

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

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SC Court of Appeals

Case No.: 2016-000872

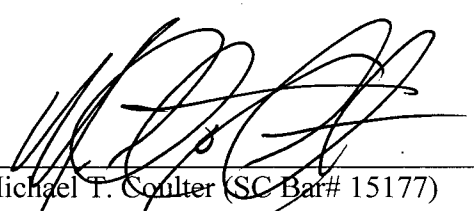
Aaliyah Smith,.....Appellants.

v.

Scott N. Carr.....Respondent.

INITIAL BRIEF OF RESPONDENT

By: _____


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STATEMENT OF THE ISSUES ON APPEAL

- I. Whether the Appellants are entitled to new trial based upon the trial judge not allowing an exhibit of the Respondent's Answer into evidence.
- II. Whether the Appellants are entitled to a new trial based upon the trial judge not allowing into evidence a criminal conviction which was over 10 years old.

STATEMENT OF THE CASE

The Appellant, Aaliyah Smith (“Smith”), filed a Complaint against Scott Carr (“Carr”), on September 11, 2014. Smith alleged that she was injured as a result of a motor vehicle accident with Carr on or about May 28, 2014 Id. On or about December 1, 2014, Carr answered the Complaint and initially denied liability to Smith.

The case proceeded to a jury trial on May 23, 2016 in the Court of Common Pleas in Spartanburg County before the Honorable Thomas L. Hughston. Both Smith and Carr’s counsel presented their respective case’s to the jury. After deliberating, the jury returned a verdict in favor of Smith for \$799.25. Thereafter, the Court ordered that any post-trial motions be made in writing within 10 days. However, no post-trial motions were filed. Smith filed her appeal on April 24, 2016. R. __ (Notice of Appeal).

Prior to the beginning of Opening Statements, counsel for the Respondent informed the Court that Carr was admitting responsibility for the accident. However, counsel for the Respondent maintained that Carr would contest that this accident was not the proximate cause of the Appellant’s alleged injuries. During the trial, the Appellant attempted to make reference to the Respondent’s Answer which initially denied liability. This was an attempt to confuse the jury with a “Red Herring” issue that had nothing to do with the issues of proximate cause and damages which were the real issues in dispute, since the Respondent admitted liability prior to beginning the trial.

Appellant also attempted to introduce evidence of a Virginia “felony charge of DUI 3rd or subsequent violation within 10 year” conviction by the Respondent which was greater than 10 years old. The Appellant indicated that these issues were important when considering the creditability and truthfulness of the Respondent when the matter of the

force of impact was in dispute. However, this was only an attempt to confuse the jury and distract them from the evidence of the minor damage to the vehicles involved in the collision. As such, the trial judge correctly excluded this evidence from consideration by the jury.

STATEMENT OF FACTS

On or about May 26, 2014, Appellant was traveling west on E. Main Street in Spartanburg, South Carolina. The Respondent was traveling west on E. Main Street behind the Appellant when he struck the rear of the Appellant's vehicle. R. __ (Complaint). The Appellant treated at the emergency room, with a dentist, and a chiropractor after the accident. (TR., P. 72-74). On September 11, 2014, Smith filed a Complaint seeking damages against Carr. R. __ (Complaint). At trial, the Appellant testified that she had \$6,242.25 in medical bills and lost wages as result of this accident. (TR., P 74, lines 10-12).

There was a dispute about the force of the impact and whether the accident could have reasonably caused the Appellant's injuries and subsequent medical treatment. After a jury trial and deliberation the jury returned a verdict in favor of the Smith for \$799.25. R. __ (Verdict).

