No. 19-367

In The
Supreme Court of the United States

SHAMBRIA NECOLE SMITH,

Petitioner,

v.

KANSA TECHNOLOGY, LLC,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

As required under S.Ct. R. 29.6, Respondent, Kansa Technology, L.L.C. discloses that it is a limited liability whose members are J-W Holding, L.L.C.; ESS Corporation; and K Holdings.

The members of J-W Holding, L.L.C. are Joe Works TOD, Joe Works, and Jane A. Works, Trustees of the Joe Works Living Trust dated April 28, 1999.

ESS Corporation has no parent corporations and no publicly held company owns 10% or more of its stock.

K Holdings has no parent corporations and no publicly held company owns 10% or more of its stock.

There are no parties to this matter other than those listed in the caption.

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BRIEF IN OPPOSITION

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The United States Fifth Circuit Court of Appeals' unpublished Opinion denying Petitioner's appeal can be found at 769 Fed. App'x 143. The United States District Court for the Eastern District of Louisiana's unpublished Order and Reasons denying Petitioner's post-trial requests for relief under Federal Rule of Civil Procedure 60(b) can be found at 2018 WL 3223265. The United States District Court for the Eastern District of Louisiana's unpublished Order and Reasons denying Petitioner's post-trial motion for leave to interview jurors can be found at 2018 WL 3208035. The United States District Court for the Eastern District of Louisiana's unpublished Order and Reasons denying Petitioner's motion for new trial can be found at 2018 WL 2219370.

JURISDICTIONAL STATEMENT

Respondent does not dispute this Court's jurisdiction under 28 U.S.C. § 1332 but denies that this matter satisfies the standard set forth in Supreme Court Rule 10(a). Petitioner filed her Petition for Writ of Certiorari on September 16, 2019.

COUNTERSTATEMENT OF THE CASE

Petitioner filed suit in Louisiana state court against her employer and Respondent for a work-related injury that she allegedly suffered while using a machine manufactured by Respondent. Pet. App. at 5. Respondent removed the action to the United States District Court for the Eastern District of Louisiana and moved for summary judgment to dismiss Petitioner's employer, which the district court granted. Pet. App. at 5. The case proceeded to trial with Respondent as the sole defendant. Pet. App. at 5.

On April 24, 2018, Petitioner filed written objections to several items in Respondent's proposed jury instructions. *See* Supp. App. at 2–5, 58.[1] Six days later, prior to the start of trial, the district court held a conference with counsel for both parties and revised the jury instructions and verdict form "in accordance with the parties' mutual agreement and provided the revised documents to parties' counsel for review." Supp. App. at 57.

The district court ordered the parties not to refer to workers' compensation during trial. Pet. App. at 10, n.20. Prior to trial, the parties submitted a Joint Pre-Trial Order that was "to be admitted *without objection*."

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[1] Respondent asserts that several documents originally filed in the district court and made part of the Record on Appeal in the appellate court will assist this Court in determining that review should not be granted. Respondent submits a Supplemental Appendix containing those documents, some of which Petitioner cites in the Petition for Writ of Certiorari but does not provide in Petitioner's Appendix. *See* Pet. at 1, nn.1–3.

Pet. App. at 10; Supp. App. at 57. Respondent included Exhibit 7 within the Joint Pre-Trial Order and the Deliberation Exhibit List, which in its original form contained information related to workers' compensation. *See* Pet. App. at 10, n.21; Supp. App. at 56. The district court admitted Exhibit 7 into evidence at trial without objection, although it ordered that any references to workers' compensation be redacted, which the court found Respondent did before showing Exhibit 7 to the jury. *See* Pet. App. at 7, 10, and n.21; Supp. App. at 57.

During trial, an individual whom Petitioner identified as a "courier" for one of the jurors exited the courtroom and went into an adjacent hallway. Pet. App. at 13. She told several nearby individuals that the judge ordered her to leave because she drank from a water bottle. Pet. App. at 13. One of the individuals, a staff member of Respondent's counsel, mentioned that earlier in the proceedings, the judge told her earlier to sit down as she handed a document to counsel. Pet. App. at 13. However, the staff member did not discuss any aspect of the trial with the courier or any juror, then or later. Pet. App. at 14.

Before the jury retired to deliberate, the district court charged and instructed the jury. Supp. App. at 9. The jury instructions included general instructions regarding comparative fault and specific instructions about the potential fault of Petitioner's employer. Supp. App. at 11–45. The verdict form asked the jury if the machine manufactured by Respondent was "unreasonably dangerous in its design" or "because of inadequate" warning. Supp. App. at 46. Questions on

subsequent pages asked the jury to assess the fault of Petitioner's employer. Supp. App. at 47–49.

