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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable L. Casey Manning, Circuit Court Judge

Case No. 2016-002268

Taliah Shabazz, ...Appellant,

v.

Bertha Rodriguez, ...Respondent

FINAL BRIEF OF APPELLANT

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Pro Se Appellant

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STATEMENT OF THE CASE

On May 8, 2012, Plaintiff, Taliah Shabazz was a19 years old college student when she was injured in an automobile accident and incurred permanent bodily impairment injuries as a result of this accident. Miss Shabazz had reportedly reached maximum (MMI) by her physician.

The Appellant, Taliah Shabazz, filed a lawsuit against Bertha Rodriguez, on February 17, 2015 for damages and injuries sustained.

This case is one of admitted liability. The case was initially brought before the Honorable Jocelyn Newman on June 13, 2016 but was declared a mistrial due to an undecided verdict on June 14, 2016. The case was tried again before the Honorable Casey Manning on August 29, 2016 and August 30, 2016; judgment was entered on August 31, 2016.

On August 29 and August 30, 2016, the case was tried by a jury which consequently awarded her 12, 500.00 in actual damages; said jury award was less than the medical expenses incurred as a result of the accident.

During the proceedings, Respondent's attorney admitted liability for the accident, but disputed Appellants medical treatments and bills. In both trials the defendant Ms. Rodriguez was not present during the proceedings. The Appellant provided the jury with medical records, bills and treatments for injuries sustained since the accident. On the last visit to her specialist for pain management----- neurologist gave her an impairment rating for all of her injuries sustained since the accident. The Respondents attorney highlighted complaints of headaches that were noted on Appellants records during an extended time frame of her treatments. Respondent argued the delay of the headaches and appellants visit to her neurologist was not causally related to the accident, therefore should not be considered for compensation. After rhetorically asking the doctor whether he believed it likely a person suffering from migraine headaches as severe as appellant claim would wait a year to seek treatment. The doctor replied it was unlikely, however went onto say with certain the injuries Miss Shabazz sustained can cause reflexive headaches. In closing remarks, the judge informed the jury that unlike the opening remarks the closing remarks

must be true. Respondent took the initiative to explain Miss Shabazz's impairment rating to the jury and how Miss Shabazz (IPR) was calculated. The defense claimed the impairment rating was not significant enough to reward Miss Shabazz for her entire medical bills. The headaches and neurologist visits should not be considered because appellant complained too late in her treatment. Therefore, jury should disregard them. Respondent reminded the jury their only job was to return miss Shabazz to the state she was in prior to the accident, not to make her rich. The defense provided no evidence Miss Shabazz headaches were caused by anything prior to, during or after the accident May 8, 2012. Only speculated that it could be caused by stress and anxiety through school, or allergies to pollen. Despite Miss Shabazz having denied allergies to pollen and Medical records saying no known allergies. The defense gave the jurors "appropriate amount" of 8,851.14 as adequate compensation and suggested anything more would be a punishment for the defense. The judge had already instructed the jury before trial that they were the sole finders of facts in this case and no one else will be permitted to weigh the evidence and to render a verdict based upon the evidence. The jury disregarded those instructions and considered respondents amount of 8, 851.14, responding in deliberations by asking if the treatments before the neurology appointments been covered by Miss Rodriguez insurance? The judge reminded the jury again they are the finders of facts and cannot considered anything outside the scope of evidence. The jury delivered their verdict within minutes after being sent back to deliberate. Miss Shabazz was awarded 12,500.00 in damages without consideration for total amount of previous expenses, in addition to pain and suffering or compensation for future treatments. After the trial post-trial motions were filed by appellants attorney. The appellants attorney filed a motion for a new trial *nisi additur*. The judge denied the motion in an order filed on October 16, 2016. On November 8,

