

**PETITION FOR A WRIT OF CERTIORARI TO  
THE COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable L. Casey Manning, Circuit Court Judge

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Opinion No. 2019-UP-416 (S.C.Ct. App. filed Dec. 31, 2020)

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Bertha Rodriguez

Respondent

v.

Taliah Shabazz

Petitioner

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PETITION FOR WRIT CERTIORARI

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Taliah Shabazz  
6289 U.S Highway 321 S  
Winnsboro, South Carolina 29180  
(803) 718-6786  
Petitioner

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S.C. SUPREME COURT

INDEX

CERTIFICATE OF SERVICE.....ii

QUESTIONS PRESENTED.....1

STATEMENT OF THE CASE.....2

RELEVANT FACTS.....3

REASONS CERTIORARI SHOULD BE GRANTED.....10

CONCLUSION.....15

**I. Petitioner was denied a fair trial because defense counsel’s closing arguments about Petitioners’ medical disability rating were improper and inflammatory, violating 14th Amendment rights and due process.....10**

**II. Because defense counsel’s inflammatory arguments were prejudiced enough to cause harm and mislead a jury.....11**

**III. Because the jury’s verdict was inconsistent and prejudiced and based on something not found in evidence violates Petitioner’s 14th Amendment rights and due process and constitutes the basis for a new trial.....14**

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Appellant

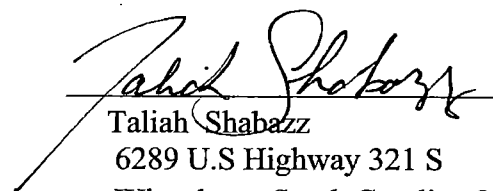
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CERTIFICATE OF SERVICE

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I hereby certify that on April 25, 2020 I served a copy of the Petition for Writ Certiorari 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 April 25, 2020.

April 25, 2020

  
Taliah Shabazz  
6289 U.S Highway 321 S  
Winnsboro, South Carolina 29180  
(803) 718-6786  
Petitioner

Cc: Allyce Bailey, Esquire

## QUESTIONS PRESENTED FOR REVIEW

1. Whether an improper inflammatory argument about petitioners' medical disability rating violates 14th Amendment rights and due process.
2. Whether improper inflammatory arguments are prejudiced enough to cause harm and mislead a jury.
3. Whether a defense verdict contradictory to the evidence and inconsistent with the law applied to them. constitutes the basis for a new trial. inconsistent jury verdict based on prejudice violates 14th Amendment rights and due process and constitutes the basis for a new trial.

## STATEMENT OF THE CASE

On May 8, 2012, Petitioner Taliah Shabazz, a 19 year old college student, was injured in an automobile accident and incurred permanent bodily impairment injuries as a result of this accident. The Petitioner filed a lawsuit against the Respondent 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. Petitioner, represented by Attorney Tyler Lee of McWhirter Bellinger and Associates at the time, filed a timely post trial motion notwithstanding the verdict on September 16, 2016. On October 10, 2016 the trial court filed an order denying the post trial motions. Petitioner commenced appeal Pro se. Petitioner filed briefs to the Court of Appeals. On December 31, 2019 the Court of Appeals issued an unpublished opinion Taliah Shabazz v Bertha Rodriguez, Op.No. 2019- UP-416 (S.C. Ct.App., filed December 31, 2019) that affirmed the trial court's decision to not grant Petitioner a new trial. Petitioner then filed a petition for a rehearing addressing the Court of Appeals' opinion. On March 27, 2020 the Court of Appeals held that there was no principle of law or material fact that has been overlooked or disregarded, and there was no basis for granting a rehearing. Therefore the petition for rehearing was denied. Petitioner timely filed a Writ of Certiorari.

