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S.C. SUPREME COURT

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

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No 2020-000650

Bertha Rodriguez

Respondent

v.

Taliah Shabazz

Petitioner

REPLY PETITION FOR WRIT OF CERTIORARI

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

Reply Petition for Writ of Certiorari

Petitioner Taliah Shabazz respectfully submits reply petition for writ of certiorari in response to opposing counsel's arguments, as pursuant to Rule 242(g)SCACR. Until this point of the petition, Respondent has failed to respond to the argument that opposing counsel's arguments are improper and address the issue as to why opposing counsel found it necessary to present false evidence to the judge and jury about Petitioner's medical injuries. Stating that without a contemporaneous objection it is not properly preserved for review is in no way a pass for attorneys to engage in fraud and deceit. Respondent has not answered this petition. It is noted under the rulings of evidence Rule 103 SCRE that there are limited circumstances in which the Supreme Court will review issues raised for the first time on appeal. *Toyota of Florence, Inc. v. Lynch* 314 S.C.257, 442 S.E.2d 611(1994)

Challenge to abhorrent and outrageous arguments raised for the first time on an appeal was cited in *Toyota of Florence v Lynch*. This writ was not the first time the case was cited. It was previously mentioned on Petitioner's petition for rehearing. Petitioner claims in the three issues presented on the first writ that a fair trial was denied based on inflammatory arguments presented by opposing counsel, violating the 14th amendment rights and due process. The second, how defense counsel's inflammatory arguments were prejudiced enough to invoke harm on Petitioner and mislead a jury into harming the Petitioner. Finally, how the jury's verdict was inconsistent with the law applied to them and was based on prejudice and was outside the scope of evidence. Rule 242, SCACR lists five situations in which the granting of a writ of certiorari usually occurs. Of those five, two strongly represent the Petitioner's writ of certiorari. One where the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court. The other is when

substantial constitutional issues are directly involved. On this reply writ the Petitioner will review these points further.

REASONS CERTIORARI SHOULD BE GRANTED

I. Unlike the Respondent, Petitioner believes the South Carolina Supreme Court should review the decision of the lower courts under the standards set forth in Rule 242, SCACR.

Rule 242, SCACR lists five situations in which the granting of a writ of certiorari usually occurs. Of those five, two strongly represent the Petitioner's writ of certiorari.

1. Where the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court. The Court of Appeals stated the established rule of law failure to make contemporaneous objection makes the issue unavailable on appeal. "The proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and to ask the court for a distinct ruling thereon." State v. Black, 319 S.C. 515, 521, 462 S.E.2d 311, 315 (Ct.App.1995) On the Petition for a Rehearing Response, Petitioner wrote there are limited exceptions that courts will review case matters without contemporaneous objections and arguments that are not properly preserved for review.¹ Respondents are hoping the courts will overlook the arguments in Toyota of Florence, Inc. v. Lynch 314 S.C.257, 442 S.E.2d 611(1994) because they know how important Toyota's case is. Although the courts do not condone failure of contemporaneous objection it would be detrimental to our judicial system to ignore blatant disrespect of the law by giving attorneys a pass to engage in fraud and deceit.

¹ (This is not the first time Toyota of Florence is mentioned to the Courts. please see Petitioners Petition for a Rehearing Response to the Court of Appeals foot note for Toyota of Florence, Inc. v. Lynch 314 S.C.257, 442 S.E.2d 611(1994)

In paraphrasing, Respondent claims *Toyota v Florence* was never intended to be broad in scope or to excuse failures to make timely objections in normal cases, citing *Dial v Nigel Associates Inc.*, 333 S.C. 253, 509 S.E.2d 269 (S.C.1998). The case of *Dial* is a rare exception of its own involving the killing of a police officer due to negligence of a DUI suspect. It is also a Pandora box the Petitioner will reframe from opening. Petitioner has never been charged with a DUI or suspected of murdering someone; however, the Petitioner will point out, the Supreme Court ruled that *Dial vs Nigel and Associates* does not rise to the occasion of *Toyota vs Florence* because Counsel's remarks were directed toward the circumstances of a guilty plea and not the opposing party or witnesses in this civil trial. *Toyota* and the line of cases preceding it concern abuse of a witness or a litigant. Accordingly, we now clarify that our holding in *Toyota* excuses the failure to make a contemporaneous objection only where the challenged argument constitutes abuse of a party or witness." 333 S.C at 259, 509. *Toyota* and the line of cases preceding it concern abuse of a witness or litigant is reflected in Miss Shabazz's case.

In Miss Shabazz's case opposing counsel attacked Miss Shabazz personally by saying the jury was not there to make Miss Shabazz rich, then proceeded to mock her by minimizing her injuries and claiming she was not hurt enough to be compensated for her injuries, "*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 R.p.67).*" Petitioner asserts 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. With that being said, the Petitioner is being led to believe based on the Respondent's reply writ of certiorari that there is no established law that says attorneys cannot present false evidence to a judge or impartial tribunal. Respondent has been diligent in disputing that preservation errors should dismiss Petitioner's appeal but has not rebuked claims of opposing counsel purposely misleading the jury by providing false information. As stated before on writ of certiorari; "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). (See *In the matter of Calhoun*, 347 S.C. 444, 556 S.E.2d 392 (2001)). Opposing Counsel also abused witness testimony in claiming Miss Shabazz's injuries are on a scale from 1%-100% when expert witness testimony never mentioned that scale chart.

