

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2018-000897

Rosa S. St. Gelais

Appellant,

v.

Julius L. Leary

Respondent.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

WHETHER THE TRIAL COURT ERRED IN ADMITTING EVIDENCE OF ROSA ST. GELAIS' POSITIVE MARIJUANA TEST WHERE SUCH EVIDENCE LACKED RELIABILITY AND PROBATIVE VALUE AS IT DID NOT SHOW THE AMOUNT OF MARIJUANA OR WHEN IT WAS ALLEGEDLY CONSUMED.

STATEMENT OF CASE

This appeal is from the circuit court's order dated Apr. 10, 2018, denying Rosa St. Gelais' ("St. Gelais" n/k/a Rosa Cardonna) motion for a new trial. (Judgment in a civil case.) St. Gelais commenced this action Julius L. Leary ("Leary") by filing the summons and complaint Nov. 2, 2015, and subsequently serving it. (Summons and Complaint.) The complaint alleged Leary was negligent in causing a motor vehicle accident between the parties that caused St. Gelais injuries. (Complaint.) Leary then filed an answer that admitted he contacted the rear of St. Gelais' car but denied the rest of the complaint's allegations. (Answer.)

Prior to the beginning of the trial, St. Gelais filed and argued a motion in limine to exclude the introduction of evidence that she purportedly tested positive for marijuana in the emergency room. (Motion to exclude; Tr. p. 5, l. 22-p. 6, l. 15.) The Court denied St. Gelais' motion and allowed Leary to introduce evidence during the trial that St. Gelais' tested positive for marijuana in her system in the emergency room. (Tr. p. 10, ll. 1-15; p. 95, ll. 6-18.) At the end of the trial, the jury returned a defense verdict. (Verdict form.)

Following the trial, St. Gelais filed a motion for a new trial pursuant to Rule 59(a), SCRCP, based in part on the trial court admitting evidence of marijuana in her urine screen taken at the hospital. (Plaintiff's motion for a new trial.) The Court denied this motion in the order mentioned above

This appeal follows.

STANDARD OF REVIEW

“The denial of a motion for a new trial is within the trial judge’s discretion and will not be reversed on appeal absent an abuse of discretion.” Kennedy v. Griffin, 358 S.C. 122, 127, 595 S.E.2d 248 (Ct. App. 2004) (internal citations omitted). “[A] trial judge’s order granting or denying a new trial will be upheld unless the order is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.” Norton v. Norfolk S. Ry., 350 S.C. 473, 478, 567 S.E.2d 851 (2002) (internal citations omitted). “This court’s review is limited to consideration of whether evidence exists to support the trial court’s order.” Id. (internal citations omitted).

“The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court’s ruling will not be disturbed on appeal.” Jamison v. Ford Motor Co., 373 S.C. 248, ___, 644 S.E.2d 755, 765 (Ct. App. 2007) (internal citations omitted). “To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e. there is a reasonable probability the jury’s verdict was influenced by the wrongly admitted or excluded evidence.” Id. (internal citations omitted.)

STATEMENT OF FACTS

This case arises from a wreck between the parties Aug. 19, 2013. (Tr. p. 66, ll. 5-10.) At approximately 7:30 a.m., St. Gelais was stopped at a red light on South Main Street in Greenwood at the intersection with Epting Avenue on her way to work when Leary rear ended her. (Tr. p. 66, l. 20-p. 68, l. 22.) Leary was driving a truck when he collided into St. Gelais, who was in a SUV,

which had to have the hitch repaired because of the wreck. (Tr. p. 68, l. 23-p. 69, l. 10; p. 111, ll. 7-11.) Leary did not dispute that he was at fault for running into the back of the stopped St. Gelais; he testified that he stopped paying attention to the road so he could look over at the gas prices at a local station. (Tr. p. 146, ll. 13-23; p. 157, ll. 1-17.) Following the wreck, St. Gelais called 911 because she was dizzy and experiencing pain in her neck and the back of her head. (Tr. p. 69, l. 13-p. 70, l. 13.) The EMT's transported her to the emergency room where she received treatment. (Tr. p. 70, ll. 4-13.) Eight days later, she followed up with her primary care physician, Dr. Asa Hatfield, as instructed at the emergency room. (Tr. p. 70, l. 14-p. 71, l. 6.) By that time, her pain had worsened, and Dr. Hatfield gave her prescriptions for muscle relaxers and pain medication and sent her to physical therapy. (Tr. p. 71, l. 12-p. 72, l. 8.) Dr. Hatfield testified that her complaints were common for someone who has been in a car wreck. (Dr. Hatfield Depo.) St. Gelais testified that the physical therapy only helped her symptoms a little. (Tr. p. 72, ll. 9-25.) She also began suffering from headaches in the back of her head after the wreck. (Tr. 73, ll. 7-14.)

Following St. Gelais' physical therapy, Dr. Hatfield ordered an MRI of her neck and referred her to a neurologist in Abbeville. (Tr. p. 74, ll. 5-11.) The neurologist sent her to get two rounds of injections in her neck, which did not provide much relief. (Tr. p. 74, l. 21-p. 75, l. 25.) St. Gelais incurred \$23,459.62 in medical bills for her treatment following the accident. (Tr. p. 77, l. 10-p. 78, l. 8.)

