

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

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DEC 03 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUDSON STANLEY,

APPELLANT

APPELLATE CASE NO. 2015-001628

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUES ON APPEAL.....3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....7

TABLE OF AUTHORITIES

Cases

Green v. State, 338 S.C. 428, 527 S.E. 2d 98 (2000) 6

Mitchell v. State, 298 S.C. 186, 379 S.E. 2d 123 (1989) 6

State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984)..... 6

State v. Lyle 125 S.C. 406, 118 S.E. 803 (1923) 5, 6

Statutes

S.C. Code § 38-55-170(1)..... 5

Rules

Rule 403, SCRE..... 6

Rule 609, SCRE..... 3, 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing the State to introduce two prior bad acts under Lyle because they were also convictions for submitting false claims in 2013 which served as improper impeachment under Rule 609, SCRE.

STATEMENT OF THE CASE

Appellant was convicted of presenting a false claim for payment over \$10,000 after a jury trial held before the Honorable Benjamin H. Culbertson on July 13-16, 2015, in Horry County. Thomas Floyd, Esquire was trial counsel. Melissa Manning, Esquire and Deanene Thornwell, Esquire were the solicitors. Appellant was sentenced to ten (10) years imprisonment.

This appeal follows.

ARGUMENT

The trial court erred in allowing the State to introduce prior bad acts under Lyle because they were also convictions for submitting false claims in 2013 which served as improper impeachment.

Appellant was tried for submitting a false claim of \$18,500 on a 2007 Cadillac Escalade under S.C. Code § 38-55-170(1). At pretrial, the solicitor claimed that the appellant's prior convictions for similar offenses went toward motive, intent, and common scheme or plan. Rule 404(b), SCRE provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident or intent.

The solicitor said, "we believe that the similarities between those previous convictions and the case at hand are so strong that they fit within these exceptions..." She explained her theory of the case. Appellant met Tracey Holmes who owned the Cadillac Escalade and convinced her to do a deal on the vehicle. He would strip parts off of her vehicle and she would report a car problem and leave the car on the road. When the tow truck arrived she would be notified that her car had been stripped. Per appellant's instructions, she would request that the car be towed to a particular body shop where appellant would reattach the same parts which he had taken off of the vehicle. Appellant would also assist with the insurance claim and get some of the proceeds. The two 2013 convictions were for very similar insurance claims. (Tr. p. 13, line 7 – p. 15, line 1).

Defense counsel argued that prior convictions do not make them prior bad acts under State v. Lyle 125 S.C. 406, 118 S.E. 803 (1923).¹ The prior convictions were not related in any way to

¹ Whenever solicitors and trial judges include most of the Lyle exceptions that usually means they don't know which exception applies.

the charge for which the appellant was being tried. Also, since the prior convictions are so similar the prejudiced effect would outweigh any probative value under Rule 403, SCRE. (Tr. p. 17, lines 11 – 24).

The trial court took the matter under advisement until after jury selection, (Tr. p. 18, lines 12 – 16). After jury selection, the trial court decided it was going to allow the prior convictions because it showed a common scheme, motive, intent, and lack of mistake.¹ He then went on to do a prejudicial effect versus probative value analysis by asking the solicitor how much evidence they had against appellant. After determining they had sufficient evidence, he determined the probative value outweighed the prejudicial effect. (Tr. p. 44, line 16 – p. 47, line 10).

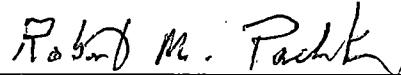
Both the solicitor and the trial court used the wrong analysis under Lyle. If the prior bad acts are strikingly similar the prejudicial effect is enhanced.² State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984). The use of prior convictions is also limited under Rule 609 (a)(1), SCRE. Green v. State, 338 S.C. 428, 527 S.E. 2d 98 (2000). Although the prior convictions were not admitted for this purpose, they amounted to impeachment evidence, and they were admitted very early in the trial. (Tr. p. 59, line 20 – p. 60, line 19). Impeachment is not allowed until a defendant takes the stand. See, Mitchell v. State, 298 S.C. 186, 379 S.E. 2d 123 (1989).

² The trial court gave a charge on a person having a past criminal record and that it could be used in determining the witness' believability. (Tr. p. 337, lines 17 – 23). While a state's witness did have a prior record so did appellant. The jury could therefore apply the charge to the appellant.

CONCLUSION

Appellant's conviction should be reversed due to the improper admission of the prior convictions.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of December, 2015.