THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2020-000589
Case No. 2017-CP-40-3166

Bridgett Taylor, ... Respondent,

v.

Richland County Sheriff's Department, ... Appellant.

INITIAL BRIEF OF APPELLANT

Andrew F. Lindemann
LINDEMANN, DAVIS & HUGHES, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Robert D. Garfield, Esquire
CROWE LAFAVE, LLC
500 Taylor Street, Suite 202
Post Office Box 1149
Columbia, South Carolina 29202
(803) 999-1225

Counsel for Appellant

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in reversing the directed verdict and granting a new trial where the court ruled that a prior order denying a motion for summary judgment precludes the same grounds raised therein from being re-asserted and adjudicated on a directed verdict motion at trial?

II. Did the trial court err in reversing the directed verdict and granting a new trial where the court ruled that the denial of a summary judgment motion by one circuit court judge precludes another judge from trying the case and ruling differently on a directed verdict motion at trial?

III. Did the trial court err in reversing the directed verdict and granting a new trial by concluding that the Appellant is not entitled to sovereign immunity under the Tort Claims Act or a judgment based on the application of collateral estoppel?

STATEMENT OF THE CASE

This is an appeal from a South Carolina Tort Claims Act action brought by the Respondent Bridgett Taylor against the Appellant Richland County Sheriff's Department ("RCSD"). The case arises from the execution of a search warrant at Taylor's residence in Columbia, South Carolina on December 19, 2013.

This action was filed on November 3, 2014. In her Complaint, Bridgett Taylor pleads only a claim for gross negligence. No other cause of action has been asserted. She alleges that the RCSD Special Response Team ("SRT") members were grossly negligent during the execution of the search warrant at her residence which resulted in her sustaining bodily injury.

On December 6, 2016, Bridgett Taylor filed a separate action in the United States District Court pursuant to 42 U.S.C. § 1983. That action was brought against Richland County Sheriff Leon Lott, Deputy Ricky Ezzell, who was the SRT commander, and David Linfert, who was the breaching operator. Taylor alleged that her Fourth, Eighth, and Fourteenth Amendment rights were violated. In her federal lawsuit, Taylor alleged that the entry on her property and residence by the RCSD deputies was constitutionally unreasonable and excessive force was used.

On July 20, 2018, U.S. Magistrate Judge Paige J. Gossett issued her Report and Recommendation finding that the Defendants' motion for summary judgment

should be granted on all claims. Thereafter, on August 14, 2018, U.S. District Judge Joseph F. Anderson, Jr. issued an order fully adopting the Report and Recommendation and, in so doing, dismissed with prejudice the entire case in District Court. Bridgett Taylor voluntarily chose not to file any objections to the Report and Recommendation. No appeal was filed.

In the state court case, the Respondent RCSD filed a motion for summary judgment on September 17, 2018. A hearing on that motion took place on December 18, 2018, with Circuit Court Judge L. Casey Manning presiding. On January 29, 2019, Judge Manning issued an order denying RCSD's motion for summary judgment. On February 8, 2019, RCSD filed a motion to reconsider pursuant to Rule 59(e), SCRCP, but that motion was summarily denied by an order filed February 27, 2019.

The case was called to trial during the week of March 11, 2019, with Circuit Judge Jocelyn Newman presiding. On the first day of trial, Judge Newman heard extensive arguments on the RCSD's motion in limine based in part on the preclusive effect of the Federal Court decision. The Respondent Bridgett Taylor then proceeded through her case-in-chief, at which time the Appellant RCSD made a motion for directed verdict based on numerous grounds and relying on the preclusive effect of the Federal Court decision per the doctrine of collateral estoppel. RCSD also raised defenses of sovereign immunity based on several

subsections of Section 15-78-60 of the Tort Claims Act. On March 14, 2019, Judge Newman issued an oral order granting a directed verdict in favor of RCSD. A Form Order was issued on March 15, 2019.

On March 22, 2019, Bridgett Taylor filed post-trial motions. Taylor requested the trial court to reconsider and reverse the directed verdict, thereby granting her a new trial. The primary issue raised in the post-trial motions was Taylor's contention that the trial judge had erroneously "overruled" Judge Manning's order denying RCSD's motion for summary judgment.

