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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Court of Common Pleas

Case No. 2017-CP-08-02153
Appellate Case No. 2020-000757

DORETTA MCHUGH, as Personal Representative for the Estate of Daniel Coy,

Appellant,

v.

JOHN DOE,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The Trial Court erred in allowing the Defendant to repeatedly refer to other instances of Plaintiff's conduct as proof that the Plaintiff was negligent at the time of the incident giving rise to this matter.

II. The Trial Court erred in failing to grant Plaintiff's Motion for a Directed Verdict, where only reasonable inference was that Defendant caused the wreck.

III. The Trial Court erred in failing to grant Plaintiff's Motion for Judgment Notwithstanding the Verdict where only reasonable inference was that Defendant caused the wreck.

STATEMENT OF THE CASE

This is an action brought by Daniel C. Coy alleging that Respondent John Doe was negligent in that John Doe drove his motor vehicle into the rear of Appellant's motorcycle, causing injuries to Appellant. This action was originally filed on September 15, 2017 and Defendant filed an answer on November 8, 2017. However, the case proceeded to trial on an amended complaint. [R. pp. 37-40; Amd. Complaint, filed October 23, 2019].

Plaintiff asserted a negligence cause of action. [R. pp. 38-40; Amd. Complaint, filed October 23, 2019]. By its answer, Defendant denied the allegations of the Amended Complaint and pled Comparative Negligence, among other affirmative defenses. [R. pp. 48-54; Answer to Amd. Complaint, filed October 25, 2019].

The matter came to trial on November 12-13, 2019 before the Honorable Deadra L. Jefferson, and a jury in the Berkeley County Court of Common Pleas.

The jury returned a verdict in favor of Defendant. [R. p. 23]

STATEMENT OF THE FACTS

This matter arises from a motor vehicle-motorcycle collision on June 14, 2017 that took place on U.S. 17 Alt. near Summerville, South Carolina. Plaintiff was riding his motorcycle to work, and as he slowed to turn into the parking lot of the convenience store he worked at, Defendant John Doe struck Mr. Coy from behind, causing him to wreck. Mr. Coy was injured as a result. John Doe then drove away and did not return. This matter proceeded to jury trial in Berkeley County on November 12 and 13, 2019 before the Honorable Deadra Jefferson. Plaintiff, prior to the trial, was killed in an unrelated collision with a drunk driver. Plaintiff was represented by his Personal Representative at trial, and excerpts from Plaintiff's deposition were published to the jury. At the close of the Defendant's case, which presented no evidence,

Plaintiff's motion for Directed Verdict was denied. The jury returned a verdict in favor of the Defendant. Plaintiff timely moved for Judgment Notwithstanding the Verdict, which was also denied.

Standard of Review

The trial court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law. *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.,* 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct.App.2000). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. *Patel v. Patel,* 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004). An abuse of discretion can occur where the trial court's ruling is based on an error of law. *Henderson v. Puckett,* 316 S.C. 171, 447 S.E.2d 871 (Ct.App.1994) (citing 16 S.C. Juris. *Appeal and Error* § 124 at 31–32 (1992)).

Law

Generally, the Plaintiff in a civil matter or defendant in a criminal matter must first offer evidence in favor or character or habit in order for the adverse party to offer evidence to the contrary. "We hold the trial court did not abuse its discretion in ruling Williams did not open the door to evidence of his confrontational character or his propensity to brandish a firearm when in a confrontation. That ruling removed Rule 404(a)(1) from the evidentiary equation; therefore, the trial court committed an error of law in relying upon Rule 404(a)(1) to allow the State to introduce evidence of Williams' confrontational character. *State v. Williams*, 430 S.C. 136, 150, 844 S.E.2d 57, 65 (2020), *reh'g denied* (July 8, 2020).

The concept behind Rule 403 is clear: if the probative value of the evidence sought to be admitted "is substantially outweighed by the danger of unfair prejudice, confusion of the issues,

or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," the trial court, upon proper objection, may exclude the evidence. *See* Rule 403, SCRE. The Rule 403 concern most often invoked is "the danger of unfair prejudice." In the context of Rule 403, "[e]vidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

[Courts] have guarded against "thinly-veiled attempt[s] to show propensity" initiated under the guise of an attempt at impeachment. *See Young*, 378 S.C. at 106, 661 S.E.2d at 390; *State v. Heyward*, 426 S.C. 630, 637, 828 S.E.2d 592, 595 (2019).

