STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2017-002145
Civil Case No.: 2016-CP-02350

Glenda R. Couram ..... Appellant,

v.

Sherwood Tidwell ..... Respondent.

FINAL REPLY BRIEF OF APPELLANT

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PRO SE APPELLANT

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INDEX

TABLE OF AUTHORITES

Statutes/Rules

ARGUMENT

I. Did the trial Court err or abuse its discretion when it refused to allow pro se Appellant full access to the court and in doing so denied Appellant due process singling her out and denying her case to be fully heard by the jury resulting in a verdict that was caprice, obituary, prejudicial and bias based on speculation refusing to allow admission under SCRE 803(6) Business Record Exception

An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991); *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987); to warrant reversal based on the admission or exclusion of evidence, the Appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof. *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); *Timmons v. S.C. Tricentennial Commn.*, 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970); *Powers v. Temple*, 250 S.C. 149, 160, 156 S.E.2d 759, 764 (1967). ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (Ct.App.1990) (quoting *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.")).

It was not a case of confusion on the part of the pro se at the judge's refusal to allow her to submit her medical records and bills to the jury as evidence. The confusion was the fact that the South Carolina Rule of Evidence (SCRE) clearly allows submission of these records under the Business Record Exception SCRE Rule 803(6) which the defense and the court were careful to avoid stating during the trail. (ROA p 145-157)

Rule 803(6) states clearly and is stated clearly in all courts across the country, perhaps under different numbers that such records are allowed to be submitted under the Business Record Exception.

When pro se proffered the records during the trial the judge refused to look at or discuss the records to determine admissibility and when the records were proffered in the Motion to Reconsider SCRCP Rule 59(e) the court continued to refuse to look at or determine if any portion of the medical records or bills were admissible instead in an email the court claimed the pro se Appellant had not submitted the proffered documents and if she had they had been disposed of. (ROA Exhibits p 393-473)

It is the duty/role of a judge to at least look at the proffered evidence to determine what would be admissible, in this case, the court refused and from the moment the trial begin the court and defense had a list of what the pro se could and could not do what she could and could not say, even anticipating what the pro se would say and they ruled on it (ROA p 141-157).

(ROA p 154-180) - COURT "you will need to have the doctors here to talk about them" according to well established case law the pro se Appellant did not have to have her doctors to testify as to the medical records she wanted publish to the jury they were admissible under the Business Record Exception to the hearsay rule under SCRE 803(6). It was an error of law to rule otherwise.

The entire thrust of the discovery rules involves full and fair disclosure "to prevent a trial from becoming a guessing game or one of surprise for either party." *State Highway Dep't v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (quoting *Hodge v. Myers*, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). See *Downey v. Dixon,* 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App.1987).

The plaintiff objected repeatedly to the judge's ruling regarding this decision until there was nothing else she could do, as this Appellant has ruled when a court makes it clear it will not change its mind it is not required to continue to object. (ROA p 153)

The jury at the end of this trail returned with the following verdict in favor of the pro se Appellant (Exhibit ROA p 1):

> 1) "they unanimously find that the Plaintiff Glenda R Couram suffered damages (Yes); 2) The jury unanimously found that the damages suffered by Plaintiff Glenda R Couram were proximately caused by the conduct of the Defendant Sherwood Tidwell (Yes).

The trial court in its denial of the pro se motion for a new trial absolute, *nisi additur*, et.al., stated "it appears the jury found that the Plaintiff lacked credibility in her contention that she sustained severe injuries and "substantial damages"[1] in a low speed, three car collision in which neither of the other drivers suffered any injury whatsoever" with that conclusion the trial Court invaded the providence of the jury and denied the Motion for a new trial. Judgment and Order Denying Plaintiff's Rule 59(E) Motion for new trial, *nisi additur* et,.al., Granting Defendants' Cost dated October 17, 2017 almost 4 months after the trial).[2] (Exhibit ROA p 80)

The judges conclusions are clearly contrary to the evidence heard by the jury, testified to by Tidwell and the pro se Appellant and instead tells the story of a judge who had no intentions of ensuring this pro se had a fair trial because she came into the courtroom already believing this pro se was a liar, lacked credibility and she was going to do a favor for her previous clients and law firm and destroy the pro se by any means necessary with abuse of her discretion, application of wrong law even if it meant concealing applicable law and the Appellant's financial ruin.

