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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002526

Janice Pitts, Appellant,

v.

Gerald Pitts, Respondent.

PETITION FOR REHEARING

J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Appellant

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SC Court of Appeals

PETITION

Now comes the Appellant who petitions the Court to grant a rehearing based on the following:

This Court's opinion rests on the application of Davis v. Traylor, 340 S.C. 150 (Ct. App. 2000). Citing Davis this Court affirmed finding that impeachment evidence was irrelevant to the matter before the court. This was clearly error. First, Davis did not address impeachment under Rule 609, SCRE, and is therefore inapplicable to the issue presented on appeal. Secondly, the parties' credibility was absolutely essential to the case. The Respondent testified that he transferred title to the motorcycle to the Appellant. Title was therefore in the Appellant's name. Respondent claimed he transferred title on a motorcycle to the Appellant because she had paid for the repairs to the motorcycle. Respondent claimed that he had a verbal agreement with the Appellant whereby the Appellant would transfer title back to him if and when he paid her back. R. p. 16-19. Respondent claimed he had a verbal agreement and offered no proof as to the amount of money he was to repay other than testifying: "11 -- 1,200 some odd dollars if I ain't mistaken." R. p. 20, l. 1-5. Appellant testified that the Respondent also claimed that he had various personal items that were "gone" that he "didn't put on that paper". R. p. 20. In his testimony the Respondent failed to identify any tools or testify to the value of the personal property. R. p. 19-20. The parties' testimony and therefore credibility was critical to the case. The Appellant's ability to impeach the Respondent under Rule 609 was therefore essential to her being able to effectively defend her case.

The Appellant attempted to impeach the Respondent with evidence of his prior convictions. After the Respondent testified and the Appellant allowed to testify she attempted to

offer the Respondent's prior criminal history for the purpose of impeaching the Respondent's testimony. The magistrate refused to consider the Respondent's record stating: "I don't want to see his criminal record." "I don't want to prejudice him in any way." The magistrate referenced the Respondent's prior testimony about having been in prison but stated that "That doesn't have anything to do with why we're here today." In the circuit court the Appellant raised the magistrate's refusal to accept documents because they were "irrelevant". R. p. 96.

From the record it is clear that the Respondent had prior convictions, at least one of which caused him to be on probation and therefore, a felony. Prior convictions are a proper consideration for the fact finder as they bear on the issue of credibility. Although the Appellant did not follow the proper procedure in raising the prior convictions, the magistrate should nevertheless have reviewed the convictions and considered any that under the rules would bear on the issue of credibility. In magistrate courts "[t]rials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice. In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order that all claims and defenses are fully presented." Rule 13, Magistrate Court Rules.

As this case turned on credibility, the prior convictions of the Respondent were of particular importance. The Respondent's prior convictions were admissible for the purpose of impeachment pursuant to Rule 609, SCRE:

(a) General Rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of

one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609, SCRE.

Here, legal title and possession of the motorcycle had been transferred to the Appellant by the Respondent for valuable consideration. The only evidence the Respondent offered was testimony about how the Appellant was supposed to give him the motorcycle back if he repaid the Appellant. Given that the Respondent's credibility was critical to the case the Appellant was entitled to impeach the Respondent with prior convictions and the magistrate, under a duty to relax the rules to reach justice, should have allowed the Appellant the opportunity to do so. Failure to do so violated the duty of the magistrate under Rule 13, SCRMC and Rule 609, SCRE. As this case turned on credibility as to details of a verbal agreement, failure to allow the Appellant to impeach the Respondent constituted reversible error. This Court's opinion in reliance on Davis is therefore in error.

Wherefore, the Appellant moves this Court to grant a rehearing and reverse its decision.

Respectfully submitted,



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Counsel for Appellant

April 23, 2020.

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Gerald Pitts, Respondent.

CERTIFICATE OF SERVICE

I certify that on April 23, 2020, I served Appellant's Petition for Rehearing on the Respondent by placing a copy into the U.S. Mail, first-class postage prepaid, addressed to the Respondent as follows, and to others if indicated, and by facsimile and electronically if indicated:

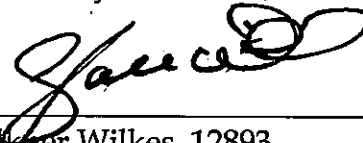
Gerald Pitts
311 Wilkie Ford Road
Inman, SC 29349

and to:

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

via facsimile also to: (803 734-1839

Respectfully submitted,



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April 23, 2020.

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April 23, 2020

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Janice Pitts, Appellant v. Gerald Pitts, Respondent
Circuit Court Case No. 2017-CP-42-02897
Appellate Case No.: 2017-002526

Dear Ms. Kitchings,

I am enclosing the Appellant's Petition for Rehearing and a check for the filing fee.

Sincerely,

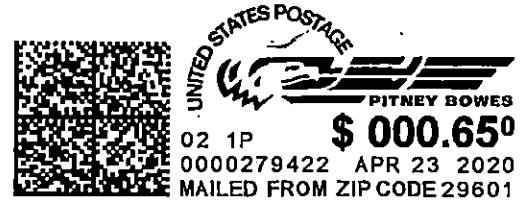


J. Falkner Wilkes

c:
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