STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
Bridgett Taylor,	Civil Action No. 2017CP4003166
Plaintiff,	
v.	**ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND ORDER**
Richland County Sheriff's Department,	
Defendant.	

This matter came before the Court upon "Motion to Alter or Amend Order and/or Motion for Reconsideration on Behalf of Defendant," which was filed on February 13, 2020. The Court decides this matter without oral argument, pursuant to Rule 59(f), SCRCP.[1]

For the reasons set forth below, Defendant's motion is DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the Complaint in this action on November 3, 2014,[2] pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. §§15-78-10 to -200 (1976, as amended). She alleges that Defendant, through its employees, is liable for gross negligence which occurred during an incident on December 19, 2013. On that date, Defendant detonated an explosive device at Plaintiff's home, causing her physical injuries.

A jury trial was commenced on March 13, 2019. At the close of Plaintiff's case-in-chief, Defendant moved for a directed verdict pursuant to Rule 50, SCRCP. After hearing the arguments

[1] Although Defendant requested an oral argument on this motion, the Court deems it unnecessary. *See, e.g., Pollard v. Cnty. of Florence*, 314 S.C. 397, 401, 444 S.E.2d 534, 536 (Ct. App. 1994) (rejecting argument that the circuit court committed reversible error in denying motion to alter or amend the judgment without first conducting a hearing).

[2] The original action, 2014CP4006934, was dismissed on September 23, 2016, pursuant to Rule 40(j), SCRCP. It was restored, using the current civil action number, on May 24, 2017.

of all counsel, the Court granted Defendant's motion and dismissed the case. In doing so, the Court relied on Plaintiff's trial testimony, elicited on cross-examination, that both the front door and screen door to her home were open when the device was detonated and that she spoke to Defendant's employee and made eye contact with him immediately prior to the blast. The Court determined that, in light of this testimony, Plaintiff alleged intentional, malicious conduct on the part of Defendant's employee. Therefore, Defendant would be immune from this action pursuant to S.C. CODE ANN. §15-78-60(17) (1976, as amended).

On March 22, 2019, Plaintiff filed a Motion to Reconsider, asking the Court to re-evaluate and set aside its Order granting Defendant's motion for directed verdict. After considering the parties' written arguments, the Court agreed with Plaintiff. By Order dated February 3, 2020, Plaintiff's Motion to Reconsider was granted, and a new trial was ordered.

Defendant then filed the instant Motion to Alter or Amend.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In its motion, Defendant contends that, in granting Plaintiff a new trial, the Court failed to consider sovereign immunity provided by S.C. CODE ANN. §§15-78-60(4), -60(6) and -60(17) (1976, as amended); issue preclusion and/or collateral estoppel; and Plaintiff's failure to prove gross negligence. The Court disagrees.

Motions for reconsideration give courts the opportunity to correct their own errors. *See, e.g., Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) (citation omitted). One such error occurs when a trial court erroneously directs a verdict in favor of one party or another. "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Harvey v. Strickland*, 350 S.C. 303, 308–09, 566 S.E.2d 529, 532 (2002) (quoting *Creech v. S.C.*

Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997)). Another error could occur when one trial judge overrules another. *See, e.g., Shirley's Iron Works, Inc. v. City of Union,* 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (citing *Charleston Cnty. Dep't of Soc. Servs. v. Father,* 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995)) ("This State has a long-standing rule that one judge of the same court cannot overrule another.").

Plaintiff is correct that the Court erred in granting Defendant's motion for directed verdict. While it is correct that Plaintiff testified that Defendant's actions amounted to an intentional wrongdoing, it is also correct that Plaintiff testified (this time during her re-direct examination) that she was standing behind a closed door when the explosive was detonated. In addition, other witnesses' testimony suggested that Plaintiff was positioned behind the door. It is improper for the Court to weigh the evidence in ruling on a motion for directed verdict. *See, e.g., Daves v. Cleary,* 355 S.C. 216, 229, 584 S.E.2d 423, 429 (Ct. App. 2003) (directed verdict "should not be granted where the "evidence yields more than one inference or its inference is in doubt"). Therefore, Plaintiff must be afforded a new trial.

Plaintiff is also correct in her argument that this Court improperly overruled the decision of another Circuit Court judge. Specifically, in denying Defendant's motion for summary judgment on January 23, 2019, Judge Manning disagreed with Defendant's arguments on the issues of sovereign immunity, *res judicata,* and collateral estoppel. For the trial court to have found otherwise (to the extent that it did) was inappropriate.

