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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

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.: 2025-000919

Wendy Lynch, Respondent,

v.

Elizabeth Langley and Rebecca White Lynch, Appellant.
Of Whom Elizabeth Langley is the Appellant and
Rebecca White Lynch is a Respondent.

REPLY TO THE RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENTS

I. The Court of Appeals erred in finding that the trial court did not abuse its discretion in admitting a voicemail from the Petitioner's former attorney, Eric Poston, despite the voicemail constituting inadmissible hearsay and being more prejudicial than probative, and in failing to grant relief from the trial court's erroneous admission of that evidence.

Respondent argues that the Court of Appeals did not error in finding that the trial court did not abuse its discretion and that the Court of Appeals opinion supports that. However, although the Court of Appeals ordered, "We hold the trial court did not abuse its discretion when it admitted a voicemail Eric Poston, Langley's former attorney, left for Lynch because the statements he made in the voicemail were admissible under Rule 801 (d)(2)(D) of the South Carolina Rules of Evidence. See Creed v. City of Columbia, 310 S.C. 342, 344, 426 S.E.2d 785, 786 (1993) ("The admission of evidence is a matter addressed to the sound discretion of the trial judge."); id. ("Absent clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal.") (Opinion: 2025-UP-034); this message was prejudicial to the Petitioner and again, harmful and should not have been allowed in trial.

The Court of Appeals then further ordered, "Langley testified Poston was representing her in a civil case at the time he left voicemail; therefore, Poston was acting as Langley's servant and an employment relationship between the two existed at that time. Further, Poston made the statements within the scope of his employment relationship because Langley testified, she hired Poston to represent her in a civil matter,... Rule 801 (d)(2)(D), SCRE ("A statement is not hearsay if ... [t]he statement is offered against a party and is ...a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the

relationship…")." (Opinion: 2025-UP-034). While Petitioner certainly does not argue with the clearly established law regarding client adoption of statements made by their attorneys, Petitioner does argue that Eric Poston's claims in the voicemail message that he still represented Petitioner are not relevant, given the facts testified to under oath by Petitioner that he was not her attorney at the time. (Respondent's Brief p. 32; R. p. 287, lines 16-18). Mr. Poston was therefore no longer a party and now more of an adverse party, especially to proceed with the voicemail after representation had been terminated. Petitioner was no longer bound by the statements made by Eric Poston as there existed no attorney-client relationship at the time the voicemail message was left. Therefore, the voicemail message statements do not fall within the non-hearsay rule of admission of a party-opponent. Rule 801(D), SCRE.

The question becomes whether or not the admission of the voicemail message into evidence is harmless error. Reversible error is only present when the admission of evidence causes prejudice that would have reasonably affected the result of the trial. State v. Vick, 384 S.C. 189 at 199, 682 S.E.2d at 280. This is the case here and further supports the Court of Appeals errored in finding that the trial court did not abuse its discretion.

As reiterated in the Petitioners Petition for Rehearing, this voicemail was personal in nature and did not pertain to the Attorney Poston's legal representation of the Petitioner. 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. This voicemail does not meet this criterion and therefore should not have been admitted. Again, reiterating the trial court did in fact abuse its discretion in allowing the admission of the voicemail and the Court of Appeals errored in finding the discretion was not abused.

To find that a voicemail left by an Attorney, one purporting to be the Attorney of the Petitioner, left for the opposing party in a civil suit, as wholly unprofessional and outrageous as the voicemail message played for this Jury could not have affected the result of the trial, is an error of the Trial Court. Then supporting that the trial court did not abuse its discretion, is an error of the Court of Appeals.

II. The Court of Appeals erred in finding that the Petitioner did not preserve the issue concerning the use of the word "kill," despite the record showing that the term was used multiple times and was objected to on the grounds of being more prejudicial than probative. The Court further erred in failing to grant relief from the trial court's ruling, which improperly invaded the jury's fact-finding role by resolving the ambiguity of the statement and determining whether the use of the word "kill" was defamatory in nature.

Respondent argues that this issue was not preserved for appellate review. Having objected to the use of any terms other than the actual defamatory statement alleged to have been said by Petitioner adequately preserves the issue for appellate review.

Respondent further argues that the use of the word "kill" was not more prejudicial than probative. As previously argued in Petitioner's Initial Brief to the Court of Appeals and Petition for Writ of Certiorari, to state that the Jury hearing the word "kill" used over and over throughout the trial in reference to the alleged defamatory statement had no effect on the Jury's fact-finding responsibility would, once again, ask the Court to disregard all common sense to determine this to be a harmless error by the Trial Court. Appellant's Brief, pg. 23.

Therefore, the Court of Appeals has errored in stating this issue was not preserved and therefore the trial court should have banned the use of the word "kill".

CONCLUSION

Respondent's main argument regarding the issues on appeal in the Petition for Writ of Certiorari are that the issues were not properly preserved for appellate review or proper evidentiary findings within the trial judge's discretion.

Respondent's argument that the admission of the voicemail message left for Respondent by Attorney Eric Poston was not an abuse of discretion is wrong by the fact that Poston was not Petitioner's attorney at the time that the voicemail message was left for Respondent. Rule 801(D), SCRE.

Finally, as to Respondent's arguments about the use of the word "kill" in reference to the allegedly defamatory statement by Petitioner and its repeated use by the Respondents Counsel during the trial without objection, requires the Court to abandon all common sense in what would affect the outcome of a Jury Trial.

Respectfully submitted,

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