2016 Miss Shabazz filed a notice of appeal *pro se*.

FACTS

On May 8, 2012 Miss Shabazz was injured in a motor vehicle crash that totaled the small Suzuki Swift she was driving. The crash was caused by a negligent driver's failure to give way to oncoming traffic. The driver pulled from a private driveway across both lanes in an attempt to make a left-hand turn in front of Miss Shabazz, which caused Miss Shabazz to T-bone the vehicle. On impact with the van Miss Shabazz's airbag deployed striking her in the face, while the overlap of the seatbelt cut across her left shoulder and clavicle (collar bone) leaving abrasions / skin tears and the lap belt left marks at the right hip area where the seat belt was buckled. The shoulder strap exerted such force of pressure on the left side that swelling of the upper back, burning on the neck, and left shoulder pain were immediate. (Exhibits:1- 2 R.pp.84-88) Other injuries manifested over a period of time.

Miss Shabazz was rushed to Palmetto Richland Memorial Hospital via ambulance, where she was treated in the trauma area of the ER. The abrasions across the neck and chest area caused burning sensations with increased stiffness and non-radiating pain in the left shoulder as well as sharp pain in the anterior medial clavicle area and a burning sensation of the overlying skin. The ER doctor indicated that she had severe muscle spasms with acute injuries, no broken bones, but possible rotator cuff injury. She was given Naproxen and Flexril and instructed not to drive, work, or go to school while taking Flexril due to its sedative effects. (Exhibit: 2 R.pp.85-88.)

Miss Shabazz was given Ibuprofen 600 mg and Flexeril 10mg orally and discharged in the care of her mother. (Exhibit: 2 R.p.88.) She was instructed to follow up with her primary care physician for further treatment as well as to apply ice to her left shoulder for swelling and heat to

her neck.

On the morning of the crash Miss Shabazz had been on her way to Midlands Tech to take a final exam. This unexpected detour to the E. R caused her to have to drop out of school for a period of time while she struggled to regain some semblance of her previous health. She did a follow up with her doctor on May 16, 2012 where he continued her on Flexril 10 mg 3x daily as needed for treatment of shoulder sprain and neck strain secondary to MVA on 5/8/12. (Exhibit: 3 R.p.90)

On May 31, 2012 her physician referred her to Carolina Shoulder and Knee for further treatment. (Exhibit:3 R.p.89)

On June 19, 2012 Miss Shabazz was seen by Kevin Nahagian, a Carolina Shoulder and Knee specialist, for left shoulder pain, stiffness, decreased range of motion and decreased strength. Dr. Nahagian diagnosed Miss Shabazz as having a left slap tear/ shoulder and neck injury causing a tremendous amount of spasms over her supra serratuas and supra spinous fossa, with hematoma (knot) in that area further adding to her discomfort. Plan of treatment included 750 mg twice a day of an anti-inflammatory medication (Nabumetone) for thirty days along with 10 mg of Flexeril every six hours as well as to continue previous meds given and physical therapy three times a week starting immediately (6/20/2012). (Exhibit: 4 R.pp.91-92.) As Miss Shabazz could not drive herself to and from her appointments she relied on family members to provide her transportation, often causing difficulty with their schedules.

The frustration with being out of school, being an inconvenience to others, being sedated or in constant pain—particularly after physical therapy with topical modalities, cervical traction, topical deep tissue massage and peri-scpular strengthening—caused severe anxiety. In addition

Miss Shabazz faced the fear of becoming addicted to prescription drugs.

From June 20, 2012 until January 9, 2013 she was poked, prodded, pulled, stretched, massaged, iced, heated, placed in cervical traction, and endured a series of x-rays, MRI, and CT scans. (Exhibit:4 R.pp.98-100) She convinced Dr. Nahagian that she needed to go back to school and would continue her physical treatments at home as long as she returned from her semester with re-evaluation.

