

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Jun 16 2023

S.C. SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank Addy, Circuit Court Judge

Supreme Court Case No. 2022-000740
Court of Appeals Case No. 2019-000637

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.

BRIEF OF PETITIONER

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STATEMENT OF PETITIONER'S ISSUE

Was Tony Young deprived of his right to a fair trial guaranteed by the constitutions of South Carolina and the United States?

STATEMENT OF THE CASE

On August 10, 2011, Tony Young was involved in an automobile collision. Tony sustained serious injuries in the collision, including several broken bones. He was air lifted to Greenville Memorial Hospital, where he was treated for his injuries, prescribed pain medication, and given a C-spine collar, which doctors instructed him to wear so that his neck would heal properly. Doctors discharged Tony to "home." On August 16, 2011, Tony was charged with Felony Driving Under the Influence in connection with the collision. He was then taken from the hospital to the Greenwood County Detention Center. Upon his arrival at the detention center, Tony was stripped of his C-spine collar and stripped of his prescription pain medication. Further, he was admitted into the jail without first undergoing a physician review and entry clearance, as required by policy. Tony was simply put into a cell, where he remained in excruciating pain.

Tony filed suit in the Greenwood County Court of Common Pleas on July 10, 2013. The case was tried from September 24 – 27, 2018, and Tony presented uncontroverted evidence that the Sheriff's Office¹ violated its own policies and procedures, which require medical screening during booking for the detention center. The jury heard uncontested evidence that the Sheriff's Office violated the Minimum Standards² for detention facilities in South Carolina and violated its own internal policies and procedures, which required the Sheriff's Office to have a physician clear Tony before he was allowed to enter the detention center. The jury also heard uncontested evidence

¹ The respondent is referred to at various points in the brief as "the Sheriff's Office." The Sheriff's Office operates the detention center where the events related to the action occurred.

² The Minimum Standards is a set of rules that govern what must be done upon arrival of inmates and detainees at jails and detention centers in South Carolina. App. p. 733, App. p. 779.

that the Sheriff's Office failed to document Tony's injuries upon booking. It is uncontested that the Sheriff's Office failed to administer Tony's medication, prescribed by a physician.

Tony was prevented from developing these issues at trial due to inappropriate and prejudicial commentary by the Court on his evidence and by improper evidentiary rulings. The jury's deliberations were compromised by the prejudicial commentary and by improper jury instructions. Negative and derisive comments about Tony's uncontroverted evidence, among other things, essentially instructed the jury to disregard multiple policy violations, which are relevant, material acts of gross negligence, and central to Tony's case.

The jury's ability to consider relevant and material evidence was irreversibly compromised in a way that deprived Tony of a fair trial. Without improper, prejudicial limitations on the presentation of evidence, a reasonable jury, hearing so much uncontested evidence of gross negligence, could only have returned a verdict for Tony. The jury deliberated, and all jurors agreed that the Sheriff's Office was negligent.³ However, after hearing inappropriate commentary on the evidence and an erroneous jury instruction, the jury determined that the Sheriff's Office was not grossly negligent. After trial, one juror commented that the Sheriff's Office had not done anything "intentional," which suggests the jury was confused by the jury instructions.

Tony moved for a directed verdict at the close of his case, and again at the close of trial. Following the trial, Tony timely filed post-trial motions, including a motion for a new trial, all of which were denied. Tony then timely filed an appeal. On April 4, 2022, the Court of Appeals issued an opinion affirming the verdict, without oral argument. Tony timely filed a motion for rehearing, which was denied. Tony then timely filed his Petition for Certiorari, and this Court

³ This information was gleaned during a conversation between Tony's counsel and a juror after the case was tried and counsel were free to speak with jurors.

granted certiorari as to the question of whether Tony was deprived of his constitutional and statutory right to a fair trial by jury.

STANDARD OF REVIEW

The Court reviews questions of law, and, therefore, constitutional questions, de novo. *State v. Brewer*, 438 S.C. 37, 44, 882 S.E.2d 156, 160 (2022). This means this Court is “free to [interpret them] without any deference to the” Court of Appeals’ decision. *S.C. Dep’t of Soc. Servs. v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018).