## RELEVANT FACTS

On the morning of May 8, 2012, Miss Shabazz was on her way to take her final exams at Midlands Technical College when she was injured in an automobile accident that totaled the small Suzuki Swift she was driving. The crash was caused by Miss Rodriguez driving a white minivan who failed to give way to oncoming traffic. Miss Rodriguez was exiting from a private driveway across both lanes in an attempt to make a left-hand turn in front of Miss Shabazz, which caused both vehicles to T-bone on impact. Both of Miss Shabazz's airbags 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 her right hip where the seat belt was buckled. The force of the shoulder strap exerted enough pressure on the left side that swelling of the upper back, burning on the neck, and left shoulder pain were immediate. (Trial Exhibits: 1-2 R.pp.84-88) Other injuries manifested over 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 prescribed Naproxen and Flexeril and instructed not to drive, work, or go to school while taking Flexeril due to its sedative effects. (Trial Exhibits: 2 R.pp. 85-88). Miss Shabazz was given Ibuprofen 600mg and Flexeril 10 mg orally and discharged in the care of her mother who is a registered nurse. (Trial Exhibits: 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. The following treatment are relevant portions of events at trial.

During the proceedings, the Respondent's attorney admitted liability for the accident, but disputed Miss Shabazz's medical treatments and bills. Miss Rodriguez was not present during the trial proceedings. Miss Shabazz and her mother Mrs. Mini'imah Shabazz both testified in court along with neurologist Dr. Ogburu Ogbonnaya, whose deposition was read into the record. Miss Shabazz provided the jury with medical records, bills and treatments for injuries sustained since the accident. On May 16, 2012 Miss Shabazz saw her primary physician, Dr. Dean Floyd of Eau Claire Cooperative Health. Dr. Floyd continued her Flexeril 10 mg three times daily as needed for shoulder pain and neck strain. On May 31, 2012, Dr. Floyd referred her to Carolina Shoulder and Knee for further treatment. (Trial Exhibit: 3 R.p. 89)

On June 19, 2012, Miss Shabazz was seen by shoulder and knee specialist Dr. Kevin Nahagian, 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 serratus (part of the shoulder) and supra spinous fossa (spine) with a hematoma (knot) in that area that added further discomfort. His plan of treatment included 750 mg twice a day of anti-inflammatory medication (Nabumentone also known as Relafen) for thirty days along with 10 mg of Flexeril every six hours as well as continuing previous meds given and physical therapy three times a week starting immediately on June 20, 2012. (Exhibit: 4 R.pp. 91-92). Miss Shabazz testified in court that she had to be driven by family members, mainly her mother, to her appointments. She also testified about her frustration with having to deal with her injuries and how it affected her school work. From June 20, 2012 until January 9, 2013 medical records at the trial showed that Miss Shabazz had gone through physical therapy and a series of x-rays, MRI's and CT scans. (Exhibit 4 R.pp. 98-100).

Miss Shabazz convinced Dr. Nahagian to allow her to go back to school; she continued physical treatments at home and was scheduled for re-evaluation at the end of the semester.

In January 2013 she went back to school with 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. Miss Shabazz testified that the side effects were interfering with her school work. 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 muscle spasms. She also complained of frontal facial headaches. Dr. Nahagian again placed her on nabumetone (relafen) 750 mg twice a day with physical therapy and scheduled re-evaluation for August 4, 2013. (Exhibit 4 R.pp. 96-96) His plan included having a neurologist to evaluate for stiffness and left shoulder pain as a direct result of the accident on May 8, 2012. Where most of the primary injuries were immediately after the accident, knots in the chest and back along with frequent headaches later manifested. Miss Shabazz took time off from school again. 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, ibuprofen anti-inflammatory meds, Fioricet (used for migraine headaches), and Zoloft (anxiety and depression). Miss Shabazz was also counseled on opioid dependency, addictions 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). Miss Shabazz sought chiropractic treatment and more massage therapy from Active Life Chiropractic and Help Yourself Massage

therapy for deep tissue and clinical massage therapy to alleviate pain from her shoulders and neck, paying for her own expenses. (See Trial Exhibits Plaintiff Expenses R.pp. 140-142)

Documented on the last visit of her treatments with Dr. Ogburu, she received a disability impairment rating for her whole body since the accident that occurred May 8, 2012. The neurologist testified that her class 1 grade B. 2 percent upper extremity impairment (UEI) converted to 1 percent whole body.(Exhibit: 5 R.p. 131) Dr. Ogburu's deposition was read at trial below. Miss Shabazz's attorney Tyler Lee asked the neurologist about her impairment rating.

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 talks 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]

During closing arguments at trial the opposing counsel made inflammatory remarks that undermined the impartiality in our judicial system. The judge informed the jury that unlike the opening remarks, closing remarks must be true. In the closing remarks opposing counsel's inflammatory speech prejudiced the jury against the petitioner.