In January 2013 she went back to school and anti-inflammatory medication to control muscle spasms and continued her physical exercises. The medications that controlled the aches and pains were no longer being used. Infrequent headaches began to manifest and become more frequent by the end of the semester (May 2013). She saw Dr. Nahagian again for re-evaluation of continued pain under the left shoulder blade and muscles spasms. She also complained of frontal facial headaches. Dr. Nahagian placed her back on Relafen 750mg twice a day with physical therapy and scheduled reevaluation for August 4, 2013. (Exhibit 4 R.pp.96-97)

His plan included having a neurologist to evaluate for stiffness and left shoulder pain as a direct result of MVA on May 8, 2012. Where in onset was immediately after the injury, knots in the chest and back along with frequent headaches was a manifestation of ongoing physical pain and suffering.

Once again school had to be placed on hold while her recovery took center stage. On May 24, 2013, Miss Shabazz saw Dr. Ogburu the neurologist for evaluation of chronic left shoulder, back and headache pain caused by the accident. (Exhibit 5 R.pp.101-104) After physical assessment, a plan of care was developed for Miss Shabazz that included a full body bone scan, MRI of brain, EMG/NCV upper extremities, MRI of cervical spine and, aquatic therapy.

Medications included soma, and ibuprofen anti-inflammatory meds, Fioricet (used for migraine headaches) and Zoloft (anxiety and depression). Miss Shabazz was also counseled on opioid dependency, addiction and side-effects of all her medications. (Exhibit 5 R.pp.105 -133) Many more months of pain, suffering, and anxiety continued to plague Miss Shabazz's health before Dr. Ogburu's assessment showed that Miss Shabazz had reached her MMI (maximum improvement). She was given a rating of class 1, grade B, according to the AMA 6th Edition (a medical text that sets the disability ratings). (Exhibit: 5 R.p.131) Miss Shabazz sought chiropractic treatment and more massage therapy from Active Life and Help yourself massage therapy for deep tissue and clinical massage therapy to alleviate pain from her shoulders in neck paying for her own expenses. (see Plaintiff Expenses R.pp. 140-142) Prior to this accident Miss Shabazz was in excellent health.

Miss Shabazz still has grave concerns of paying more than $16,000 in medical expenses, not including previous attorney fees. (see Plaintiff Medical Expenses R.pp. 134-139) She is working part time to pay for college, and medical expenses to creditors that have been demanding being paid as they submit medical bills to collection agencies and credit bureaus, damaging her ability to obtain loans, or grants based on credit ratings.

ARGUMENT:

1. THE APPELLANT DISAGREES WITH RESPONDENT THAT CLOSING REMARKS WERE PROPER AND THAT A FAILED OBJECTION SHOULD NOT DISMISS THE COMPLAINT.

Respondents brief stated "opposing counsel was only quoting a witness testimony stating the impairment rating chart in its entirety, 0% through 100%, during closing arguments." The appellant disagrees. The defense reply contradicts the closing arguments in question. In

closing arguments to the jury, opposing counsel took it upon herself to explain to the jury what the impairment rating given by the appellant's neurologist meant. Once she took it upon herself to explain, she was no longer citing or quoting a witness testimony.

Defense closing arguments
"Dr. Ogburu, the plaintiff's neurologist gave her a one percent impairment rating for her entire body. One percent on a scale of one to 100. For her upper extremity, he gave her an impairment rating of two percent, two percent on the scale of one to 100." [closing arguments, R.pp.65-66]

The 0% to 100% scale was never mentioned in the doctor's testimony like the respondent claimed. Dr. Ogburu was very specific in describing Miss Shabazz's injuries: Class One, Grade B. 2 percent upper extremity impairment (UEI) converted to 1percent whole body [*Dr. Ogburu's Testimony*, R.pp.*32-33*]. He also referenced where the plaintiff's impairment rating can be found—the American Medical Association also known as AMA, 6th Edition: "The (AMA)chart depicts Appellant's shoulder injuries as a Class 1, Grade B- 2 soft tissue "Shoulder contusion or crush injury with healed minor soft tissue or skin injury." (American Guide to the Evaluation of Permanent Impairment, 6th Edition, published 2008, Chapter 3, Table 15-5 R.p.39.)