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[1] The Court refused to allow the pro se Appellant to give the jury a dollar amount but allowed her to say "substantial damages" in her closing arguments.

[2] When the accident occurred plaintiff and Brown was stopped when they were hit by Tidwell causing almost $6000 in damages to Tidwell's Commercial vehicle, about $3,000 to Brown's Cadillac Sedan who was less than 30 years of age and the pro se Appellant about to turn 57 years of age incurred almost $700 in damages was not a low speed accident the fact that Tidwell managed to hit Brown's car and ramming it into the pro se says otherwise. The evidence that was allowed and the testimony of pro se and Tidwell does not with the trial judge's conclusion

The pro se Appellant was never treated as a pro se litigant as required under the well established pro se standard again showing the trial judge's bias and prejudice towards this pro se. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R. Co.*, 151 Fed 2nd 240; *Pucket v. Cox*, 456 2nd 233 - *Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938) "*Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment.*"

The trial court treated this pro se as if she was a learned attorney; she in no way or time applied the well established laws when dealing with a pro se litigants. It made no difference to Court that the Appellant had substantially complied with all rules of court, participated appropriately in discover and did her due diligence as to the rules of court and rules of evidence.

The Respondent did not contradict the testimony of the pro se as to her injuries thereby giving credence to her testimony therefore making the determination of the trial judge in complete contrast to the full weight of the evidence and the FACT that the jury indeed found the Appellant credible which would mean that the jury verdict was indeed inadequate, speculative, caprice, bias and based on a prejudice court.

The defense attorney did not supply contradictory evidence as to the Appellant's injuries yet the trial judge concluded that "because the Respondent and Brown did not suffer any injuries whatsoever, how could the pro se?" (ROA p 236-255).

The Appellant's medical records proffered with the Rule 59(e) Motion and refused during the trial explained how the injuries came about and the records show that the Appellant had no pre-existing injuries prior to the accident.

The court in its response to the 59(E) motion quotes *Waring v Johnson* 341, SC 248, 257, 533 SE 2d 906, 911 (Ct App 2000) (citation omitted). "The import of a new trial nisi additur is a suggestion on the part of the judge of a settlement figure." "The consideration of a motion for a new trial nisi additur requires the court to consider the adequacy of the verdict in light of the evidence presented." See also *SC State Highway Dept. v Townsend*, 217 SE 2d 778 (SC Sup Ct 1975).

The trial court and defendant states "there was no evidence submitted in the record from which this court could determine that the verdict rendered by the jury is inadequate." The pro se Appellant proffered her medical records and bills to the court in the Motion to Reconsider, once again the court refused to acknowledge those records and admissible documents under Rule 803(6) instead the court ignored the documents and stated via email to the pro se that "*if they were filed/submitted* they are in the clerk's office or they have been disposed of."

II. The issue of judicial bias and prejudice was timely raised by the Appellant to the trial court; therefore, it is preserved for review by this court

The issue of judicial bias was timely filed to the lower court when it was discovered within the 10 days of filing of the Motion to Reconsider Rule 59, therefore the issue is preserved for this court's review. The trial judge's relationship with the Appellant pro se's former employer SC Department of Motor Vehicles, Eugene Matthews and Richardson Plowden and Robinson should have been disclosed prior to the Judge asking this pro se to agree to no witnesses, yet she deliberately concealed this information on June 12th up and until the trial and then continued to concealed the information during the trial when Matthews inserted himself into

the trial. The trial judge is under a Canon of laws governing judges conduct yet she disregarded those Canons to cause harm to this pro se Appellant. The Court singled Appellant out, implemented a plan that harmed the pro se leading to substantial injustice and a violation of the 6th and the 14th Amendment, which requires equal protection under the law, due process/rights and a right to be fully heard to ensure complete justice/substantial justice and violated Canon 2a, Canon 3.