On February 3, 2020, Judge Newman issued a form order granting Taylor's post-trial motions. She reversed or set aside the directed verdict and ordered a new trial. RCSD filed a motion for reconsideration under Rule 59(e), SCRCP. On March 10, 2020, Judge Newman issued a formal order in which she agreed with Taylor's argument that she could not "overrule" the prior order issued by Judge Manning denying RCSD's motion for summary judgment. Judge Newman ruled as follows:

> 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.

(03-10-20 Order, p. 3). Judge Newman further explained that "[i]t is implicit in its Order that the Court finds, based on the evidence present at the previous trial, that Defendant is not entitled to sovereign immunity and cannot claim the 'protections' of collateral estoppel or *res judicata*." (03-10-20 Order, p. 4).

The Appellant RCSD subsequently filed a timely appeal to this Court.

STATEMENT OF FACTS

The following recitation of the facts are summarized from the unappealed and final Order of U.S. District Judge Joseph F. Anderson, Jr., filed August 18, 2018, in the case of *Taylor v. Lott*, Civil Action Number 3:16-3823-JFA-PJG. That Order adopts in full the Report and Recommendation issued by U.S. Magistrate Judge Paige J. Gossett. *See, Taylor v. Lott*, 2018 WL 3873541 (D.S.C. 2018). The following represents the express findings of fact and conclusions of law contained within the Federal Court orders.

A. Generally

On December 19, 2013, RCSD deputies executed a search warrant at the Respondent Bridgett Taylor's residence -- a known source of drug activity in Columbia, South Carolina -- in the early morning. In executing that search warrant, the deputies detonated an explosive device to open the front door. The deputies thought the Respondent's son, Terrance Taylor, was in the house. Terrance was suspected in a homicide investigation as well as of the drug activity at the location. Bridgett Taylor and her daughter turned out to be the only ones in the home at the time. Bridgett Taylor was injured by shrapnel from the door.

B. History of Criminal Activity at Plaintiff's Residence

By way of background, the RCSD deputies had comprehensive information about the drug activity at Taylor's residence. They also had information regarding

the dangerousness of Terrence Taylor and others who either lived at or frequented the residence. Law enforcement had been called to the residence fifty times in the ten months preceding execution of the search warrant based on reports of illegal drug activity, and prior search warrants executed at the residence had yielded drugs.

Narcotics agents had advised that all of the family were involved in the drug activity at the residence. Terrence Taylor was known to currently reside there, and he was a suspect in a murder that had occurred approximately the week before. The other murder suspect, Christopher Jones, was also known to frequent the residence. Both Terrence Taylor and Jones were known affiliates of the Bloods street gang. A Chevy Impala -- registered to Bridgett Taylor -- that was associated with the murder and drug activity had been observed by law enforcement at the subject residence when they conducted surveillance there. Significantly, Terrence Taylor was known to officers to drive the Chevy Impala.

C. RCSD Formal Threat Assessment

The City of Columbia Police Department, which shared jurisdiction over the subject residence with the RCSD, furnished intelligence to Deputy Ricky Ezzell detailing numerous issues of officer safety associated with the residence. Notably, the Columbia Police Department SWAT team commander suggested to Ezzell that Bridgett Taylor herself presented an officer safety threat and risk of obstruction of

the investigation and that occupants of the residence had been combative with police officers when they were executing search warrants or conducting interviews. Previous search warrants executed at the residence had yielded weapons, and the occupants kept a vicious pit bull there.

Based on the information provided to officers and gathered in the homicide and narcotics investigations, Deputy Ezzell conducted a threat assessment on a point-based scale. This resulted in the highest total points ever compiled by the RCSD Special Response Team.

Significantly, the deputies decided to conduct a forced entry only if the Impala were in the driveway at the residence at the time they executed the warrant because the presence of the Impala would indicate to them that Terrence Taylor was inside the house.

D. Plaintiff's Specific Risk to Law Enforcement

The RCSD deputies had reason to suspect that Bridgett Taylor posed a risk to the effectiveness of the investigation. In the Report and Recommendation, the Federal Court noted: "as the plaintiff had herself been arrested for possession of drugs at her residence approximately three months prior, the officers executing the warrant could have reasonably suspected her to be connected to her son's drug activity." 2018 WL 3873541, *4, n.5. Moreover, the deputies knew weapons had also been recovered from the house in the past. As indicated, Terrence Taylor was

suspected of a fatal shooting in addition to his drug activity. Terrence and Christopher Jones had recently posed with firearms -- apparently on the subject property -- in photographs posted on social media. Additionally, Columbia Police Department officers had met with interference from occupants of the house in the past.

