

STATE OF NORTH CAROLINA

WAKE COUNTY

COMMON CAUSE, et al.,

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-014001

2019 JUN 21 P 3: 36

WAKE CO., C.S.C.

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIRMAN OF
THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**DEFENDANT-INTERVENORS'
MOTION TO EXCLUDE
EVIDENCE OF DISMISSED
CRIMINAL CHARGES**

NOW COME Defendant-Intervenors Adrain Arnett, Carolyn Elmore, Cathy Fanslau, Connor Groce, Reginald Reid, Aubrey Woodard, and Ben York (“Intervenors”), and hereby respectfully move this Court for the entry of an order excluding any and all evidence, references to evidence, testimony, or argument relating to criminal charges brought against Reginald Reid, which have no relevancy whatsoever to this case, pursuant to Rules 402, 403, 404, 608, and 609 of the North Carolina Rules of Evidence. In support of this motion, Intervenors provide the following:

I. Background

Reginald Delano Reid (“Mr. Reid”) has had two criminal charges brought against him, both more than ten years ago: one for assault on a female in 2003, and one for stalking in 2006. Both charges were dismissed without any plea, and the 2003 charge was expunged. Somehow, while Mr. Reid was a candidate for the North Carolina General Assembly in the 2012 election cycle, local journalists in Winston-Salem were alerted to the expunged 2003

and a 2007 charge against another man with a similar name. The journalists simultaneously accused Mr. Reid of also committing the 2007 charge, despite the fact that the 2007 charge was not against him, but brought against a man named Reginald Cephus Reid. This attempted “gotcha” journalism drew more attention to the non-story of Mr. Reid’s expunged 2003 charge—a charge which is non-existent in the eyes of the law.

Intervenors have good reason to believe that Plaintiffs may attempt to introduce evidence of criminal charges, including the 2007 charge against someone else, in their examination of Mr. Reid at trial. At Plaintiffs’ deposition of Mr. Reid on May 7, 2019, Plaintiffs’ presented Mr. Reid with a *Winston-Salem Journal* article dated October 30, 2012, relating to an expunged charge from 2003, and continued to question him regarding the article and the charge itself. Reid Dep. 14:4–22:9.¹ Plaintiffs have sought to designate those portions of his deposition transcript, among others, for use at trial, and Intervenors have objected to the same. This evidence, and any evidence relating to criminal charges brought against Mr. Reid, should be excluded as improper character evidence, irrelevant, prejudicial, and improper impeachment evidence.

II. The since-dismissed charges brought against Mr. Reid are improper character evidence and inadmissible under Rules 404, 608, and 609 of the North Carolina Rules of Evidence.

North Carolina law is crystal clear on the admissibility of evidence relating to dismissed criminal charges. “Evidence of a person’s character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion,” except that character of a witness may be used for impeachment purposes in accordance with Rules 607, 608, and 609 of the North Carolina Rules of Evidence. N.C. Gen. Stat. § 8C-1, Rule 404 (2017). “Specific instances of the conduct of a witness, for

¹ The relevant portion of Mr. Reid’s deposition transcript and related exhibit are attached hereto as **Exhibit A**.

the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence.” *Id.* at Rule 608(b). Rule 609 permits the use of felony and certain misdemeanor *convictions* within the past ten years for impeachment purposes; however, “the general rule regarding evidence of prior charges and indictments is that “[a]ccusations that [a witness] has committed other extrinsic crimes are generally inadmissible even if evidence that [the witness] actually committed the crimes would have been admissible.” *State v. Johnson*, 128 N.C. App. 361, 369, 496 S.E.2d 805, 810 (1998) (quoting *State v. Mills*, 332 N.C. 392, 407, 420 S.E.2d 114, 121 (1992)) (alterations in original); *see also State v. Lynch*, 337 N.C. 415, 421–22, 445 S.E.2d 581, 583–84 (1994) (holding that trial court properly refused to admit evidence of assault charges to impeach witness where no verdict entered).

Mr. Reid has never been convicted of any crime. Though Mr. Reid had criminal charges brought against him more than ten years ago, all such charges were dismissed. None of those charges were for *crimen falsi*. One of those charges—the charge at issue in the news article Plaintiffs confronted Mr. Reid with at his deposition—was expunged. Under North Carolina law, a person whose charge has been expunged shall not “be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.” N.C. Gen. Stat. § 15A-146. Accordingly, the Court should enter an order excluding any and all evidence, references to evidence, testimony, or argument relating to any criminal charges against Mr. Reid.

III. The since-dismissed charges brought against Mr. Reid are irrelevant to the claims and defenses brought in this lawsuit.

