

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No.: 2015-000907

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SC Court of Appeals

The StateRespondent

v.

Jack Randall MooreAppellant.

INITIAL BRIEF OF APPELLANT

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May 14, 2015

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STATEMENT OF ISSUES ON APPEAL

THE COURT ERRED IN NOT ALLOWING THE APPELLANT TO CROSS EXAMINE A PROSECUTING WITNESS ABOUT STATEMENTS THE PROSECUTING WITNESS ALLEGEDLY MADE BECAUSE THE CROSS EXAMINATION WAS PERMITTED BY THE RULES OF EVIDENCE AND THE EXCLUSION OF THE CROSS EXAMINATION WAS AN ABUSE OF DISCRETION AND DAMAGED THE APPELLANT'S DEFENSE.

STATEMENT OF THE CASE

On or about November 19, 2013, the Appellant Jack Randall Moore (Moore) was arrested for falsely reporting a stolen tractor in violation of S.C. Code §16-21-100 which states: "A person who knowingly makes a false report of the theft or conversion of a vehicle to a peace officer or to the Department is guilty of a misdemeanor."

Trial was held before Magistrate Charles Jones who declared a mistrial following the introduction of certain evidence ruled inadmissible in an earlier sidebar.

The second trial was held before Magistrate James B. Paslay on July 23, 2014. Moore was found guilty and fined.

Moore filed his Notice of Appeal from the Magistrate's Court on July 31, 2014. That appeal was heard before the Honorable R. Keith Kelly on March 3, 2015. Judge Kelly affirmed the conviction by Form 4 Order dated March 4, 2015. Moore received Judge Kelly's Order on March 9, 2015 and filed his Notice of Appeal with the Court on March 13, 2015. The appeal was received by the Court of Appeals on March 18, 2015.

SUMMARY OF FACTS

The Appellant, Jack R. Moore, (Moore) was a sixty (60) year old business man who had never been arrested prior to this incident. His businesses included manufacturing carriages for sale and in collecting and hauling waste oil from customers. (R. p. 115) Melvin Stewart (Stewart) was an independent truck driver who made his living by hauling loads for various brokers throughout the United States. He basically lived in his truck. During some of his hauls Stewart made the acquaintance of a nineteen (19) year old truck stop waitress named Ellen Bradley (Bradley). (R. p. 63) Stewart and Bradley began a relationship in which Stewart drove the truck and Bradley handled the paperwork. For tax reasons Stewart's tractor was in the name of Bradley but the refrigerated trailer remained in his name. (R. p. 66)

In 2013 Stewart was diagnosed with Stage 4 lung cancer. (R. p. 66) With his health deteriorating to the point he could no longer drive the tractor, Stewart hired a driver named William Richard Coleman a/k/a Rick Coleman (Coleman). (R. p. 66, 67)

Moore and Stewart had been long time friends and had occasionally considered going into some type of business arrangement together. (R. p. 117) In any event, Moore purchased Stewart's refrigerated trailer on October 2, 2013 for the sum of \$10,000. At that time Coleman was driving the tractor belonging to Bradley and the refrigerated trailer belonging to Stewart until it was sold to Moore. (R. p. 117)

According to Moore, he and Stewart contacted Coleman after the purchase and ordered Coleman to bring the trailer back to South Carolina and deliver it to Moore. (R. p. 120-121) Coleman refused to bring the trailer back and Moore had conversations with Bradley on the

following times and dates. October 21, 2013 – seven minutes (R. p. 81); October 24, 2013 (R. P. 82); October 26, 2013 – seventeen minutes (R. p. 83).

According to Moore, he demanded Bradley order Coleman to return his trailer to him. According to Bradley, she and Moore did not discuss his ownership of the trailer or his demand that the trailer be returned during these telephone conversations prior to October 26th. Although she talked to Coleman daily, she and Coleman never discussed Moore's ownership of the trailer. (R. p. 84)

Because he could not get his trailer returned, Moore contacted brokers he knew who would assign loads to Stewart, Bradley or Coleman and instructed the brokers not to load the trailer. Moore was contacted by a broker who advised that Coleman and the trailer were in the State of Washington and that the broker was refusing to load the tractor on Moore's instructions.

