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May 31 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank Addy, Circuit Court Judge

Appellate Case No. 2019-000637
Op. No. 2022-UP-170 (S.C. Ct. App. Filed April 6, 2022)

Tony Young.....Petitioner,

v.

Greenwood County Detention Center and the Greenwood County Sheriff’s Office, Defendants,
of Which the Greenwood County Sheriff’s Office is.....Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel submits that, upon information and belief, he has preserved the issues discussed herein for appeal and that he timely filed a petition for rehearing after the Court of Appeals issued an opinion in this case. The Court of Appeals issues its decision on April 6, 2022. Petitioner Tony Young filed a petition for rehearing on April 21, 2022, and it was denied on May 3, 2022.

QUESTIONS PRESENTED

1. Whether the appellant was deprived of his constitutional and statutory right to a fair trial by jury.
2. Whether the appellant was deprived of his right to object to the jury panel hearing irrelevant and prejudicial information.

STATEMENT OF THE CASE

On August 10, 2011, Tony Young was involved in an automobile collision. Tony sustained serious injuries in the collision, including several broken bones. He was transported to Greenville Memorial Hospital, where medical providers prescribed him pain medication and a C-spine collar to wear. Tony was then discharged to “home.” On August 16, 2011, Tony was charged with Felony Driving Under the Influence in connection with the collision. He was then taken from the hospital to the Greenwood County Detention Center. Upon his arrival at the detention center, Tony was stripped of his prescribed medication and C-spine collar.

Tony filed suit in the Greenwood County Court of Common Pleas on July 10, 2013. The case was tried from September 24 – 27, 2018. Tony presented uncontroverted evidence that the Sheriff’s Office¹ violated its own policies and procedures with regard to its medical screening when he was booked into the detention center. Tony moved for a directed verdict at the close of

¹ The respondent is referred to at various points in the brief as “the Sheriff’s Office.” The Sheriff’s Office operates the detention center where the events related to the action occurred.

his case and again at the close of trial. Following the trial, Tony timely filed post-trial motions, including a motion for a new trial.

At trial, the jury heard uncontested evidence that the Sheriff's Office failed to comply with the Minimum Standards² for detention facilities in South Carolina and violated its own internal policies and procedures, which required the Sheriff's Office to have a physician clear Tony Young before he could enter the detention center. The jury also heard uncontested evidence that the Sheriff's Office failed to document Tony's injuries upon booking and refused to give him medication prescribed to him by a physician in violation of policies and procedures. Most importantly for this Petition for Certiorari, Tony was prevented from developing these issues due to inappropriate and prejudicial commentary by the Court on his evidence and evidentiary rulings. As a result, the jury's deliberations were compromised due to erroneous jury instructions and comments about Tony's uncontroverted evidence which, among other things, essentially instructed the jury to disregard relevant, material acts of gross negligence.

The jury's ability to consider relevant and material evidence was irreversibly compromised in a way that deprived Tony of a fair trial. Without improper and prejudicial limitations on the presentation of evidence, a reasonable jury, hearing so much uncontested evidence of gross negligence, could only have returned a verdict for Tony. The jury deliberated, and all jurors agreed that the Sheriff's Office was negligent.³ However, after hearing inappropriate commentary on the evidence and an erroneous jury instruction, the jury determined that the Sheriff's Office was not grossly negligent. After the conclusion of the trial, a juror commented that the Sheriff's Office had not done anything "intentional," which suggests that the jury was confused by the jury instructions.

² The Minimum Standards is a set of rules that govern what must be done upon arrival of inmates and detainees at jails and detention centers in South Carolina.

³ This information was gleaned during a conversation between Tony's counsel and a juror after the case was tried and counsel were free to speak with jurors.

After the trial, Tony timely filed post-trial motions, followed by a timely appeal. On April 4, 2022, the Court of Appeals issued an opinion affirming the verdict. Tony timely filed a motion for rehearing, which was denied. He then timely filed this Petition for Certiorari.

ARGUMENT

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...” U.S. Const. amend. VII.

“The right of trial by jury shall be preserved inviolate...” S.C. Const. art. I, §14.

“The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.” Rule 38, SCRPC.

I. THE SUPREME COURT SHOULD GRANT CERTIORARI BECAUSE TONY WAS DEPRIVED OF HIS RIGHT TO A FAIR JURY TRIAL AS GUARANTEED BY THE SOUTH CAROLINA CONSTITUTION AND THE UNITED STATES CONSTITUTION.

The trial court deprived Tony of his right to a fair trial in two ways⁴. First, the trial court prejudicially and inappropriately commented on Tony’s evidence, essentially weighing the evidence, and determining issues of fact. In doing so, the Court took on the function of the jury. Second, the trial court gave instructions to the jury that were incorrect and confusing.

a. The trial court’s prejudicial comments about Tony’s evidence are not allowed under South Carolina law.