The chart also depicts that soft tissue is only measured in **two** classes: Class 0 and Class1. Class 2, 3 and 4 columns are left blank and therefore are irrelevant to Miss Shabazz. Also, the defense never mentioned that the AMA chart in its entirety is 0% to 100%, nor did counsel argue the range of percentages as they appear on the impairment rating chart, which was argued in the respondent's brief—but that Miss Shabazz's injuries were measured between the 0% to 100% scale.

In Miss Shabazz s' case, according to AMA, class 1 upper extremity impairment (UEI)

only ranges from 1%-13%, with MMI measuring between 0%-3%, placing Miss Shabazz 2% MMI in the 0%-3% category, not 2% on a scale of 1%-100%. The Defense purposely misrepresented in minimizing Miss Shabazz's injuries by arguing that those ratings were not sufficiently serious to warrant a significant damages award.

The respondent argues that because the appellant failed to object to any of the closing remarks presented by the respondent that it is grounds to dismiss the appellant's complaint. Respondent then goes on to argue that the appellant's first issue is not preserved for appellate review, citing case *State v Black* , 319 S.C. 515,521,462, S.E.2d 311, 315 (Ct. App.1995) . As a reason to disregard first issue on appeal.

The appellant disagrees. The Defense counsel's statement of Miss Shabazz's injuries is an enormous error that needs to be addressed. South Carolina Civil Rules Procedures 201(a) Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. 201(b) only a party aggrieved by an order, judgment, sentence or decision may appeal. Also *(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. (South Carolina's Rule on Evidence 103)* The appeals court will not review harmless errors. Defense counsels calculating Miss Shabazz impairment rating one percent on a scale of one to 100 and two percent on the scale of one to 100, was *not* harmless but detrimental to Miss Shabazz. This impairment rating can only be given once in a person's life. Miss Shabazz being 19years old at the time of the accident, received a permanent disability that would affect her for the rest of her life. The impairment rating the defense counsel claimed insignificant--- then demanded jurors to ignore --

affected the substantial right of the party, in this case Miss Shabazz. Miss Shabazz impairment rating is the foundation of the case. The fundamental error of law doctrine explains this better:

"In a civil case, the fundamental error occurs when the evidence presented at trial, is so erroneous that it damages the heart of the case, and the fairness of the trial. Fundamental error,' which can be considered on appeal without objection in the lower court, is error which goes to the foundation of the case or goes to the merits of the cause of action." Sanford v. Rubin, *237 So. 2d 134, 137 (1970).*

2. THE APPELLANT DISAGREES WITH THE RESPONDENT ABOUT OBJECTING TO THE TRIAL JUDGE'S ANSWER TO THE JURY'S QUESTION ABOUT HEALTH ISURANCE. THE APPEALLANT'S ARGUMENT IS NOT WITH THE TRIAL JUDGE, BUT WITH THE DEFENSE COUNSEL WHO PREJUDICED THE JURY AND THE JURY WHO ASKED A SPECIFIC QUESTION PERTAINING TO THE DEFENSE COUNSEL'S CLOSING REMARKS.

The judge instructed the jurors that Miss Shabazz was entitled to loss of enjoyment of life and actual damages including pain and suffering as well as loss of expenses because of Defense negligence. *(See Judges Instructions R.pp. 69-73).*

> An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. Separate damages are given by mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset/and or humiliation as the result of the defendants' negligence. Boan v Blackwell 541 S.E.2d 242 (2001).

Defense counsels closing remarks focused on Miss Shabazz headaches at trial as separate entity from other injuries she sustained.

"You have every provider that she went to and you have the amount of money that each of those

bills were. I want you to stop at January 9, 2013, that's a year after the accident when she began complaining about those chronic migraine headaches." That is all of the treatment after that period. This I want you to pay for." (closing arguments R.p.67.)