*"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 on a scale of one to 100."* (Opposing counsel's closing remarks) The opposing counsel grossly misrepresented the measurements to the trial court. On appeal, Petitioner provided the Court of Appeals with the American Association chart that distinctly shows the Appellant's impairment rating is only measured in two classes, mainly class 1 being the only class that measures from 1%- 13%, with MMI measuring between 0%-3%, therefore placing Miss Shabazz's 2% MMI fell in the 0%-3% category, not 2% on a scale of 1%-100%. The Respondent's attorney highlighted complaints of headaches that were noted on the Appellant's records during an extended time frame of her treatments. The Respondent argued the delay of the headaches and the Appellant's visit to her neurologist was not causally related to the accident, and therefore, should not be considered for compensation. *"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 on 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."* (opposing counsel closing arguments R.p.67) Counsel also made other disparaging and inflammatory remarks in the closing statement. *"I think that she deserves to be paid for all these 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*” (Opposing counsel closing arguments R.p.67).The judge had already instructed the jury before trial that they were the sole finders of facts in this case and no one else would be permitted to weigh the evidence and to render a verdict based upon the evidence. The jury disregarded those instructions and considered the Respondent’s amount of \$8,851.14. Counsel then proceeded to prejudice the jury further.

*“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 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. (Opposing Counsel closing remarks).* Closing remarks minimized Miss Shabazz’s injuries and permanent disability rating and made the jury believe that Miss Shabazz had already been compensated for her injuries. The jury asked if the treatments before the neurology appointments were covered by Miss Rodriguez insurance. (Jury’s question R. p.79). The problem with the Opposing Counsel statement was it was enough to get a prejudicial verdict. After the judge sent them back a second time to deliberate, it took less than 10 minutes for the jury to deliberate and return a defense verdict of \$12,500.

Petitioner’s attorney submitted post-trial motions asking the court to set aside the jury verdict and grant the petitioner a new trial, pursuant to Rule 59 of the South Carolina Civil Procedures an order granting a New Trial *Nisi Additur*, or, in the alternative, a new trial absolute. The motion was based on the following reasons: the verdict of \$12,500 was grossly inadequate, the verdict was contrary to the preponderance of evidence, and the jury considered matters outside the scope of evidence: the insurance question in their deliberations (Post trial motionsR.p3).

On October 16, 2016, the court denied the motion notwithstanding the verdict for a new trial nisi stating: “The grant or denial of a motion for a new trial nisi rests within the discretion of the trial judge and his decision

will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” *Waring v. Johnson* 341 S.C. 248, 533 S.E.2d 906 (Ct.App.2000)

Petitioner filed appeal pro se on the grounds that opposing counsel’s remarks were improper and highly prejudicial and was not within the proper scope of vigorous representation of her client. Counsel's statements were so erroneous that it caused the jury to become prejudiced and infringed on Petitioner’s 14th Amendment rights to have a fair and impartial trial. Petitioner also stated that the jury’s verdict was inconsistent with the evidence that was presented at trial and the jury erred as a matter of law. Petitioner also appealed for counsel relief but retracted the issue on appeal realizing it applied to criminal trials.

The Court of Appeals notified both parties the case would be submitted without oral arguments. The Court of Appeals ruled that the petitioner’s appeal was not enough to grant a reversal on appeal. The Court addressed only two of the issues on the petitioner’s appeal; other issues were dismissed because respondents did not address the issues and the petitioner’s initial brief did not match the final brief, citing ( It is well settled that an issue cannot be raised for the first time on appeal , but must have been raised to and ruled upon by the trial court to be preserved.”); also citing *White v Wilbanks* , 298 S.C 225, 229, 379, S.E.2d 298, 300 (Ct.App.1995). Failure to make a contemporaneous objection makes this issue unavailable on appeal.”), rev’d on other grounds. Petitioner submitted a petition for rehearing of the Appellate Court’s decision on December 31, 2019, affirming the trial court’s decision. The Court of Appeals gave Respondent an opportunity to respond, which was submitted January 24, 2020, then allowed the Appellant to respond to the respondents reply petition, which was submitted March 10, 2020. On March 27, 2020 the Court of Appeals was unable to discover that any material fact or principle of law has been either overlooked or disregarded, and decided not to grant the appellant a rehearing. The appellant then filed a petition for a writ of certiorari to the South Carolina Supreme Court.

