

No. _____

In the
Supreme Court of the United States

SHAMBRIA NECOLE SMITH,
Petitioner,

v.

KANSA TECHNOLOGY, L.L.C.,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The testimony presented in the instant matter as well as the underlying facts and circumstances reveal that the following issues, which form the basis of the appeal, are each to be answered strongly in the Plaintiff-Appellant's favor.

- A. Whether the District Court violated the Due Process Clause by disallowing the interview of the jurors in furtherance of determining whether a jury taint and/or jury tampering occurred during the trial proceedings in this matter.
- B. Whether the District Court erred in its oral ruling, whereby Exhibit 7 was permitted for use as an accident report, that provided Workers' Compensation references which caused confusion as evidenced by the jury question prior to verdict.

PARTIES TO PROCEEDING

The undersigned counselors of record for the Petitioner certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or refusal.

I. Parties:

- a. Petitioner Shamberia Smith was Plaintiff in the District Court proceedings and the Appellant the Fifth Circuit case.
- b. Respondent KANSA TECHNOLOGY, LLC was the Defendant in the District Court proceedings and the Appellee in the Fifth Circuit case.

II. Counsel for the Plaintiffs-Appellants

- a. The Johnson Law Group, APLC; Willie G. Johnson, Jr., Sophia J. Riley, Derek Elsey and Jennifer Robinson

III. Counsels for the Defendants-Appellees

- a. KANSA TECHNOLOGY, LLC –Duplass, Zwain, Bourgeois, Pfister, Weinstock & Bogart; Guy Valdin and Jade Wandell

May this certificate of interested parties be deemed proper in the premise.

STATEMENT OF RELATED PROCEEDINGS

- *Shamberia Necole Smith v. Kansa Technology, LLC and Hammond Daily Star Publishing Company, Inc.*, 2016-0002724; Division “A”; 21st Judicial District Court; State of Louisiana;
- *Shamberia Necole Smith v. Kansa Technology, LLC and Hammond Daily Star Publishing Company*, No. 2:16-cv-16597; United State District Court, Eastern District of Louisiana (Jury Verdict Rendered on May 2, 2018 and Final Judgment Entered on May 4, 2018);
- *Shamberia Necole Smith v. Kansa Technology, LLC and Hammond Daily Star Publishing Company*, No. 18-30900; United States Court of Appeals for the Fifth Circuit (Judgment entered June 26, 2019)

There are no additional proceedings in any court that are directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

This petition presents the question of whether the district court violated the Due Process Clause by disallowing the interview of the jurors in furtherance of determining whether a jury taint and/or jury tampering occurred during the trial proceedings in this matter and whether the District Court erred in its oral ruling, whereby Exhibit 7 was permitted for use as an accident report, that provided Workers' Compensation references which caused confusion as evidenced by the jury question prior to verdict.

On April 24, 2018, the Plaintiff objected to the Jury Verdict Form, R. Doc. #66 in detail regarding the potential taint with reference to Hammond Daily Star Publishing and/or Workers' Compensation.¹ The Plaintiff preserved the record notating its objection through the R. Doc. #66 and oral argument during the in chambers conference with the court.

The Court in R. Doc. #87 rendered Judgment according to the Jury Verdict from the April 30, 2018 trial of this action.²

On May 11, 2018, Plaintiff in R. Doc. #89 filed a Motion for a New Trial regarding the objected to inclusion of any mention regarding Hammond Daily Star relating to the Plaintiff's Workers' Compensation.³

¹ ROA 1256

² ROA 1343

³ ROA 1347

On May 15, 2018, the Court in R. Doc. #91 denied the Plaintiff's request for a new trial in this matter.⁴

The Court, within the order denying a Motion for New Trial found the Plaintiff failed to attach a copy of Exhibit 7 at issue. As argued within the Motion for New Trial the exhibit is part of this Honorable Court's record and Plaintiff requested the exhibit from Defense counsel prior to submission to the court. Defense counsel could not locate the exact redacted exhibit thus the record is the best evidence of the form submitted by Defense counsel.

As per the ruling within R. Doc. #91 pursuant to an oral ruling, Exhibit 7 was permitted for use as an accident report, provided Workers' Compensation references were redacted. Plaintiff's counsel further argued that any agreements regarding Exhibit 7 were oversights and therefore Plaintiff's counsel re-urged exclusion of any such reference to Workers' Compensation and specifically any reference to Exhibit 7. In reply, Defense counsel, argued that procedural convenience would permit the exhibit to be used since counsel did not previously object to the use of Exhibit 7 and that both parties included said exhibit in the Pre Trial order served as a basis of Exhibit 7's use at trial.

