brought this action against the City of Columbia and Sheriff Leon Lott of Richland County as a result of the death of her husband on July 22, 2007.

In her complaint, the Appellant has alleged a cause of action for negligence against the Respondent Lott. After discovery was completed, Sheriff Lott moved for summary judgment which was heard by Circuit Judge Eugene C. Griffith, Jr. By order filed January 14, 2014, Judge Griffith granted the motion on the basis of sovereign immunity under Section 15-78-60(6) of the South Carolina Tort Claims Act. Judge Griffith dismissed all claims against Sheriff Lott with prejudice.

The Appellant subsequently filed a timely appeal. No Rule 59(e) motion was filed.

STATEMENT OF FACTS

On Sunday, July 22, 2007, at approximately 8:00 a.m., Richland County Sheriff's Department ("RCSD") deputies received an "officer in need of assistance" call from the Columbia Police Department ("CPD"). A RCSD squadron proceeded in a back-up capacity to a residence at 69 Samson Circle in the City of Columbia. (R. 34). Upon their arrival, the deputies approached the house where Appellant's decedent, Richard L. Catoe, Jr. ("Catoe") was located in the front yard, holding a knife to his throat. (R. 34).

A CPD officer briefed deputies as to two incidences occurring moments before the deputies' arrival. First, Catoe threatened one of the CPD officers with a knife and, as a result, had been shot once in the torso. Secondly, Catoe was threatening to kill any officer who tried to arrest him. (R. 34)

The joint assemblage of officers from the two agencies discussed strategy which centered on potentially administering the taser devices if Catoe were in a tactically favorable position. The proposed plan was for the RCSD deputies to obtain a position at the rear of the residence and attempt to maneuver around the side of the house. Thus, by establishing the element of surprise, police may theoretically be in sufficient range to tase and apprehend Catoe. (R. 35).

At that time, RCSD deputies Todd White and Kellye Hendrick positioned themselves at the left rear corner of the house. Initially, both officers had their tasers drawn. However, after approximately twenty minutes, the deputies were instructed to transition their role from non-lethal to lethal. In so doing, Deputy Hendrick holstered her taser and drew her service weapon, a Model 23 Glock .40 caliber. (R. 35).

At some point, a trained CPD negotiator arrived and began attempting to negotiate with Catoe. Catoe was provided a chair in which to sit, and upon doing so, Deputy White no longer had a clear shot with which to administer the taser. At some point, Deputies White and Hendrick were informed via radio that a more dynamic approach would be undertaken by CPD SWAT team and that they should maneuver to the side of the house and not give up their position. (R. 35).

While situated at the side of the house, the deputies learned that there was a family confined within the house. Deputy Hendrick and her fellow RCSD deputies successfully extricated the family members from the house, removed them to a safe position, and then returned to their position at the side of the house. (R. 35-36).

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

as he might flee to the rear of the house. In such an event, the deputies should be prepared to take appropriate action. (R. 36).

The "flash-bang" was deployed, and the SWAT team directed Catoe to get down on the ground. Catoe failed to comply and proceeded to run into the backyard, at which point he was actively pursued by the SWAT members. (R. 36).

Deputy White was situated at the front right corner of the house, holding his Taser. Deputy Hendrick was positioned at the right rear corner of the house, holding her service weapon. As Catoe ran around the corner, Deputy Hendrick repositioned herself at the corner of the house to expand her view as to include the backyard. (R. 36).

As Catoe rapidly approached her and without delay, Deputy Hendrick very loudly identified herself as a Sheriff's Deputy and gave clear verbal commands for Catoe to drop the knife. Catoe ignored these repeated and unequivocal instructions and quickly advanced on Hendrick, grasping the knife in an elevated, striking position. (R. 36).

At that precise moment, Deputy Hendrick was placed in fear of immediate serious bodily harm or death at Catoe's hands. She brought her service weapon up from the ready position, aimed at Catoe, and fired once. Despite being struck with the bullet, Catoe never wavered and again quickly closed the distance between himself and Deputy Hendrick. Deputy Hendrick then fired a second round and

again struck Catoe. This caused Catoe to turn, ambulate several yards, and then fall to the ground. His injuries were fatal. (R. 36).