SUMMARY OF ARGUMENT

The fundamental right to a jury trial is so important that it is the only right to appear both in the body of the Constitution and the Bill of Rights. *Neder v. United States*, 527 U.S. 1, 30, 119 S.Ct. 1827, 1844 (1999) (Scalia, J., dissenting). It is the spinal cord of democracy. *Id.* Similarly, the right to a jury trial is guaranteed by Article 1, Section 14 of the South Carolina Constitution, which mandates that “the right to trial by jury shall be preserved inviolate.” That backbone of our justice system is shattered if litigants are robbed of their right to a trial by jury, which is exactly what happened at Tony’s trial. The Court commented on – brutally criticized – not only evidence, but uncontested evidence of policy violations, which is the primary means of proving gross negligence in Tort Claims Act cases. The Court’s inappropriate and improper intervention during testimony of uncontested policy violations by multiple witnesses was so prejudicial that no juror could have ignored it. As a result, Tony did not receive a fair and impartial trial, which must be preserved inviolate.

When our Legislature waived sovereign immunity following this Court’s decision in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), Tony’s right to a jury trial became as

fundamental as if he had sued for injuries from a car wreck.⁴ Tony was robbed of that right when the trial court criticized and berated uncontroverted evidence that proved his case in open court, in front of the jury. Since Tony was robbed of his right to a fair, impartial jury trial as required by the constitutions of South Carolina and United States, the Supreme Court should reverse the Court of Appeals' ruling and order a new trial.

ARGUMENT

I. TONY DID NOT RECEIVE A FAIR AND IMPARTIAL 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. As Alexander Hamilton wrote in 1788, “The friends and adversaries of the plan of the constitutional convention, if they agree in nothing else, concur at least in the value they set upon trial by jury; the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government.”

There is perhaps no more important right in the United States than the right to a trial by jury, and the deprivation of Tony's Seventh Amendment right requires a new trial. “Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.” *Dimick v. Schiedt*, 293 U. S. 474, 486, (1935).

It is important to note that the United States Supreme Court has repeatedly held that the Seventh Amendment right to a fair and impartial jury trial extends to statutory causes of action like Tony's cause of action for gross negligence, brought pursuant to the South Carolina Tort Claims Act. In determining whether a Seventh Amendment right extended to § 1983 cases, the Supreme Court held that “...the Seventh Amendment jury guarantee extends to statutory claims

⁴ See *Curtis v. Loether*, 415 U.S. 189 (1974) and *S.C. Code 15-78-40*, both discussed *infra*.

unknown to the common law, so long as the claims can be said to ‘soun[d] basically in tort,’ and seek legal relief.” *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, (1999) quoting *Curtis v. Loether et al*, 415 U.S. 189 (1974). *See also*, *Lorillard v. Pons*, 434 U.S. 575 (1978). “[T]he applicability of the constitutional right to a jury trial in actions enforcing statutory rights [is]... 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); *Hepner v. United States*, 213 U.S. 103 (1909)).

Since the Seventh Amendment guarantees Tony a jury trial, unfair and prejudicial commentary at trial is not allowed. A trial court’s comments on the evidence may “not be one-sided” and “deductions and theories not warranted by the evidence should be avoided.” *Quercia v. United States*, 289 U.S. 466 (1933). When the trial court, visibly irritated, stated that Tony’s counsel was “pumping a dry well” because testimony was elicited that showed the Sheriff’s Office flatly violated the policy that required Tony to be assessed by a doctor, it did exactly what *Quercia* addressed and forbids. Simply because the trial court did not believe the Sheriff’s Office should have to follow policy, does not mean the trial court was permitted to communicate factual determinations to members of the jury. To make such prejudicial comments is to make “deductions and theories not warranted by the evidence and should be avoided.” *Id.*

Likewise, it was fatally unfair for the trial court, in front of the jury, to stop testimony establishing an uncontested policy violation, especially when that violation was the very cause of Tony’s damages. The Court completely discounted the fact that Tony should have never been allowed into the jail because his injuries were too severe, which is the purpose of the physician clearance policy. Instead of allowing the jury to weigh that evidence themselves, the trial court interrupted that Tony “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.” The Court’s statements were “made with all the persuasiveness of judicial utterance...[and] was not withdrawn,” warranting a new trial. *Id.*