Finally, the Court agrees with Plaintiff's contention that Defendant has incorrectly characterized the Form 4 Order (which granted Plaintiff's Motion to Reconsider). While the Court did not specifically address each of the arguments made by Defendant, it is clear that each of them was rejected. By ordering a new trial, the Court corrected its own errors and rejected Defendant's

previous arguments. It is implicit in its Order that the Court finds, based on the evidence presented at the previous trial, that Defendant is not entitled to sovereign immunity and cannot claim the "protections" of collateral estoppel or *res judicata*.

IT IS, THEREFORE, ORDERED that the Motion to Alter or Amend Order and/or Motion for Reconsideration on Behalf of Defendant is DENIED.

AND IT IS SO ORDERED.

Richland Common Pleas

Case Caption: Bridgett Taylor vs Richland County Sheriffs Dept

Case Number: 2017CP4003166

Type: Order/Other

So Ordered

Jocelyn Newman

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4003166

Bridgett Taylor
PLAINTIFF(S)

Richland County Sheriffs Dept
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider (filed on March 22, 2019) is GRANTED. The Court sets aside its March 15, 2019 Order granting Defendant's Motion for Directed Verdict. Therefore, this matter is re-opened and shall be scheduled for jury trial during the next appropriate term of court.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/03/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Richland Common Pleas

Case Caption: Bridgett Taylor vs Richland County Sheriffs Dept

Case Number: 2017CP4003166

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017 – CP – 40 – 03166
	)	
Bridgett Taylor,	)	
	)	
Plaintiff,	)	**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**
	)	
v.	)	
	)	
Richland County Sheriff's Department,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court for a hearing on December 18, 2018, on Defendant Richland County Sheriff's Department's ("RCSD") motion for summary judgment. After reviewing the pleadings and the parties' submissions and hearing argument of counsel, the Court denies Defendant's motion.

STANDARD

"[S]ummary judgment is a 'drastic remedy' which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Schmidt v. Courtney*, 357 S.C. 310, 318, 592 S.E.2d 326, 331 (Ct. App. 2003). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Id.* at 316, 592 S.E.2d at 330. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Moore v. Weinberg*, 373 S.C. 209, 216, 644 S.E.2d 740, 744 (Ct. App. 2007) (internal citation omitted). "Generally, negligence claims are not susceptible of summary adjudication because of

the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause." *Folkens v. Hunt*, 290 S.C. 194, 199, 348 S.E.2d 839, 842 (Ct. App. 1986).

FACTS

Pursuant to Rule 56, SCRCP, the Court states the evidence presented in a light most favorable to Plaintiff. This case arises out of RSCD's execution of a narcotics search warrant at Plaintiff's home on the morning of December 19, 2013. RCSD entered Plaintiff's home using an explosive breach device that blew up in Plaintiff's face when she opened the door to allow the officers to enter. The search warrant related to Plaintiff's son, who was not in the home at the time of the explosive entry.

On December 18, 2013, RCSD obtained a narcotic search warrant for Plaintiff's residence. Plaintiff's son was the target of the warrant, and Plaintiff herself was not implicated or suspected in any criminal activity with regard to the warrant. Prior to executing the search warrant, the Richland County Special Response Team ("SRT"), completed a risk assessment for executing the search warrant on Plaintiff's residence. With a high-risk assessment score of 105 points, RCSD decided to execute the search warrant with an explosive breach device on December 19, 2013.

On December 19, 2013, RCSD officers surveilled Plaintiff's home for three hours, beginning at approximately 3:30 am. RCSD observed no movement whatsoever within the residence and saw only Plaintiff's vehicle parked at the house during the surveillance. At 6:50 a.m., RCSD executed the search warrant. Plaintiff was awake and getting ready to go to work for her 7:00 a.m. shift. At 6:50 a.m., RCSD surrounded Plaintiff's property. Plaintiff saw the police lights. As she proceeded to open the front door to let the officers into her home, RCSD detonated an explosive breach device on the door. Plaintiff testified that she did not hear any knocking,

warning, or announcement to step away from the door before the explosion. As a result, Plaintiff was struck with shrapnel from the door exploding open and suffered injuries to her face, chest, and abdomen.

RCSD entered Plaintiff's home and told her to stay on the ground with a gun drawn to her face. Once inside the home, RCSD did not find Plaintiff's son or any threat. No one was charged with possession of drugs or any other crime. EMS transported Plaintiff to Palmetto Health Hospital, where she was diagnosed with right breast wounds, right abdominal abrasions, a conjunctival burn to her eye, tachycardia and stridor. Plaintiff underwent two procedures to treat her injuries—removal of shrapnel from her right breast and irrigation and debridement of her right abdominal abrasion.