ARGUMENTS

I. The trial court correctly granted summary judgment to Sheriff Lott on the basis of absolute sovereign immunity under Section 15-78-60(6) of the South Carolina Tort Claims Act.

The Appellant appeals the grant of summary judgment in favor of the Respondent Leon Lott. Circuit Judge Eugene C. Griffith, Jr. 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. In granting summary judgment, Judge Griffith relied substantially on this Court's decision in *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006), which involved a substantially similar factual scenario and is controlling precedent.¹

A. Plaintiff's Allegations of Negligence

As an initial issue on appeal, the Appellant argues that there exist genuine issues of material fact in dispute that should have precluded summary judgment. In

¹ The South Carolina Supreme Court denied a petition for writ of certiorari which had been filed in *Huggins*. See, Order Denying Writ of Certiorari filed October 18, 2007.

making that claim, the Appellant proceeds to argue that Judge Griffith's order makes it "appear that the officers followed department procedures, that they acted with care and without negligence, and that the loss of Mr. Catoe's life was the result of an officer's justifiable and reasonable use of deadly force." *See*, Appellant's Brief, p. 10. That is a misreading of Judge Griffith's order. He did not conclude that there was no negligence or fault on the part of the RCSD deputies. Instead, he granted summary judgment based upon absolute sovereign immunity under Section 15-78-60(6), and it is well settled that an immunity defense by definition presupposes a conditional finding of negligence or fault. *See, Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910, 916 (1988) ("[o]ne who pleads immunity, conditionally admits the plaintiff's case, but asserts his immunity as a bar to liability"). While Sheriff Lott did not admit fault on the part of his deputies, for purposes of an immunity defense, the court is not required to determine fault. In actuality, a determination of fault is immaterial.

Instead, the focus is on the alleged conduct that gives rise to the negligence claim, and if that alleged conduct falls within the scope of an immunity provision under the Tort Claims Act, the defendant may not be held liable. Therefore, summary judgment is not precluded by the Appellant's assertion that genuine issues of material fact exist with respect to a determination of negligence or fault.

As stated, that issue is indeed immaterial in assessing a defendant's entitlement to immunity because fault is conditionally admitted.

Nonetheless, the conduct that forms the basis of the alleged negligence is material to a determination of a defendant's entitlement to immunity. In the case at bar, the Appellant has relied on expert testimony to establish what she believes to be the conduct that forms the basis for her negligence claim. 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). Blum did not express opinions regarding the reasonableness of Deputy Hendrick's action in the force that she used or the method of force employed. Therefore, based on Blum's testimony, the Appellant complains in her brief about the "lack of organization and communication within and among the RCSD and the CPD." *See*, Appellant's Brief, p. 11.

B. Section 15-78-60(6)

Judge Griffith granted summary judgment to Sheriff Lott based on 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.

C. Huggins v. Metts

This case is remarkably similar – factually and legally – to the 2006 case of *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006). In *Huggins*, this Court affirmed summary judgment for the Lexington County Sheriff based upon Section 15-78-60(6) in a case where a suspect was shot by law enforcement. This Court explained that the Tort Claims Act "specifically exempts the Police from

liability concerning the methods which they choose to utilize to provide police protection." 640 S.E.2d at 467.

In *Huggins*, the Lexington County Sheriff's Department responded to a call from the plaintiff stating that Huggins had threatened to burn down several homes and to commit suicide. After deputies could not locate him at his home, bloodhounds discovered Huggins in the woods behind his residence. When the deputies approached Huggins, they observed that he was armed with two large butcher knives. Huggins was directed to drop the knives. Not only did he fail to do so, he also stated to the deputies that they were going to have to kill him. 640 S.E.2d at 465.