During deliberations, the jury posed a question regarding whether Petitioner had any pending lawsuits against her employer. Supp. App. at 10, 58. The court conferred with both parties regarding the jury's questions before referring the jury back to the comparative fault section of the verdict form. Supp. App. at 10, 58. Petitioner did not object to the court's answer to the jury. Supp. App. at 58.

After deliberating, the jury returned a verdict in favor of Respondent on May 2, 2018, finding that the machine was not unreasonably dangerous. Pet. App. at 5, 22. On July 31, 2018, Petitioner filed a Motion for Leave to Interview Jurors that the district court denied because it found no evidence of possible jury taint or misconduct. Pet. App. at 17–21.

Petitioner also moved for a new trial under Rule 60(b) of the Federal Rules of Civil Procedure on three grounds. Pet. App. at 7; Supp. App. at 50–54. First, she asserted that the jury was misled into reaching a verdict for Respondent because the verdict form listed Petitioner's employer and the jury saw an improperly redacted copy of a document marked as "Exhibit 7". Pet. App. at 7–8. Second, she contended that the jury could not have reasonably found that the machine was not unreasonably dangerous because no evidence was presented at trial to show that there were any warning labels on it. Pet. App. at 10. Last, she maintained that Respondent tampered with the jury because of the

brief interaction between Respondent's staff member and the courier in the hallway outside the courtroom during trial. Pet. App. at 14. The district court denied the motion. Pet. App. at 15; Supp. App. at 56–62.

The United States Fifth Circuit Court of Appeals summarily dismissed Petitioner's appeal and endorsed the well-reasoned decisions of the district court denying Petitioner's post-trial motions. Pet. App. at 1–3.

REASONS FOR DENYING THE PETITION

I. THIS CASE DOES NOT IMPLICATE ANY OF THE COMPELLING REASONS FOR WHICH THIS COURT ORDINARILY GRANTS A PETITION FOR WRIT OF CERTIORARI.

Petitioner asks this Court to determine two questions. Pet. at 1. First, whether the district court violated her due process right when it denied her post-trial request to interview the jurors to determine whether the jury was tainted or tampered with during trial. Pet. at 1. Second, whether the jury was misled by Exhibit 7, which the district court permitted to be shown to the jury at trial. Pet. at 1. Although not formally presented as a question to the Court, she also suggests that the jury's verdict was contrary to the facts because there was no evidence that the machine manufactured by Respondent had any warning labels. Pet. at 4.

This Court should deny review because Petitioner's "asserted error[s] consist[ ] of erroneous factual findings or the misapplication of [ ] properly stated rule[s]

of law." SUP. CT. R. 10. This case does not involve conflicting decisions between state and federal courts or among federal circuit courts. *See Hillman v. Maretta*, 569 U.S. 483, 489 (2013). There is no issue of national significance, such as a constitutional challenge to a federal law. *Massachusetts v. Envtl. Prot. Agency*, 549 U.S. 497, 505–06 (2007). Nor did the courts below misapply any precedent of this Court. *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S.Ct. 1421, 1427 (2017).

II. THE ISSUES OF WHETHER PETITIONER'S DUE PROCESS RIGHT WAS VIOLATED, WHETHER THE DISTRICT COURT PROPERLY DENIED HER POST-TRIAL REQUEST TO INTERVIEW JURORS, AND WHETHER EXHIBIT 7 SHOULD HAVE BEEN ADMITTED AND USED AT TRIAL ARE NOT PROPERLY BEFORE THIS COURT.

The Court should deny review because Petitioner did not preserve the issues of whether her due process right was violated, whether she should have been permitted to interview the jurors, and whether Exhibit 7 should have been admitted into evidence and used at trial.

A. Petitioner never raised any due process concerns prior to her Petition to this Court.

Petitioner did not assert in her post-trial motions that the district court violated her due process right. *See* Pet. App. at 4–16, 17–21. She also did not raise the issue before the Fifth Circuit. *See* Pet. App. at 1–3. For the first time in her briefing to this Court, Petitioner suggests that the district court violated her due process right when it denied her post-trial request to interview the jurors. Pet. at i. Because the question was "neither raised before nor considered by the Court of Appeals, this Court" should adhere to its longstanding practice and not entertain it. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147, n.2 (1970) (citations omitted); *see also Tharpe v. Ford*, 139 S.Ct. 911, 913 (2019) (Sotomayor, J.) (the petitioner failed to preserve an issue for appeal because he never raised it prior to a footnote in his reply brief in the appellate court and the district court had not addressed it).