“Evidence which is not relevant is not admissible.” N.C. Gen. Stat. § 8C-1, Rule 402. Relevant evidence is defined as “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.” *Id.* at Rule 401. This Court has the inherent authority to exclude evidence that is irrelevant or unduly prejudicial prior to trial. *State v. Roache*, 358 N.C. 243, 284, 595 S.E.2d 381, 408 (2004).

Untested criminal allegations made against Mr. Reid have absolutely no bearing on this case. Any criminal accusations are wholly unrelated to Mr. Reid’s status as a voter, his political preferences, and his opinions on his legislative districts. The fact that Mr. Reid has had criminal charges brought against him makes no fact at issue in this case more or less probable, and in fact have no relation to this matter whatsoever. Therefore, in addition to being improper character evidence, Mr. Reid’s criminal charges are irrelevant to this case and should be excluded on that basis.

IV. To the extent such evidence is relevant, its minimal probative value is substantially outweighed by risk of unfair prejudice.

Finally, to whatever minimal extent Plaintiffs may argue this such evidence contains probative value, any evidence relating to Mr. Reid’s criminal charges would be highly prejudicial, and such prejudice would substantially outweigh such probative value. Rule 403 of the North Carolina Rules of Evidence gives the Court discretion to exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury. *See State v. Mason*, 315 N.C. 724, 731, 340 S.E.2d 430, 434–35 (1986) (citing N.C. Gen. Stat. § 8C-1, Rule 403). Unfair prejudice is defined as the “undue tendency to suggest decision on improper basis, commonly, though not necessarily, an emotional one.” *Id.* (citation omitted). Evidence used with the sole aim of exciting prejudice or sympathy is

properly excluded under Rule 403. *See State v. Campbell*, 359 N.C. 644, 674–75, 617 S.E.2d 1, 20 (2005) (citation omitted).

Intervenors understand that this is a bench trial, and your Honors are fully capable of weighing and appropriately disregarding the evidence as it is presented to you. *See, e.g., State v. Jones*, __ N.C. App. __, __, 789 S.E.2d 651, 656 (2016) (restating the “well-established principle that the trial court is presumed to disregard incompetent evidence in making its decisions as a finder of fact”) (internal quotation marks and citation omitted). In this instance, however, allowing Plaintiffs the opportunity to present evidence of Mr. Reid’s criminal charges at a very public trial threatens to derail proceedings by pursuing a line of questioning which would serve dual detrimental purposes of exciting a witness and entering questionably relevant, if not wholly irrelevant, evidence into the record. Any attempts to have evidence of Mr. Reid’s criminal charges would be transparently intended for such purposes. Indeed, Plaintiffs’ questioning of Mr. Reid with such evidence at his deposition bordered on harassing. The local news articles about Mr. Reid’s expunged charges were attempts at “gotcha” journalism which Plaintiffs attempted to use in similar fashion at Mr. Reid’s deposition. While such tactics were unavailing at his deposition, this court should order evidence relating to Mr. Reid’s criminal charges inadmissible to prevent Plaintiffs from trying again.

CONCLUSION


WHEREFORE, in light of the foregoing, Intervenors respectfully request that this Court enter an order excluding any and all evidence, references to evidence, testimony, or argument relating to criminal charges brought against Reginald Reid pursuant to Rules 402, 403, 404, 608, and 609 of the North Carolina Rules of Evidence. Intervenors further request

that the order encompass opening statement, closing argument, and otherwise during the presentation of the case by all parties.

This the 21st day of June 2019.

SHANAHAN LAW GROUP, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing: DEFENDANT-INTERVENORS' MOTION TO EXCLUDE EVIDENCE OF DISMISSED CRIMINAL CHARGES upon all parties to this matter via email to the below listed email addresses as follows:

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, ET AL.,)
)
Plaintiffs,)
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DAVID LEWIS, IN HIS OFFICIAL)
CAPACITY AS SENIOR CHAIRMAN)
OF THE HOUSE SELECT COMMITTEE)
ON REDISTRICTING, ET AL.,)
)
Defendants.)

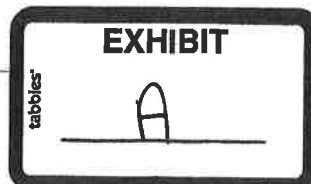
DEPOSITION OF
REGINALD REID

10:22 A.M.

TUESDAY, MAY 7, 2019

SHANAHAN LAW GROUP
7501 FALLS OF NEUSE ROAD, SUITE 200
RALEIGH, NORTH CAROLINA

BY: LISA A. WHEELER, RPR, CRR



1 A. Yeah.

2 Q. -- you'd have no reason to dispute that?

3 A. Uh-huh.

4 Q. During your 2012 Senate race was there a news
5 report that you had been charged with assault
6 by a female student while working as a
7 substitute teacher in --

8 A. Yes.

9 Q. -- 2003? And in -- in relation to that news
10 report, did you initially deny that you were
11 the same Reginald Reid who had been charged?