Shortly thereafter Moore received a text message from Bradley which stated, "Tell Melvin (Stewart) that since I can't load trailer back, he can pick the trailer up, but oops I forgot where we left it." (Ex. 2)

Moore took this as a threat to leave the trailer in the State of Washington where he expected it would be stolen or hauled off and he would never see it again. For that reason he ordered to broker to go ahead and load the trailer but to tell him where the trailer was going. The broker complied and advised Moore that the trailer was hauling a load to Zebulon, North Carolina.

At this point Moore contacted the Spartanburg Sheriff's Department and reported that his trailer was in the possession of Coleman who would not return it. The officer who took the report characterized the possession by Coleman as theft and contacted the NCIC with the

information in regard to the trailer. That information went to the law enforcement authorities in Zebulon, North Carolina who arrested Coleman for having a stolen trailer and notified Moore that he could come and retrieve his trailer which he did.

After some investigation the Spartanburg County detective determined that the trailer was not stolen and therefore Moore had made a false report. The officer was ambivalent as to whether the use of the word "stolen" would have resulted in Moore's arrest if Moore had simply said his trailer was "converted". (R. p. 41)

Following Coleman's arrest he gave a statement to the Spartanburg County Sheriff's Office that he was unaware that Moore had purchased the trailer. He further stated that in the conversation he had had with Stewart and Moore neither one of them had ever requested that he bring the trailer back to South Carolina. The charges against Coleman in North Carolina were subsequently dismissed.

After Moore retrieved his trailer, Bradley called Moore and left a message on his cell phone voice mail that said, "Jack, this is Ellen. I hope you consulted with your attorney before you did this, because you just declared war." (R. p. 87)

Following the dismissal of the charges against Coleman in North Carolina and the arrest of Moore, Bradley hired attorney Charles J. Hodge to explore a suit against Moore in the event he was convicted. She signed a contract with Hodge for the suit. (R. p. 76, 77) Bradley also introduced Coleman to Mr. Hodge for the purpose of bringing a lawsuit against Moore for false arrest. Attorney Hodge ended up as a special prosecutor for the solicitor's office against Moore.

Subsequent to the arrest of Moore, Coleman gave a sworn affidavit and a recorded statement in which he quoted certain conversations that he had had with Bradley. In that sworn

statement Coleman said words to the effect that Bradley told him, "Don't worry about Jack Moore. You work for me. Just don't bring the damn trailer into South Carolina. Everything is fine. I've got this under control." Further, Bradley said, "Well, let me call that SOB. I'll just tell him that we will leave the trailer at a damn truck stop or rest area beside the road. Hell, I can't remember where we left it, Jack. You'll have to find it." (R. p. 89)

Subsequently Coleman gave an affidavit to Bradley and Attorney Hodge in which he denied Bradley had ever made these statements.

At the first trial held in this case, Coleman was not subpoenaed by the prosecution to attend. In that trial the magistrate ruled that Bradley could be asked if she made these specific statements to Coleman. The magistrate ruled that this questioning was proper. Prosecutor Hodges sought to introduce the affidavit of Coleman repugnant to Coleman's earlier affidavits from which these questions came. The magistrate ruled that it would be improper to introduce the affidavit.

Following the questioning of Bradley about making these specific statements to Coleman which she denied, Prosecutor Hodges asked Bradley if Coleman had given an affidavit which refuted the alleged statements he had given in the affidavit from which Bradley was being questioned. Moore moved for a mistrial which was granted.

In the second trial the magistrate ruled that Coleman's statements in his affidavit of statements made by Bradley to him were hearsay and did not allow Moore to ask Bradley if she had made those statements. Moore made a proffer to the court of the questions that would have been asked and those appear of record.

ARGUMENT

THE COURT ERRED IN NOT ALLOWING THE APPELLANT TO CROSS EXAMINE A PROSECUTING WITNESS ABOUT STATEMENTS THE PROSECUTING WITNESS ALLEGEDLY MADE BECAUSE THE CROSS EXAMINATION WAS PERMITTED BY THE RULES OF EVIDENCE AND THE EXCLUSION OF THE CROSS EXAMINATION WAS AN ABUSE OF DISCRETION AND DAMAGED THE APPELLANT'S DEFENSE.