See *In the Matter of Marshall* (Ct of App 9th Cir) ... bias should "be evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance." *Liteky v. United States,* 510 U.S. 540, 548 (1994). "It is well established that the recusal inquiry must be made from the perspective of a reasonable observer who is informed of all surrounding facts and circumstances." *Cheney v. U.S. Dist. Ct.,* 541 U.S. 913, 924 (2004) (emphasis and internal quotation marks omitted). See *Osuagwu v. Gila Regional Medical Center*, 938 F Supp 2d 1142 (Dist Ct NM 2012).

The Supreme Court first noted that, "[c]oncededly, a fair trial in a fair tribunal is a basic requirement of due process.... Not only is a biased decision maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness."

US v Scroggins, 485 F. 3d 824 (5th Cir 2007) Adverse judicial rulings will support a claim of bias only if they reveal an opinion based on an extrajudicial source or if they demonstrate such a high degree of antagonism as to make fair judgment impossible.

US v. Bernegger, (Dist Ct Miss. 2010) recusal is also required when "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable. *Withrow v. Larkin,* 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975) a fair trial in a fair tribunal is a basic requirement of due process. In *re Murchison*, 349 U.S. 133, 136 (1955). This

applies to administrative agencies which adjudicate as well as to courts. *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973). Not only is a biased decision maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness. In re Murchison, supra, at 136; cf. *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

III. The trial Court abused its discretion in not instructing the jury as to punitive damages and granting a directed verdict when the jury verdict found that the defendant was negligent and damages were awarded however inadequate?

As a preliminary matter, we restate the standard of review Appellate courts should apply to a trial court's post judgment due process review of a punitive damages award. We have typically applied an abuse of discretion standard in reviewing a trial court's post judgment review of a punitive damages award. *See Gamble v. Stevenson*, 305 S.C. 104, 112, 406 S.E.2d 350, 355 (1991) ("[O]nly when the trial court's discretion is abused, amounting to an error of law, does it become the duty of this Court to set aside the award."); *Hundley v. Rite Aid of South Carolina, Inc.*, 339 S.C. 285, 314, 529 S.E.2d 45, 61 (Ct. App. 2000) (evaluating the trial court's post-judgment review and finding "no abuse of discretion in the trial court's conclusions following its review of the jury verdict."). However, changes in the federal case law have persuaded us to adopt a de novo standard for the review of trial court determinations of the constitutionality of punitive damages awards. See *Mitchell v Fortis Insurance Company* (SC Sup Ct 2009)

Before the question of punitive damages in a tort action can properly be submitted to the jury, the circuit court must determine, as a matter of law, that the evidence will support an award of punitive damages. *Lievrouw v. Roth*, 157 Wis. 2d 332, 344, 459 N.W.2d 850 (Ct. App. 1990). To determine whether, as a matter of law, the question of punitive damages should have been submitted to the jury, this court reviews the record de novo. *Bank of Sun Prairie v. Esser*, 155 Wis. 2d 724, 736, 456 N.W.2d 585 (1990); *Lievrou*, 157 Wis. 2d at 344.

The courts of South Carolina has also held "for the reasons articulated in *Cooper Industries,* we find that determinations of the constitutionality of punitive damages awards are best conducted pursuant to a de novo review. Accordingly, we hold that our Appellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damages award. *Cooper Industries,* 532 at 431.

In South Carolina, "punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." See *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E. (2d) 206, 210 (1964). Moreover, they serve "as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated." See *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E. (2d) 65, 68 111*111 (1973). Lastly, punitive damages may be awarded only upon a finding of actual damages. See *Carroway v. Johnson*, 245 S.C. 200, 139 S.E. (2d) 908 (1965).

