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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

Bertha Rodriguez

Respondent

v.

Taliah Shabazz

Appellant

PETITION FOR REHEARING

Taliah Shabazz
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Pro Se Appellant

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JAN 14 2020
SC Court of Appeals

PETITION FOR REVIEW

In Pursuant to Rule 221, SCACR, the Appellant respectfully requests a petition for rehearing of the appellate court's decision on December 31, 2019 affirming the trial court's decision. The Appellant humbly asks the appellate panel to reconsider the facts.

The Appellant at this time would like to address the Court of Appeals and make a small disclaimer: in the initial brief the Appellant realised too late that some of the references and citations were for criminal cases and not civil cases. Post conviction only applied to criminal cases. The Appellant then attempted to make the necessary changes. The Appellant believed those changes needed to correlate with the Record on Appeal. It is noted that the Record on Appeal cannot include matters that were not presented to the lower court or tribunal.

Rule 210 (c) SCACR **The Record on Appeal** shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

Anything that is not reflected on the Record of Appeal cannot be contained in the briefs.

Rule 210 (h) SCACR **Review Limited to Record on Appeal**. Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

The Appellant placed the civil cases into the Record on Appeal. However, since the issue of counsel's ineffectiveness was not discussed at trial or to the judge, unfortunately it cannot be added to the briefs for consideration, therefore it cannot be added to the Record on Appeal and the final brief. The Appellant does humbly apologise and tried to correct the mistake in the reply and final brief, believing that final brief was the one the Court of Appeals would take into consideration.

Rule 211 (b) SCACR Final brief Content. The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:

Rule 211(b) 1 SCACR References to the Record. The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31).

In the reply and final brief, the Appellant was responding to the Respondent's claims that the Appellant's appeal had no merit and should be dismissed. The Appellant also went into detail on how the jury came to be prejudiced, including the damage caused by opposing counsel's final remarks.

Rule 208 3(a) SCACR Reply Brief. An appellant may file and serve a brief in reply to the brief of respondent. If a reply brief is prepared, appellant shall, within ten (10) days after service of respondent's brief, serve

one copy of the reply brief on all parties to the appeal and file with the clerk of the appellate court one copy of the reply brief with proof of service.

The Appellant's initial brief stated why the case was being appealed. The Appellant stated those facts in the initial brief then went into detail in her reply and final brief when she was responding to the Respondent's reply and final briefs.

As for the rest of the brief, everything is the same. The evidence presented at trial is the same evidence the jury was presented with in their deliberations. This is also the same evidence on the Record of Appeal and the evidence submitted to the Court of Appeal's office. This is not new evidence presented on appeal for the first time. The Appellant's brief contained a concise history of the hearing of the proceedings whereas the Respondent's brief glossed over important parts. These important parts include but are not limited to a doctor's testimony about the plaintiff's headaches, the treatment the plaintiff received, the judge's instructions to the jury and opposing counsel telling the jury to disregard the judge's instructions. The defense even misrepresented the plaintiff's impairment rating.

The respondent stated on appeal "It is perfectly acceptable to cite or even quote a witness' testimony during a closing argument for the purpose of challenging it."

Mr Lee : And what is an impairment rating?

Dr. Ogburu: Impairment rating is an assessment of patient's long term procedural disability, something like that. You know, that- whatever it's like from their normal state as to being a problem.

Mr. Lee: When you assign someone an impairment rating, is that the same as saying that they have a permanent injury?

Dr. Ogburu: Most likely it suggests they have a permanent injury.

Mr. Lee: And in this case, it looks like you assigned class one, grade B. What is that referring to?

Dr. Ogburu: This is all from the sixth edition of the Disability and Impairment rating book. I think this more or less talk about whatever the book says about class one.[please see R.pp. 32 lines 1-25, R.pp.33 lines 1-4]

Mr. Lee: And it looks like you assigned UEI

Dr.Ogburu: Upper extremity

Mr. Lee: All right. And converts to one percent WPI?

Dr. Ogburu: Whole body

Mr. Lee: Okay

Dr. Ogburu: Whole body impairment rating.