It is well settled that a “trial judge must act with absolute impartiality in the performance of judicial duties.” *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994). The trial court’s comments about uncontroverted evidence of policy violations and gross negligence in the presence of the

⁴ Tony was also deprived of a fair trial in violation of the South Carolina Tort Claims Act.

jury were largely unaddressed by the Appellate Court's opinion, but Tony respectfully submits that the comments are in direct contradiction to what is allowed at trial under *Pace*.

The Supreme Court should grant certiorari because the trial court's prejudicial comments were largely unaddressed by the Appellate Court and because Tony's right to a fair trial was not "preserved inviolate." In *Butler v. State*, 302 S.C. 466, 397 S.E.2d 87 (1990), our Supreme Court stated:

In *State v. Pierce*, 289 S.C. 430, 346 S.E. (2d) 707 (1986), and *State v. Cooper*, 291 S.C. 332, 353 S.E. (2d) 441 (1986), the same trial judge made similar comments to each defendant. Both defendants had chosen not to testify, and neither was swayed by the judge's comments. The State argued, therefore, that any error was harmless since the defendants were not prejudiced. We rejected the suggestion that these types of comments could ever constitute harmless error, noting, "The comments by the judge were erroneous, improper and contrary to South Carolina law." *State v. Pierce*, 289 S.C. at 434, 346 S.E.(2d) at 710.

Pierce involved comments made about witnesses' decision not to incriminate themselves, but the rationale is applicable here. The trial court's comments about the pivotal evidence presented by Tony cannot "ever constitute harmless error" because the comments "were erroneous, improper and contrary to South Carolina law." *Id.*

During trial, Tony drew attention to uncontested evidence of gross negligence. Tony questioned a Sheriff's Office employee about the policy violations central to Tony's case, specifically, about why Tony was admitted to the detention center without being cleared by a physician, as the Minimum Standards and the Sheriff's Office's own internal policies and procedures require. The Court interjected with prejudicial comments about the evidence, and violated the rule in *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994):

We've been down this road before, okay? We've been down the road before. I think you're pumping a dry well here. He was released from the hospital in Greenville. It's what I said [in a side bar away from the jury] earlier this morning. He cannot be boomeranged back between doctors. We need to move on from this of questioning and focus on what your complaint is, and that is the six days without the neck brace, okay? So go . . . (R. p. 376).

By commenting about important evidence in the presence of the jury, the Court again weighed the evidence for the jury and made it impossible for the finders of fact to objectively analyze the evidence.

A central part of Tony's case was the fact that the Sheriff's Office refused to give Tony his prescribed medication. During the testimony of another defense witness, the evidence was uncontroverted that the Sheriff's Office did, in fact, deprive Tony of prescribed medication. Again, the trial court interrupted, and stated "[t]hey weren't depriving him of medication that he needed, period. End of story. They were depriving him of narcotics, which he can't have in the jail" (R. p. 616). By making this comment in the presence of the jury, the Court again weighed the evidence for the jury, and usurped the jury's power to determine whether it was grossly negligent for the Sheriff's Office to disregard a physician's orders and deny Tony access to his prescribed medication. Tony was denied his right to have impartial jurors determine whether uncontested policy violations, which caused deprivation of medical clearance and denial of prescribed medication when he had a broken neck, broken back, and shattered teeth, constituted gross negligence.⁵

In affirming the verdict, the Appellate Court affirmed the deprivation of one of the most fundamental rights guaranteed by two constitutions, South Carolina Rule of Civil Procedure 38, and the waiver of sovereign immunity⁶. These issues are of paramount importance and should be

⁵ Tony also offered evidence from himself and other witnesses that the Sheriff's Office deprived him of his physician-prescribed C-spine collar, which caused a great deal of pain. However, conflicting evidence on this issue was presented, so it was no uncontroverted. It is important to consider it with the uncontroverted evidence, though, since prescribed medication would have alleviated pain and adherence to the policy requiring physician clearance would have prevented the C-spine collar deprivation and pain associated therewith.

⁶ When the Legislature waived sovereign immunity with the South Carolina Tort Claims Act, Tony's "...right of trial by jury as declared by the Constitution or as given by a statute of South Carolina...[was]...preserved...inviolable." Rule 38, SCRPC. Tony's right to a jury trial was "...given by statute..." at that point, and his right to a jury trial guaranteed by the constitutions of

examined by our Supreme Court. Tony's trial was so one-sided and unfair that at one point, the Court sustained an objection that the defense did not make. After defense counsel thanked the Court for sustaining an objection the defense did not make, the Court made more prejudicial comments, and stated, "[t]his suit was filed years later, okay? The tapes get written over. Let's focus on what is truly an issue here and stop chasing rabbits, please, okay?" (R. p. 384). Tony had requested video footage that would show how he was treated in the detention center, and Tony was entitled to ask witnesses why the Detention Center did not retain footage related, which showed the Sheriff's Office's policy violations. Instead, the trial court proactively interjected, interrupted the testimony, and made prejudicial comments about the lack of evidence.

