

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2015-002361

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SEP 06 2016
SC Court of Appeals

Ida Lord.....Plaintiff/Appellant.

v.

D & J Enterprises, Inc.Defendant/Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. **WHETHER THE TRIAL COURT ERRED IN REFUSING TO QUALIFY THE PLAINTIFF'S WITNESS ROBERT MONTY CLARK AS AN EXPERT IN THE FIELD OF PRIVATE SECURITY.**
- II. **WHETHER THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT'S MOTION FOR A DIRECTED VERDICT.**

STATEMENT OF THE CASE

The Respondent concurs with the Statement of the Case of the Appellant

STATEMENT OF FACTS

The Respondent concurs with the Statement of Facts of the Appellant with the exception that the testimony of other businesses having a security guard was asked in the general aspect of some businesses which have security guards and not regarding businesses that added security guards as a result of the armed robbery incidences.

ARGUMENT

WHETHER THE TRIAL COURT ERRED IN REFUSING TO QUALIFY THE PLAINTIFF'S WITNESS ROBERT MONTY CLARK AS AN EXPERT IN THE FIELD OF PRIVATE SECURITY.

A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). In the present case there was no abuse of discretion by the trial court in

refusing to qualify Plaintiff's witness Robert Monty Clark as an expert in the field of private security and thus no error in excluding his testimony as an expert.

In the case of *State v. White*, 676 S.E.2d 684, 382 S.C. 265 (S.C., 2009), our Supreme Court established the standard for the trial courts in determining, in both scientific matters and non-scientific matters, whether a witness should be allowed to testify as an expert. The Court wrote: "We hold that the trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. The familiar evidentiary mantra that a challenge to evidence goes to 'weight, not admissibility' may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence."

In this case the witness's testimony not only did not establish that he was qualified to be an expert in private security, the witness's testimony went further to admit that he was not an expert in the area of security that encompassed the facts of this case.

The witness testified he made a living as a private investigator. (Tr. p. 66, lns. 15-16.) He was a patrol officer with the Charlotte Mecklenburg Police Department for 5 years and an undercover officer for 5 years. (Tr. 67, lns. 13-23). For 5 years he worked internal security for Federal Express. (Tr. P. 68 Lns. 4-14). And finally he worked for the Carolina Panthers as a security guard. (Tr. 69, ln. 15 – Tr. 70, ln. 12, P. 74, ln. 25-P.76, ln. 4). The witness may have qualified as an expert in certain areas of private investigation, but certainly not private security.

Further, the witness agreed that the area of crisis management was the same area involved in this case. And the witness testified that he was *not* an expert in the area of crisis management. (Tr. P. 77, ln. 22 – P. 79, ln. 23.). Additionally, the Court added testimony from the Proffer to support its previous position of not allowing the witness to qualify as an expert. (Tr. P. 122, ln. 16- P. 123, lns. 10.).

Had the Appellant's witness met the qualification standard, the reliability of the basis of his testimony did not. At best it would have confused the jury, not assisted the jury in understanding.

Appellant presented evidence that there is no way for a crime to be prevented if a person is determined to commit it. (Tr. 52, ln. 24 – p. 53, ln. 2). In this particular matter, the Appellant also provided evidence that the shooter had committed two armed robberies prior to the one involved in this matter where he shot two clerks and a bystander notwithstanding that the clerks had followed his instructions. (Tr. pp. 117-120). Given the randomness of the shooter's actions combined with the evidence that there is no way to prevent a crime if a person is determined to prevent it, the witnesses assertion that an armed guard would have prevented the shooting is not reliable.

The prior two armed robberies were committed at a small seafood market in Rock Hill, South Carolina and a convenience store in Fort Mill, South Carolina. During the proffer of testimony by the Appellant, the witness for the Appellant, when questioned as to whether other like businesses in the two communities should have provided some form of deterrent stated: " That's something I can't---I really can't answer that question, is it necessary because there's all other establishments around there that were the same situation where there was no security. The time I was there, I never say anybody, law

enforcement, sheriff's department or anybody ride through the particular area. Deterring crime is something that really can't be measured. Even law enforcement have problems measuring statistics as far as crime is concerned. They can only go back at that has happened versus what is happening, then make a decision as to whether or not they've deterred crime or whether or not its actually increased. There's no way of measuring security, only deterrents, and that can't be measured." (Tr. P. 116, lns. 3-16) Thus, the testimony of the witness is not reliable and would only confuse the jury and not act as an aid to it for its determinations.

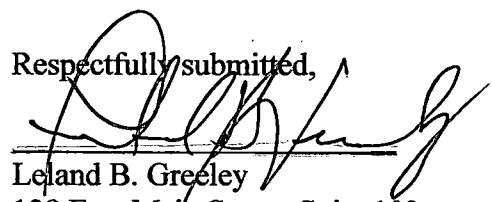
WHETHER THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF APPELLANT'S CASE.

The Court's granting of Respondent's motion under Rule 50 (a), SCRCivP. was correct and proper in this case. (Tr. P. 164, ln. 24 – P. 168, ln. 11) Previously the Court did not qualify the Appellant's proposed expert witness as an expert in the case and disallowed his testimony. Thus, there was no evidence in the record that the Respondent had breached its duty of care toward the Appellant. (Initial Brief of Appellant, p. 13.).

CONCLUSION

The trial court didn't abuse its discretion in failing to designate Appellant's witness Robert Monty Clark an expert in private security. Therefore, the Court's ruling as to this should be affirmed. Additionally, because the court's ruling should be affirmed, the trial court's granting of Respondent's motion for a directed verdict should likewise be affirmed.

Respectfully submitted,



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September 6, 2016.

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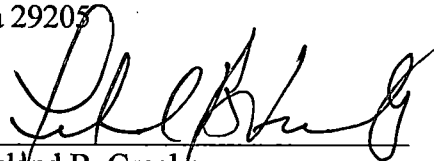
v.

D & J Enterprises, Inc.Defendant/Respondent.

CERTIFICATE OF SERVICE

I certify that I have served today a copy of Respondent's Designation of Matter to be Included in Record on Appeal, and Respondent's Initial Brief on counsel for the Appellant by depositing the same in the U.S. Mail with sufficient postage attached thereto and address as follows:

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HAND DELIVERED SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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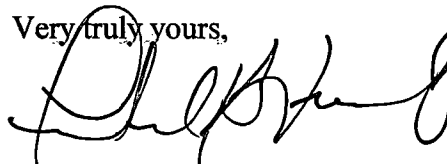
RE: Ida Lord v. D & J Enterprises, Inc., d/b/a Cash on the Spot

Dear Ms. Kitchings:

Please find enclosed the originals, along with 7 copies of each, of Respondent's Designation of Matter and Respondent's Initial Brief, as well as a Certificate of Service indicating service on opposing counsel.

With kindest regards, I remain

Very truly yours,



Leland B. Greeley

/adt
Enclosures

cc: Authur K. Aiken