The Appellant emphasis this because the respondent wanted to isolate Miss Shabazz injuries into separate parts. Miss Shabazz impairment rating was for her entire body *not* headaches. Class One, Grade B. 2 percent upper extremity impairment (UEI) converted to 1percent whole body. "The (AMA)chart depicts Appellant's shoulder injuries as a Class 1, Grade B- 2 soft tissue "Shoulder contusion or crush injury with healed minor soft tissue or skin injury."

She was referred to the neurologist Dr. Ogburu by her primary care physician Dr. Dean Floyd of Eau Clair Cooperative Health, based on Dr. Nahagian's plan of care on 05/ 6/ 2013 *(See Exhibit: 4 R.pp.*96-97) . Also Miss Shabazz was still being treated by Dr. Nahagian on May 6, 2013 and follow up appt. August 4, 2013. (See Exhibit: 4 plan of care May 6, 2013) These treatments Defense demanded jurors cut before January 9, 2013. Appellant's MRI showed tenderness and abnormalities to cervical spine, muscle spasms, and bulging disc to Miss Shabazz's spine.

The neurologist's described Miss Shabazz injuries as chronic because it had been going on for long periods of time. The American Guide to the Evaluation of Permanent Impairment, 6th Edition, Chapter 3 of the guide discuss: chronic pain and how it affects a person life, IPR systems and calculations based on patient evaluations, and Doctors assessments. (R.pp.40-51)

The Defense admitted liability and *not* "limited liability,". In fact the Defense admitted this to the jury.

" I would be standing before you admitting that exact same thing that plaintiffs' counsel and Judge Manning have already mention, that we admit that we are at fault for this accident." (defense counsel opening remarks, R.p. 29.)

Defense produced no witnesses or evidence that showed that any part of Miss Shabazz's diagnoses/injuries resulted from any cause other than the accident on May 8, 2012. No parts of the diagnoses or doctor's testimony claimed the injuries sustained were from any cause other than the accident on May 8, 2012. Defense Counsel produced no evidence of accidents or injuries related prior to the accident or Miss Shabazz's permanent injury disability ruling.

The Defense's only argument was that Miss Shabazz had complained about headaches a few months after her accident and claimed this was not enough to warrant full damages for awards. She asked the jury to cut off her medical bills at a certain part that was deemed relevant to Miss Shabazz's injuries by stating:

" *I think that she deserves to be paid for all of this medical treatments for injuries she sustained as a result of our accident. If that is what she claims, I want you to pay her every cent of this and award a verdict in the amount of $8, 851. 14. (defense closing arguments R.p.67.)*

Miss Shabazz was entitled to an impartial jury. The Civil Due Process, Criminal Due Process, Yale law and Policy Review describes an impartial juror as " *a neutral decision- maker, required by due process principles, is not simply a person without financial interest in the case, but more broadly a person who is not affiliated with, or biased in favor of or against, one side or the other. A decision- maker cannot act as both a party and a neutral, because those two roles are fundamentally incompatible.*" (*procedural due process*) [*Civil Due Process/ Criminal Due Process].*

The amount the Defense claimed the jury should award was so specific, in addition to wanting to cut Miss Shabazz's medical bills, made the jury think that Miss Shabazz had already been compensated for her injuries, which is why the jurors came back with this

specific question pertaining to the defense closing remarks: "Has the cost of the first year's appointments before the neurology appointments began already been covered by Ms. Rodriguez's Insurance?" (jury's *question R.p. 79)*

The Defense's closing statements were improper and so erroneous that it caused the jury to become prejudiced and invoke harm on Miss Shabazz. "Before a complaining party may receive a new trial based on an unobjected-to closing argument, the party must establish that the argument being challenged was improper, harmful, incurable, and so damaged the fairness of the trial that the public's interest in our system of justice requires a new trial." Murphy v. International Robotic Systems, Inc., 766 So. 2d 1010, 1031 (2000).