After the tainted trial described above, Tony sought a chance to have a fair and impartial trial. Tony filed motions for a new trial absolute, judgment notwithstanding the verdict, and a new trial pursuant to the Thirteenth Juror Doctrine. See *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). The trial court denied all of Tony's motions, any one of which would have provided a way to correct the deprivation of Tony's rights guaranteed to him by the South Carolina Constitution and the Constitution of the United States. With such overwhelming evidence of policy violations and gross negligence, a defense verdict was "grossly inadequate," and the trial court should have granted a new trial. See *Vinson v. Hartley*, 324 S.C. 398, 477 S.E.2d 715 (Ct. App.1996). The Supreme Court should review the denial of Tony's request for a new trial to determine whether the denial comports with *Vinson*.

South Carolina and the United States was vested because sovereign immunity was waived. The trial court's prejudicial comments violated that right because no reasonable juror could be expected to ignore such prejudicial comments from the court where jurors were told to come for jury duty, lest they face legal consequences.

b. The trial court’s jury instructions were erroneous and confusing.

“[I]t is reversible error to charge the jury on comparative negligence without also charging the jury that the defendant bears the burden of proof on the affirmative defense.” *Ross v. Paddy* 340 S.C. 428, 532 S.E.2d 612 (Ct. App. 2000). The Appellate Court found that the jury charge on comparative negligence could not have prejudiced Tony because the instruction came after the question of whether the Sheriff’s Office was grossly negligent, and cited *Cole v. Raut*, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008). *Cole* acknowledges that an erroneous jury instruction may be grounds for reversal if “...the appellant can show prejudice from the erroneous instruction.” *Id.* At least one juror made it clear that the jury thought an intentional act was required for a finding of gross negligence. Since jurors only spoke with each other during deliberation, proof of jury confusion due to erroneous instructions such as those given at trial in this case cannot be part of any record and can only be discovered by speaking with jurors. The Supreme Court should examine this issue since it affects such an important right.

II. The Supreme Court should grant certiorari because Tony was deprived of his right to object to irrelevant, prejudicial information in the presence of the jury panel.

The Supreme Court should examine the issue of whether Tony ever had any choice in stipulating to a DUI plea. As set forth in Tony’s initial brief with the Court of Appeals, the Court informed the entire jury panel of the DUI before a record was running and before Tony or his counsel had a chance to do anything. The jury panel was tainted at that point, and Tony had no choice but to march forward and try his case. In *State v. Johnson*, 333 S.C. 62, 508 S.E.2d 29 (1998), our Supreme Court determined that “where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the

point on appeal, to renew the request at [the] conclusion of the court's instructions." See also, *Keaton ex rel. Foster v. Greenville Hosp.*, 334 S.C. 488, 514 S.E.2d 570 (1999).

Johnson addressed absence of an objection where a judge declined an instruction presented by a party. The party's opposition to the trial court's decision was patent because the party had proposed a charge that the trial court declined to give. Similarly, Tony made a motion *in limine* prior to the trial court's comments to the jury panel to exclude Tony's DUI charge. Tony's position about and objection to the panel being informed about the charge was therefore obvious and any objection would have been unnecessary, just as it was in *Johnson*. The trial court noted that had the motions *in limine* been reviewed, the Court would have proceeded differently. The Supreme Court should review the Appellate Court's decision because it is at odds with *Johnson*.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the Supreme Court grant a Writ of Certiorari.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have filed and served the Petitioner’s Petition for Writ of Certiorari on the Respondent’s Counsel of Record, the Clerk of the South Carolina Court of Appeals, and the Clerk of the Supreme Court of South Carolina, by electronic service and filing, and with a copy sent via U.S. Certified Mail, Return Receipt Requested, with proper postage affixed, as indicated below, on this date, May 31, 2022.

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Re: *Tony Young v. The Greenwood County Sheriff's Office*
Appellate Case No. 2019-000637

Dear Mr. Shearouse:

Please find enclosed for filing and service, a copy of Petitioner's Petition for Writ of Certiorari in the case referenced above, along with a Proof of Service and check for the filing fee. Pursuant to The Supreme Court's Order filed August 25, 2021, neither an Appendix nor additional copies of the Petition have been included. Should the Court need copies of those, please do not hesitate to ask.

Opposing counsel and the Clerk for the S.C. Court of Appeals has been copied via electronic service as indicated below.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Monica Brody
Certified Paralegal

Enclosures



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