The deputies then brought in a negotiator to attempt to speak with Huggins, but that was unsuccessful. After a period of time, the deputies radioed for a taser to subdue Huggins; however, upon hearing this, Huggins exclaimed: "you're not going to tase me." 640 S.E.2d at 465-466. Thereupon, Huggins indicated that he was "going home" and began walking towards his residence. The deputies attempted to position themselves between Huggins and the residence while continuing to demand that Huggins drop the knives. 640 S.E.2d at 466. When Huggins continued to advance towards one of the deputies, he was expressly warned "do not come any closer or I will shoot." Huggins, still armed with two large butcher knives, continued to approach the officer. Once he closed in within

fifteen feet, the deputy discharged his service weapon and shot Huggins. After being shot, Huggins continued to advance in the direction of the officer at which point two other officers shot Huggins. Huggins died as a result of these gunshot injuries. *Id.*

The plaintiff, who was Huggins' father, initially filed suit in federal court. After the federal claims were dismissed, the plaintiff brought claims against Sheriff Metts in state court, and the late Circuit Judge Marc Westbrook granted summary judgment for the sheriff. On appeal, the plaintiff argued that his state claims focused on "the preparation and events leading up to the time immediately preceding the shooting of Deceased." 640 S.E.2d at 467. Nonetheless, this Court found that the lawsuit "concerned the manner in which the police chose to provide police protection." *Id.* Applying the immunity provision set forth in Section 15-78-60(6), this Court affirmed the summary judgment for the Sheriff and reasoned as follows:

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

Id. (Emphasis added).

D. Huggins as Controlling Authority

Not surprisingly, Judge Griffith found that "the precedent as set forth in *Huggins* is authoritative with respect to the instant manner." (R. 8). The *Huggins* case is clearly controlling. As indicated, the facts 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.

The similarities of the two cases are uncanny. Clearly, this Court's decision in *Huggins* is authoritative, as Judge Griffith found. The application of the law, specifically the immunity provision set forth in Section 15-78-60(6), is dispositive in the present case as it was in *Huggins*. Therefore, the Appellant is simply incorrect in her position that Section 15-78-60(6) does not bar liability in this case. The summary judgment in favor of Sheriff Lott should be affirmed.

E. Huggins was Correctly Decided

The Appellant obviously agrees that *Huggins* is dispositive. Accordingly, the Appellant attempts to argue that *Huggins* was incorrectly decided and, more precisely, that Section 15-78-60(6) should be interpreted differently than it was in *Huggins*.

Specifically, the Appellant focuses on the term "method" in Section 15-78-60(6) and insists that "method" refers to "the orderly formulation of policy by policymakers – i.e., the determination of the overall *method* of providing police protection to the community." *See*, Appellant's Brief, p. 22. According to the Appellant, the immunity provided by Section 15-78-60(6) is for policy making and not for actual operational conduct. If the Appellant is correct, then *Huggins* was incorrectly decided by this Court because, like the case at bar, *Huggins* involved

strictly operational conduct and not policy formulation.

However, the Appellant is not correct and *Huggins* is. Several key rules of statutory construction make that clear. Not surprisingly, the Appellant did not address these rules.

First, it is well settled that provisions of the Tort Claims Act "must be liberally construed in favor of limiting the liability of the State." *See*, S.C. Code Ann. § 15-78-20(f). This rule of statutory construction was expressly adopted by the General Assembly and has likewise been applied by the appellate courts in construing the Tort Claims Act. *See, Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"). *See also, Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990); *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).² Therefore, to the extent there is any ambiguity or the potential for construing the term "method" in inconsistent ways, the meaning of the term that favors limiting the liability of the State must control.

² This rule of construction is also in accord with the well established principle that any law in derogation of the common law must be strictly construed. *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989). There is no question that the Tort Claims Act, which waives sovereign immunity in certain particulars, is in derogation of the common law.

Second, it is also well settled that statutes "should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *Abraham v. Palmetto Unified School District No. 1*, 343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000), citing *Matter of Decker*, 322 S.C. 215, 471 S.E.2d 462, 463 (1995). Similarly, the United States Supreme Court has described the "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *Kengys v. United States*, 485 U.S. 759, 778 (1988). However, the Appellant's construction of Section 15-78-60(6) and specifically the term "method" renders that provision superfluous and redundant. It would serve no purpose.