Less than 10 minutes after the judge's instructions to disregard the insurance question the jury came back with a verdict of $12,500. The jury improperly considered factors other than Dr. Ogburu's testimony, the witness testimony, and evidence that was presented in trial. The only remedy for a verdict infected by improper considerations outside the scope of the evidence presented by the parties is a new trial. O'neal v Bowels, 314 S.C. 525, 431.

3. THE APPELLANT DISAGREES WITH THE RESPONDENT THAT DEFENSE CLOSING ARGUMENTS WERE WELL WITHIN THE PROPER SCOPE OF VIGOROUS REPRESENTATION OF HER CLIENT BY THE RESPONDENT'S ATTORNEY.

Appellant would like to reiterate that while counsel is allowed to emphasize points in favor of her client's case, she may not assume facts not in evidence or invite the jury to speculate as to unsupported inferences, or inferred statements such as:

Defense closing arguments

" *You have an important job to do today here in the state of South Carolina, You're to award Miss. Shabazz money if you believe that the injuries she sustained were caused by this accident. And if you do believe that, the money that you are to award her is to put her in the same position that she was in prior to this accident. We understand that she had to experience some inconveniences, but this is not an opportunity for Miss. Shabazz to get rich." (Closing arguments* R.p. 67.)

Defense closing remarks were not within the proper scope of vigorous representation of her client for these reasons: 1. Defense asked jurors to disregard judge's instructions to take all of Miss Shabazz's injuries into account even after the defense had admitted full liability. 2. Closing remarks minimalized Miss Shabazz's injuries and permanent disability rating and created speculations and inferred that Miss Shabazz was only trying to "get rich" off the Defense. 3. Asked jurors to become personal partisans instead of impartial jurors and infringe on Miss Shabazz's 14th amendment due process rights to have a fair and impartial trial. 4. Asked jurors to award a verdict in the amount of $8, 851.14 and disregard the rest of Miss Shabazz's bills that totaled almost $17,000. 5. Finally, succeeded in prejudicing the jury against Miss Shabazz. The most damage caused was when the defense demanded the jury cut Miss Shabazz's medical bills by almost half. The evil of such argument is that it risks converting the jurors from impartial decision makers into personal partisans. As one appellate court explains: "The appeal to a juror to exercise his substantive judgement rather than an impartial judgement predicated on the evidence cannot be condoned. It tends to denigrate the juror's oath to well and truly try the issue and render a true verdict according to the evidence." Cassim v Allstate INS Co. 33 Cal.4th 780,796 [16 Cal.Rptr.3d 374, 94 P.3d 513] (2004).

The defense counsel took an oath to vigorously represent her client within the proper scope, but the defense also took an oath to not mislead an opposing party, judge, or juror. As

mandated by Attorney's Oath rule 402 (k) SCACR, where it stipulates that

"I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law;" Attorney's Oath mandated by rule 402(k), SCACR .

The appellant contends that an attorney can present *factual* evidence in favor of their client effectively, while presenting non -prejudicial evidence against opposing counsel to the court. These two ideas are not mutually exclusive. However, in Miss Shabazz's case, the defense arguments were improper and outside the attorney oath mandate and scope of vigorous representation of her client.

4. APPELLANT DISAGREES WITH RESPONDENT THAT APPELLANT HAS WAIVED ANY CHALLENGE TO THE TRIAL JUDGE'S DECISION TO DENY HER MOTION FOR A NEW TRIAL OR *NISI ADDITUR.*

The trial judge delivered the post-trial motion in the absences of the appellant; at the time, appellant was represented by her attorney at trial. The appellant was present during trial proceedings and the jury verdict but was absent from hearing the trial judge's ruling on the denial of motion for a new trial or nisi additur. The appellant's attorney post-trial motions are on record of the appeal. The *pro se* Appellant has neither the law background or previous experience with court cases to determine standards of review. The appellant contends the court of appeals has

jurisdiction of this matter. However, the appellant will emphasis points from post-trial motions deemed relevant to this appeal.