On November 3, 2014, Plaintiff filed a Complaint in State Court asserting a gross negligence cause of action against RCSD. On December 6, 2016, Plaintiff filed a Complaint in Federal Court under 42 U.S.C. § 1983 asserting violations of the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution against the Sheriff and two officers. RCSD was not a defendant in the Federal Court action. The defendants in the Federal Court action filed a motion for summary judgment arguing they did not violate Plaintiff's Constitutional rights and are immune from liability. On July 20, 2018, the Honorable Paige J. Gossett issued a Report and Recommendation granting Defendants' motion on the basis that they had reasonable suspicion to justify a no-knock entry under the Fourth Amendment, the use of an explosive entry was not excessive force under the Fourth Amendment, and the Eighth and Fourteenth Amendment claims failed because Plaintiff was not in custody at the time of the explosion. (R&R). Plaintiff did not file an objection to the Report and Recommendation, and the District Court adopted it on August 14, 2018.

In this action, Plaintiff alleges RCSD acted with gross negligence in using an explosive entry without evidence of a uniquely dangerous situation, failing to recognize the explosive entry was foreseeably dangerous, failing to properly monitor the home prior to using an explosive entry, failing to execute the warrant at a time less likely to injure the Plaintiff, failing to avoid injuries and using a less dangerous entry method, failing to use only the amount of force necessary, failing to knock and announce, failing to have or follow proper policies and procedures to include RCSD policy 808 and 904, and failing to follow the appropriate standard of care for law enforcement. (Cmplt.). Plaintiff's law enforcement expert, Dr. George Kirkham, testified in his deposition and submitted an affidavit discussing acts of gross negligence committed by RCSD, by and through its employees.

In Dr. Kirkham's opinion, RCSD breached its policies and procedures and applicable standards of law enforcement care in its execution of the search warrant. Dr. Kirkham cites to RCSD policy 904, *Execution of Search Warrants*, and states RCSD breached it by not providing Plaintiff fair warning of its purpose after surrounding her home. Section II (G) of policy 904, states: "The officer in charge, or a uniformed officer shall notify persons inside the search site of the team's presence, and in every case announce in a voice loud enough to be heard inside the search site that admission to the premises is demanded at once." Section II (H) of policy 904 states, "If the warrant lists readily disposable items, the search team will delay its entry for approximately ten (10) seconds following the announcement of authority and purpose unless the officer is admitted to the premises by the occupant, there is indication of a willful delay by the occupant, or there is reason to believe that evidence is being or can be destroyed." Section II (I) of policy 904 states "Entering the premises in order to conduct a search shall be done in as

courteous and non-destructive a manner as is practical." Section K(5)(a) states, "Occupants of the premises must be treated with as much restraint and courtesy as possible under the circumstances."

Dr. Kirkham testified that RCSD violated policy 904 by not giving Plaintiff warning of the explosive breach and an opportunity to let the officers into her home. Plaintiff testified that she would have let the police in voluntarily had she known they were there with a search warrant. Dr. Kirkham testified that RCSD conducted inadequate surveillance to determine if Plaintiff's son or any other threats were present in her home at the time of the explosive breach to justify such an entry. Plaintiff's expert, Dr. Kirkham, testified that RCSD should have surveilled Plaintiff's home for at least 12-14 hours before executing the search warrant to accurately determine if Plaintiff's son (the primary threat) was inside the residence to warrant the use of an explosive breach device as the method for entry. Dr. Kirkham testified that using an explosive breach device when only the Plaintiff and her daughter—not the suspect—are known to be in the home is unreasonable. Further, Dr. Kirkham emphasized that placing a gun on Plaintiff while she was significantly injured and forcing her to remain on the ground was grossly negligent as it violated policy 904's expectation that officers execute search warrants in as "courteous and non-destructive manner as practical."

Defendant now moves for summary judgment on the bases of res judicata and issue preclusion, sovereign immunity, failure to state a claim, intervening criminal acts, and that it is not the proper party. The Court denies the motion for the reasons stated herein.

ANALYSIS

I. RES JUDICATA AND ISSUE PRECLUSION

RCSD argues the decision by the District Court in the Federal action bars Plaintiff from litigating this action in state court. The Court disagrees and finds neither res judicata nor issue

preclusion apply to these circumstances. Res judicata and collateral estoppel are separate doctrines. "*Res judicata* bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding." *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997).