While the plaintiff stated during the trial that this was an accident it does not change the fact that she requested instructions to the jury on punitive damages the granting of the directed verdict prior to the jury verdict was inappropriate and as the jury was the *trier of fact* in this matter it was up to the jury to determine if the defendant's conduct rose to the level to award punitive damages.

The defendant testified, he did not know how to operate his brakes yet he was driving at full speed during rush hour traffic on September 18, 2015. Respondent testified he had just avoided running into the truck that was in front of him in the middle lane and without reducing his speed he switched lanes and found the pro se Appellant causing her severe damages.

Respondent also testified for the need for prescription glasses that he did not obtain until

January 2017. Respondent testified he had been traveling at a speed of 35 miles an hour and that he received and paid the ticket for "driving too fast for conditions" on September 18, 2015. (S.C. Code § 15-32-510/520). The testimony brings out that this was not was not a low speed impact accident, there was close to $10,000 in property damages among the three vehicles involved. (ROA p 283-297).

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. The jury found in her favor. S.C.Code Ann. § 15-33-135 (Supp.1999); *Taylor v. Medenica,* 324 S.C. 200, 479 S.E.2d 35 (1996). A conscious failure to exercise due care constitutes willfulness. *McCourt by and through McCourt v. Abernathy,* 318 S.C. 301, 457 S.E.2d 603 (1995); *Hawkins v. Pathology Assocs. of Greenville,* 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998).

The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. See *Graham v. Whitaker,* 282 S.C. 393, 321 S.E.2d 40 (1984); *Hawkins, supra.*

The trial judge *abused her discretion* in granting the defendant's motion for a directed verdict as to punitive damages and in failing to instruct the jury as to punitive damages requested by the Appellant. The trial court also abused her discretion and or erred in refusing to instruct the jury as to the "egg shell doctrine" where the laws states clearly that a defendant is to take the Plaintiff as he finds him.

"When considering [such] motions, neither the [circuit] court nor the appellate court has [the] authority to decide credibility issues or to resolve conflicts in the testimony or [the] evidence." See *Parrish v. Allison,* 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007).

IV. Did the trial Court erred or abused its discretion in denying pro se Appellant's request for a new trial absolute, etc.

See O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). The denial of a motion for a new trial absolute, nisi additur, etc., is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. *Id.* If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. *Id.* See *Waring v. Johnson,* 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct.App.2000). "This [c]ourt has the duty to review the record and determine whether there has been an abuse of discretion amounting to an error of law." *Id.* at 257, 533 S.E.2d at 911

The trial court *must* grant a new trial absolute "if the verdict is so grossly excessive (inadequate in this case added) that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive." *Knoke v. South Carolina Dep't of Parks, Recreation and Tourism,* 324 S.C. 136, 141, 478 S.E.2d 256, 258 (1996).

See *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 407 S.E.2d 630 (1991) (The jury must be presented with all evidence from which it can make a logical, well informed decision. A jury's verdict cannot "be left to conjecture, guess or speculation.") (quoting *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 183 S.E.2d 438 (1971)); see also Winchester v. United Ins. Co., 231 S.C. 462, 470, 99 S.E.2d 28, 32 (1957) ("While the mere fact that the determination of future damages may be surrounded with many difficulties does not render the courts impotent to grant

relief, the proof must be established with reasonable certainty and probability that damages will result to the person wronged.").

A circuit court's refusal to grant a new trial is reviewed for abuse of discretion. *Bobby Kitchens Inc. v. Miss. Ins. Guar. Ass'n*, 560 So. 2d 129, 132 (Miss. 1989). In determining whether a verdict is against the overwhelming weight of the evidence, this Court must view all evidence in the light most *consistent with the jury verdict. Motorola Commc'ns & Elecs. Inc. v. Wilkerson*, 555 So. 2d 713, 723 (Miss. 1989).