E. Objective Reasonableness of Police Conduct

The severity of the crime at issue was serious. Law enforcement had regularly been called to the residence based on illegal drug activity. Terrence Taylor, and arguably everyone else in the residence, based on information that all of the household were involved in drug activity -- were assessed to pose a threat to law enforcement officers. All of the occupants had been identified as combative. Weapons had previously been recovered in the home. Moreover, Terrence, who the police reasonably but erroneously suspected to be inside, was a murder suspect and known to carry weapons.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*. The issues presented by this appeal are questions of law.

ARGUMENTS

The trial court issued a form order granting the Respondent Bridgett Taylor's motion for reconsideration of the oral trial order granting a directed verdict to the Appellant Sheriff. The Sheriff then filed a motion to alter or amend that form order, and the trial court entered a formal order on March 10, 2020. In that formal order, the trial court ruled:

> 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.

(03-10-20 Order, p. 3). In addressing its reversal of the directed verdict, the trial court further explained that "[i]t is implicit in its Order that the Court finds, based on the evidence present at the previous trial, that Defendant is not entitled to sovereign immunity and cannot claim the 'protections' of collateral estoppel or *res judicata*." (03-10-20 Order, p. 4).

With these rulings, the trial court erred in several key respects. First, the order by Judge Manning denying the Sheriff's motion for summary judgment does not preclude the same defenses being re-asserted and adjudicated on a directed verdict motion at trial. Second, the denial of a summary judgment motion by one

circuit court judge does not preclude another judge from trying the case and ruling differently on a directed motion at trial. Third, the trial court erred in reversing the directed verdict and in concluding that the Sheriff is not entitled to judgment based on the application of collateral estoppel or sovereign immunity under the Tort Claims Act.

I. The trial court erred in reversing directed verdict and granting a new trial based on a prior order of another circuit court judge that denied the Appellant's motion for summary judgment.

South Carolina law is well settled that "[a] denial of a motion for summary judgment decides nothing about the merits of the case." *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). "The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings." *Id*. Therefore, because the denial of summary judgment by Judge Manning did not establish the law of the case and did not decide the merits of the issues presented, each of the Sheriff's defenses rejected by Judge Manning at summary judgment were subject to re-litigation *de novo* at trial. The Supreme Court further explained in *Ballenger* that "the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings." *Ballenger*, 443 S.E.2d at 380. *See also, Falk v. Sadler*,

341 S.C. 281, 533 S.E.2d 350, 355 (Ct. App. 2000) ("[t]his result does not preclude a later determination that summary judgment or a directed verdict may be appropriate, as it does not establish the law of the case or have the effect of striking any applicable defense"). The trial judge thus erred in concluding that she was prohibited from considering *de novo* the Sheriff's defenses that were initially rejected at the summary judgment stage.

In this same respect, the trial judge also erred in adopting the Respondent's argument that a circuit court judge cannot overrule a prior decision of a different circuit court judge. While is it true that "one circuit court judge may not overrule another," *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81, 88 (2008), that rule has no application where the earlier ruling is a *denial* of a summary judgment motion which by law does not and cannot decide the merits or establish the law of the case. As the Supreme Court has held, "that a different trial judge previously denied the motion [for summary judgment] did not preclude [defendant] from renewing its motion once new evidence came to light." *Dorrell v. South Carolina Department of Transportation*, 361 S.C. 312, 605 S.E.2d 12, 18 (2004). Since that is true for a renewed motion for summary judgment prior to trial, it is certainly the case, as here, where a directed verdict motion is made at trial. In short, the trial judge was mistaken in concluding that she was bound by the decision made by Judge Manning in denying the earlier summary judgment motion.

Although the trial judge did not mention Rule 43(l), SCRCP, it bears further discussion. Rule 43(l), SCRCP, provides: "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action." Rule 43(l), SCRCP. However, the Supreme Court has explained that "[t]he fact that a different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion once new evidence is gathered." *Smith v. Breedlove*, 377 S.C. 415, 661 S.E.2d 67, 70 (2008). The Supreme Court explained that Rule 43(l) does not prohibit a renewed summary judgment motion where there is a "different set of facts" based on additional discovery that was completed. *Id*. The same is certainly true in the case of a direct verdict motion which is based solely on the evidence admitted in the plaintiff's case-in-chief.[1]

