

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2016CP4601280

Nathan Morgan		Rock Hill City Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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;  Other: \_\_\_\_\_  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

RECEIVED  
 JUL 14 2017  
 SC Court of Appeals

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)  Statement of Judgment by the Court:

ORDER REVERSING CONVICTION AND REMANDING FOR NEW TRIAL

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/S. Jackson Kimball  
 Special Circuit Court Judge

3063  
 Judge Code

5/22/2017  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on **May 23, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **May 23, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

**Charles Harold Rudnick** 1675-1E York Hwy PO Box 691  
York, SC 29745

**Anna Timothy Thomas** 201 E. Main St., 3Rd Floor Rock  
Hill, SC 29730  
**Chisa Johnson Putman** 1675 1D York Highway York, SC  
29745

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

*David Hamilton*

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**Court Reporter**

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**David Hamilton - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**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.

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
CITY OF ROCK HILL )  
Respondent, )  
vs. )  
NATHAN MORGAN )  
Appellant. )

IN THE COURT OF COMMON PLEAS

CASE NO. 2016CP4601280

ORDER REVERSING CONVICTION AND  
REMANDING FOR NEW TRIAL

RECEIVED

JUL 14 2017

SC Court of Appea

FILED - RECEIVED  
2017 MAY 23 AM 8:45  
DAVID HAMILTON  
CLERK, C.P. & C.C.  
YORK COUNTY, SC

This matter came before the court on May 11, 2107, upon an appeal filed by Nathan Morgan (“Appellant”) from his conviction for Assault Battery 3rd Degree, following a jury trial held on April 21, 2016. Appellant was represented by Charles H. Rudnick, Assistant Public Defender, and the City of Rock Hill (“City”) was represented by Christopher E. Barton, City Solicitor. After consideration of the record and arguments of counsel, I find and conclude as follows.

**FACTUAL / PROCEDURAL BACKGROUND**

Appellant was charged, and subsequently convicted of Assault and Battery 3<sup>rd</sup> Degree after a jury trial on April 21, 2016. Appellant timely filed an Appeal to this Court.

During his direct examination at trial, in defense of the charges against him, Appellant testified that Cornelius McCleod (“McCleod”), the alleged victim, aggressively pulled his jacket from behind. Appellant stated that he felt threatened after this occurred, and in response, struck McMcCleod.

On cross-examination, the City confronted the Appellant with McCleod’s assertion that Appellant had stolen his chainsaw. Appellant denied the theft and stated, “I don’t steal.”<sup>1</sup>

Appellant had a prior 1984 conviction of Retail Theft, a 1993 conviction of Burglary 2<sup>nd</sup> Degree, and a 1996 Theft of Cable conviction. All convictions were twenty to thirty years old.

Appellant objected to the attempted impeachment with these prior convictions, but the trial court found that Appellant “opened the door” to the admission of each of these prior convictions for impeachment purposes. After making this ruling, the trial court did not conduct a

<sup>1</sup> It is important to note that Appellant’s statement was made in the present tense, and that it was made in the context of an accusation of a recent theft. It would be unfair to equate the statement to a claim of never having been guilty of theft, especially in view of remoteness of the convictions used to impeach Appellant.

balancing test as required by Rule 609(b), SCRE. The only finding made was that the “prejudicial value was not outweighed by the probative harm (sic).”

### LAW / ANALYSIS

Rule 609(a)(2), SCRE, provides that “. . . evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of punishment.” However, evidence of such convictions is not admissible if a period of ten years or more has elapsed since the conviction or release, whichever is later. Rule 609(b), SCRE. This prohibition may be overcome, and the conviction admitted, if “. . . the court determines, in the interests of justice, that the probative value of the conviction *supported by specific facts and circumstances substantially outweighs* its prejudicial effect.” *Id.* (Emphasis added.)

The Rule creates a presumption against the admission of remote convictions, and the State bears the burden to overcome this presumption. *State v. Bryant*, 369 S.C. 511, 516, 633 S.E.2d 152, 155 (2006). A trial court must conduct a balancing test to determine whether remote convictions are admissible under Rule 609(b). *Id.*; *State v. Colf*, 337 S.C. 622, 626, 525 S.E.2d 246, 248 (2000).

Before admitting the remote convictions, a trial judge should consider the following factors: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness’s subsequent history; (3) the similarity of the past crime and the charged crime; (4) the importance of the defendant’s testimony; and (5) the centrality of the credibility issue. *State v. Colf*, 337 S.C. at 627, 525 S.E.2d at 248.

After conducting the balancing test, “. . . the judge must make a determination and articulate, on the record, the specific reasons for his ruling. Specifically, the trial judge must articulate why the probative value of the prior conviction outweighs its prejudicial effect.” *State v. Bryant*, 369 S.C. at 516-517, 633 S.E.2d at 155. The failure to conduct a balancing test, and to articulate for the record specific facts and circumstances to overcome the presumption created by Rule 609(b), is an abuse of discretion. *State v. Colf*, 337 S.C. 622, 626, 525 S.E.2d 246, 248 (2000).

Respondent asserts that the error, if any, was harmless. “Error is harmless where it could not reasonably have affected the result of the trial.” *State v. Bryant*, 369 S.C. at 517, 633 S.E.2d at 156 (2006); *In re Harvey*, 355 S.C. 53, 584 S.E.2d 893 (2003). “[A]n insubstantial error not affecting the result of the trial is harmless where a defendant’s guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.” *Id.*; *State*

*DM*  
*#2*

v. *Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989).

In this case, Appellant's credibility was essential to his defense. Appellant asserted self-defense as justification for his actions. While one witness corroborated Appellant's account, only the Appellant could explain whether he felt threatened by Mr. McCleod's conduct in order to justify his own conduct. Admission of Appellant's remote convictions was highly prejudicial to Appellant's credibility. Under the facts of this case, I find and conclude that the error in this instance was not harmless.

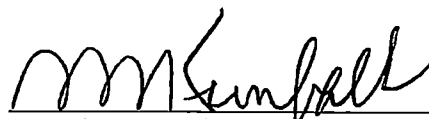
In summary, I conclude as a matter of law that Rule 609(b) required that the remote convictions not be admitted to impeach Appellant. I further conclude that, in any event, the Court failed to conduct the balancing test required by Rule 609. Further, the error in admitting the remote convictions for impeachment purposes was highly prejudicial, and was not harmless.

**ORDER**

Therefore, based on the findings and conclusions herein, it is ordered that Appellant's conviction of Assault and Battery 3<sup>rd</sup> Degree be reversed, and that this case be remanded to the trial court for a new trial.

IT IS SO ORDERED.

May 22, 2017



S. Jackson Kimball  
Special Circuit Court Judge  
York County

43