

Randall W. Holcombe

Michael Galloway

PLAINTIFF(S)

Terry Holcombe
 DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) State entered judgment by the Court:

TRUE COPY
 JUL 30 2014
 Clerk of Court

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge
 SCRPC Form 4C (03/2013)

2155
 Judge Code

2-14-14
 Date
 Page 1

RECEIVED
 AUG 04 2014
 SC Court of Appeals

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Donald L. Smith

John M. Grantland

Jason P. Luther

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporters – Renee Tollison

Richard Shirley – Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Jury verdict rendered for the Defendant, Michael Galloway.

FILED - CLERK'S OFFICE
ANDERSON, SC
2014 FEB 14 P 3:09
CLERK'S AND
JURY SESSIONS

Randall Wade Holcombe,
COMMON PLEAS AND
GENERAL SESSIONS
Plaintiff,

v.

Michael Galloway and Terry Holcombe,
Defendants,

**ORDER DENYING PLAINTIFF'S MOTION
FOR A NEW TRIAL COPY**

JUL -9 2014

This case arises out of a single vehicle accident that occurred on January 9, 2012. The case came to trial before the Court on February 10, 2014, and ended with a jury verdict for the Defendant Michael Galloway ("Defendant") on February 14, 2014.¹ The central issue at trial was the identity of the driver of the vehicle at the time of the accident: Plaintiff claims the Defendant was driving, and Defendant claims Plaintiff was driving. Before the Court is Plaintiff's motion for a new trial pursuant to Rule 59. A hearing on the motion was held on June 12, 2014. Present for the motion were counsel for Plaintiff, Don Smith, and counsel for Defendant, Jason Luther.

The specific grounds of Plaintiff's motion are set forth in his motion previously filed with the Court on February 4, 2014, and his supplemental motion filed on or about April 2, 2014. In particular, the Plaintiff contends that the trial court erred in excluding evidence of the Defendant's driving record. The Plaintiff argues that the Defendant testified at trial that he was a "careful driver" and therefore the trial court abused its discretion in preventing the Plaintiff from impeaching the credibility of the Defendant with his prior driving record, which Plaintiff alleges included several tickets and a suspended license. The Court has reviewed and considered the

¹ Prior to trial, the Court granted summary judgment in favor of Defendant Terry Holcombe, thereby dismissing him as a party to this action.

Plaintiff's written motions, the memorandum in opposition to the motion submitted by the Defendant, and the able argument of counsel. For the reasons set forth herein, the Court finds that Plaintiff's motion should be, and hereby is, denied.

DISCUSSION

The admission or rejection of evidence is largely within the trial court's sound discretion. Pike v. S.C. Dep't of Transp., 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000). Likewise, the grant or denial of a motion for new trial rests within the discretion of the trial court. Rule 59, SCRPC; Brinkley v. South Carolina Dept. of Corrections, 386 S.C. 182, 687 S.E.2d 54 (S.C. Ct. App. 2009). Here, the trial court did not err in excluding evidence of the Defendant's prior driving record.

First, I find that the evidence of Defendant's prior driving record was not relevant, and was therefore inadmissible and properly excluded. Rules 401, 402, SCRE; State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007). Evidence is relevant if it has "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." Rule 401, SCRE. Nothing about the Defendant's prior speeding tickets and alleged suspended license tended to establish the sole fact of consequence in this action—the identity of the driver at the time of the accident.

Moreover, even if the Defendant's driving record was relevant, I find that the evidence was properly excluded under Rule 403 because any probative value was substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. The Plaintiff argues that this case hinges on the credibility of the two parties, and the probative value of the driving record is that it would have demonstrated that the Defendant was not a "careful driver" because he had previously been ticketed for speeding, thereby impeaching the Defendant's credibility. However, even if the

Defendant was not a “careful driver,” admitting evidence of his prior driving record would unfairly prejudice him because it would confuse the issues and mislead the jury to think that the Defendant’s prior driving habits is evidence of whether he was actually driving in this instance.

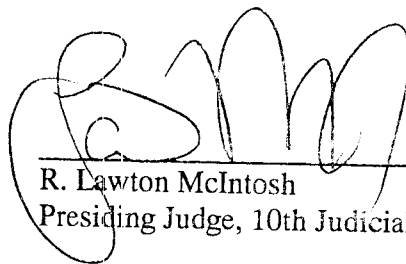
Similarly, evidence of Defendant’s driving record was properly excluded under Rule 404 because evidence of a person’s character or prior bad acts are generally not admissible for the purpose of proving action in conformity therewith on a particular occasion. Rule 404, SCRE. Yet this is precisely the reason the Plaintiff claims he sought to introduce the Defendant’s driving record—to “introduce evidence of prior bad acts for the purpose of illustrating the identity of the driver.” (See Plaintiff’s Motion for a New Trial, p.2). The Plaintiff wanted the jury to infer from Defendant’s driving record that because the Defendant was a bad driver in the past, he must have been the bad driver who caused this accident. This is precisely the type of evidence that is generally excluded by Rule 404. Moreover, even if the prior bad acts evidence fell within an exception under Rule 404, as discussed above the evidence was properly excluded because its probative value was substantially outweighed by the danger of unfair prejudice to the Defendant. State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001).

Finally, I find that any alleged error was harmless because it could not reasonably have affected the result of the trial. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). The Plaintiff must show that the exclusion of the evidence was both error and resulted in prejudice to the Plaintiff, i.e., there is a reasonable probability the jury’s verdict was influenced by the wrongly excluded evidence. State v. Commander, 396 S.C. 254, 263, 721 S.E.2d 413, 418 (2012). The issue in this case and at trial was not whether Defendant Galloway was a careful driver, but whether he was the actual driver at the time of the accident. This is quintessential factual inquiry, and there was overwhelming evidence and testimony at trial—from numerous

independent witnesses and the Plaintiff's own admissions—from which the jury could reasonably conclude that the Plaintiff, not the Defendant, was driving the truck at the time of the accident.

For the reasons stated above, I find that the trial court did not abuse its discretion in excluding the evidence of the Defendant's prior driving record. Accordingly, the Plaintiff's Motion for a New Trial is DENIED.

AND IT IS SO ORDERED.



R. Lawton McIntosh
Presiding Judge, 10th Judicial Circuit

June 30, 2014
Anderson, South Carolina

CLERK'S OFFICE
JUN 11 - 8 A.M. 15
COMMON PLEAS AND
GENERAL SESSIONS