The Court’s opinion on Tony’s evidence was also clear during matters taken up outside the presence of the jury, including the uncontested deprivation of Tony’s physician-prescribed medication. The Court was emphatic when it commented “[t]hey weren’t depriving him of medication that he needed, period. End of story. They were depriving him of narcotics, which he can’t have in the jail.” (App. p. 489). This is important because the evidence that Tony required medicine not allowed in jail shows that the Sheriff’s Office’s violation of the policy that requires physician clearance prevented Tony from having that medicine. The only reasonable conclusion is that had the Sheriff’s Office followed the policy requiring physician clearance, the physician would have been able to assess Tony’s need for medication prescribed by another physician and factored that into his decision as to whether Tony, who had multiple broken bones and shattered teeth, was fit for entry into the detention center. The jury should have been allowed to hear the evidence about physician clearance and allowed to weigh that evidence without fatally prejudicial comments from the trial court. The uncontested physician clearance requirement violation was the direct cause of the deprivation of Tony’s physician-prescribed medication.

II. TONY DID NOT RECEIVE A FAIR AND IMPARTIAL TRIAL GUARANTEED BY THE SOUTH CAROLINA CONSTITUTION.

“The right of trial by jury shall be preserved inviolate...” S.C. Const. art. I, §14. The addition of the word “inviolate” in our State’s constitution makes the violation of Tony’s right to a jury trial under the South Carolina Constitution perhaps even more egregious than the violation of his right to a jury trial guaranteed by the United States Constitution. Since the Tort Claims Act unambiguously states at § 15-78-40 that a governmental defendant is “...liable for...torts *in the*

same manner and to the same extent as a private individual under like circumstances...” it is clear that Tony was entitled to a fair and impartial jury trial (emphasis added).

The trial court deprived Tony of his right to a fair trial in at least two ways. First, the trial court prejudicially and inappropriately commented on Tony’s evidence, essentially weighing the evidence, and determining issues of fact. In doing so, the Court took on the function of the jury. Second, the trial court gave instructions to the jury that were incorrect, confusing, and prejudicial.

a. The trial court’s prejudicial comments about Tony’s evidence are not allowed under South Carolina law.

It is well settled that a “trial judge must act with absolute impartiality in the performance of judicial duties.” *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994). The trial court’s comments about uncontroverted evidence of policy violations and gross negligence in the presence of the jury are in direct contradiction to, and are expressly forbidden by, *Pace*. The negative comments about how important or unimportant Tony’s evidence was in front of the jury, charged with the very task of determining how important the evidence is, ensured that Tony’s right to a fair trial was not “preserved inviolate.”

In *Butler v. State*, 302 S.C. 466, 397 S.E.2d 87 (1990), this Court stated:

In *State v. Pierce*, 289 S.C. 430, 346 S.E. (2d) 707 (1986), and *State v. Cooper*, 291 S.C. 332, 353 S.E. (2d) 441 (1986), the same trial judge made similar comments to each defendant. Both defendants had chosen not to testify, and neither was swayed by the judge’s comments. The State argued, therefore, that any error was harmless since the defendants were not prejudiced. We rejected the suggestion that these types of comments could ever constitute harmless error, noting, “The comments by the judge were erroneous, improper and contrary to South Carolina law.” *State v. Pierce*, 289 S.C. at 434, 346 S.E.(2d) at 710.

Pierce involved comments made about witnesses’ decisions not to incriminate themselves, but the rationale is applicable here. The trial court’s comments about the pivotal evidence presented by Tony cannot “ever constitute harmless error” because the comments “were erroneous, improper and contrary to South Carolina law.” *Id.*

During trial, Tony presented uncontested evidence of gross negligence. Tony questioned a Sheriff's Office employee about the policy violations central to Tony's case; specifically, about why Tony was admitted to the detention center without being cleared by a physician, which is required by the Minimum Standards and the Sheriff's Office's own internal policies. The Court interjected with prejudicial comments about the evidence, and violated the rule in *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994):

We've been down this road before, okay? We've been down the road before. I think you're pumping a dry well here. He was released from the hospital in Greenville. It's what I said [in a side bar away from the jury] 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 . . . (App. p. 382).