"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 R.pp.65-66)

Below Miss Shabazz's attorney Tyler Lee asked the neurologist about her impairment rating during the neurologist deposition that was then later read at trial.

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]

Opposing counsel claimed to know what Miss Shabazz's injuries meant without back up expert witness testimony to support that claim, and then presented that information to the jury.

In their initial reply brief, Respondents stated, "While the class within which the Appellant's impairment rating falls only provides ratings from 1% through 13%, the impairment rating chart in its entirety provides ratings from 0% through 100%." (Respondents initial reply brief page 6)

Respondent admitted on appeal that Shabazz's injuries were measured from 1%-13%, which was contradictory to what opposing counsel's closing arguments said (that Miss Shabazz's impairment rating measured from 1% on a scale from 1 through 100). Petitioner argues that Miss

Shabazz's impairment rating can only be measured in two classes, mainly class 1. Out of both classes, which are class 0 and class 1, neither measures up to 100%. So, her injuries cannot be rated from scale 1% through 100%. Specifically, to the Petitioner's injuries diagnosed by the neurologist, the American Medical Association chart category of Class 1 Grade B 2% UEI soft tissue shoulder contusion, sprain and strain, notes that the maximum impairment rating falls between 1% to 3% (R.p39). Consequently, the 2% UEI converted to 1% whole body, the 1% whole body MMI is 0%-2%. (R.p39) So, either way Respondent looks at it, opposing counsel's statement was false and Respondent has now admitted knowing that Petitioner's impairment rating was not presented accurately during trial and deliberately prejudiced the jury against the Petitioner. The jury cut substantial bills that was relevant to injuries sustained due to the accident May 8, 2012.

2. Petitioner stated there were limited exceptions in which this court will review cases. One case is where the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court. The other is when substantial constitutional issues are directly involved. When opposing counsel deliberately provided false evidence to the jury, a contemporaneous objection and preservation errors no longer applied. Counsel violated Petitioner's constitutional rights to due process and has made this a rare exception to the rules that will allow the Supreme Court to look at this case further.

II. Petitioner believes to overlook the issue of inflammatory arguments made by defense counsel would violate Petitioners 14th amendment right to have a fair and impartial trial .

It would also become a catalysis for other cases soon to allow attorneys to present evidence they know to be false but because of no contemporaneous objection or preservation error they can say and do what they want. Regarding Respondent's claims that these issues are not properly preserved for review, the post-trial motions by Petitioner's attorney regarding the inconsistent

and inadequate verdict suggest otherwise.² Opposing counsel's highly inflammatory and prejudicial argument fits under these categories: improper motive, prejudice, partiality, and corruption. "Has the cost of first year's appointments before the neurology appointments been covered by Miss Rodriguez insurance." (R.p78) The basis of the insurance question was the direct result of opposing counsel's closing inflammatory remarks.

"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)

"-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 trial court had ruled on post-trial motions that because there was no objection, that was the basis to deny a new trial. If this justification is not enough for the Respondent, then the Petitioner will reiterate her reason as to why the Supreme Court should grant this writ of certiorari again.

"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) The Supreme Court should grant this writ of certiorari to reverse the lower court's decision because Respondent's closing arguments were highly prejudicial and inflicted harm on the Petitioner because Petitioner

² Petitioner's attorney argue if the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. The trial judge is required to grant a new trial absolute." Waring vs Johnson, 341 S.C.248,257,533 S.E.2d 906, 911 (Ct.App.2000) (emphasis added) (citing Cock-N-Bull Steak House, Inc v Generalis Ins. Co., 321 S.C 1, 466 S.E2d 727(1996). (Post-Trial Motions R.p 4, Rpp.2-5) (Also Please See Record on Appeal Post-trial motions Order denying New Trial footnote page 9. The insurance question was brought up, the court dismissed it because of no objection.)

received a defense verdict contradictory to the evidence and inconsistent with the law applied to them.

III. Petitioner reasserts claim the jury's verdict was inconsistent with the law applied to them and was based on prejudice and was outside the scope of evidence. This is another violation of the right to have a fair and impartial trial.

The jury being the fact finders of the case were given instructions by the judge that they were the sole finders of facts and that no one else will be permitted to weigh the evidence and render a verdict based upon the evidence. Their verdict cannot be based on passion, caprice, prejudice, or something not found in evidence. The jury was swayed by false evidence and inflammatory remarks suggesting that Miss Shabazz was just trying to get rich, and the jury cut medical bills that were relevant to her injuries. A fair and impartial trial is an inherent right for every litigant civil or criminal. *Shabazz v Rodriguez* is a rare exception to the rules because the Respondent admitted to providing evidence, they knew to be false to the jury and admitted such on appeal. They also violated Petitioner's constitutional rights to have a fair and impartial trial. The *Shabazz v Rodriguez* case was a case filled with absolute prejudice and injustice.