ARGUMENT

I. THE COURT DID NOT ERR IN EXCLUDING A PORTION OF THE RESPONDENT'S ANSWER THAT REFERENCED LIABILITY

At trial the Respondent stipulated that he was responsible for causing the accident. During opening argument, Appellant's counsel attempted to show the jury a demonstrative exhibit of the Respondent's Answer which initially denied being responsible for causing the accident, or being grossly negligent, reckless, willful, and

wanton, and other affirmative defenses. (TR., p. 32). The trial judge questioned the purpose of using the Respondent's Answer in Appellant's counsel opening argument on the grounds that it was prejudicial to the Respondent, and would needlessly cause confusion for the jury because the Respondent was admitting responsibility for the accident. (TR., p. 34, lines 20-25, pp. 35-36). The trial judge concluded that he would tell the jury that the Respondent was at fault at the end of the case and that "there was no reason to bring in a red herring." (TR., p. 4-7). In his brief, Appellant alleges that the lower court went on to rule that Appellant could make no reference whatsoever about Respondent's allegations against Appellant in the opening statement. Nevertheless, Appellant's counsel, in his opening statement, stated "We had to bring this action because the defendant denies that he is responsible for any harms to Aaliyah Smith." (TR. P. 39, lines 7-9).

During cross-examination of the Respondent, Appellant again sought to insert portions of the Respondent's initial Answer which stated that he was "not liable to the plaintiff in any sum whatsoever." (TR., p. 45) As stated above, the issue of liability was conceded prior to trial and was not in question, but the issue of proximate cause and damages remained. Again, the Appellant was simply attempting to confuse the jury from the real issues, and only remaining issues, in this case.

Citing Lucht¹ and Postal², Appellant argues that he should have been able to enter the Respondent's Answer as evidence in the case, and also cross-examine the Respondent about the prior pleadings. Appellant further argues that there was a credibility issue concerning the force of the impact. Appellant erroneously relies on a pleading that was

¹ Lucht v Youngblood, 221 S.E.2d 854, 858 (S.C. 1975).

² Postal v Mann, 418 S.E.2d 322, 323 (S.C. App. 1992).

entered by the Respondent's counsel less than two months after the Complaint was filed, and before any discovery had been completed. Appellant attempted attack the credibility and prejudice the Respondent based on a red-herring issue which the trial court had broad discretion to exclude.

Even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleads the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. SCRE 403. A trial court has wide discretion in determining the relevancy of evidence. Johnson v. Sam English Grading, Inc., 772 S.E.2d 544 (Ct. App. 2015), reh'g denied (June 18, 2015), cert. denied (Oct. 8, 2015). A trial court has broad discretion in the admission or rejection of evidence and will not be overturned unless it abuses that discretion. Id. "Unfair prejudice" allows relevant evidence to be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, which means an undue tendency to suggest a decision on an improper basis. Id.

The Appellant in his brief argues that he is entitled to a new trial because the pleadings were not allowed into evidence to impeach the credibility of the Respondent concerning the force of the impact. However, several matters of evidence were considered by the jury as related to the force of the impact including the Appellant's testimony, photographs of the vehicles, and the investigating officer's testimony. (TR., p. 70-71, p. 83-86, p. 103, lines 1-8). As stated above, the judge had broad discretion in the admission of evidence. The trial judge correctly excluded this evidence based on his sound discretion because of its prejudicial effect on the Respondent, and because the red herring issues would have needlessly confused the jury.

II. THE TRIAL JUDGE DID NOT ERR IN EXCLUDING EVIDENCE OF A CONVICTION BY THE RESPONDENT WHICH WAS GREATER THAN 10 YEARS OLD

During the Appellant's direct examination of the Respondent, he attempted to introduce a copy of the defendant's criminal record from Virginia from September of 2002.³ The Appellant argued that the Respondent was not truthful during his deposition because he denied that he had ever been convicted of a felony.⁴ The record indicated that the Respondent had been convicted of a "felony charge of DUI 3rd or subsequent violation within 10 years". Respondent argued outside the presence of the jury that this was overly prejudicial because it was a felony over 10 years old, and a back-door attempt by the Appellant to enter this matter into evidence. (TR. P. 50, lines 15-25).

The trial judge correctly excluded this on the grounds that it was overly prejudicial and was a conviction greater than 10 years old. SCRE 609(2)(b). Under this rule, if the Court determines, in the interests of justice, that the probative value of a conviction, supported by specific facts and circumstances, substantially outweighs its prejudicial effect, it may be allowed into evidence. *Id.* Again, under its broad discretion concerning prejudicial evidence, the Court did not allow this information into evidence.