12 A. That report, what they -- what -- what he --
13 what he told me about was not the person I
14 was. A report was -- a report was given by
15 my opponent to -- to the Camel City Dispatch.
16 It was for a Reginald Cephus Reid. It wasn't
17 for me.

18 Q. So --

19 A. The report -- the -- the reporter from
20 Winston-Salem Journal had contacted -- he
21 knew it wasn't me. They found out it wasn't
22 me. He knew it wasn't me -- for Reginald
23 Cephus Reid -- from Camel City Dispatch. He
24 contacted Johnston County and they found --
25 they found a com- -- they found a police

1 record for my arrest, and -- and the case
2 was -- the case was dismissed and expunged.

3 Q. But when you were first contacted by a
4 reporter at the Winston-Salem Journal in
5 2012, did you initially deny that you were
6 the same Reginald Reid who had been charged
7 in that 2003 assault?

8 MR. BRANCH: Objection.

9 BY MR. JACOBSON:

10 Q. You may answer.

11 MR. BRANCH: You can answer.

12 THE WITNESS: Huh?

13 MR. BRANCH: You can answer.

14 A. That wasn't the same person, sir. It wasn't
15 me. It was not me. And John Hinton knows it
16 wasn't me and, furthermore, me and Mr. Hinton
17 have had some issues because I am an
18 African-American and a Republican. We've had
19 some issues. Me and Mr. Hinton actually had
20 some personal issues so he -- me and him --
21 me and him do not get along.

22 (REID EXHIBIT 1 was marked for
23 identification.)

24 BY MR. JACOBSON:

25 Q. Mr. Reid, I'm going to show you what's been

1 marked here as Exhibit 1 and I'll pass out
2 copies for everyone else here as well.

3 MR. BRANCH: That's for you.

4 THE WITNESS: Okay.

5 BY MR. JACOBSON:

6 Q. And this is a -- the article in the
7 Winston-Salem --

8 A. Yes, sir.

9 Q. -- Journal by Mr. Hinton in -- dated October
10 30th --

11 A. Yes, sir.

12 Q. -- 2012; is that correct?

13 A. Yes, sir.

14 Q. If you could just wait till I finish my
15 questions. Thank you.

16 A. Uh-huh.

17 Q. And if I could ask you to just turn to Page 2
18 of this printout here, sort of bottom of the
19 page, third paragraph down on the page. It
20 says, Reid initially denied to a
21 Winston-Salem Journal reporter that he was
22 the same Reginald Reid charged with the
23 assault.

24 A. That is not true. I did not do that. He
25 did -- he did not come with me with Reginald

1 Reid -- my stuff. My stuff was dismissed and
2 expunged. He did not come with me with
3 Reginald Cephus Reid stuff.

4 Q. So you're --

5 A. He's a bold-face -- yes. I'm saying he's
6 lying.

7 Q. So you're saying he's --

8 A. And, unfortunately -- yes.

9 Q. -- he's lying that you --

10 A. Yes.

11 Q. -- initially denied being the same Reginald
12 Reid charged --

13 A. Yes. The one --

14 Q. -- with this assault?

15 A. The one -- the one he came with was not me,
16 and he knows it wasn't me.

17 Q. And then in the next sentence here it says,
18 however, Reid admitted that he was charged in
19 the matter in a statement he posted on
20 Face- -- on the local Face- -- GOP's Facebook
21 page on Monday.

22 Is that correct that you admitted it in
23 a Facebook post?

24 A. I admitted -- I admitted -- I admitted to a
25 different charge. Like I said, he came to me

1 with something totally different. He came to
2 me with something totally different, came to
3 me with a different person, different name,
4 and different birthday.

5 Q. But you did admit in a Facebook post that you
6 had been charged in 2003 by a student in
7 relation --

8 A. Uh-huh.

9 Q. -- to an assault allegation by a student?

10 A. Yes. It was -- like I say, the case was
11 investigated, dismissed, and expunged.

12 Q. But you were, in fact, charged in 2003?

13 A. Yes. The case was dismissed and expunged.

14 Q. And how old was the female student who
15 alleged assault?

16 A. I'm not sure.

17 Q. Was she in high school?

18 A. May have been. Middle school, somewhere in
19 there, yes, sir.

20 Q. So un- -- under 18?

21 A. Yes, sir.

22 Q. And regardless of whether the allegations
23 were true or false --

24 A. Uh-huh.

25 Q. -- what exactly did the female student

1 allege?

