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STATE OF SOUTH CAROLINA  
COUNTY OF YORK

) DAVID HAMILTON  
) CLERK OF COURT  
) YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS  
THE SIXTEENTH JUDICIAL CIRCUIT

Indictment No.: 2012-GS-46-04105

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

LYNNE SMITH SAUCIER,

Defendant.

RECEIVED ORDER

OCT 17 2013

SC Court of Appeals

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC  
2013 OCT -2 PM 3: 48  
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This matter is before the Court on Motion of the Defendant, Lynne Smith Saucier, for a new trial in the above entitled matter. The Defendant was convicted of pointing or presenting a firearm by a jury. The Defendant was given the opportunity to file any post-trial motions at the conclusion of the trial and none were made. The Defendant did not request that she be allowed to file a post-trial motion or that the period be left open for ten (10) days. The Defendant thereafter filed with the Clerk of Court a written Motion for a new trial within ten (10) days on September 10, 2013, but it was not sent to the Court until September 26, 2013. Assuming that the Motion complies with Rule 29 of the S. C. Rules of Criminal Procedure, the Court will rule on the Motion.

The Court finds no merit to the Motion. Addressing grounds 1. and 2. of the Motion, the Court finds, as it did during the trial, that there was substantial evidence from which the jury could have found that the State had proven the charge against the Defendant,

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including criminal intent beyond a reasonable doubt. The credibility of the witnesses and the weight to be accorded to the evidence is a matter for the jury and not the Court.

There was testimony from an eyewitness, supported by a video with visual and audio made from a cell phone of the Defendant's actions. This evidence supports the State's position that the victims were lawfully working on their property when the Defendant cursed them and fired a shotgun in their direction. Further, that shotgun pellets hit the trees above their heads on their property and fell down from the trees near them.

The third ground cited in the Motion is the exclusion of a civil judgment in favor of the Defendant against the victims in this case following a decision by an assistant solicitor to dismiss a previous charge against the Defendant.

Whether to admit evidence of the civil judgment was discussed at length in chambers prior to the start of the trial and on the record in pre-trial. The State opposed the admission of the civil judgment for several reasons. The State also insisted that all circumstances surrounding the dismissed charge and the judgment be admitted into evidence. Specifically, the State stated to the Court that the previous criminal charge was a "he said," "she said," case with no other evidence to support either side. Given the burden of proof required in criminal cases, the assistant solicitor decided not to go forward with the case and dismissed it. The Defendant then sued the complaining witnesses and got a civil judgment for malicious prosecution. The assistant solicitor, who handled the previous criminal case and made the decision to dismiss it, is no longer working for the Solicitor's Office in York County. She is working as a prosecutor in another state. The State requested that the case be delayed to get her here to explain why she dismissed the previous charge. The Court decided that she would be a material witness if the civil judgment were to be

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allowed into evidence. In order to prevail in a civil action for malicious prosecution, a plaintiff must establish that there was no probable cause to support a warrant. This is usually established by the finding of "no probable cause" at a preliminary hearing or the refusal of a grand jury to indict. Neither of those events happened in the previous case and the dismissal was solely based on the decision of the assistant solicitor that it was not a winnable case based on the burden of proof and possessing no proof other than the testimony of the complaining witness and the Defendant. Since there may well have been probable cause, but difficulty of proof, the assistant solicitor's testimony would be important to the State.

The civil judgment regarding a previous incident involving the parties is relevant evidence as defined in Rule 401, SCRE, which would be admissible under Rule 402, SCRE, but solely on the issue of motive of the complaining witness in this case. However, relevant evidence may be excluded by the trial court pursuant to Rule 403, SCRE, on the grounds of prejudice, confusion or waste of time.

The Court excluded evidence of the civil judgment on the grounds that it was prejudicial to the State, would be confusing to the jury, and that it would take twice as long to try this case, and a delay to get the assistant solicitor's presence.

A trial within a trial is almost always confusing to a jury. The State would have to educate the jury on the burden of proof in a civil case and a criminal case, provide testimony on "probable cause," and why the previous criminal charge was dismissed. The State would have had to present testimony as to the previous conduct of the Defendant, out of which the previous criminal charge was made. That would have required the addition of witnesses, lengthened the trial, and confused or misled the jury as to the State's case.

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The Defendant would have had to present her side of the facts and events leading up to the civil judgment. This would have led to a trial within a trial, resulting in undue delay, waste of time, confusion of the issues, and misleading the jury. The Defendant would have told the jury, in effect, they did it before and they are doing it again. In determining whether a previous criminal conviction can be used to impeach a defendant, the trial court is required to balance the probative value against unfair prejudice to the Defendant. In this case, the cases are similar and the admission of a civil judgment would be more prejudicial to the State than probative to the defense. It is only relevant on the question of motive. But, the danger would be that the jury would decide this case based on a previous case and not on the merits of this case or would be confused or misled concerning the issues in this case.

In an effort to compromise and let the Defendant present the question of motive of the complaining party, the Court suggested a stipulation of counsel that the parties had an ongoing dispute about a boundary issue. The parties agreed on the wording of the stipulation and the Court published the stipulation to the jury.

The complainants knew they had to have more evidence than their word against the word of the Defendant or face another dismissal. They had physical evidence by way of a video recording. But, the jury may not have understood the differences in "probable cause," burden of proof, additional evidence, and why the previous charge was dismissed.

The jury knew the parties did not like each other, which allowed them to judge motives. The jury heard the testimony of the witnesses and had the opportunity to judge their credibility. Their verdict was based on the testimony and evidence in this case. Any slight prejudice to the Defendant was heavily outweighed by undue delay, waste of time,

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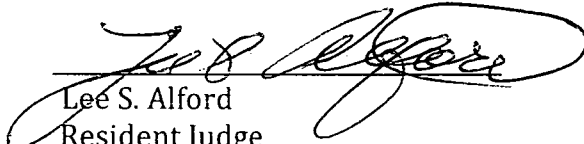
confusion of the issues for the jury, prejudice to the State, and the danger that the jury would decide this case based on an arbitrary factor, a civil judgment.

The Motion for a new trial is denied for all of the foregoing reasons. The Defendant received a fair trial, and the verdict was supported by substantial evidence.

IT IS SO ORDERED.

York, S. C.

October 2, 2013

  
Lee S. Alford  
Resident Judge  
of the Sixteenth Judicial Circuit

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