REASON CERTIORARI SHOULD BE GRANTED

- I. **Petitioner was denied a fair trial because defense counsel's closing arguments about Petitioners' medical disability rating were improper and inflammatory, violating 14th Amendment rights and due process.**

The decision of the Court of Appeals is in conflict with the decision made by the Supreme Court. The Supreme Court has held that, even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice. *Toyota of Florence, Inc. v Lynch* 314 S.C.257, 442 S.E.2d 611 (1994) citing, *South Carolina Highway Dept. v. Nasim*, 255 S.C. 406, 179 S.E. 2d (1971). In *Toyota of Florence, Inc. vs Lynch*. Lynch's counsel illustrated his argument with hand-drawn posters. The three posters depict men with Asian features shown doing dishonest business dealing with the plaintiff S.E.T. S.E.T did not view the details of the chart until after closing arguments. Even then, S.E.T made no objection or request for a mistrial until its post-trial motions. Once the issue was raised, Lynch counsel defended the drawings saying they were not meant to look "oriental," but rather Italian-looking. It is very telling that counsel defended the accusation that he was evoking a racial prejudice by contending that he was instead trying to imply an ethnic stereotype.

This case is relevant because the inflammatory remarks made by opposing counsel were highly prejudicial and served to minimize the level of Petitioner's injuries in that the comments used a scale of 1% to 100%, instead of the 1% to 13% impairment scale. Defense counsel proceeded to tell the court what Petitioner's impairment rating meant without consulting a medical professional or asking the neurologist during the deposition. A disability rating is only given once in a person's life. The entire trial was about the seriousness of the petitioner's injuries. Respondent's appeal admitted to knowing that Miss Shabazz's rating measured 1% to 13% and still mentioned the rating of 1% to 100% to the jury.

“Justice cannot be administered if lawyers routinely lie to the court or knowingly present to the court false evidence.” *Chewing v Ford Motor Co.* 354 S.C. 72, 579 E. E. 2d 605, 611 (2003).

The Supreme Court has upheld a suspension of an attorney in the matter of Respondent, Mark R. Calhoun for falsely presenting evidence to the court. In the case of Calhoun: Calhoun had altered the court date on his copies of his citation in an effort to convince the magistrate to reopen his traffic citation case . Calhoun later admitted to the actions and implicitly acknowledged that he lied to the ODC and unfairly impugned the prosecuting officer’s integrity. Calhoun was also found to have violated Rule 3.3- a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or offer evidence that the lawyer knows to be false; Rule 8.4 (a)- violating the Rules of Professional Conduct; Rule 8.4(d)-engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation ; and Rule 8.4(e)- a lawyer shall not engage in conduct that is prejudicial to the administration of justice. *In the matter of Calhoun*, 347 S.C. 444, 556 S.E.2d 392 (2001)

Calhoun also violated the Rules for Lawyer Disciplinary Enforcement, specifically, Rule 7(a)(1)- violating the Rules of Professional Conduct; Rule 7(a)(5)- engaging in conduct tending to pollute the administration of justice or to bring the legal profession into dispute; and Rule 7(a)(6)- violating the oath of office taken upon admission to practice law in the State. *In the matter of Calhoun*, 347 S.C. 444, 556 S.E.2d 392 (2001) opposing counsel prejudiced the jury against the petitioner at trial; it violated her 14th Amendment right to have a fair and impartial trial.

**II. Because defense counsel’s inflammatory arguments were prejudiced enough to cause harm and mislead a jury.**

The Supreme court should grant this writ of certiorari to reverse the lower court's decision because Petitioner received a defense verdict contradictory to the evidence and inconsistent with the law applied to them. 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.