Argument

Admission of Plaintiff's prior fall from a motorcycle over objection, and repeatedly referring to it, constitutes a reversible error of law. What possible probative value can evidence of a prior fall offer the jury in this case? None. Yet the danger of unfair prejudice is substantial. Defendant's arguments related to the prior fall are an overt, not thinly veiled, attempt to show Plaintiff's propensity for falling by his own mistake. The evidence at issue consists of an excerpt from page 42 of Plaintiff's discovery deposition transcript, which was published to the jury by Plaintiff's Personal Representative, his mother. Prior to the reading of the transcript excerpts, a conference between the Court and counsel took place wherein Plaintiff offered certain testimony and Defendant offered certain testimony. Plaintiff objected to the introduction of testimony related to a prior fall Plaintiff experienced while taking a motorcycle safety course. [R. p. 280. line 2-3; Tr. 191: 2-3, 17-22].

Plaintiff did not place his character or habit for safety practices at issue, therefore Defendant's introduction of testimony related to a prior fall, six weeks prior to the collision at

issue during a safety course, was improper. The evidence that Plaintiff had a prior fall on his motorcycle was not offered to impeach his credibility, it was offered to show he was at-fault in the case at trial. Responding to Plaintiff's timely objection, the Trial Court attempted to help the Defendant out by indicating that the evidence would be offered to show a pre-existing condition, such as headaches. [R. p. 275, line 24-25, R. p. 276, line 1-3 ;Tr.186: 24-25, 187: 1-3]. "I'm just anticipating [the Defendant's] argument, that it's a pre-existing condition for which is also a contributing cause to his headaches." [R. p. 273, line 3-6; Tr.184: 3-6]. "And I'm assuming, Mr. [Defendant], that is your argument; that, that was a pre-existing defect for which he's not entitled to be compensated. [Defendant]: Yes, Your Honor." [R. p. 273, line 23-25, R. p. 274, line 1; Tr.184: 23-25, 185: 1].

If Defendant wished to argue that Plaintiff suffered from a pre-existing condition, this would have been easy to accomplish without admitting evidence of a prior fall. Plaintiff offered a proper alternative that would allow Defendant to introduce evidence of prior headaches without introducing evidence of a prior fall. "We could, for instance, put in there, 'I still get headaches from time to time because I had a minor fall.'" [R. p. 276, line 12-14;Tr. 187: 12-14].

However, the Defendant never adopted this argument in front of the jury and argued throughout the trial that the Plaintiff's prior fall at the safety training indicated Plaintiff caused the injury at issue in trial. "[J]ust six weeks before this accident… he did something wrong and flipped over the handlebars. <u>Just like this accident</u>." [R. p. 170, line 5-6, 20-24; Tr. 81:5-6, 20-24]. In addition to being inadmissible, this statement by Defendant is inaccurate, as the deposition transcript shows. Defendant's inadmissible theory is best summed up in his closing argument. "Is it possible that as Mr. Coy is making a maneuver on his Ducati Café Racer to turn into that parking lot, going around 19 miles an hour, attempting to change gears <u>loses control of</u>

that bike, flips, and at that same time, a car goes by[?]" [R. p. 369, line 8-13; Tr. 280:8-13]. "[Y]ou heard about the situation where six weeks before he is turning and braking and making a maneuver on the bike and flies off and hits his head." [R. p. 372, line 6-9; Tr.283: 6-9]. This last statement, at least, was objected to and the objection was sustained. However, it is further proof of the improper narrative that Defendant promoted throughout the trial.

Conclusion

This inadmissible evidence was harmful and not cumulative because it was the main defense presented at trial. The defense offered no alternate explanation for Plaintiff's injuries, nor did the defense offer other evidence that would tend to prove the Plaintiff caused the collision in this matter. The main defense presented, that Plaintiff was the cause of the crash at issue in this matter, was supported solely by Plaintiff's deposition testimony that he had fallen from his motorcycle six weeks prior. These unrelated matters were repeatedly referred to by Defendant during opening, during examinations, and during closing argument in support of the defense's argument that the Plaintiff caused himself to fall during the incident giving rise to this matter. Allowing this evidence to be published to the jury over Plaintiff's timely objection was reversible error; denying Plaintiff's motions for Directed Verdict and JNOV were further reversible error where the defense relied almost exclusively on the prior fall in support of its arguments.

Plaintiff respectfully requests that this Court reverse the decision below and enter judgment in favor of the Plaintiff, or, alternatively, order a new trial on the merits.

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CERTIFICATE OF SERVICE

I, Daniel C. Boles, attorney for the Appellant do hereby certify that on June 16, 2021, I served a copy of the Final Brief of Appellant on counsel for Respondent, via U.S. Mail, first class, postage prepaid to the following address:

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CERTIFICATION

I, Daniel C. Boles, attorney for the Appellant do hereby certify the Final Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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