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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank Addy, Circuit Court Judge

Appellate Case No. 2019-000637
Op. No. 2022-UP-170 (S.C. Ct. App. Filed April 6, 2022)

Tony Young.....Petitioner,

v.

Greenwood County Detention Center and the Greenwood County Sheriff’s Office, Defendants,
of Which the Greenwood County Sheriff’s Office is.....Respondent.

**PETITIONER’S REPLY TO RESPONDENT/PETITIONER’S RETURN TO
PETITION FOR WRIT OF CERTIORARI**

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REPLY ARGUMENT

I. Tony Young was denied his constitutional right to a fair trial.

The right to a fair trial is one of the most fundamentally important parts of our legal system. Where a petitioner has shown that this right has been infringed, the Court should grant certiorari and allow the parties to brief this incredibly important issue. The respondent has argued that the verdict should be affirmed – obviously the respondent wants the defense verdict to stand. The respondent has not articulated any good reason why certiorari should be denied, though. The respondent acknowledges on page 2 of its Return that Rule 242 SCACR authorized petitions for certiorari in certain situations. The respondent simply denies those situations are present in this case.

The respondent states “The Opinion of the Court of Appeals does not conflict with any prior decision of the Supreme Court...” That is simply untrue. The trial court not only prevented the petitioner from presenting evidence our Supreme Court has ruled to be admissible, but it also disparaged uncontroverted evidence of policy violations. As set forth in the petitioner’s opening brief, it is well-established in South Carolina that causative violations of the law and internal policies and procedures are relevant evidence of negligence and gross negligence. See *Fairchild v. SCDOT*, 398 S.C. 90 (2012) (violations of laws constitute negligence per se); *Caldwell v. K-Mart Corp.*, 306 S.C. 27 (1991) (evidence of violations of internal polices admissible as to whether standard of care breached); *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (S.C. 2003) (gross negligence verdict for the Plaintiff supported by, among other evidence, that the conduct “was contrary to County's established detention center policies.”); *Madison v. Babcock Ctr., Inc.*, 638 S.E.2d 650 (S.C. 2006). The trial court’s rulings were in direct conflict with these Supreme Court cases. The trial court’s rulings are also at odds with *State v. Pace*, 316 S.C. 71, 447 S.E.2d

186 (1994), cited in the petitioner’s petition for certiorari, which held that a “trial judge must act with absolute impartiality in the performance of judicial duties.”

The respondent’s claim that there are no federal issues related to this petition for certiorari is also inaccurate. The petitioner has appealed and petitioned because he was denied his right to a fair trial guaranteed by the United States Constitution. “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...” U.S. Const. amend. VII. The South Carolina Tort Claims Act statutorily extended the petitioner’s right to a jury trial to his suit against the Greenwood County Sheriff’s Office. The United States Supreme Court has “...considered the applicability of the constitutional right to a jury trial in actions enforcing statutory rights ‘as a matter too obvious to be doubted.’” *Curtis v. Loether*, 415 U.S. 189 (1974) quoting *Parsons v. Bedford*, 3 Pet. 433 (1830). See also *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) and *Hepner v. United States*, 213 U.S. 103 (1909).

The South Carolina Supreme Court should grant certiorari because the petitioner was deprived of his right to a fair jury trial under both federal and state law. “The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate.” S.C. Const. art. I, §14. “Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.” Rule 38, *SCRCP*. The petitioner has shown that there is at least a question of whether his right to a fair jury trial guaranteed by state and federal law has been denied or, said differently, not “...preserved inviolate.” Our Supreme Court should grant certiorari so it may consider these important questions.

II. Tony Young was deprived of his right to object to the jury panel hearing irrelevant and prejudicial information.

The respondent acknowledges the inappropriate comments made by the trial court about uncontroverted policy violations. The trial court's comments that the respondent does not have to obey the *minimum* requirement for injured inmates, as well as its decision to cut off the petitioner's counsel's line of questioning about those uncontroverted policy violations directly contradicts the holding of *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994), that a "trial judge must act with absolute impartiality in the performance of judicial duties." The Supreme Court should grant certiorari and examine whether the trial court's comments not only deprived the petitioner of his right to a fair jury trial, but whether the trial court's comments violated the rule in *Pace*.

The respondent has stated the jury instructions were clear and not misleading, but at least one juror said otherwise. The fact that a juror confirmed that all jurors agreed the Sheriff's Office was negligent but failed to find gross negligence because there was no intentional act confirms that the instructions were faulty. The information gleaned from the juror may also be novel, which would constitute another reason to grant certiorari under Rule 242 SCACR¹.

The respondent's arguments concerning the improperly disclosed DUI conviction fail. Even the presiding judge acknowledged the problems inherent in disclosure of the DUI to the jury panel before any court reporter began making a record, telling the parties that had he read motions *in limine* before disclosing the DUI, he would have proceeded differently. It was impossible to object, and the petitioner's position is clear from his motion *in limine*. The Supreme Court should grant certiorari to examine whether or not this prejudicial disclosure deprived the petitioner of his right to a fair jury trial.

¹ The undersigned is not aware of any cases examining a similar circumstance, but in an abundance of caution, states only that he is unaware of any similar cases in South Carolina.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the Supreme Court grant a Writ of Certiorari.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have filed and served the Petitioner's Reply to Respondent/Petitioner's Return to Petition for Writ of Certiorari on the Respondent's Counsel of Record, the Clerk of the South Carolina Court of Appeals, and the Clerk of the Supreme Court of South Carolina, by electronic service and filing, and with a copy sent via U.S. Certified Mail, Return Receipt Requested, with proper postage affixed, as indicated below, on this date, July 8, 2022.

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Re: *Tony Young v. The Greenwood County Sheriff's Office*
Appellate Case No. 2019-000637

Dear Mr. Shearouse:

Please find enclosed for filing and service, a copy of Petitioner's Reply to Respondent/Petitioner's Return to Petition for Writ of Certiorari, in the case referenced above, along with a Proof of Service. Pursuant to The Supreme Court's Order filed August 25, 2021, no additional copies have been included. Should the Court need copies of those, please do not hesitate to ask.

Opposing counsel and the Clerk for the S.C. Court of Appeals has been copied via electronic service as indicated below.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Monica Brody
Certified Paralegal

Enclosures



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