By stopping questioning and commenting about important evidence in the presence of the jury, the trial court weighed the evidence for the jury and made it impossible for the finders of fact to objectively analyze the evidence.

Inappropriate commentary about the undisputed fact that the Sheriff's Office violated the policy requiring physician clearance was not isolated. A central part of Tony's case was the fact that the Sheriff's Office refused to give Tony physician-prescribed medication when he was placed into the jail without physician clearance. It was uncontested that the Sheriff's Office did, in fact, deprive Tony of prescribed medication. The court stated "[t]hey weren't depriving him of medication that he needed, period. End of story. They were depriving him of narcotics, which he can't have in the jail" (App. p. 489). These comments not only ignore the fact that the deprivation of medication was a direct result of the physician clearance requirement violation, but they also show that the trial court weighed evidence for the jury, and usurped the jury's power to determine whether it was grossly negligent for the Sheriff's Office to disregard a physician's orders and deny Tony his prescribed medication. Tony was denied his right to have impartial jurors determine

whether uncontested policy violations, which caused deprivation of medical clearance and denial of prescribed medication when he had a broken neck, broken back, and shattered teeth, constituted gross negligence.⁵

In affirming the verdict, the Court of Appeals affirmed the deprivation of one of the most fundamental rights guaranteed by two constitutions, South Carolina Rule of Civil Procedure 38, and the waiver of sovereign immunity⁶. Tony's trial was so one-sided and unfair that at one point, the trial court sustained an objection that the defense did not make. As Tony's counsel asked questions about why video evidence requested through discovery and trial subpoena was not brought to trial, defense counsel acted as if he were about to object, but before any objection was made, the trial court said "Sustained." (App. p. 390) After defense counsel thanked the trial court for sustaining the objection that was never made, the trial court made more prejudicial comments, and stated, "[t]his suit was filed years later, okay? The tapes get written over. Let's focus on what is truly an issue here and stop chasing rabbits, please, okay?" (App. p. 391). The footage Tony requested would have shown how he was treated in the detention center and the related policy violations, and Tony was entitled to ask witnesses why the Sheriff's Office did not retain that

⁵ Tony also offered evidence from himself and other witnesses that the Sheriff's Office deprived him of his physician-prescribed C-spine collar, which caused a great deal of pain. However, conflicting evidence on this issue was presented, so it was not uncontroverted. It is important to consider it with the uncontroverted evidence, though, since prescribed medication would have alleviated pain and adherence to the policy requiring physician clearance would have prevented the C-spine collar deprivation and pain associated therewith.

⁶ When the Legislature waived sovereign immunity with the South Carolina Tort Claims Act, Tony's "...right of trial by jury as declared by the Constitution or as given by a statute of South Carolina...[was]...preserved...inviolate." Rule 38, *SCRCF*. Tony's right to a jury trial was "...given by statute..." at that point, and his right to a jury trial guaranteed by the constitutions of South Carolina and the United States was vested because sovereign immunity was waived. The trial court's prejudicial comments violated that right because no reasonable juror could be expected to ignore such prejudicial comments from the court where jurors were told to come for jury duty, lest they face legal consequences.

footage. Instead of allowing Tony to explore this evidence, the trial court interrupted the testimony and made prejudicial comments – excuses for the defense – about central videographic evidence that was destroyed by the Sheriff’s Office.

After the tainted trial described above, Tony sought a chance to have a fair and impartial trial by filing motions for a new trial absolute, judgment notwithstanding the verdict, and a new trial pursuant to the Thirteenth Juror Doctrine. See *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). The trial court denied all of Tony’s motions, any one of which would have provided a way to correct the deprivation of Tony’s rights guaranteed to him by the constitutions of South Carolina and the United States. With such overwhelming evidence of policy violations and gross negligence, a defense verdict was “grossly inadequate,” and the trial court should have granted a new trial. See *Vinson v. Hartley*, 324 S.C. 398, 477 S.E.2d 715 (Ct. App.1996). The Supreme Court should grant Tony a new trial, so that he may present important, central evidence (which proves the Sheriff’s Office’s gross negligence) without improper and incurable commentary and interruption.

b. The trial court’s jury instructions were erroneous and confusing.