The judge had already instructed the jury before trial that they were the sole finders of facts in this case and no one else will be permitted to weigh the evidence and to render a verdict based upon the evidence. Defense demanded jurors to award a verdict $8, 851.14. Appellant will emphasis again. Defense produced no witnesses or evidence that showed that any part of Miss Shabazz's diagnoses/injuries resulted from any cause other than the accident on May 8, 2012. No parts of the diagnoses or doctor's testimony claimed the injuries sustained were from any cause other than the accident on May 8, 2012. Defense Counsel produced no evidence of accidents or injuries related prior to the accident or Miss Shabazz's permanent injury disability ruling. The only way Miss Shabazz could not be compensated would be if there were speculative damages. The defense did *not* prove that. Only speculated, misquoted, and inferred about Miss Shabazz injuries. Miss Shabazz medical bills were over 16,000, yet the jurors awarded a verdict of 12, 500. Appellants attorney argued the verdict is grossly inadequate, inconsistent and arbitrary to the evidence presented at trial. For the jury to award a defense verdict in a stipulated liability case with as much evidence of damage as was presented to this jury is contrary to reason and can only be explained by failure to understand the law as it was charged.

Miss Shabazz impairment rating was for her whole body, not for her headaches. This was actual damages incurred from this accident. A 19-year-old with a permanent disability rating that can only be given once in a person's life. The injuries sustained has affected her life considerably and defense made sure that not only Miss Shabazz not have compensation, but never be awarded for further treatments. As long as neck, shoulder and back pain is there, her

headaches will persist. Motion claimed that judgment cannot be disturbed upon appeal, unless the findings were wholly unsupported by facts. However South Carolina Civic Rule and Procedure 50 states " *Denial of Motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that a party is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted." (South Carolina Civic Rule and Procedure 50 (d))*

This was a defense verdict based on passion, caprice, prejudice, partiality and or corruption. Evidence was not based on facts, records revealed injuries related to the accident, judge instructed jurors on awarding for actual damages, instead jurors cut actual damages plaintiff was entitled to. Appellant emphasis these arguments but leaves for the court of appeals to decide. Appellant final argument would be to emphasis this last point preservation of error rule is subject to two exceptions. Many court of appeals recognize the plain error doctrine, or in a civil case fundamental error, and will consider erroneous errors that effected the fundamental fairness of trial proceedings even when the appellant does not object. Although these two exceptions are limited, one being: the trial court and the litigants knew what action the appellant wanted to take. Secondly Federal Rule 46 of civil procedures: the appellant had no opportunity to object when the ruling was made. [*Preserving Error in Civil Cases*]

CONCLUSION

Miss Shabazz was not able to receive a fair and impartial trial. The Defense closing remarks minimalized Miss Shabazz's injuries and permanent disability by miscalculating Miss Shabazz impairment rating. The defense did not provide any evidence that the injuries Miss Shabazz sustained was from any other wreck, other than the accident on May 8, 2012. The jury improperly considered factors other than Dr. Ogburu's testimony, the witness testimony, and evidence that was presented in trial. Jurors ignored judge's instructions that Miss Shabazz was entilited to actual damages, by cutting said damages award in half. Thereupon infringing on Miss Shabazz's 14th amendment due process rights to have a fair and impartial trial. The respondent claims that no objection to closing remarks and jury question allows the court to dismiss the case. Miss Shabazz case has merits because defense provided false evidence and the jurors ignored judge's instructions that affected the substantial right of Miss Shabazz. For these reasons the appellant asks the court of appeals to examine this case and make an impartial decision. That would reverse Miss Shabazz case. Only then will Miss Shabazz receive a fair and impartial trial.

Respectfully submitted,

March 30, 2018

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