To reiterate, the Appellant contends that Section 15-78-60(6) provides immunity for "policy formulation." As stated repeatedly throughout the Appellant's brief, Section 15-78-60(6) should be construed as providing immunity for "the formulation of policy for the method of providing police protection, but not for the negligence of officers in implementing policies." *See*, Appellant's Brief, p. 23. However, "policy formulation" or the "adoption" of policies is already an immune function as a result of Section 15-78-60(4). Thus, if Section 15-78-60(6) also applies to the formulation of policy, then it is rendered superfluous and redundant. There would be two sections that have the same purpose and effect. However, as this Court, the State Supreme Court

and the United States Supreme Court has made abundantly clear, no statute should be construed so as to render a provision superfluous or redundant. Consequently, given Section 15-78-60(4) and the immunity already provided for policy formulation, Section 15-78-60(6) must be construed to include something more within its scope.³

Clearly, Section 15-78-60(6) does not provide "blanket immunity" for all law enforcement conduct, as the Appellant incorrectly asserts is the ultimate result of Judge Griffith's order.⁴ However, Section 15-78-60(6) is not limited to policy formulation either. Instead, a correct reading of Section 15-78-60(6) brings within its scope operational conduct where law enforcement chooses or employs particular methods or tactics. In fact, the Court is urged to focus on

³ It is worth noting that the South Carolina Supreme Court has previously declined to recognize a distinction between planning activities and operational activities in construing another provision of the Tort Claims Act, specifically Section 15-78-60(5) which provides for discretionary immunity. In *Clark v. South Carolina Department of Public Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002), this Court had ruled that operational conduct -- as opposed to planning activities -- "is not the type of discretionary act contemplated in the Tort Claims Act." 578 S.E.2d at 23. However, on certiorari, the Supreme Court declined to recognize any distinction between planning and operational activities in evaluating a party's entitlement to discretionary immunity. *Clark v. South Carolina Department of Public Safety*, 362 S.C. 377, 608 S.E.2d 573, 579, n.3 (2005).

⁴ Ironically, the Appellant makes the "Chicken Little" argument that the affirmance of Judge Griffith's order will result in "blanket immunity" for all law enforcement activity. However, *Huggins*, on which Judge Griffith based his decision, has been the law in South Carolina since 2006, and there has not been "blanket immunity" provided for all law enforcement activities. In fact, to the contrary, the Appellant herself cites to numerous South Carolina cases where Section 15-78-60(6) immunity has not been asserted and/or cited to provide immunity to law enforcement in various scenarios.

the term "tactics" which is an appropriate synonym for "methods" within the context of law enforcement functioning. Therefore, where law enforcement chooses to employ certain police tactics in the course of an operation, those tactics or methods are entitled to immunity.

With regard to the present case, the Appellant's law enforcement expert was critical of the command structure and communications employed for the "joint operation" between RCSD and CPD. Jon Blum, in fact, found the need for a better "method or action plan." (R. 167-168). It is precisely such methods of operation that fall within the scope of Section 15-78-60(6). Similarly, in her brief, the Appellant questions whether a non-lethal method of force should have been employed. *See*, Appellant's Brief, p. 6. ("Mr. Catoe had not been tased, sprayed with OC spray, subjected to the baton or to any less lethal measures before he was shot dead"). However, the method of force used, i.e., a decision of operational tactics, also falls within the scope of Section 15-78-60(6).

In sum, like the theories of liability in *Huggins*, the present case also focuses on operational tactics. The Appellants complain that the operation was poorly planned and coordinated and also make the suggestion (without expert testimony) that non-lethal methods of force could have been utilized as an alternative. Yet, just as this Court correctly held in *Huggins*, this case likewise turns on the methods that law enforcement chose to utilize to provide police protection, and those

choices are entitled to immunity under Section 15-78-60(6). In short, the methods and tactics chosen by the deputies in attempting to disarm Richard Catoe and to take him into custody cannot give rise to liability, and for that reason, the summary judgment in favor of Sheriff Lott should be affirmed.⁵

II. The trial court correctly ruled that Sheriff Lott may not be held vicariously liable under a negligence theory for any intentional act committed by his deputies, including the use of deadly force.