B. Petitioner did not timely appeal the denial of her request to interview jurors.

After the district court denied her Motion for Leave to Interview Jurors on June 28, 2018, Petitioner had thirty days to file a Notice of Appeal under FED. R. APP. P. 4(a)(1)(A). Because the thirtieth day fell on a Saturday, her deadline was the following Monday, July 30, 2018. However, she did not file her Notice of Appeal until the following day. Because Petitioner failed to timely appeal, this Court should not consider the

question of whether Petitioner should have been permitted to interview jurors.

C. Petitioner did not object to the admission and use of Exhibit 7.

Under FED. R. EVID. 103(a)(1), it is an "unremarkable proposition[]" that a party may only assert on appeal that the district court erred in admitting evidence if she contemporaneously objected and articulated specific grounds for exclusion. *See Ohler v. United States*, 529 U.S. 753, 756 (2000). Here, Petitioner failed to preserve the issue of whether Exhibit 7 was improperly admitted because she failed to object to its use at trial "[d]espite being given multiple opportunities" to do so. Pet. App. at 10; Supp. App. at 58. Further, Exhibit 7 was listed on the Joint Pre-Trial Order, Joint Exhibit List, and the Exhibit List given to the jury for use during deliberations. Petitioner also signed a Certification of Trial Exhibits at the close of trial, further attesting that she did not object to Exhibit 7.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED PETITIONER'S POST-TRIAL MOTIONS.

This Court should deny review because the district court correctly exercised its broad discretion when it denied the post-trial relief sought by Petitioner. *See Browder v. Dir., Dept. of Corr. of Illinois*, 434 U.S. 257, 263, n.7 (1978) (FED. R. CIV. P. 60); *Tanner v. United*

States, 483 U.S. 107, 126 (1987) (denial of request for post-trial interview of jurors).

As the district court noted, Petitioner has not clearly articulated the specific legal principles upon which she bases her requests for relief. Pet. App. at 8. However, the district court considered her requests under FED. R. CIV. P. 60(b)(1), (2), (3) and (6). Pet. App. at 8–13.

Under Rule 60(b)(1), a party may seek relief from a final judgment due to "mistake, inadvertence, surprise, or excusable neglect." Federal courts throughout the country adhere to the principle that "relief will not be granted under Rule 60(b)(1) merely because a party is unhappy with the judgment. The party must make some showing justifying the failure to avoid the mistake or inadvertence. Gross carelessness or negligence is not enough." 11 Charles Alan Wright et al., *Fed. Prac. & Proc. Civ.* § 2858 (3d ed).

Rule 60(b)(2) permits a party to seek relief because of "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." FED. R. CIV. P. 59(b) states that a party must move for a new trial "no later than 28 days after the entry of judgment." However, this Court has expressed that "motions for a new trial on the basis of newly discovered evidence" are disfavored. *I.N.S. v. Doherty*, 502 U.S. 314, 323 (1992).

If there has been "fraud . . . , misrepresentation, or misconduct by an opposing party", a litigant may seek relief under Rule 60(b)(3). To succeed, the movant must

establish through clear and convincing evidence that her opponent's gross misconduct prevented her from presenting her case fully and fairly. *See Williams v. Thaler*, 602 F.3d 291, 321 (5th Cir. 2010).

Finally, this Court has held that relief under Rule 60(b)(6) "is available only in extraordinary circumstances. In determining whether extraordinary circumstances are present, a court may consider a wide range of factors. These may include, in an appropriate case, the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process." *Buck v. Davis*, 137 S.Ct. 759, 777–78 (2017) (internal citations and quotations omitted).

A. Petitioner has not shown any necessity for interviewing jurors following the trial.

As noted by the district court, Pet. App. at 19, "[f]ederal courts have generally disfavored post-verdict interviewing of jurors", *Haeberle v. Tex. Int'l Airlines*, 739 F.2d 1019, 1021 (5th Cir. 1984), because doing so risks "denigrat[ing] jury trials by afterwards ransacking the jurors in search of some ground, not previously supported by evidence, for a new trial." *United States v. Riley*, 544 F.2d 237, 242 (5th Cir. 1976).

Here, the district court properly exercised its "wide discretion to restrict attorney-juror contact in order to shield jurors from post-trial fishing expeditions by" Petitioner's attorneys. *Green Constr. Co. v. Kansas Power & Light Co.*, 1 F.3d 1005, 1012 (10th Cir. 1993) (internal quotations omitted). Petitioner has never

suggested that Respondent had illicit communications with a juror during trial, directly or through counsel's staff, nor pointed to any evidence that even hints at juror prejudice arising out of the brief contact between an employee of Respondent's counsel and a juror's courier. Pet. App. at 19.