[Dr. Ogburu deposition read into record at trial R.pp. 32 lines 24-25, R.pp.33 lines 1-4]

As mentioned above the Respondent's reply brief stated on appeal "It is perfectly acceptable to cite or even quote a witness' testimony during a closing argument for the purpose of challenging it." However the defense counsel's arguments contradict the respondents brief.

"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 a scale of one to 100." [Opposing Counsel Closing arguments, R.pp.65-66]

The Respondent's entire brief is how the Respondent perceived the trial, and not the actual events that took place during the trial. The Respondent said the impairment rating chart is one to 100 percent. The Appellant listed the American Medical Association chart mentioned at trial in the Record on Appeal to point out the 1% to 13%, and the class Miss Shabazz's impairment rating is in, is *only* measured in two classes. Most specifically, Class 1 grade B. (AMA, 6th Edition, published 2008, Chapter 3, Table 15-5 R.p.39) Opposing counsel knew this, then mentioned 1 to 100 therefore knowingly misrepresenting the evidence about the details of Miss Shabazz's impairment rating. This is a direct violation of the Attorney's Oath Mandate that states:

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 facts of law. Attorney Oath Mandated by rule 402 (K) SCACR.

Miss Rodregiuez was never present for the trial; nevertheless, the opposing counsel had an obligation to submit factual evidence. Opposing counsel broke the rules of professional conduct by misleading the jury.

On appeal, the Appellant argued the jury erred by considering the issue of insurance during its deliberations. All the briefs went into detail on why the jury considered the issue of insurance and how they came to err for these reasons:

1. *“ 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 the treatment after that period . This I want you to pay for.” (Opposing counsel closing remarks R.p.67)*

The opposing counsel demanded the jurors to ignore the judge's instructions and demanded Miss Shabazz's medical bills be cut in half because of headaches complained about later. 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 expense 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 a result of the defendants negligence. the injury itself. Boan v Blackwell 541 S.E.2d 242 (2001).

2.Regardless of whether the jury listened to opposing counsel, the Appellant submitted evidence to the jurors during the trial court proceedings and in the Record of Appeals that showed on May 6, 2013, Miss Shabazz was still seeing Dr. Nahagian who treated her primary injuries due to the accident on May 8, 2012 (See Exhibit: 4 R.pp. 96-97) as well as in a follow up visit August 4, 2013 (See Exhibit: 4 plan of care May 6, 2013). In fact, all of Miss Shabazz's doctors' visits that were submitted showed every doctor Miss Shabazz visited treated her for the same injuries caused by the accident on May 8, 2012, including the neurologist Dr. Ogburu. Dr. Ogburu treated Miss Shabazz's primary injuries like the previous doctors treated her for, as well as for headaches. There was no reason to cut Miss Shabazz's medical bills in half, especially when she was still seeing Dr. Nahagian for treatment caused by the accident on May 8, 2012. This is the same evidence that was submitted to the jurors at the trial and on the Record of Appeal (please see Evidence Exhibits R.pp 82-136)

3. The judge had already instructed the jurors before trial that they were the sole finders of facts and no one else would be permitted to weigh the evidence and render a verdict based upon the evidence. Instead of looking at the Exhibits that were submitted, the jurors decided to listen to this:

" I think that she deserves to be paid for all of this medical treatment 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 ward a verdict in the amount of 8, 851. 14 (Opposing Counsel Closing arguments R.p. 67.)

The defense asked the jurors to become personal partisans instead of impartial jurors infringing on Miss Shabazz's 14th amendment due process rights to have a fair and impartial trial.¹ 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].

4. 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 the accident . We understand that she had to experience some inconveniences, but this is not an opportunity for Miss. Shabazz to get rich.” (Opposing Counsel Closing arguments. R.p.67)

This is what led the jury to posed the question “ Has the cost of the first year's appointments before the neurology appointments began already been covered by Ms. Rodriguez

¹ Impartial Tribunal. Just as in criminal and quasi-criminal cases,⁷⁶² an impartial decision maker is an essential right in civil proceedings as well.⁷⁶³ “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.”⁷⁶⁴ Thus, a showing of bias or of strong implications of bias was deemed made where a state optometry board, made up of only private practitioners, was proceeding against other licensed optometrists for unprofessional conduct because they were employed by corporations. Since success in the board's effort would redound to the personal benefit of private practitioners, the Court thought the interest of the board members to be sufficient to disqualify them.⁷⁶⁵ (Fourteenth Amendment procedural due process)

Insurance?”. The Appellant contends that the jury considered the matter of insurance during its deliberations, which is error as a matter of law.