St. Gelais testified to an overall less enjoyable life after the wreck as she still suffers from neck pain and a lack of energy and cannot play music like she did prior to the wreck. (Tr. p. 78, l. 10-p. 79, l. 16.) She also has had trouble sleeping since the wreck because of numbness and

tingling. (Tr. p. 83, ll. 8-13.) Driving became difficult and uncomfortable for her after the wreck so she changed jobs to shorten her commute. (Tr. p. 83, ll. 3-15.)

Upon cross-examination, the defense questioned St. Gelais about marijuana appearing in her urine drug screening at the emergency room on the day of the wreck. (Tr. p. 93, l. 19-p. 95, l. 3.) The medical record that Leary relied upon in questioning St. Gelais about marijuana use states “Marijuana: Positive Not Confirmed Verified By Repeat Analysis.” (Medical record of urine drug screen.) The note further states “No Chain Of Custody Result Must Not Be Used For Non Medical Purposes (Employment or Legal Testing).” (*Id.*) The results do not state what level of marijuana was in her urine or how long the marijuana had been in her urine. (*Id.*) Leary, who is a practicing obstetrician-gynecologist, confirmed that the results in the medical records did not show the amount of marijuana in her urine or when it was ingested; he admitted the marijuana could have been ingested a week prior to the test and that the police officer did not charge St. Gelais with driving under the influence. (Tr. p. 158, ll. 7-10.)

Prior to the beginning of the trial, St. Gelais made a motion to exclude any reference to the marijuana test because it lacked reliability and probative value. (Tr. p. 4, l. 21-p. 5, l. 15.) The court denied this motion and allowed the marijuana evidence in to rebut testimony of St. Gelais’ experiencing dizziness or any other symptom that could be attributed to the marijuana. (Tr. p. 10, ll. 1-15.) During the trial, the court allowed in the evidence despite the objection and gave a jury instruction to limit the use of the marijuana to its effect on St. Gelais’ symptoms because fault was not an issue as Leary had admitted to fault in causing the accident. (Tr. p. 95, ll. 6-18.) St. Gelais renewed her objection to this evidence coming before the jury after she rested her case. (Tr. p. 135, ll. 10-18.) St. Gelais denied smoking marijuana prior to the wreck. (Tr. p. 93, l. 19-p. 94, l. 20.)

ARGUMENT

THE TRIAL COURT ERRED IN ADMITTING UNFAIRLY PREJUDICIAL EVIDENCE OF MARIJUANA IN ST. GELAIS' URINE TEST AT THE HOSPITAL BECAUSE THE EVIDENCE LACKED RELIABILITY AND PROBATIVE VALUE AS IT DID NOT SHOW THE MARIJUANA AMOUNT OR TIME OF CONSUMPTION.

The trial court erroneously allowed Leary to introduce, through cross-examination of St. Gelais, evidence of St. Gelais' medical records showing that she had marijuana in her urine drug screen at the emergency room following the accident.

To be admissible, evidence must be relevant. See Rule 402, SCRE. “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. While relevance is a threshold issue for determining the admissibility of evidence, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....” Rule 403, SCRE. “Unfair prejudice means an undue tendency to suggest a decision on an improper basis.” Kennedy 358 S.C. 122 at 127, 595 S.E.2d at 251 (quoting State v. Owens, 346 S.C. 637, 666, 552 S.E.2d 745, 760 (2001).).

In Kennedy, the court of appeals overturned a defense verdict in a disputed liability wreck case because the trial court had allowed into evidence a blood test taken at the hospital that showed the plaintiff had marijuana in his system. Id. at 128, 595 S.E.2d at 251. The court noted that the drug test did not specify the quantity of marijuana in the plaintiff's system or show how recently the plaintiff had used marijuana. Id. The court noted that no evidence indicated whether the plaintiff had a high enough marijuana level to be impaired, no marijuana was found in or near the

plaintiff's truck, and no one testified that the plaintiff smelled like marijuana. Id. The court held that the mere presence of marijuana without more would mislead the jury so it should not have been admitted. Id. "The admission of this evidence was more prejudicial than probative because there was no correlation between the marijuana and the accident. Accordingly, the trial judge erred in allowing its admission." Id. at 128-29, 595 S.E.2d at 251. See also Johnson v. Horry Cnty. Solid Waste Auth., 389 S.C. 528, 698 S.E.2d 835 (Ct. App. 2010) (affirming the trial court's exclusion of evidence of the decedent's blood alcohol content of 0.14% and trace amounts of marijuana and cocaine in a disputed wreck case because such evidence, despite having probative value, was substantially outweighed by its prejudicial effect).

The facts in this case are almost identical to Kennedy. The evidence of marijuana in St. Gelais' system lacked probative value because as in Kennedy, the drug test did not state the amount of the marijuana, no marijuana was found in or near St. Gelais' automobile, and no one testified that St. Gelais smelled of marijuana. By Leary's own admission, the marijuana could have been ingested a week prior to the wreck. (Tr. p. 158, ll. 4-7.)