In *Ballenger*, the Supreme Court made it clear that "the denial of summary judgment is not reviewable even in an appeal from final judgment." *Ballenger*, 443 S.E.2d at 380. However, if the rule on which the trial judge relied that precludes one judge from overruling another judge applies to a summary judgment

[1] Certainly, Bridgett Taylor cannot argue that there is not a "different set of facts" presented at trial. In addition to the record consisting of the evidence actually admitted in Taylor's case-in-chief as opposed to the summary judgment record, Taylor changed expert witnesses. Judge Manning's order cites to the opinion testimony of George Kirkham who was withdrawn as an expert just prior to trial and replaced by Roy Taylor who testified at trial.

decision, then the party aggrieved by the summary judgment denial would have the right to appeal this decision -- which would be contrary to *Ballenger*. If the denial of summary judgment does have the effect of deciding the merits and establishing the law of the case -- which was the trial judge's mistaken conclusion in the case at bar -- then a party that lost that motion would have to granted a right to appeal that order.

The net result should be clear. The rule that one judge cannot overrule another judge does not apply to an order denying a summary judgment motion because that order does not decide the merits and does not have the effect of striking a defense. Likewise, Rule 43(l) does not bar a trial judge from hearing all defenses de novo at the directed verdict stage at trial. Thus, the trial judge erred in ruling that the directed verdict in favor of the Sheriff was an "improper overruling" of Judge Manning's order denying summary judgment on the same defenses. The trial judge likewise erred in striking the Sheriff's defenses based on sovereign immunity under the Tort Claims Act and the application of collateral estoppel and res judicata based on a summary judgment order that did not decide the merits.

II. The trial court erred in reversing the directed verdict and in concluding that the Appellant is not entitled to judgment based on the application of collateral estoppel or sovereign immunity under the Tort Claims Act.

Given the trial court's errors as discussed above in Section I, the trial judge reversed her earlier directed verdict on an erroneous basis and the Sheriff's grounds raised at directed verdict were not given a proper adjudication. The Sheriff submits that the directed verdict should be reinstated.

A. Collateral Estoppel

Under South Carolina law, "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. South Carolina Department of Transportation*, 385 S.C. 550, 684 S.E.2d 779, 782 (Ct. App. 2009). Collateral estoppel "prevents a party from relitigation in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." *Shelton v. Oscar Meyer Foods Corp.*, 325 S.C. 248, 481 S.E.2d 706, 707 (1997).

Bridgette Taylor had a full and fair opportunity to litigate the principal facts and legal issues arising from the events of December 19, 2013 in her federal court action captioned *Taylor v. Lott*, Civil Action Number 3:16-3823-JFA-PJG. In that action, Taylor brought claims pursuant to 42 U.S.C. § 1983 alleging violations of

her Fourth, Eighth, and Fourteenth Amendment rights. By order filed August 14, 2018, U.S. District Judge Joseph F. Anderson, Jr. granted summary judgment to Sheriff Leon Lott and two deputies involved with the forced entry at Taylor's residence. Judge Anderson adopted the Report and Recommendation issued by Magistrate Judge Paige J. Gossett filed July 20, 2018, to which Taylor did not even file objections thereby voluntarily waiving her right to appellate review.[2]

The Federal Court's order adopts the Report and Recommendation which addresses exhaustively the factual background regarding both the preparation and planning the preceded the execution of the search warrant and the actual entry into the residence including the use of a detonator on the front door to gain entry. The Federal Court explained the applicable legal analysis under the Fourth Amendment as follows:

> The plaintiff also contends that the defendants' use of a detonator on the front door constituted an excessive use of force in violation of the Fourth Amendment. A claim that a law enforcement officer has used excessive force during an arrest, investigatory stop, or other seizure of a person is properly analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. *Graham v. Connor*, 490 U.S. 386, 394-95 (1989). The Fourth Amendment test is an objective one; however, it is not capable of precise definition or mechanical application. *Id*. at 396-97. *It requires the*

[2] *See, Thomas v. Arn*, 474 U.S. 140 (1985) (failure to timely file specific objections to a report and recommendation will result in the waiver of a right to appellate review). Judge Anderson's order indicates that "the Court call Plaintiff's lawyer on August 8, 2018, to make sure Plaintiff did not intend to file objections" and "Plaintiff's counsel stated that she did not intend to file objections." (08-14-18 Order, p. 2).

> *court to determine "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id*. at 397. The court must balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id*. at 396.