It took the jury less than 10 minutes after the insurance question was asked for them to return with the defense verdict of \$12,500.00. Counsel for the respondent demanded the jury to award a verdict in the amount of \$8,851.14 and disregard the rest of the petitioner's bills, which totaled almost \$17,000. The remarks made about Petitioner only wanting to "get rich" made the jury believe that the petitioner had already been compensated. This is what led to the question of insurance: "Has the cost of the first years appointments before the neurology appointments began already been covered by Miss Rodriguez insurance" posed by the jury, which was highly prejudicial to the petitioner. Although the court instructed the jury to disswade itself and start over, it is highly improbable that the jury would be able to disregard its preconceived thoughts and or concerns during its deliberations. When the verdict was inconsistent then the court should have returned the jury back to deliberate, or dismissed the jury and declared a new trial. As Pursuant to Rule 49(b) General Verdict Accompanied by answers to interrogatories: When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgement may be entered pursuant to Rule58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial (South Carolina Civil Procedure Rule 49(b) SCACR) Petitioner understands that improper arguments and an inconsistent verdict are not sufficient enough to constitute bases for a new trial until prejudiced is proven to exist.

Petitioner's impairment rating was purposely misrepresented to argue that injuries were not as severe before counsel demanded the jury to cut the portion of bill that contained the neurologist who gave the impairment rating. Defense counsel then made disparaging comments

about Petitioner before providing an amount that counsel deemed appropriate. The jury improperly considered factors other than Dr. Ogburu's testimony, the witness testimony, and evidence that was presented in trial. Considering these relevant facts as a whole constitutes prejudice and therefore should be reason to grant a new trial. In the case of the South Carolina Highway Department v. Nasim, the Supreme Court has held that "It is a general rule of law that inflammatory remarks made by counsel in argument which are calculated to appeal to the passions or prejudice of a jury should be affirmatively condemned by the trial court. Highway Dept. v. Nasim, 255 S.C. 406,179 S.E. 2d; 88 C.J.S Trial§187 (1971)

In the case of South Carolina Highway Department v Nasim, the highway department had acquired public use of a lot from the land owner Mr. Nasim. At trial the only dispute was the amount of compensation the highway department should pay the landowner. During closing remarks to the jury, the Attorney representing Mr. Nasim attacked a credible witness testimony by citing and making disparaging comments about the witness' character calling him "a liar", "thief," and "traitor" after all the evidence was submitted to the jury. Counsel for the highway department did not object to statements by counsel during the argument. After the verdict was returned, counsel for the highway department moved for a new trial. The Supreme Court in the final analysis ruled on these grounds: "whether or not the particular arguments are so prejudicial as to constitute reversible error depends upon the nature of the utterances and the circumstance under which they were made. Here the remarks were so vicious and the likelihood of prejudice so strong that we are persuaded that the highway department did not receive a fair and impartial trial which is the inherent right of every litigant." Highway Dept. v. Nasim, 255 S.C. 406,179 S.E. 2d (1971) Because counsel prejudiced the jury against the petitioner this should be cause for the Supreme Court to grant the petition for the writ of Certiorari.

**III. Because the jury's verdict was inconsistent and prejudiced and based on something not found in evidence violates Petitioner's 14th Amendment rights and due process and constitutes the basis for a new trial.**

Counsel asked jurors to become personal partisans instead of impartial jurors and to infringe on Petitioner's 14th Amendment due process rights to have a fair and impartial 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.

The 14th Amendment procedural due process for an impartial tribunal states: unlike criminal and quasi- criminal cases, <sup>762</sup>an impartial decision maker is an essential right in civil proceedings as well:<sup>763</sup> "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 (Fourteenth Amendment procedural due process).

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 Court of Appeals ruled that the petitioner's issues were not properly preserved for review. In order to be preserved it must be ruled upon by the trial court or be included in post

trial motions. Because opposing counsel gave an inaccurate rating that the petitioner was not badly hurt, the jury ruled based on those claims. "The Supreme Court has held that if prejudicial arguments are made without objection of counsel or interference of the trial court to the extent that the parties litigation cannot receive a fair trial and the judicial process stand without deterioration, then upon review this court may consider such assignments of error, even though no objection was made and no ruling made or preserved thereon." Highway Dept. v. Nasim, 255 S.C. 406,179 S.E. 2d (1971)

Petitioner has not received justice for the injuries that were inflicted by the respondent's negligence. There has not been an award to cover the cost of medical bills, future treatments, and pain and suffering: "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 defense negligence." Boan vs Blackwell 541 S.E.2d 242 (2001).

#### CONCLUSION

For these reasons the court should grant the writ of certiorari.

Respectfully Submitted,

April 25, 2020



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