B. Petitioner has not illustrated that the jury was confused by Exhibit 7.

In her briefing to this Court, Petitioner argues that the jury was confused during deliberations because it sent a note to the court inquiring about whether she had a pending action against her employer. Pet. at 3. She asserts that the court failed to consider that Exhibit 7, which she claims counsel for Respondent "did not adequately and properly redact", caused at least some of the jury's confusion. Pet. at 2–3.

As the district court reasoned, Petitioner did not object to Exhibit 7 despite having "multiple opportunities" to do so. Pet. App. at 10; Supp. App. at 58. Although Petitioner states that "Exhibit 7 is attached herewith which reveals the content of the exhibit presented to the jury", Pet. at 3, no such document appears in her Appendix. Further, the district court expressly stated that Respondent presented a redacted version of Exhibit 7 to the jury. Pet. App. at 10, nn.20, 21. Petitioner's vague, conclusory allegations that Exhibit 7 was improperly redacted and failure to provide this

Court a copy of that document, in any form, preclude relief under Rule 60(b).

C. Petitioner has not shown that the jury was misled by the verdict form.

Petitioner refers to "R. Doc. #66" as proof that she "objected to the Jury Verdict Form" before trial. Pet. App. at 1. However, as the district court correctly ruled in denying Petitioner's post-trial motion for relief under Rule 60(b), Pet. App. at 8–9, the inclusion of her employer on the jury verdict form was entirely proper because, under Louisiana law, fault must be allocated among all parties and nonparties involved in the occurrence made subject of the litigation. LA. CIV. CODE ART. 2323; *see Fontenot v. Dual Drilling Co.*, 179 F.3d 969, 973 (5th Cir. 1999).[2]

Additionally, Petitioner has not pointed to anything indicating that the jury was confounded by the verdict form. Her sole assertion, without any evidentiary support, is that the jury must have been confused because it asked the court whether Petitioner had any pending claims against her employer.

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[2] The district court declined to analyze Petitioner's arguments concerning the jury instructions and verdict form because she "waived her right to assert [those] challenges" by not objecting at trial. Supp. App. at 59, n.5.

D. Any jury confusion as to whether Petitioner made a claim against her employer was harmless because they did not reach that portion of the verdict form.

Assuming that Respondent presented an improperly redacted version of Exhibit 7 to the jury and the presence of Petitioner's employer on the verdict form caused jury confusion, the error was harmless. The jury returned a verdict in favor of Respondent after it determined that the machine at issue was not unreasonably dangerous. *See* Pet. at 4; Pet. App. at 5, 10. Because the jury found that Respondent was not liable for Petitioner's injuries, it did not reach the section of the verdict form concerning apportionment of fault among the various actors.

Regardless of any hypothetical jury speculation about any claims that Petitioner might have made against her employer in a separate proceeding, there was no effect on the verdict because the jury did not reach the issue of whether the employer was at fault. Accordingly, this argument is not a valid basis for this Court to grant review.

E. Petitioner has not demonstrated that the verdict was contrary to law.

Petitioner contends that the verdict was "contrary to the facts established at trial with respect to an inadequate warning" regarding the machine manufactured by Respondent because Respondent's expert "testif[ied] during trial there were no warning labels."

Pet. at 4. The district court rejected this argument when it denied Petitioner's motion for relief under Rule 60(b), finding that the evidence presented at trial provided a sufficient basis for the jury's verdict in favor of Respondent. Pet. App. at 11. Petitioner has not produced in this Court or the courts below any additional evidence to the contrary or otherwise shown how the jury's verdict was so erroneous as to warrant the extraordinary relief of a new trial.

CONCLUSION

Petitioner seeks review from this Court for no reason other than her dissatisfaction with the outcome of the trial. She has not presented any novel, compelling, or important issues of law that should be resolved by this Court. Petitioner failed to raise any due process argument in any briefing prior to her Petition, did not timely appeal the district court's denial of her unwarranted request to interview jurors, and did not object to the admission and use at trial of Exhibit 7. Finally, she has not shown that she is entitled to the extraordinary relief of Federal Rule of Civil Procedure 60(b) concerning her request to interview jurors, jury confusion caused by Exhibit 7 or the verdict form, or that the verdict was contrary to the law based on lack of evidence.

Therefore, Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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