Taylor v. Lott, 2018 WL 3912377, *5 (D.S.C. 2018). (Emphasis added). In then applying the "objective reasonableness" standard to the use of the detonator, the Federal Court explained:

> With specific regard to the plaintiff's argument that use of the detonator itself constituted excessive force, the facts and circumstances of this case belie this contention. The court first considers the factors suggested in *Graham* to the extent they apply. First, the severity of the crime at issue was serious -- law enforcement had regularly been called to the residence based on illegal drug activity. Second, the suspect -- Terrence Taylor, and arguably everyone else in the residence based on information that all of the household were involved in drug activity -- were assessed to pose a threat to law enforcement officers. According to Ezzell, all of the occupants had been identified by his counterpart at the Columbia police department as combative. Weapons had previously been recovered in the home. Moreover, Terrence Taylor, whom the police reasonably but erroneously suspected to be inside, was a murder suspect and known to carry weapons. The third factor -- whether the suspect was actively resisting arrest or attempting to flee -- has no application to the facts presented, as the detonator was deployed while the door was still locked prior to law enforcement's entry. Moreover, Defendants Ezzell and Linfert consulted beforehand and decided to use a smaller (six-inch) charge rather than the usual

> fifteen-inch more explosive charge, indicating use of a lower level of force for the circumstances presented.

2018 WL 3912377, *6. The Federal Court also expressly rejected "plaintiff's assertion that she had opened the door and was looking directly at the officer's face when he detonated the device." 2018 WL 3912377, *6, n.9. The Federal then concluded that "[b]ased on all of this, and considering the totality of the circumstances, no reasonable jury could find that using the detonator to unlock the door was unconstitutionally excessive," meaning that the Court found the use of the detonator to be objectively reasonable. 2018 WL 3912377, *6.

As part of that same analysis, the Federal Court explained that "[m]any of plaintiff's arguments with respect to her excessive force claim hinge on her contention that no exigent circumstances existed at the time officers executed the warrant." *Id*. The Court then concluded that the "officers reasonably suspected exigent circumstances existed" for use of the no-knock entry. *Id*. Importantly, the Fourth Amendment prohibits *unreasonable* searches and seizures. Here, the Court found the search, including the use of the no-knock entry and the preparations done prior to the execution of the search warrant were, in fact, objectively reasonable. The Court ruled that the officers had "reasonable suspicion that occupants in the residence would present a danger to law enforcement or inhibit the investigation." 2018 WL 3912377, *2. The Court found that nature and the length of the surveillance including the threat assessment were reasonable. 2018 WL 3912377,

*3. Moreover, the Court found that the "officers had reason to suspect that [Terrence] Taylor was present, since they had information that Terrence Taylor drove the Impala and that the presence of the Impala would indicate he was at the subject property." 2018 WL 3912377, *5. Also, the Court determined that the "officers had reason to suspect that the plaintiff herself posed a risk to the effectiveness of the investigation." 2018 WL 3912377, *3. Based thereon, the Court concluded the "officers had particular reason to suspect Terrence Taylor (and possibly co-conspirators) were in the home and that his mother might interfere with law enforcement efforts to conduct the search." 2018 WL 3912377, *5.[3]

The standard by which the Sheriff and his deputies were adjudged in Federal Court was one of "objective reasonableness." Thus, if the Sheriff's conduct was objectively reasonable, which has been established by collateral estoppel, then it cannot be shown that the Sheriff and his deputies failed to exercise slight care.[4]

[3] The Federal Court also rejected Taylor's assertion that she was in custody. The Court found that "no facts in the record permit a reasonable inference that the plaintiff was in custody, either as a detainee or a convicted prisoner, at the time of her injuries." 2018 WL 3912377, *7. For this reason, based on the application of collateral estoppel, that finding is entitled to preclusive effect, and accordingly, it is not proper to find Section 15-78-60(25) applicable to this case. Because Section 15-78-60(25) has no applicability, which is how the trial judge originally ruled (Tr. 544), a gross negligence exception should not be interpolated to each immunity provision in Section 15-78-60, including subsection (6) as discussed below.