“Nothing outside of this courtroom you can consider. If it’s not in evidence, you can’t consider it. This question you can’t consider. You need to wipe it out of your mind and began over as if you never asked me this question, blank sheet of paper, began again with that in mind.”
(Judge’s instructions to the jury R.pp.78-80)

It was less than 10 minutes after the judge’s instructions to disregard the insurance question that the jury came back with a verdict of \$12,500. The last set of instructions given to the jury by the judge stated in the transcript on the Record of Appeal that their decision could not be based on passion, prejudice, emotion or something not found in evidence. (See Judges Response to Jury Question R.p 79 line 5)

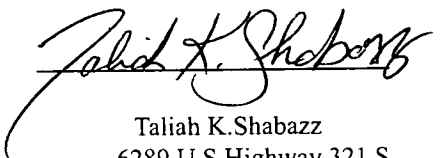
The evidence Miss Shabazz submitted to the jury showed them what they needed to know. They were supposed to consider the evidence in front of them, not what was not there--meaning they were to consider the impairment rating given to Miss Shabazz for her whole body, and not for headaches, which as stated in Dr. Ogburu’s testimony was Class 1 grade B, 2 percent upper extremity (UEI) converted to 1 percent whole body. Instead they considered a 1 to 100 chart that did not exist for that specific rating. Miss Shabazz showed evidence of doctors visits that pertained to her injuries on May 8, 2012, instead the jury believed the injuries were caused by something else, even though the defense produced no evidence that suggested otherwise.

CONCLUSION

Miss Shabazz submitted factual evidence, believing the jury would deliberate on what was in front of them. The Appellant explained how the jury came to error and why the jury erred in all of the appeals. The Appellant explained the damaged caused by the opposing counsel's remarks in regards to those errors. Opposing counsel on appeal refused to answer any of the responding briefs the Appellant sent in response to their response. Because the Respondent did not respond, the Court of Appeals refused to take the Appellant's evidence into consideration. The Respondent's refusals to respond to the Appellant's response brief should not have warranted a dismissal. Even if the Court of Appeals does not find the opposing counsel's behavior inappropriate, the jurors' sole job was to deliver an impartial verdict not based on passion, prejudice, emotion or something not found in evidence. The error of Matter of Law is with the jury who erred by disregarding the judge's instruction. The Appellant would have liked to go into detail about the post trial motions submitted on the appeal, however, the Court of Appeals has stated their opinion, and the Appellant will address only the Court of Appeals opinion. The Appellant would like to thank the Court of Appeals for the consideration of this case, regardless of the outcome. The Appellant's sole desire was to establish weight with justice and not fall short in the balance of pursuing said justice.

Respectfully submitted,

January 13, 2020



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PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
JUDGEMENT IN A CIVIL CASE

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Casey L. Manning, Circuit Court Judge

Case No. 2015-CP-40-02395
Appellate Case No. 2016-002268

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Taliah K. Shabazz

Appellant,

v.

Bertha Rodriguez,

Respondant

PROOF OF SERVICE

I certify that I have served the appellant brief motion for extension of time, to Ms. Rodriguez's attorney of record, Allyce Bailey, Post Office Box 1473, Columbia South Carolina 29202, by depositing said materials in the United States Mail, postage prepaid, on January 13, 2020. I have also submitted these materials to Ms. Tammy Kitchens, the clerk of court.

January 13, 2020

s/ Taliah K.

Shabazz

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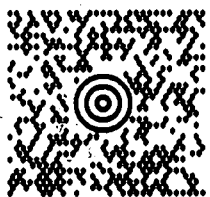
Cc: Tammy Kitchens, Clerk of Court,
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