Interestingly, Defense counsel did not adequately and properly redact said document when using in his opening statement and following the close of the case, defense counsel could not locate the specific exhibit which was used in his opening statement nonetheless

⁴ ROA 1364

Exhibit 7 is attached herewith which reveals the content of the exhibit presented to the jury.

The use of Exhibit 7, the Workers' Compensation 1008 form, was prejudicial, served no relevant purpose particularly since the parties agreed to use Exhibits 5 and 6 which were the incident reports to provide the jury with incident details.

Furthermore, the court in R. Doc. #91 made no mention of the jury question directly correlating to any Workers' Compensation inquiry by the jury. The jury question is the exact reason the Plaintiff objected to the court April 30, 2018.

As a result, the court ordered that Workers' Compensation was not to be referenced in the trial except that Defense counsel would be permitted to use Exhibit 7 with redactions during his opening argument and case in chief.

As a consequence of this prejudicial Exhibit 7, the jury had one question prior to their verdict, "***Does Shambria Smith have any pending lawsuits against the Hammond Daily Star?***"⁵ the composition and wording of the Verdict Form and Jury Instructions as a whole likely led to juror confusion. The Court within its ruling, merely mentioned the jury questions, however, and did not weigh the evidence regarding the jury question and its direct correlation to the objected Exhibit 7 along with the Charge and Verdict Form objected to by the Plaintiff.

⁵ ROA 1299

The inclusion of the Workers' Compensation party (Hammond Daily Star Publishing) as evidenced by the jury question prior to verdict must have caused juror confusion.

In essence, the Charge and Verdict Form misled the jury to render a verdict in favor of the defense as it is assumed the jury believed the Plaintiff had previously recovered and/or had a pending suit against Workers' Compensation.

Additionally, relief should be granted on the grounds the jury rendered a verdict contrary to the facts established at trial with respect to an inadequate warning contained on the KANSA 480 Inserter as there was no evidence of any warning labels on the subject portions of the equipment whatsoever thus, no reasonable jury could find "inadequate warning" as there cannot be any finding on adequacy by a preponderance of the evidence when there was absolutely no evidence adduced at trial of any warning. In this regard, the Court provided its own evaluation of the evidence despite Defense witness, Mr. Worthington testifying during trial there were no warnings labels. Therefore, Plaintiff respectfully requests that her relief be granted and all other equitable relief under federal rules.

In the instant case, "the district court must balance the losing party's right to an impartial jury against the risks of juror harassment and jury tampering."

Trial took place from April 30, 2018 through May 2, 2018, before an eight-person jury. On May 2, 2018, the jury returned a unanimous verdict in favor of

Defendant. During the trial, Plaintiff's expert, Lauren Rivet sat in the hallway of the court awaiting her time to testify. During this time, Plaintiff's expert believes she witnessed interaction of the defense's support staff and Ms. Hydel, the courier for one of the juror's Ms. Waguespack interacting with each other to be verified. The Plaintiff is seeking to interview the jury to obtain any additional information that may or may not support a finding of a jury taint along with evidentiary issues. In communicating with jurors, Plaintiff's counsel would make it clear that any communication and participation would be completely voluntary. Plaintiff's counsel would conduct its inquiry in a non-confrontational manner, making sure not to challenge the juror's views, reasoning or participation regarding deliberation. On May 2, 2018, the Defendants stated they had no objection to interviewing the jurors.

OPINIONS BELOW

The Fifth Circuit's opinion (May 1, 2019) was selected for publication and neither was the District Court's Opinion (July 2, 2018).

STATEMENT OF JURISDICTION

This is an appeal of the denial of the Motion for Rule 60(b) Relief by the United States Fifth Circuit Court of Appeals in a civil action.

This matter proceeded to a trial by Jury, which commenced on April 30, 2018 pursuant to 28 U.S.C. § 1331. This Honorable Court has jurisdiction over this matter. Judgment was rendered on July 2, 2018, denying Plaintiff's request for 60(b) relief. On July 31, 2018, Plaintiff filed a timely Notice of Appeal. The

Judgement of the Fifth Circuit was rendered on June 26, 2019.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the 14th Amendment (Appendix F) as it relates to Due Process along with all other applicable statutes.

