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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Appellate Case No. 2022-000740
Civil Action No. 2016-CP-24-00157

Tony Young

v.

Greenwood County Detention Center and
Greenwood County Sheriff's Office, Respondents

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

The Petitioner was involved in an automobile accident on August 10, 2011, resulting in injuries and he was charged with Felony Driving Under the Influence. Following the accident, he was taken to Greenville Memorial Hospital where he was treated and then discharged on August 16, 2011. He was picked up from the hospital by the South Carolina Highway Patrol and transported to the Greenwood County Detention Center. He was then booked at the Greenwood County Detention Center on August 16, 2011, at approximately 5:00 P.M.

His suit claims that for the first six days he was in jail he was denied medication and that during those six days his neck brace was taken from him. His claim centers around those six days.

There was testimony at trial that for purposes of a booking photograph, Young's neck collar was removed and this was done for purposes of checking for contraband and to note any identifying marks such as tattoos and/or birth marks. This was necessary for security reasons and the collar was returned to him shortly thereafter. Contrary to what has been suggested by the Petitioner, there was no violation of SCDC Minimum Standards. (R., pp. 236 - 240, Gilmore). Furthermore contrary to the claim of the Petitioner there was no violation of Greenwood County Detention Center policy as relates to the dispensing of medications. At trial, the testimony confirmed that there was a policy change in 2010 when Southern Health Partners became a contract medical provider for the detention center and implemented protocols for medical services and the administration of medications. (R. pp. 197-199, Powell). In accordance with that policy and formulary, Young was given 200 mg of Ibuprofen x 3 two times a day as a substitute for Lortab since Lortab is a narcotic and is not dispensed at the detention center. The medical testimony offered at trial confirmed that this was an

appropriate and reasonable substitute for Lortab. (R., pp. 297-298, 277-295, Nurse Bouknight). At trial there was no evidence and testimony that Medical Administration Records confirm that Young received the medication timely and appropriately, and treatment consistent with the discharge instructions from the hospital.

The Petitioner's claim is subject to and governed by the provisions of the South Carolina Tort Claims Act and more specifically the provisions of S.C. Code, Ann., § 15-78-60(25) requiring proof of gross negligence. After a three-day trial, the jury returned a verdict finding that there was no gross negligence. The arguments advanced now were heard and considered by the trial judge, and again the by Court of Appeals that issued a Per Curiam Opinion on April 6, 2022. The Court of Appeals, after that, again carefully considered the Petition for Rehearing and found that there was no principle of law or material fact that had been overlooked and/or disregarded and the Petition for Rehearing was denied on May 3, 2022.

ARGUMENT

Respectfully, this Petition for *Certiorari* is frivolous. Rule 242 SCACR outlines five general areas where *certiorari* might be appropriate. There is no novel issue of law involved in this appeal nor was there any dissent to the Court of Appeal's Opinion. The Opinion of the Court of Appeals does not conflict with any prior decision of the Supreme Court and there is no federal question in this case at this point. The federal claims referenced in the Complaint were dismissed at Summary Judgment by Order of the District Court dated January 5, 2016. The Petitioner now tries to suggest that he was deprived of a fair trial, giving rise to some substantial constitutional issue. The arguments advanced in the Petition for *Certiorari* clearly do not come close to meeting that test, nor do those arguments warrant any further expenditure of judicial resources to bring this case to

final closure.

I. There were no prejudicial comments made by the trial judge.

The Petition references a statement by the trial judge at R. p. 376 L 10-17, which reads as follows:

> We've been down this road before, okay? We've been down this road before. I think you're pumping a dry well here. He was released from the hospital in Greenville. It's what I said over there earlier this morning. He cannot be boomeranged back between doctors. We need to move on from this line of questioning and focus on what your complaint is, and that is the six days without the neck brace, okay? So go. (R. p. 376).

That statement by the trial judge is preceded by Petitioner's attorneys' line of questioning about SCDC's Minimum Standards, where counsel suggest that Minimum Standards would require that Young be examined by a physician at the detention center on August 16, 2011, when in fact he had just been discharged from Greenville Memorial Hospital. (R. p. 373, L 9 - p. 376, L 9, Smith).

The case of *State v. Pierce*, 289 S.C. 430, 346 S.E.2d 707 (1986) involved a statement by a trial judge outside the presence of the jury to a defendant commenting about whether or not the defendant planned to testify. That was held to be inappropriate. State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) involved a judge's comment in the jury's presence about an attorney's age, gender and experience. Those cases do not provide any authority whatsoever for the argument made here. Judge Addy's comment, in the context of the testimony, in no way prejudiced the Petitioner at trial. Judge Addy in his instructions to the jury clearly stated,

> Now, as has been said several times, ladies and gentlemen, you are the sole and exclusive judges of the facts in this case. Understand that a trial judge is not permitted to comment on or make any statement about the facts in any case tried by a jury. Since you're the sole judges of the facts, please don't think by anything that I've said during the progress of this trial in ruling upon the admissibility of evidence

> or otherwise that I have any opinion about the facts in this case. Ladies and gentlemen, the law does not permit me to have an opinion about the facts. This is solely for you to determine. (R. pp. 688 L. 22 - 689, L 7).

