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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable H. Steven Deberry, IV, Circuit Court Judge for Common Pleas

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Appellate Case No.: 2022-001006
Opinion No. 2025-UP-034

Wendy Lynch & Rebecca White Lynch, ...Respondents,

v.

Elizabeth Langley .....Appellant.

APPEALLANT'S AMENDED PETITION FOR REHEARING

Appellant Elizabeth Langley, pursuant to Rule 221, SCAR, respectfully request this Court rehear the matter and reconsider its arguments. Counsel respectfully submits this Court has overlooked or misapprehended matters necessary for the proper resolution of Appellant's claim.

RELEVANT FACTS

This matter arises out of a dispute regarding the Last Will and Testament of James Marion Lynch. Wendy Lynch, Elizabeth Langley and Rebecca White are the three adult children of the decedent. Wendy Lynch filed suit against her sisters for civil conspiracy, defamation, abuse of process, and intentional infliction of emotional distress.

James Marion Lynch died on February 9, 2013, after suffering with brain cancer. Prior to his death, he issued a will naming Wendy Lynch and Elizabeth Langley as co-personal representatives of his estate. Proceedings in the probate court became contested.

Wendy Lynch filed a Summons and Complaint in the Florence County Court of Commons Pleas in 2016. This case was tried before a jury on April 25-29, 2022. A jury returned a verdict in favor of Wendy Lynch against Elizabeth Langley in the amount of $60,000 actual and $250,000 punitive, and against Rebecca White in the amount of $40,000 actual and $250,000 punitive.

ARGUMENT

The trial court erred in admitting a voicemail message left by Appellant's former attorney, Eric Poston, under Rule 801(d)(2)(D) of the South Carolina Rules of Evidence.

For a statement to qualify as non-hearsay under this rule, it must be made by the party's agent or employee concerning a matter within the scope of that agent or employment, and during the existence of the relationship.

The record reflects that the Appellant consulted with Attorney Poston regarding two legal matters, including a probate case, during which she informed him that she could not afford his representation for the probate matter. Subsequently, Attorney Poston left a voicemail for the Respondents without the Appellant's knowledge or authorization. The Appellant was neither present when the voicemail was recorded nor aware of its contents at the time. Upon learning of the voicemail, she immediately terminated Attorney Poston's representation. ROA 254-256.

When asked on the record about obtaining representation from Attorney Poston, the Appellant states the following;

> **Q:** All right. Now, you also were represented by Ducati James -- Jones. I'm sorry. That's Mr. Jones. That's his gangster rap name. He actually is named Eric Poston.

A: I briefly went and had a consult with him regarding two cases and he never submitted, from what I understand, that he was representing me in any of the cases. I went and consulted him with both cases. I told him I couldn't afford him for probate. And then he's trying to sabotage me by threatening Ms. Lynch on a telephone call that I had nothing to do with, and so I -- I fired him.

Q: Okay. So, we can agree that -- I didn't ask you that, but I appreciate you anticipating that I would, that Mr. Poston, the lawyer you went to see that you say you did not hire, telephoned this lady, Ms. Lynch, threatening her? You've heard the tape; right? I can play it for you. He threatened her.

A: I wasn't there when that happened.

Q: But he threatened her on the telephone.

A: He did.

Q: He told her not to call the police. He told her she needed to settle this matter with you and your sister.

A: I had nothing to do with that.

Q: That's what he said.

A: But I had nothing to do with that attorney doing that. He did that to sabotage me because he knows you. He knows you and your aunt -- or his aunt knows you is what he told me.

Q: Okay. I'm not sure what that means, but all right. And now you have Mr. Rigney?

A: Sir, I'm not going to keep hiring somebody that's going to sabotage me.

Q: Well, in fact, you had -- I think a dozen, but I may have lost count.

A: That's not a dozen.

Q: Well, it's close. Maybe a baker's dozen. But nonetheless, in nine years you've had all those lawyers; correct?

A: I had those lawyers, but not that many. And some of them had to do different tasks. Some of them couldn't do certain tasks. And Mr. Eric was hired, but he never put himself, from what I understand, on any case. He was hired only for the civil, because I couldn't afford him for the probate. And then when he sabotaged me, I told him I didn't need -- I didn't need you to get me in more problems, so.

Q: He called and threatened her to advance your interests, trying to terrorize her, ---

A: Well, I had nothing to do with that.

Q: --- telling her not to call the police. Telling her he needed -- she needed to come to cur [ph] and settle this.

A: Never had anything to do with that. He did that to sabotage me, because I told him I was getting my records and he did it that day. I was there to get my records.

ROA 254-256.

In this case, the voicemail in question was personal in nature and did not pertain to Attorney Poston's legal representation of Langley. As such, it falls outside the scope of the attorney-client relationship and should have never been admitted as evidence.

Courts have consistently held that an attorney may be the agent of his client for the purposes of Rule 801(d)(2)(D), but that the trial court must exercise caution when admitting statements that are a product of this relationship. United States v. Harris, 914 F.2d 927, 931. The voicemail at issue does not meet this criterion and was therefore improperly admitted.

The trial court erred in allowing the Respondent to repeatedly use the word "kill" throughout their arguments.

The trial court erred in allowing the Respondent to repeatedly use the word "kill" throughout their arguments, despite the fact that the record clearly reflects that Ms. Langley never used that term. Instead, she stated that the Respondent "tried to send Daddy to Heaven early." ROA 292 – 298.

The repeated use of the word "kill" mischaracterized her statement, creating unfair prejudice that far outweighed any probative value and improperly influenced the jury's perception of the evidence. This undue emphasis infringed upon the jury's role in determining the meaning and intent behind Ms. Langley's words.

Although the Appellant did not contemporaneously object, the prejudicial impact of this mischaracterization compromised the fairness of the trial. The appellate court has discretion to review unpreserved issues where failing to do so would result in a fundamental miscarriage of justice. Given the highly prejudicial nature of the Respondent's repeated use of the word "kill," appellate intervention is warranted to ensure the integrity of the proceedings.

In State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010), the South Carolina Court of Appeals reaffirmed the principle that while issue preservation is critical, appellate courts may consider unpreserved issues in exceptional cases to prevent a miscarriage of justice. The undue emphasis on the term "kill" in this case created an inherently prejudicial atmosphere that warrants appellate review.

For the foregoing reasons, the appellant respectfully requests that this Court grant the petition for rehearing to address these significant evidentiary and procedural errors, which substantially impacted the fairness and integrity of the trial proceedings.

CONCLUSION

This court should grant Appellant's petition for rehearing.

Respectfully submitted,

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