

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Lee S. Alford, Circuit Court Judge

Case No. 2012-GS-46-04105

Lynne Smith SaucierAppellant,

v.

State of South Carolina.....Respondent.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

DID THE CIRCUIT COURT ERR IN EXCLUDING EVIDENCE OF A PRIOR CIVIL SUIT AND JUDGMENT BETWEEN THE APPELLANT AND WITNESSES BASED ON THE GROUNDS OF RELEVANCY, CONFUSION, AND WASTE OF TIME?

STATEMENT OF THE CASE

On April 12, 2012, Appellant was arrested and charged with Discharge of a Firearm in Unincorporated Area of the County. At some point later, this charge was dropped and Appellant was charged with Pointing and Presenting a Firearm. Appellant's case was tried before a jury in a three-day trial from August 27, 2013 - August 29, 2013. Prior to opening statements, counsel for Appellant sought the introduction of statements and evidence relating to a previous civil suit between the Appellant and Robert and Carol Jones, her neighbors, and subsequent civil judgment in favor of Appellant. Over Appellant's objections, the Honorable Lee S. Alford excluded the use of this evidence on the grounds that it was not relevant, it would confuse the jury, and it would waste judicial time.

On August 27, 2013, Appellant was convicted of Pointing and Presenting a Firearm and sentenced of commitment to the State Department of Corrections for a determinate term of five years provided the sentence is suspended with probation for five years. Appellant filed a timely Motion for a New Trial with the Clerk of Court on September 10, 2013 seeking a new trial based on the trial Court's failure to grant Appellant's motion for directed verdict, the jury verdict unsupported by the evidence, and the improper exclusion of evidence. A filed copy of this motion was mailed to the Honorable Lee S. Alford on September 24, 2013 and received by the Court on September 26, 2013.

On October 8, 2013, Appellant, through counsel, received written notice of Judge Alford's Order denying Appellant's Motion for a New Trial. Appellant filed a timely notice of appeal with the Court of Appeals on or about October 14, 2013. This appeal follows.

FACTS

Appellant, Lynne Saucier, resides in York County, South Carolina on California Road. Appellant has resided at this sixteen-acre farm since 1989. (Transcript p. 174). Carol and Robert Jones reside next door to Appellant with an adjoining property line. (Id. at 175). Appellant and her neighbors have had a long and tumultuous relationship involving unfounded criminal charges initiated by Carol and Robert Jones and a successful malicious prosecution, abuse of process, and defamation civil suit against the Jones.

In 2009, the Jones falsely accused Appellant of firing at them and charged her with Assault and Battery of High and Aggravated Nature. Appellant was arrested and the charge was ultimately dismissed. Appellant initiated a civil suit against the Jones for malicious prosecution and abuse of process, which resulted in a \$35,000 verdict in favor of Appellant on March 22, 2012.

Less than two (2) weeks later on April 2, 2012, Appellant was at her home rehabbing a shoulder surgery. (Transcript 176). Appellant was in her driveway trying to start her Ford truck when she noticed the Jones' worker, Robert Rainey, watching her from the Saucier-Jones property line. (Transcript 177-178). Appellant left to run some errands in her Dodge truck, but returned to find Mr. Rainey and Ms. Carol Jones at the property line staring at her. (Transcript 178). Despite her not uncommon audience, Appellant continued to work on one of her trucks in the driveway. (Transcript 180-181).

Appellant, an avid and lawful gun owner, removed some jumper cables and her shotgun from one of her trucks. (Transcript p. 181). Frustrated with her inability to start the first truck, Appellant cursed and fired her shotgun straight up into the air from her driveway. (Id.) Appellant fired her shotgun from the same place in here driveway where she regularly fired her shotgun and shoots skeet. (Id.). Appellant fired the shotgun up into the air. She was unable to fire the shotgun from her shoulder as one normally fires a shotgun because of her shoulder surgery. (Id. at 182). In frustration, Appellant fired two shots up into the air as she walked back to her Ford truck. (Id.)