"To establish *res judicata*, three elements must be shown: (1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Pye*, 325 S.C. at 432, 480 S.E.2d at 458. RCSD does not satisfy these elements. As to the first element, RCSD was not a party to the prior, Federal court litigation. As to the second element, the subject matter of this action is not the same as that of the Federal court action. This action involves a determination of whether RCSD acted with gross negligence, while the Federal court action involved a determination of whether the Sheriff and police officers violated the United States Constitution. Constitutionality and gross negligence are different standards. That RCSD employees' actions did not violate Plaintiff's Constitutional rights in deciding to use an explosive breach to execute the search warrant does not mean that RCSD did not act in a grossly negligent manner in carrying out the breach.

> Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. It is the failure to exercise even the slightest care. This Court has also defined it as a relative term that means the absence of care that is necessary under the circumstances.

Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 331-32, 566 S.E.2d 536, 544 (internal quotation marks and citations omitted) (denying defendant's motion for summary judgment). While the use of a no-knock-and-announce entry and explosive device may have been

constitutional, that does not mean RCSD conducted it with more than slight care. As discussed herein, Plaintiff presented expert testimony that RCSD acted with gross negligence.

As to the third element of res judicata, the Federal court did not adjudicate the issue of gross negligence. "[T]he doctrine of res judicata has been held to bar an action in state court where the ***precise point*** was adjudicated in a federal court action terminated by a directed verdict." *Jones v. City of Folly Beach*, 326 S.C. 360, 366, 483 S.E.2d 770, 773 (Ct. App. 1997) (emphasis added). There has not been a determination as to whether RCSD's conduct in this case constitutes gross negligence. Specifically, the Federal court never heard or decided on the issues of whether RCSD violated RCSD policy 904, 808 and RCSD training on timing executions of search warrants during the early morning hours when individuals are likely asleep. These issues were never presented to the Federal court and therefore never adjudicated.

"Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action." *Catawba Indian Nation v. State*, 407 S.C. 526, 536, 756 S.E.2d 900, 906 (2014) (internal quotation marks omitted). "[T]he party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* at 536-37, 756 S.E.2d at 906 (internal quotation marks omitted). RSCD does not satisfy these elements. As to the first and second elements, and as stated above, the issue of whether RSCD exercised less than slight care in carrying out the explosive breach was not actually litigated and determined by the Federal court. *See id.* at 539, 756 S.E.2d at 907 ("Since the current issue was not actually litigated in the prior action, the State has not met its burden of demonstrating that collateral estoppel should be applied."). The Federal court determined only that (1) RCSD had reasonable suspicion to justify a no-knock entry, (2) a reasonable jury could

not find use of the explosive entry was *unconstitutionally* excessive, and (3) Plaintiff was not in police custody at the time of her injuries. (R&R pp. 8, 14). None of these findings preclude a finding that RCSD failed to exercise slight care by, for example, not following policies and procedures or not properly monitoring Plaintiff's home prior to executing the search warrant. As to the third element, the level of care used by RCSD was not a determination essential to the Federal court's judgment. The Magistrate noted that the standard for a constitutionality determination requires only reasonable suspicion that is more flexible than the standard for a gross negligence determination. (R&R pp. 6-7).

At the hearing, RCSD cited to *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 684 S.E.2d 779 (Ct. App. 2009), in support of its collateral estoppel argument. *Carolina Renewal* is distinguishable from this case because it is based on the fact that the issue of contract damages was previously litigated, regardless of whether the plaintiff was a party to the prior action. *Id.* at 555-57, 684 S.E.2d at 782-83. In this case, the issue of whether RCSD exercised slight care in conducting the explosive breach was not previously litigated. RCSD does not satisfy the elements of collateral estoppel.

II. SOVEREIGN IMMUNITY UNDER S.C. CODE ANN. § 15-78-60

RCSD asserts it is entitled to sovereign immunity under S.C. Code Ann. §§ 15-78-60(1)-(6), (9), and (20). Plaintiff asserts that § 15-78-60(25), which contains a gross negligence standard, is applicable to this case and, therefore, the gross negligence standard must be read into all other provisions. *See Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999) ("[W]hen an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended."). "[F]or the gross negligence

standard from one immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must first apply to the case." *Repko v. Cty. of Georgetown*, 424 S.C. 494, 507, 818 S.E.2d 743, 750 (2018). Subsection (25) applies to this case because it involves "a loss resulting from: . . . (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25). Therefore, the gross negligence standard must be read into the immunity provisions cited by RCSD. As discussed below, Plaintiff presents sufficient evidence of gross negligence to survive summary judgment. RCSD's motion on the basis of sovereign immunity is denied.