It is certainly reasonable to think that those eleven fair-minded jurors in Greenwood County who sat on this jury would pay attention to this portion of the charge, and follow those instructions. (A trial juror had to be hospitalized and all counsel agreed to proceed with eleven jurors. (R. p. 628, L 5-9).

II. The jury instructions were clear, appropriate, and not misleading.

Respectfully, the Petitioner's argument that the comparative negligence charge was confusing, inappropriate and/or deprived Petitioner of a fair trial is itself misleading. In this case the verdict form clearly shows that the jury never found any comparative fault on behalf of Young. The jury simply concluded by their verdict that there was no gross negligence on behalf of the detention center and/or their sheriff's office, so their deliberations ended at that point without consideration as to any issue of comparable fault. There is no dispute but that the law requires a showing of gross negligence to establish liability in this case. [See S.C. Code, Ann. § 15-78-60(25)].

The Petition makes reference to a conversation between Petitioner's counsel and a juror after the trial suggesting that a particular unnamed juror may have felt that an intentional act was required to establish gross negligence. In doing so Petitioner attempts to suggest that somehow this juror was misled and/or confused by the charge. This is indeed a very unusual position to advance at this point, especially in light of the fact that there is no affirmation or further details from this unidentified juror as to what he or she may have thought as to the law or the facts.

In any case the court gave a very appropriate clear instruction to the jury on gross negligence in that regard. The judge charged as follows:

> I instruct you that the plaintiff has the burden of proof in this case, and to recover, the plaintiff must prove that the defendant was grossly negligent. While negligence is merely the failure of a person to exercise due care, gross negligence is the failure to exercise even slight care. That is, gross negligence involves a conscious failure to exercise due care. A person who is so indifferent to the consequences of his conduct as not to give a slight care as to what he is doing acts with gross negligence. (R. p. 691).

During deliberations no questions were posed by the jury and obviously no juror was confused about any part of the charge. There is no merit whatsoever to the suggestion that the Court's charge caused confusion resulting in prejudice to the Petitioner.

III. There was no fair trial deprivation to the Petitioner by the disclosure of his DUI conviction.

In Paragraph 5 of the Complaint, the Petitioner alleged that the Plaintiff was placed in the Greenwood County Detention Center on August 16, 2011 for Felony Driving Under the Influence following an automobile accident on August 10, 2011. The trial judge conducted appropriate *Voir Dire* and the panel was asked if any juror, or any member of their family had been arrested for Felony DUI and/or if any juror or family member had been a victim of a drunk driver. Several jurors responded and answered appropriate questions out of hearing of the panel. Jurors were also questioned on the subject of whether or not they or their family members had been detained at the Greenwood County Detention Center. Those *Voir Dire* subjects were appropriate, and allowed for both sides to have needed information in order to exercise their strikes and/or assert challenges for purposes of jury selection.

Young was in fact guilty of Felony DUI, he was convicted, and he served four years in the South Carolina Department of Corrections for that offense. His conviction is clearly admissible under Rule 609 and Rule 403, SCRE, for impeachment purposes. The plaintiff did not make any

contemporaneous objection when Young was cross-examined about his felony DUI conviction, nor did his counsel request a limiting instruction.

Furthermore, we submit that Petitioner's counsel is in error in suggesting that the trial judge informed the entire jury panel that Mr. Young had been charged and/or convicted with Felony DUI during *Voir Dire.* The record reflects that any juror who indicated that they, or a family member had been charged with Felony DUI and/or had been a victim of a drunk driver was questioned privately by the Court with counsel, out of hearing of the entire panel.

The record also contains the dialogue of counsel with respect to the Petitioner's Motion in *Limine.* In that Motion in *Limine* Young's counsel expressed concern that defense counsel would question Young about older convictions and/or details concerning the injury to the victim involved in the Felony DUI incident. Defense counsel indicated there was no intention to question Petitioner as to any other convictions but argued in fact that the Felony DUI conviction in April of 2012 would be admissible under Rule 609 for impeachment purposes. (R., pp. 89-90). Following that argument counsel for the Petitioner noted, in-part

> . . . So, you know, we'll stipulate, yeah, he pled guilty to DUI. We don't have a problem with that. But to tell somebody, oh, you hurt somebody, you need to punish this man by not giving him any money, that's just not proper, I don't think. (R., p. 91).

To which the court responded, "I don't think that Mr. Harter intends to make that argument to the jury. . ." (R., pp. 91 - 92).

The fact that the trial jury ultimately learned that Young was convicted of Felony Driving Under the Influence was in no way inappropriate or prejudicial to the outcome of a fair trial.

CONCLUSION

Respectfully, Mr. Young has had more than "his day in court." He has had the benefit of a trial of eleven fair-minded citizens of Greenwood County who gave up their time to serve, the benefit of fair rulings as to law and evidence by a conscientious and impartial judge, and the benefit of a thorough review and re-review of the law and the facts by the South Carolina Court of Appeals, all of which have insured that he had a fair trial. Accordingly, this Petition should be DENIED.

Respectfully submitted,

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