At no point during this incident did Appellant threaten Mr. Foy, Mr. Rainey, Ms Jones or anyone at the property line watching her. (Id. at 184). Appellant never fired the shotgun in the direction of the witnesses. (Id.). Appellant actually fired the shotgun in the air in the direction opposite of the neighbors staring down below at the property line. (Id.). There is no question that both the State of South Carolina and York County permit one to shoot a firearm on one's property so long as it is done in a safe manner. (Id. at 162).

ARGUMENT

- I. BECAUSE THE TRIAL COURT JUDGE EXCLUDED EVIDENCE RELATING TO PREVIOUS CIVIL SUIT AND JUDGMENT BETWEEN THE APPELLANT AND WITNESSES BASED ON THE GROUNDS OF RELEVANCY, CONFUSION AND WASTE OF TIME, THE CIRCUIT COURT ERRED BY IMPROPERLY EXCLUDING ADMISSIBLE EVIDENCE.

A. Relevancy

At her criminal trial, Appellant was unduly prejudiced by the trial court judge's pre-trial refusal to permit Appellant to introduce evidence of the alleged victims' and the state's key witness' animosity towards Appellant. As a preliminary matter, Rule 402, SCRE

provides that "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." "Relevant evidence" is further defined in Rule 401, SCRE as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

In the case at hand, Appellant, both in chambers and in pretrial motions sought the ability to produce evidence, both testimonial and via civil court orders, showing a long-standing tumultuous between Appellant and her neighbors. In short, Appellant wished to introduce evidence regarding the previous lawsuit involving the Jones, the outcome of the lawsuit and other information surrounding her tumultuous relationship with the Jones. Although counsel for Appellant made arguments to introduce this evidence in chambers, the trial judge deliberated and made his ruling on the record prior to the start of the trial. In his ruling, the Honorable Lee S. Alford determined that no such evidence on the prior civil suit or judgment in favor of Appellant would come in. (Transcript p. 62-63).

Here, the trial court judge did find that the proffered evidence was at least "tangentially" relevant, but excluded it anyway. (Transcript p. 63). The trial court judge failed to recognize that evidence of a prior civil suit and unfavorable judgment is extremely relevant to show both bias and motive on the part of the Jones and the State's key witness, Barry Foy, who was the Jones' son-in-law. In fact, the State's case-in-chief relied almost entirely on the testimony of Barry Foy, a neighbor and son-in-law of Robert and Carol Jones.

(Transcript p. 92-93). Moreover, Barry Foy, his mother-in-law, Carol Jones and one of their workers, Robert Rainey were the only witnesses to the alleged incident which the State contends constitutes the Pointing and Presenting charge.

Although Judge Alford correctly points out that a prior civil suit may not be directly relevant to the act of pointing and presenting, it is still relevant under Rules 401, 402 SCRE because it has a tendency to make the existence of facts that are of consequence to the determination of the present action more probable or less probable than they would be without the evidence. Specifically, evidence of the prior civil suit and judgment in favor of Appellant is directly relevant to the credibility, bias and motive of the Jones and testifying witness, Barry Foy. Without the ability to question witnesses about the prior civil suit, Appellant was prejudiced by her inability to question Mrs. Jones and Mr. Foy's credibility, bias or motive.

Contrary to Judge Alford's ruling deeming this evidence "tangentially" relevant, a party is permitted to impeach a witness with even irrelevant matters. "Considerable latitude is allowed in the cross-examination of a witness (always within the control and direction of the presiding judge) to test the accuracy of his memory, his bias, prejudice, interest, or credibility. In doing so the witness may be asked questions in reference to irrelevant matter, or in reference to prior statements contradictory of his testimony, or in reference to statements as to relevant matter not contradictory of his testimony." *State v. Thompson*, 110 S.E. 133, 134 (S.C. 1921). If Appellant had been able to introduce evidence of the civil suit judgment or otherwise cross-exam Mrs. Jones and Mr. Foy on the subject, Appellant would have been able to impeach Mrs. Jones and Mr. Foy's credibility. In addition, Appellant

would have been able to show that Mr. Foy and the Jones colluded and fabricated their story in order to seek retribution from Appellant for her civil suit victory.