A new trial may be granted upon the ground of "accident or surprise, which ordinary prudence could not have guarded against." Newly-discovered evidence: "Newly discovered evidence, material for the party making the application, which he (or she) could not, with reasonable diligence, have discovered and produced at the trial."; Inadequate damages (Inadequate damages" is likewise ground for a new trial motion. Again, this ground asks for a limited new trial--i.e., a new trial limited to the issues of damages (findings re liability, etc. to be kept intact).

V. Did the pro se appellant fail to preserve the issue of judicial bias or raise the issues of prejudice to the trial court? No

Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998). In *Roche,* the Court applied Canon 3(E)(1)(a) of Rule 501, SCACR. Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party. It is not sufficient for a party seeking disqualification to simply allege bias; the party must show some evidence of bias or prejudice *Mallett v. Mallett,* 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996). If there is no evidence of judicial bias or prejudice, a judge's

failure to disqualify himself will not be reversed on appeal. *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 433 S.E.2d 856 (1993).

When reviewing a jury charge for alleged error, an appellate court must consider the charge as a whole in light of the evidence and issues presented at trial. *Welch v. Epstein,* 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct.App.2000) (citing *Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 514 S.E.2d 570 (1999)). A judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. *Ellis,* 315 S.C. at 285, 433 S.E.2d at 857.

The moment the Appellant learned/discovered/uncovered the possible bias, prejudice Appellant immediately *in the Motion for Reconsideration Rule 59(e) dated June 23, 2017, within the 10 days allowed to file the Motion stated beginning on Page 14 titled Plaintiff's Motion Pursuant to Rule 59 Requesting Additur or in the Alternative a New Trail for Damages* brought up the issue of the new evidence and judicial bias, prejudice and recusal as soon as she learned what happened and the Defendant responded on July 3, 2017.

Appellant also preserved this issue in the Motion for Relief from Judgment pursuant to SCRCP Rule 60 filed and dated December 4, 2017 which is still currently pending in the trial court as it was filed after the pro se Appellant filed the Notice of Appeal.

That person is entitled to full compensation for all medical bills resulting from that accident under collateral source rule, lost income, current and future pain and suffering including emotional distress. These instructions were clearly given to the jury as to the entitled the pro se Appellant was entitled to but due to the courts failure to allow a full and complete hearing and denial of well established or application of well established law the jury was lead to a verdict that was inadequate the jury was not allowed to see the medical bills which should have been allowed

under South Carolina law, medical instead they were left with pure speculation and words instead of the evidence that was in the court room that day and should have been before them.

The court at times appears to give the Defendant/Respondent advice such as when she suggest to the Respondent that he did not have to return after lunch (ROA p 200-202) and only subsided when the pro se mentioned she had his Admission; or when the trial judge repeatedly suggested that the defendant not call their expert in order to prevent the pro se from having time to subpoena her witnesses and to deny the continuance. (ROA p 153-165)

VI. The trial court abused its discretion when it denied Appellant's request for a continuance based on surprise and its denial of submission of her records which was crucial evidence in proving her case

Logan v Gatti, 347 SE 2d 506 (SC Ct App 1986) A judge is shown to have abused his discretion, however, if his decision is based upon a error of law. *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E. (2d) 290 (1981).The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record. See *Bridwell v. Bridwell*, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983). At the start of the trial the trial judge (ROA p 5-152) set up the trial by stating it was her intent to continue the case so Ms. Couram would have the opportunity to subpoena witness. At the time, this trial judge directly contacted the pro se Appellant she was under the impression she was talking to the Assistant of Judge Benjamin and she was in the process of getting her witness list (which she had already submitted to the defense) together along with the subpoenas. The plaintiff had just lost her job and she was in pain.