[4] Significantly, Taylor has pled a cause of action for gross negligence only. She did not plead a simple negligence claim or a batter claim, a latter of which is the appropriate cause of action alleging excessive force. (Complaint). Under South Carolina law, "[g]ross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the

Liability of a governmental entity under the South Carolina Tort Claims Act is premised on traditional tort concepts including the "reasonable person standard." *See*, S.C. Code Ann. § 15-78-20(a) ("liability for acts or omissions under this chapter is based on the traditional tort concepts of duty and *the reasonably prudent person's standard of care* in the performance of that duty"). (Emphasis added). The "reasonable person" standard and the "objective reasonableness" standard are the same. *See, State v. Mattison*, 352 S.C. 577, 575 S.E.2d 852, 856 (Ct. App. 2003) (equating "objective reasonableness" to what a "reasonable person" would know, understand, or do). Thus, the concepts of "due care" for simple negligence and "slight care" for gross negligence are determined by an "objective reasonableness" standard -- the very standard that governed the Federal Court's analysis.

Other courts have ruled that collateral estoppel bars the relitigation of the reasonableness of officer conduct where the federal court has already determined that the conduct was "objectively reasonable" under the Fourth Amendment

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doing of a thing intentionally that one ought not to do." *Clyburn v. Sumter County School District No. 17*, 317 S.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*, 331 S.C. 192, 500 S.E.2d 160, 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.

standard. *See*, *Sigman v. Town of Chapel Hill*, 161 F.3d 782, 789 (4th Cir. 1998) (concluding that where police officers were entitled to qualified immunity with respect to alleged Fourth Amendment violations because their use of force was objectively reasonable, the officers' conduct could not be found to be negligent or otherwise wrongful for purposes of a state wrongful death action); *City of Anderson v. Davis*, 743 N.E.2d 359, 366 (Ind. App. Ct. 2001) (concluding that a federal court's grant of summary judgment against a plaintiff in his civil rights claim alleging use of excessive force had collateral estoppel effect in the plaintiff's state court claim for negligence, precluding the plaintiff from arguing that the city was not entitled to immunity under the Indiana Tort Claims Act because it had used excessive force); *Estate of Fennell v. Stephenson*, 137 N.C. App. 430, 528 S.E.2d 911, 916-17 (2000), *rev'd on other grounds*, 354 N.C. 327, 554 S.E.2d 629 (2001) (concluding that estate's state law wrongful death claim was barred by the collateral estoppel effect of the federal court's summary judgment ruling that the police officer, who shot and killed plaintiff's decedent, was entitled to qualified immunity on claim of Fourth Amendment violation because the issue was the same: whether the officer's use of deadly force was objectively reasonable under the circumstances). Federal courts have similarly applied collateral estoppel when the objective reasonableness of the police conduct was first adjudicated in state court. *See e.g.*, *Franklin v. City of Pontiac*, 887 F.Supp. 978, 983 (E.D. Mich.

1995) (concluding that a state court's grant of summary judgment to police officers on an arrestee's state law claim alleging use of excessive force had collateral estoppel effect in the arrestee's subsequent federal court action alleging a violation of the Fourth Amendment as the issues in each case were identical).

As the Supreme Court has explained, the elements for collateral estoppel are (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67, 72 (2011). Each of those elements has been demonstrated in the case at bar. Bridgett Taylor is the plaintiff in both cases. Moreover, the identity of the subject matter is the same – both cases present claims against Sheriff Lott arising out the forced entry into Taylor's residence on December 19, 2013. Finally, as discussed at length above, the issues litigated are the same. In short, the factual findings and conclusions of law made in the federal lawsuit, which has reached final judgment, preclude Bridgett Taylor's ability to successfully show that the Sheriff acted with gross negligence. Thus, the Sheriff is entitled to have the directed verdict reinstated.

B. Section 15-78-60(6)

The Sheriff also moved for a directed verdict 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.

In the 2006 case of *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006), 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.

That immunity provision of the Tort Claims Act is similarly applicable to this case. Taylor offered the expert testimony of Roy Taylor (no relation), who was qualified in the "areas of law enforcement, police administration and supervision and police standards." (Tr. 397). He specifically was critical that the Sheriff authorized and utilized the detonator to make the forced entry to the residence. He described the use of the detonator as "too dangerous in this situation

given these circumstances." (Tr. 421). He later confirmed on cross-examination that he disagreed with the method of entry that the Sheriff used, and that it was that method used to provide police protection that caused Bridgett Taylor's injuries. (Tr. 487-488).