Unlike in Kennedy, Leary does not even dispute fault because he drove into the rear of her SUV while she was stopped at a red light. The fact that St. Gelais was on her morning commute to work at the time of the wreck further weakens Defendant's theory that marijuana intoxication caused her injuries so this evidence lacked probative value. No one disputes that St. Gelais did not exhibit any bad driving.

The evidence of marijuana in St. Gelais' urine test should not have been allowed into evidence because it was not probative and highly prejudicial. The text of the document itself casts doubts on its reliability. It explicitly states the results of the test have not been confirmed, do not have a chain of custody, and are not to be used for non-medical purposes. Given these statements,

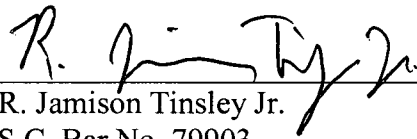
this piece of unreliable evidence was not relevant because it did not have any tendency to prove that St. Gelais' injuries were affected by marijuana intoxication. These results did not prove she was under the influence of marijuana at the time of the wreck, and no other evidence supported that she was under the influence of marijuana.

On the other hand, this evidence was highly prejudicial in an unfair manner. It portrayed St. Gelais as a drug user despite drug use having no proper bearing on the outcome of the case. This marijuana evidence gave the jury the opportunity to base its decision on passion against drug use rather than on the actual evidence. Given the total lack of probative value where fault for the wreck was not an issue and no other evidence supported that St. Gelais was under the influence of marijuana, the unfair prejudice of allowing the jury to hear about the marijuana in her system substantially outweighed the evidence's probative value. The court, thus, should have excluded that evidence pursuant to Rules 401 and 403 of evidence and the precedent set in Kennedy but it instead allowed the jury to decide the case based on improper considerations.

CONCLUSION

As discussed above, the circuit court erred in admitting evidence of the unreliable drug test from the hospital that showed marijuana in St. Gelais' blood where the test lacked a chain of custody and explicitly said not to use it for legal purposes; no other evidence showed that marijuana use was a factor or had anything to do with St. Gelais' injuries. The Court should, therefore, reverse the circuit court's denial of St. Gelais' new trial motion remand the case to the circuit court for a new trial where this evidence will not be admitted.

Respectfully submitted,



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September 19, 2018

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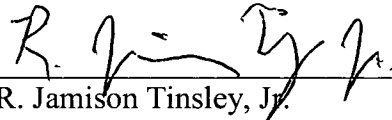
Julius L. Leary,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter on the S.C. Court of Appeals and counsel for the Respondent by U.S. Mail Delivery, postage pre-paid on September 19, 2018, addressed to S.C. Court of Appeals, at Post Office Box 11629, Columbia, South Carolina 29211 and to Carrie Hailman O'Brien, Esquire, at 225 East Worthington Avenue, Charlotte, North Carolina 28203.

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Re: Rosa S. St. Gelais v. Julius L. Leary
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Dear Court of Appeals:

Enclosed please find Initial Brief of Appellant and Designation of Matter along with a proof of service.

Please contact me should you have questions or concerns.

Yours truly,

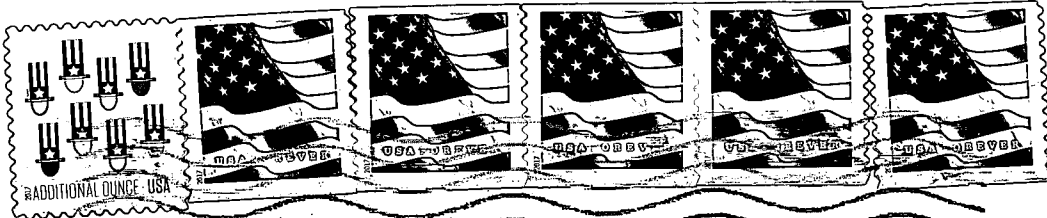


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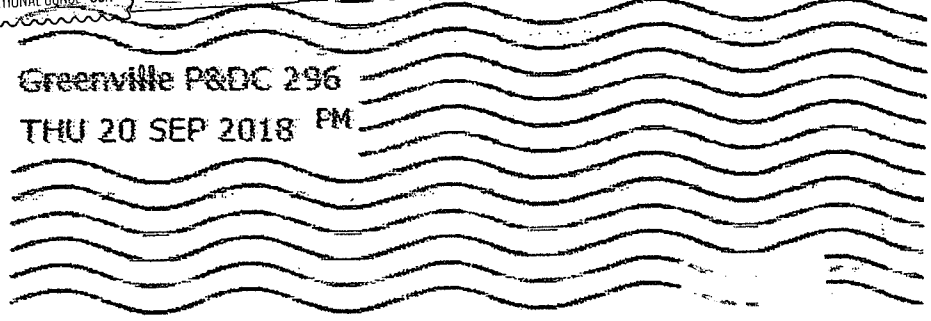
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Enclosures as indicated

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