III. EVIDENCE OF GROSS NEGLIGENCE

RCSD argues Plaintiff "is unable to prove" it acted with gross negligence in this case. The Court disagrees and finds sufficient evidence to survive summary judgment on the issue of gross negligence.

"Gross negligence is defined as the failure to exercise slight care." *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007) (internal quotation marks omitted). "It has also been defined 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." *Id.* at 71, 651 S.E.2d at 309 (internal quotation marks and citation omitted). "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002).

Plaintiff's allegations of gross negligence are supported by sufficient evidence of the expert testimony of Dr. Kirkham's affidavit and deposition. Dr. Kirkham opined that RCSD executed the search warrant on Plaintiff's home in a "grossly negligent manner" (Depo. Kirkham, Vol.2, p. 217:11-17.) Dr. Kirkham defined grossly negligent as heedless, reckless, irrespective of potential harm to innocent individuals you were supposed to be out there to protect as a law enforcement officer." (Depo. Kirkham, Vol. 2, p. 217: 21-23). Dr. Kirkham testified that RCSD, by and through its employees, "behaved irresponsibly with respect to the things we talked about at length during the deposition today in terms of the planning and execution and the failure to give reasonable warning to the occupants in the house, specifically Ms. Taylor and her daughter, and that their behavior and misconduct, which was excessive and grossly negative [sic], was a significant and proximate cause of the Plaintiff's injury." (Depo. Kirkham, Vol. 2, p. 221:12-19).

Viewing the evidence presented and all inferences in a light most favorable to Plaintiff, there is evidence RCSD's conduct in executing the search warrant was grossly negligent. Therefore, the Court denies RCSD's motion on this basis.

IV. CLAIM FOR NEGLIGENT INVESTIGATION OR EXECUTION OF A SEARCH WARRANT

RCSD argues that Plaintiff fails to state a claim because South Carolina does not recognize a cause of action for negligent investigation or execution of a search warrant. This appears to be a restatement of the sovereign immunity argument under S.C. Code Ann. § 15-78-60(3), which states a "governmental entity is not liable for a loss resulting from: . . . (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." The Court disagrees with RCSD's argument for the reasons already stated in Section II above regarding the gross negligence standard. *See Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999) ("[W]hen an exception

containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended."). This cause of action may be asserted here where an exception containing the gross negligence standard applies and the gross negligence standard is then read into all other applicable exceptions.

V. INTERVENING CRIMINAL ACTS

RCSD argues that Plaintiff's injuries were caused by the criminal actions of her son that necessitated the search warrant. Plaintiff represented that she is not alleging gross negligence based on RCSD's decision to get a search warrant but on the method and execution of it. "An intervening act by a third person will not relieve the first wrongdoer of liability if such intervention should have been reasonably foreseen in the attendant circumstances." *Mellen v. Lane*, 377 S.C. 261, 282, 659 S.E.2d 236, 247 (Ct. App. 2008). It is foreseeable that someone will engage in criminal activity that necessitates a search warrant. This case involves law enforcement's conduct in responding to that criminal activity. The criminal acts of a third party are not applicable under these circumstances as an intervening act. The Court denies RCSD's motion on this basis.

VI. PROPER PARTY

RCSD argues it is not a legal entity and, therefore, not a proper party to this action. Plaintiff represented at the hearing that she is prepared to substitute the proper party by consent order. Therefore, it is not a basis for summary judgment and the Court denies the motion on this basis.

CONCLUSION

For the reasons stated herein, the Court denies RCSD's motion in its entirety.

Honorable Casey L. Manning

January 23, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Bridgett Taylor, Plaintiff, v. Richland County Sheriff's Department, Defendants.	CASE NO: 2017 CP 4003166 **ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER**

THIS MATTER came before the Court on December 18, 2018 on the Motion for Summary Judgment filed by Defendant, Richland County Sheriff's Department. Following the hearing and review of arguments and pleadings submitted by the parties, this Court denied Summary Judgment by an Order dated January 29, 2019. Defendants filed a Motion to Reconsider on February 08, 2019, which was timely under Rule 59(e). After a review of the pleadings, the motion and arguments therein, and all the testimony including this Court's previous ruling, this Court denies Defendant's Motion to Reconsider without oral arguments presented.

Therefore, after reviewing Defendant's Motion and the arguments within being duly noted, Defendant's Motion to Reconsider this Court's ruling on Defendant's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED this 26 day of February, 2019

The Honorable L. Casey Manning
Presiding Judge