Section 15-78-60(6) includes within its scope operational conduct where law enforcement chooses or employs particular methods or tactics. In fact, the term "tactics" is an appropriate synonym for "methods" within the context of law enforcement functioning. Therefore, where law enforcement chooses to employ certain police methods or tactics in the course of an operation, that use of a particular method or tactic is entitled to absolute immunity. In short, the use of the detonator, which the Federal Court has also held to have been objectively reasonable, is subject to absolute sovereign immunity under Section 15-78-60(6). Consequently, for this additional reason, the Sheriff is entitled to have the directed verdict reinstated.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Richland County Sheriff's Department respectfully requests that this Court reverse the Orders issued by Circuit Court Judge Jocelyn Newman which reversed or set aside the directed verdict in favor of the Sheriff and granted a new trial. The Respondent respectfully requests that the Court reinstate the directed verdict in its favor as issued at trial or, alternatively, remand with direction that a directed verdict be entered.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Robert D. Garfield #6557
Crowe LaFave, LLC
500 Taylor Street, Suite 202
Post Office Box 1149
Columbia, South Carolina 29202
(803) 724-5729

Counsel for Appellant Richland County Sheriff's Department

June 15, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2020-000589
Case No. 2017-CP-40-3166

Bridgett Taylor,..... Respondent,

v.

Richland County Sheriff's Department, ... Appellant.

CERTIFICATE OF SERVICE

Pursuant to Section (g)(3) of the Supreme Court's Order Re: Operation of the Trial Courts During the Coronavirus Emergency (As Amended May 29, 2020), the undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Appellant, does hereby certify that service of the **Initial Brief of Appellant** and **Appellant's Designation of Matter to be Included in the Record on Appeal** was made upon all counsel of record by email only this the 15th day of June 2020:

Andrew W. Kunz, Esquire
Lauren K. Slocum, Esquire
Elliott, Phelan & Kunz, LLC
Email: andrew@elliottphelanlaw.com
Email: lauren@elliottphelanlaw.com

Robert D. Garfield, Esquire
Crowe LaFave, LLC
Email: robert@crowelafave.com

s/ Andrew F. Lindeman

LINDEMANN DAVIS & HUGHES

Telephone (803) 881-8920
Facsimile (803) 862-1181

5 Calendar Court, Suite 202 (29206)
Post Office Box 6923
Columbia, South Carolina 29260

ANDREW F. LINDEMANN*
Direct Dial: (803) 881-8921
Email: andrew@ldh-law.com

JAMES M. DAVIS, JR.†
Direct Dial: (803) 881-8922
Email: jim@ldh-law.com

JOEL S. HUGHES†
Direct Dial: (803) 881-8923
Email: joel@ldh-law.com

**Also Admitted in North Carolina*
†Certified Mediator

Of Counsel
STEVEN R. SPREEUWERS
Direct Dial: (803) 373-2268
Email: steve@ldh-law.com

June 15, 2020

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Bridgett Taylor v. Richland County Sheriff's Department
Appellate Case Number: 2020-000589
Civil Action Number: 2017-CP-40-3166
Claim Number: Risk Management
Our File Number: 314.20297

Dear Ms. Kitchings:

Please find enclosed for filing the **Initial Brief of Appellant** and **Appellant's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (g)(3) of the Court's Order RE: Operation of the Appellate Courts During the Coronavirus Emergency Appellate Case No. 2020-000447 (As Amended May 29, 2020).

If you have any questions, please advise. Thank you for your assistance in this matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Enclosures)

Via Email Only
Andrew W. Kunz, Esquire
Lauren K. Slocum, Esquire
Elliott, Phelan & Kunz, LLC
Email: andrew@elliottphelanlaw.com
Email: lauren@elliottphelanlaw.com

Via Email Only
Robert D. Garfield, Esquire
Crowe LaFave, LLC
Email: robert@crowelafave.com

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bcc: (w/ Enclosures)

Via Email Only
Larry Smith, Esquire
Richland County Attorney
Email: Smith.Larry@richlandcountysc.gov

Via Email Only
Ms. Brittney Hoyle Terry
Director of Risk Management
Richland County
Email: HOYLEB@rcgov.us

Via Email Only
Ms. Christa Sheehan
Claims Manager
Richland County
Email: sheehanc@rcgov.us

Via Email Only
Ms. Ann Greer
Liability Team Leader
BSI Companies
Email: agreer@bsicompanies.com

Via Email Only
Joanna A. McDuffie, Esquire
Deputy Chief for Legal Affairs
Richland County Sheriff's Department
Email: jmcduffie@rcsd.net