STATEMENT OF THE CASE

This matter commenced as a product's liability action in the 21st Judicial District Court, in the Parish of Tangipahoa, State of Louisiana. This matter was subsequently removed to the Eastern District Federal Court, Action Number 2:16-cv-16597. This matter proceeded to jury trial, which began on or about April 30, 2018, which lasted through May 03, 2018, whereby the jury rendered a verdict in favor of the defendants. The Petitioner thereafter filed a Motion for New Trial, Motion for Reconsideration and a Motion for Miscellaneous Relief, in connection with the admissibility of Exhibit "7", along with jury confusion and taint. Said Motions were denied.

This matter was then subsequently appealed to the United States Fifth Circuit Court of Appeals, whereby Judgment was rendered on June 26, 2019.

The applicable provisions of law, which are to be addressed, are as follows:

Federal Rule of Civil Procedure 60(b), which states the following:

Relief from a Judgment or Order

(a) **CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS.**

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **GROUND FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING.**

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) **TIMING AND EFFECT OF THE MOTION.**

(1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

(d) **OTHER POWERS TO GRANT RELIEF.** This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) **BILLS AND WRITS ABOLISHED.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Under Federal Rule of Civil Procedure 60(B), a motion for relief the court may relieve a party or its legal representative from a final judgment, order, or proceeding for reasons set forth in Rule 60.

Rule 60 requires the filing within a reasonable time and no more than a year after the entry of judgment. The Plaintiff has timely filed said motion for relief.

Furthermore, the Appellants also argue the appropriate motion was filed pursuant to Fed. R. Civ. Proc. 5.01 which states the following:

Rule 5.01 - Juries -- Selection; Instructions; Prohibition of Post-Trial Interviews No attorney or party shall undertake, directly or indirectly, to interview any juror after trial in any civil or criminal case except as permitted by this Rule. If a party believes that grounds for legal challenge to a verdict exist, he may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to the challenge. The motion shall be served within 14 days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion shall state the name and address of each juror to be interviewed and the grounds for the challenge that the moving party believes may exist. The presiding judge may conduct such hearings, if any, as necessary, and shall enter an order denying the motion or permitting the interview. If the interview is permitted, the Court may prescribe the place, manner, conditions, and scope of the interview.

The court analyzed *Haeberle v. Tex. Int'l Airlines*, 739 F.2d 1019, 1021 (5th Cir. 1984 and similar rulings *Abel v. Ochsner Clinic Found.*, No. 06-8518, 2010 WL 1552823, at 1 (5th Cir. 2010); *United States v. Riley*, 544 F.2d 237, 242 (5th Cir. 1976) cert. denied, 430 U.S. 932 (1977); *Green Constr. Co. v. Kan. Power & Light Co.*, 1 F.3d 1005, 1012 (10th Cir. 1993) *Ledet v. United States*, 297 F.2d 737 (5th Cir. 1962) the Fifth Circuit intention to not denigrate the jury trial afterwards. The Appellant is still entitled to a fair trial and the issues of potential jury taint should not be dismissed in an effort to disfavor jury interviews. The court has wide discretion to allow interviews.

REASONS FOR GRANTING THE PETITION

The decisions, which have been reached by lower courts, have been clear deviations from the applicable law, which has been provided herein. It is unequivocal that in the instant case, the Plaintiff objected to the use of Exhibit “7”, which in fact was the basis as to why each of the parties filled their own exhibit and witness lists because of the ongoing objection to documents. The court within in chamber Pre-Trial Conference stated that Exhibit “7” would be allowed but must be redacted. The court within Rec. Doc #89 ruled the oral ruling did occur and the record is clear as to the multiple exhibits and witness lists due to the continued dispute of admissible documents amongst the parties.⁶

⁶ ROA 1364

CONCLUSION

The Trial Court erred in disallowing the interview of the jurors in furtherance of determining whether jury taint and/or jury tampering had occurred during trial proceedings in this matter. Furthermore, the Fifth Circuit erred by failing to overturn the Trial Court's ruling.

Appellant further argues that the oral ruling on Exhibit 7 was permitted for use as an accident report, yet provided Worker's Compensation references causing juror confusion as evidenced by the jury question prior to verdict.

Respectfully submitted:

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