Moore had the constitutional right to confront Bradley as a witness against him under both the Sixth Amendment of the U.S. Constitution and Article I, Section 14 of the S.C. Constitution.

Rule 613, S.C.R.E., subsection (a) sets forth permission for Moore to question Bradley about the statement Bradley allegedly made to Coleman. Subsection (b) sets forth the requirement of introducing extrinsic evidence of the prior inconsistent statement by the witness.

Prior inconsistent statements made by witnesses are not hearsay when offered to impeach the witness's trial testimony. The prior inconsistent statement is not offered to prove the truth of the matter asserted, but to impeach the current testimony of the witness. State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992); see also State v. Galloway, 263 S.C. 585, 211 S.E.2d 885 (1975).

Credibility was a key issue at this trial. Bradley denied being advised that Moore had purchased the trailer until October 26th. Bradley acknowledged having several telephone conversations with Moore prior to that time but denied Moore told her that he had purchased the trailer and wanted it back.

On the other hand, Moore testified that in the telephone conversations with Coleman and Bradley he advised both that he owned the trailer and wanted it back, but they refused to return

it. If true, Moore's report to the police would have been factual in that Bradley and Coleman had converted his trailer to their own use.

Bradley was supplied with Coleman's affidavit which contained the statements she allegedly made to him in the first trial and in the second trial.

Coleman's out of court statement quoting Bradley was hearsay but permissible impeachment material.

The wrongful exclusion of these impeaching questions to Bradley was not harmless. Coleman and Bradley were private clients of the prosecutor and both had motives to misrepresent what happened. Bradley and Coleman were going to sue Moore if he was convicted; Coleman for false arrest and Bradley for defamation. Coleman's affidavit was damning to the State's criminal case and to the plans to convict Moore and sue him for money with the State's help. Coleman's absence from the trial was at the choice of the prosecution. Depriving Moore of his right to question Bradley about her statement to Coleman further prevented any attempt to offer any impeaching testimony on behalf of Moore.

Because credibility was such a key issue, the exclusion of cross examination concerning statements Bradley allegedly made was not harmless error.

CONCLUSION

Moore respectfully asks this Court to declare the denial of his right to cross examine a witness about a prior inconsistent statement she allegedly made was an abuse of discretion, a blatant misreading of the rules of evidence, and harmful to his defense. The Court should reverse the conviction and grant such other and further relief as the Court deem just and proper.



O. W. Bannister

Appellant Jack R. Moore hereby designates the following to be included in the Record on Appeal:

1. Affidavit of William Richard Coleman dated January 21, 2014
2. Transcript of Hearing pages 63, 66, 67, 76-78, 81-90, 115-129
3. Exhibit 2
4. Notice of Appeal to Circuit Court
5. Form 4 Order

CERTIFICATE OF COUNSEL

The undersigned certifies that this Designation of Matter to be Included in the Record on Appeal complies with Rule 209(b), SCACR.

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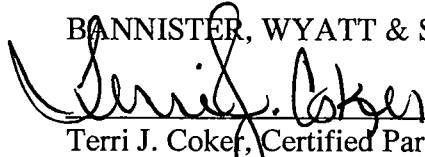
v.

Jack Randall MooreAppellant.

PROOF OF SERVICE

The undersigned hereby certifies that the Initial Brief of Appellant was served on Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2015, addressed to its attorney of record, Charles J. Hodge, Post Office Box 2765, Spartanburg, South Carolina 29304-2765.

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Re: **State vs. Jack R. Moore**
Court of Appeals Case No.: 2015-000907

Dear Ms. Kitchings:

Enclosed please find the Initial Brief of Appellant as well as the Appellant's Designation of Matter to be Included in the Record on Appeal in connection with the above-referenced matter. Also enclosed is our Proof of Service.

By copy of this letter I am serving the Initial Brief and Designation of Matter upon opposing counsel.

Yours truly,

BANNISTER, WYATT & STALVEY, LLC

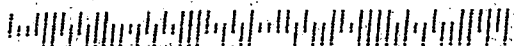


Terri J. Coker, CP
Paralegal to O. W. Bannister

/tjc

Enclosures

cc: Charles J. Hodge, Esq., w/enclosures



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