B. Confusion

The trial judge erred by refusing to allow evidence of the prior civil suit under Rule 403, SCRE on the ground of confusion. During pretrial motions, Judge Alford ruled that the evidence would confuse the jury. (Transcript p. 65). It appears that Judge Alford made this conclusion based on the differing burdens of proof between civil and criminal trials. However, this is hardly a basis for confusion in any criminal trial. It is hard to imagine a single criminal trial where at least defense counsel, if not both, discuss the difference between "preponderance of the evidence" standard and "beyond a reasonable doubt" standard.

In fact, the distinction was explained to the jury at least five times in this trial. The trial judge instructed the jury of the state's burden of proof beyond a reasonable doubt in his opening remarks. (Transcript p. 75). Counsel for Appellant later explained the differing burdens of proof in his opening statement. (Transcript p. 87). Counsel for Appellant again explains this distinction in his closing argument. (Transcript 220). Counsel for the State even discussed the heightened beyond a reasonable doubt standard in his closing argument. (Transcript pp. 224-225). Most importantly, the judge, in his jury charge, specifically explained the preponderance of the evidence standard and distinguished it from the beyond a reasonable doubt standard. (Transcript pp. 238-239). These are the very same, simple jury instructions criminal trial courts rely on daily to instruct the jury on the proper burden of proof. If these instructions are sufficient for jury charges, they should also sufficiently quash

any potential confusion from the introduction of Appellants civil trial involving the alleged victims. In other words, even if there was some slight confusion, it could be easily wiped away by a very simple curative instruction.

Furthermore, the trial judge misapplied Rule 403. Rule 403 provides that relevant evidence "may be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (emphasis added). Rule 403 does not bar relevant evidence because there is *some confusion* or even when there is a *great deal of confusion*. Rather, Rule 403 permits a trial judge to exclude relevant evidence if and only if the probative value is substantially weighed by the danger of confusion of the issues. The seemingly "some confusion" finding by the trial judge does not even trigger a judge's discretion to bar relevant evidence.

Under the same 403 analysis, the incredible probative value of this evidence cannot be ignored. Because the State's primary witness was related to the losers of the civil suit with Appellant, this impeachment evidence was the only evidence available to demonstrate Mr. Foy's credibility, motive and bias. Appellant had no other opportunity to draw out the witness' bias towards Appellant. Appellant had no other way to show the jury that these parties have sought false and malicious unfounded charges against Appellant in the past. Accordingly, the trial judge abused his discretion when excluding evidence of Appellant's civil suit and civil judgment on Rule 403 grounds of confusion.

C. Waste of time

The trial judge also appears to have excluded the use of the same evidence under Rule

403 on the grounds that the same would be a waste of time. (Transcript p. 67). As discussed in detail above, the proper 403 inquiry is not whether there is some waste of time or great waste of time, but rather whether any waste of time *substantially outweighs* the probative value of the proffered relevant evidence. In making his pre-trial ruling, it appears that Judge Alford focused on the need to re-try the failed criminal case against Appellant which led to the \$35,000 civil verdict in favor of Appellant. In doing so, Judge Alford's attention was misplaced. Appellant needed only to introduce a certified copy of the civil judgment in order to impeach Mr. Foy as to his possible motive or bias. Although Judge Alford noted the waste of time in educating the jury on the differing burdens of proof, this was already done throughout the trial and again in Judge Alford's jury charge. (Transcript p. 68; 238-239).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and remand for a new trial.

May 13, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this 13th day of May, 2014, I served upon the below named Respondents copies of the **INITIAL BRIEF OF APPELLANT** by depositing copies of the same via U.S. Mail, postage prepaid, United States Mail in an envelope addressed as set forth herein below:

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***Re: Notice of Intent to Appeal from Lynne Smith Saucier v. State of South Carolina,
C.A. No.: 2012-GS-46-04105***

Dear Ms. Kitchings:

Enclosed for filing is my original and three copies of the Initial Brief of Appellant along with a Certificate of Service in the above-referenced case. By copy of this letter, I am also serving counsel for the State of South Carolina.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,

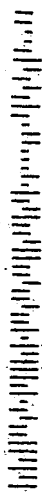
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Enclosures (as stated)

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