The 14th Amendment procedural due process for an impartial tribunal states: unlike 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 (Fourteenth Amendment procedural due process).

The questions presented on this writ of certiorari all consist of one thing. This court has to now decide whether to allow opposing counsel's erroneous arguments of Petitioners impairment rating of her entire body to stand, when counsel verbally attacked the witness, lied about Petitioner's injuries and coerced the jury into cutting substantial bills that would have

otherwise placed her in the same position she was in before the accident, as opposing counsel stated in closing arguments.

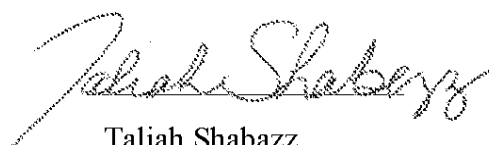
Conclusion

Petitioner has petitioned the Court of Appeals to set aside the jury verdict and the lower courts on the basis of: Improper argument by opposing counsel, inconsistent and inadequate verdict in regard to opposing counsel's improper remarks, and a prejudiced jury that looked outside the scope of evidence. Opposing counsel has always pointed out that Miss Shabazz is upset about the outcome of her trial, that no one is entitled to a perfect trial but is tone deaf to actual arguments on appeal. The Petitioner is not arguing for a perfect trial but for a fair one. Respondent completely disregarded the fact that they are still at fault for the accident on May 8, 2012. Subtract the doctors' visits, deduct the medical bills, disregard the accident, and at the end of the day you would have that healthy vibrant 19-year-old. Miss Shabazz's injuries did not miraculously vanish after trial or once the judge dismissed the jury. What it all comes down to is that Respondent has yet to take responsibility for the trial and the accident. This case was about damages sustained by the Petitioner that was caused by the defendant Bertha Rodriguez. Neurologist Dr. Ogburu testified in his deposition that he gave Miss Shabazz an impairment rating for her entire body, based on his analysis and the analysis of the previous physicians she visited. With that being said, is it right for the Supreme Court to deny Miss Shabazz a fair and impartial trial by disregarding all of the evidence and facts she presented on appeal, in favor of a counsel who has impugned the integrity of our judicial system? In briefs and trial transcripts not once did the Petitioner mistreat Bertha Rodriguez regardless as to whether she was present or not. Not once did the Petitioner present false evidence about Miss Rodriguez. When you have a fair and impartial trial, our judicial system has a solid foundation. Plaintiff submits evidence that

supports their claims. Defense submits evidence that counteract those claims but still present factual evidence of their own. That solid foundation begins to collapse when counsels decide to impugn the integrity of the courts and our judicial system by providing false information to judges and impartial tribunals. Counsel for the Respondent broke that agreement between plaintiff and defendant then proceeded to attack the litigant and abuse expert witness testimony. The Supreme Court has upheld cases despite objection and preservations in order to preserve both parties' rights to have a fair trial. Miss Rodriguez was not in court that day. All there was an empty seat as to where the Respondent should be. Yet, somehow throughout the trial and throughout this appeal, Miss Rodriguez became the plaintiff and Miss Shabazz that empty chair. For these reasons the South Carolina Supreme Court should set aside the jury verdict, reverse the decision of the Court of Appeals and remand for a new trial.

June 11, 2020

Respectfully Submitted,



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Petitioner

Examination of Dr. Ogburu by Attorney Tyler Lee
 Impairment Rating Chart Ms. Shabazz injuries
 Cited Reference Impairment Rating Guide Chapter 15, Table 15-5 page 401

The Upper Extremity 301

TABLE 15-5 Shoulder Regional Grid, Upper Extremity Impairments

Shoulder Regional Grid					
IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES: Degree Extremity to	0	1% - 25% UE	16% - 25% UE	25% - 40% UE	30% - 100% UE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
SOFT TISSUE*					
Shoulder pain, non-specific; shoulder pain following injury or occupational exposure	0	0 0 1 1 1			
Shoulder contusion or crush injury with related minor soft tissue or skin injury		0 1 2 3			
Shoulder bursitis					
MUSCLE/TENDON*					
Shoulder pain, non-specific; shoulder pain post-acute injury or laceration (not otherwise specified)	0	0 0 1 1 1			
Shoulder pain, not functional; loss of motion, but no objective findings of muscle or tendon injury or laceration	0	0 0 1 2			

Shoulder contusion or crush injury with related minor soft tissue or skin injury

Shoulder pain, not functional; loss of motion, but no objective findings of muscle or tendon injury or laceration

The 2% UEI converted to 1% whole body, the 1% whole body MMI is 0%-2%.

Dr. Ogburu assigned Miss Shabazz an impairment rating Soft tissue column: shoulder contusion or crush injury with minor soft tissue or skin injury. Class 1 grade B 2% UEI. Note only measured Class 0 and Class 1. Shoulder Contusion category MMI measured 1%- 3%.