“[I]t is reversible error to charge the jury on comparative negligence without also charging the jury that the defendant bears the burden of proof on the affirmative defense.” *Ross v. Paddy* 340 S.C. 428, 532 S.E.2d 612 (Ct. App. 2000). The Court of Appeals found that the jury charge on comparative negligence could not have prejudiced Tony because the instruction came after the question of whether the Sheriff’s Office was grossly negligent, and cited *Cole v. Raut*, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008). *Cole* acknowledges that an erroneous jury instruction may be grounds for reversal if “...the appellant can show prejudice from the erroneous instruction.” *Id.* However, the jury heard all of the instructions before it was given the verdict form or answered any of the questions. At least one juror made it clear that the jury thought an intentional act was

required for a finding of gross negligence after deliberating over four hours. Since jurors only spoke with each other during deliberation, proof of jury confusion due to erroneous instructions such as those given at trial in this case cannot be part of any record and can only be discovered by speaking with jurors.

Indeed, the Sheriff's Office relied heavily on its comparative negligence defense at trial.⁷ (App. pp. 665-666, 668-671, 673, 675-676, 683) Not only did Tony lack the ability to be comparatively negligent since he lacked the ability to alter the Sheriff's Office's decision to deprive him of his medication, C-spine collar, and a physician to determine fitness for entry as required by policy, but the Sheriff's Office harped on the defense as if it were viable. The trial court should have stricken the defense to begin with, but it was certainly reversible error to refuse to instruct the jury on the Sheriff's Office's burden to prove it.

III. TONY DID NOT RECEIVE A FAIR AND IMPARTIAL TRIAL AS REQUIRED BY SOUTH CAROLINA RULE OF CIVIL PROCEDURE 38.

"The right of trial by jury as declared by the Constitution *or as given by a statute*⁸ of South Carolina shall be preserved to the parties inviolate. 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*. Since Tony's right to a jury trial is "given by statute," the South Carolina Tort Claims Act, *SCRCP* 38 requires that Tony be afforded a fair trial by a jury of his peers, just as if Tony had brought suit for a common law cause of action.

⁷ The plaintiff also argued against comparative negligence but was ruled against. The Judge allowed the defense to go forward without issuing further appropriate instruction (App. pp. 629-634).

⁸ The applicability of the constitutional right to a jury trial in actions enforcing statutory rights (like the right to a jury trial for Tort Claims Act cases) is "too obvious to be doubted." *Curtis v. Loether*, 415 U.S. 189 (1974) quoting *Parsons v. Bedford*, 3 Pet. 433 (1830).

SCRCP 38 mandates that a victim of gross negligence at the hands of the government be afforded a fair trial, and *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994) makes it clear that where a trial judge does not “act with absolute impartiality,” unfairness results. *Id.* To make such one-sided and prejudicial comments about the evidence as:

(in the jury’s presence) We’ve been down this road before, okay? We’ve been down the road before. I think you’re pumping a dry well here. He was released from the hospital in Greenville. It’s what I said [in a side bar away from the jury] earlier this morning. He cannot be boomeranged back between doctors. We need to move on from this of questioning and focus on what your complaint is, and that is the six days without the neck brace, okay? So go . . . (App. p. 382).

and

(outside the jury’s presence) “[t]hey weren’t depriving him of medication that he needed, period. End of story. They were depriving him of narcotics, which he can’t have in the jail” (App. p. 489).

and

(in the jury’s presence) “[t]his suit was filed years later, okay? The tapes get written over. Let’s focus on what is truly an issue here and stop chasing rabbits, please, okay?” (App. p. 391).

is to violate this Court’s rule articulated in *Pace* and warrants a new trial.

Tony did not receive a fair trial, and his right to a jury trial was not preserved “inviolable,” as required by *SCRCP 38*. Any of the commentary described above or the improper jury instructions which failed to charge the jury on the appropriate burden of proof violates *SCRCP 38*, and warrants a new trial. All of these problems in the same trial certainly call for a new, fair trial.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Supreme Court reverse the Court of Appeals and remand this matter for trial.

Respectfully submitted,

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