As an alternative ruling, Judge Griffith agreed with Sheriff Lott's position that he cannot be held vicariously liable under a negligence theory for the intentional acts of his deputies. The Appellant alleged only a cause of action for negligence. She has not pled a cause of action for battery arising from the shooting of Richard Catoe. *See, Horton v. City of Columbia*, 408 S.C. 27, 757 S.E.2d 537 (Ct. App. 2014).⁶

⁵ The Appellant spends much of her lengthy brief discussing cases from Texas and Oklahoma which construe similar statutory language as Section 15-78-60(6). However, those cases are not controlling, while this Court's decision in *Huggins* is. More importantly, however, when closely read, the cases from Texas and Oklahoma are not truly at odds with *Huggins* or the ruling by Judge Griffith. Those cases draw a distinction between the formulation of policy and the implementation of policy, but none of those cases involve a law enforcement operation where tactical decisions or choices are made during the course of the operation, such as what occurred in *Huggins* and in the present case.

⁶ In paragraph 16 of her complaint, the Appellant does appear to improperly include a tort of outrage claim as part of the cause of action for negligence. To the extent it were found that the tort of outrage claim has been properly pled, Sheriff Lott did seek summary judgment on that claim, which ultimately was an issue that Judge Griffith did not find it necessary to reach given the dismissal of all tort claims based on sovereign immunity under

In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation.

Moreover, it is well settled under South Carolina law that intentional torts "cannot be committed in a negligent manner." *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (2000). Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), the Supreme Court explained that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liability for injury to person or property, when such injury is not the result of premeditation and formed intention." 134 S.E. at 235. Thus,

Section 15-78-60(6). Nonetheless, it is well settled that the Appellant cannot assert a tort of outrage claim against Sheriff Lott. That claim would be governed by the Tort Claims Act. The definition of "loss" contained in the Tort Claims Act specifically excludes "the intentional infliction of emotional harm." *See*, S.C. Code Ann. § 15-78-30(f). Hence, as an additional sustaining ground, Sheriff Lott is entitled to sovereign immunity on any outrage claim.

intent and negligence are mutually exclusive, and there is no claim of negligence that flows from intentionally tortious conduct.

As indicated, the Appellant has not alleged a cause of action for a battery stemming from the conduct of Deputy Kellye Hendrick in her use of deadly force. The intentional tort of battery cannot be transformed into a negligence claim. Negligence and battery are mutually exclusive, and there is no such cause of action as negligent assault and battery. See, *Restatement (Second) of Torts*, § 282 cmt. d (1965). Consequently, as Judge Griffith concluded, Sheriff Lott cannot be held vicariously liable under a negligence theory for an intentional act by one of his deputies.

The Appellant has not addressed this issue on appeal. The Appellant has instead argued that Judge Griffith ruled that her claims are barred by the public duty rule and that there is no duty of care owed to the Appellant's decedent. That was not the argument made by Sheriff Lott nor the ruling rendered by Judge Griffith in footnote #2 of his order. The Appellant has simply missed the point. The Appellant's arguments regarding the public duty rule are superfluous, as are the arguments that Sheriff Lott had voluntarily assumed a duty of care owed to Richard Catoe.

The Appellant's reliance on gross negligence and Section 15-78-60(25) is equally misplaced. Sheriff Lott did not plead sovereign immunity under Section

15-78-60(25),⁷ nor would that provision have any applicability because Richard Catoe was not a student, patient, prisoner, inmate or client of the RCSD, nor was he in the custody or control of the deputies. Just the opposite was true. The officers on the scene were attempting to place Catoe under arrest and into custody. That had not occurred.

In sum, as an additional basis for summary judgment, Judge Griffith was correct in concluding that Sheriff Lott is not liable under a negligent theory for any intentional act committed by his deputies, including the use of deadly force.


⁷ 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 plead, 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 [defendant] did not plead a section containing a gross negligence standard." *Jones*, 692 S.E.2d at 905. The same is true in the present case. Sheriff Lott asserted immunity under Section 15-78-60(6) and never pled nor relied on any immunity provision within Section 15-78-60 containing a gross negligence exception.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Leon Lott, in his official capacity as Sheriff of Richland County, respectfully requests that this Court affirm the Order of Circuit Judge Eugene C. Griffith, Jr. granting summary judgment in favor of Sheriff Lott.

Respectfully submitted,

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February 10, 2015

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CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned counsel for the Respondent Leon Lott, in his official capacity as Sheriff of Richland County, certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent Leon Lott, in his official capacity as Sheriff of Richland County, certifies that the Final Brief of Respondent 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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