This court has held previously recognized "that failure to grant a continuance may deprive a defendant of a fair trial and due process of law, within the circumstances of a particular case." *Williams*, 84 Wash.2d at 855, 529 P.2d 1088 (citing *State v. Cadena*, 74 Wash.2d 185, 443 P.2d

826 (1968)). Yes, this pro se Appellant said she would proceed without witnesses at the suggestion of the trial judge Newman if she wanted to have her case heard that week June 15, 2017. Appellant agreed knowing she could submit her medical bills and medical records as evidence to the jury to prove her damages under the Business Exception Rule SCRE 803(6).

Then the courts begin the pre-trial issues. Plaintiff offered her evidence to the court however the court refused to accept or look at the evidence proffered just repeatedly they were not admissible under SCRE Rule 801 and 802 (ROA p 145-158).

The denial of the submission of any documents, letters that the pro se wrote and could be cross-examined about was denied, the medical records and bills were denied without the presence of the pro se doctors this was a complete and total surprise and the Appellant requested a continuance for the first time (ROA p 157). The judge clearly states she would hear the cause if the pro se "agreed to no witnesses." In fear the matter would end up with Judge Manning and knowing her records and bills could be submitted the pro se Appellant agreed to "no witnesses." What she did not know was the relationship that Judge Newman had with her former employer and their attorney if she had she would never had agreed. (Exhibit Emails dated June 12-15, 2017 ROA p 4495-508)

The hearing had not begun as stated by the Defense and the request for a continuance was not withdrawn by the Appellant, the request was denied by the Court, it made no sense for this Appellant to antagonize the court by continuing to insist on a continuance. There was absolutely nothing the pro se could do or say except move on with the restrictions that left her with no evidence submitted to the jury or court and a book bag full of evidence that legally could be submitted but denied submission merely because of the Appellant's pro se status. (ROA p 162-167)

IN CONCLUSION

State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. *Id* "words and actions create an overwhelming appearance of bias and prejudice" and "convey the impression that the Judge has developed a hostile feeling or spirit of ill will and that the Judge has reached a fixed anticipatory judgment" preventing him from hearing the balance of the case. See also "[t]he term 'bias or prejudice' 'implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.' " *In re Disqualification of O'Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956).

It appears that throughout the trial the main focus of the trial court was to insure that the jury never got to hear the Appellant fully or completely. The result was a jury verdict that was based on speculation. See *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 407 S.E.2d 630 (1991) (The jury must be presented with all evidence from which it can make a logical, well informed decision. A jury's verdict cannot "be left to conjecture, guess or speculation.") (quoting Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971)); see also Winchester v. United Ins. Co., 231 S.C. 462, 470, 99 S.E.2d 28, 32 (1957) ("While the mere fact that the determination of future damages may be surrounded with many difficulties does not render the courts impotent to grant relief, the proof must be established with reasonable certainty and probability that damages will result to the person wronged.").

The trial judge gave the pro se an opportunity to submit her medical bills but waffled then suddenly changed her mind after the pro se located the documents was in the process of handing them to her and she suddenly decided that the Appellant had taken too long to located the documents and had no intent to submit into evidence (ROA p 310-315); (ROA p 237-247). Appellant identified and verbally placed on record that she went to Lexington County Urgent Care, referral to Vital Energy for physical therapy, Palmetto Medical Associates her doctor and referral to Palmetto Spine Center when the plan returned up release from Vital Energy. Appellant was not allowed to verbalize the actual cash amount, but allowed read into the record her medical visits and treatment endured since October 9, 2015. See *Crawford v. Washington*, 541 U.S. 36 (US Supreme Court 2001).

What took place on June 15-16, 2017 was a travesty of justice and must be overturned and remained in the interest of justice and for the foregoing reasons this court should reverse the decision of the lower court and enter judgment in the amount of damages requested in the Motion to Reconsider or in the alternative remand the matter for a new trial absolute as to damages.

Respectfully submitted by,

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Dated this 14th day of September 2018
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Reply Brief of Appellant substantially complies with Rule 211(b), SCACR.

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Dated this 14th day of September 2018
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