Interestingly, in his brief, the Appellant relies on SCRE 608(b) regarding specific instances of the conduct of a witness for attacking credibility of that witness. However, Appellant failed to mention that this rule clearly states that an inquiry into this matter is at the "discretion of the Court." SCRE 608(b). Clearly, the Court used its discretion in determining whether to exclude evidence of a conviction that was not only prejudicial, but over 10 years old.

³ Criminal Record of Scott N. Carr.

⁴ Deposition of Scott Car, p. 7, lines 12-24.

Additionally, the Appellant argues that the Respondent's conviction should be admissible since the Respondent inserted his military record during cross-examination. The Appellant goes on to argue that the lower Court permitted Respondent to boost his own credibility by evidence of his military service. However, the Appellant did not object to the question by Respondent's counsel regarding his military history at trial. If a ruling is one of admitting evidence, a timely objection or motion to strike must appear in the record, stating the specific ground of objection, if the specific ground was not apparent from the context. SCRE 103. If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. State v. Pauling, 470 S.E.2d 106, 109 (1996). Furthermore, the questions surrounding the Respondent's military history was no more than an examination of his background, much similar to the Appellant's counsel's direct examination concerning what church the Appellant attended. (TR. P. 69, lines 6-7).

The Appellant further argues that the Court's jury charge was inconsistent with the Court refusing to allow the Appellant to attack the respondent's credibility with the contested conviction. In his brief, Appellant cites that the jury was charged to "determine the credibility or believability of the witnesses who testified." (TR., p. 165, lines 21-24). Appellant also notes that the charge which stated that the jury must "decide do I believe what that person tells me, how much trust, how much faith do I put in what that person tells me." (TR., p. 166, lines 15-17). However, Appellant failed to make any objections at trial concerning the jury charges, nor were any post-trial motions made. This collateral issue was correctly ruled upon by the trial judge and does not warrant a new trial.

CONCLUSION

For all of the reasons discussed above, Respondent Carr respectfully requests that the Court affirm the jury's verdict in this case.

Respectfully submitted,

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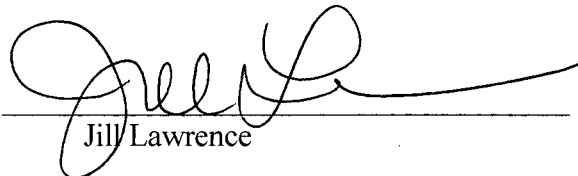
Aaliyah Smith,.....Appellants.
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Scott N. Carr.....Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Clarkson, Walsh, Terrell, & Coulter P.A. certifies that she has on the date below, served the Initial Brief of Respondent and Designation of Matter Upon the below person(s) via first class mail.

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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Jill Lawrence

July 14th, 2016

CLARKSON, WALSH, TERRELL & COULTER, P.A.

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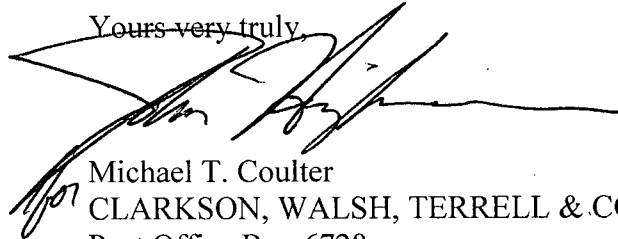
Re: Aailyah Smith vs. Scott Carr
C.A. No.: 2014-CP-42-036560
Appellate Case No.: 2016-000872

Dear Ms. Kitchings:

Enclosed for filing are an original and one (1) copy of the Initial Brief of Respondents and Respondents' Designation of Matter to be Included in the Record on Appeal along with a Proof of Service. We would ask that you return clocked copies of these documents to us in the enclosed envelope.

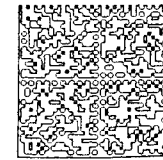
By copy of this letter we are serving Appellant with copies of the same. Thank you for your kind consideration and assistance. Please feel free to call if you should have any questions or comments regarding this matter.

Yours very truly,

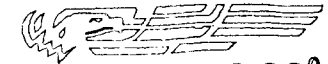


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cc: Timothy Ryan Langley, Esq



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