2 A. She said I put my hands on her.

3 Q. Anything else?

4 A. No, sir.

5 Q. Did she allege you put your hands on her in a
6 sexual way?

7 A. No, sir.

8 Q. Just in a --

9 A. She said I put my hands on her, said I
10 grabbed her.

11 Q. And did you do that as she alleged?

12 A. No, sir. Like I said, the case was
13 investigated, dismissed, and expunged.

14 Q. And just to make sure we're a hundred percent
15 clear, you're saying that this Winston-Salem
16 Journal reporter never contacted you about
17 this particular --

18 A. No, he -- he did --

19 Q. -- incident?

20 A. -- contact me.

21 THE WITNESS: I know.

22 MR. BRANCH: Objection. Just --

23 THE WITNESS: Yeah.

24 A. Like I say, he did contact me.

25 Q. About this --

1 A. He did con- --

2 Q. -- particular incident?

3 MR. BRANCH: Can you let him finish,
4 please?

5 MR. JACOBSON: Sure.

6 A. He -- like I say, he did contact me about
7 another incident originally, and, like I say,
8 he investigated the background and he found
9 some -- he found some weird computer -- he
10 found some stray computer report. And, like
11 I say, the case was investigated and
12 expunged.

13 Q. But you're saying he never contacted you
14 about this incident?

15 A. No. He contacted me about --

16 MR. BRANCH: Objection.

17 A. -- that incident. Like I say, he contacted
18 me two times about two different incidences.

19 Q. I see.

20 A. Yes, sir.

21 Q. And when he contacted you about this
22 particular incident, did you deny that you
23 were the same Reginald Reid charged in
24 relation --

25 A. Which particular --

1 Q. -- to this incident?

2 A. -- incident? Which one?

3 Q. The incident which you were actually, in
4 fact, charged and which it was not a case
5 of mistaken --

6 A. When -- when he --

7 Q. -- identity.

8 A. -- contacted me -- when he contacted me about
9 the incident, I was like -- I didn't realize
10 what he was talking about. I was like, okay,
11 yeah. That's when I posted on Forsyth County
12 Republican Facebook page. I put my whole
13 statement out there.

14 Q. So, sir, please just let me finish answering
15 my questions --

16 A. Uh-huh.

17 Q. -- asking my questions. So when he contacted
18 you about this particular incident and not
19 the second incident, the -- the incident --

20 A. Which incident?

21 Q. -- in which you were actually charged --

22 A. No. The first incident he contacted me.
23 First incident was not me he contacted me
24 with. When he says I denied the charge,
25 that's what he meant. When he contacted me

1 with the second incident, that's when I
2 posted on Facebook.

3 Q. And when he contacted you about the second
4 incident, did you deny to him that you --

5 A. No, sir.

6 Q. -- were the person charged?

7 A. No, sir. I said, well, just go to -- I'll
8 post it on Facebook. I was like, I'll post
9 it on Facebook.

10 Q. Okay. And you ran for House in 2018; is that
11 right?

12 A. I did.

13 Q. And it was in House District 72?

14 A. I did.

15 Q. And your opponent was someone named Derwin
16 Montgomery?

17 A. Yes, sir.

18 Q. And Mr. Montgomery is also African-American?

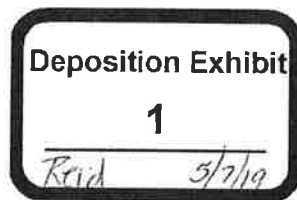
19 A. Yes, sir.

20 Q. And who one that election?

21 A. Mr. Montgomery did.

22 Q. And roughly what percentage of the pote --
23 vote did you receive and what percentage did
24 he receive?

25 A. About 20 percent.



BREAKING Lambeth withdraws controversial bill to redraw Winston-Salem City Council wards

https://www.journalnow.com/news/elections/senate-candidate-reid-charged-with-assault-in/article_3c8c94e4-228f-11e2-b19b-001a4bcf6878.html

Senate 32 candidate Reid charged with assault in '03

John Hinton Oct 30, 2012

Reginald D. Reid, a Republican candidate for N.C. Senate District 32, was charged with assault on a female in 2003 in Clayton in Johnston County, where he worked as a substitute teacher.

Reid said the charge was dismissed and he had the records expunged in Johnston County, which is just east of Wake County in east-central North Carolina. Because the case was expunged, no court records are available, but the Clayton Police Department still has a computer record of his arrest. It includes no details.

Reid, 33, is challenging state Rep. Earline Parmon, D-Forsyth, for the Senate seat. The District 32 seat is held by Democratic Sen. Linda Garrou, who isn't running for re-election after the legislature redrew the district lines to move her home into House District 31.

A report from the Clayton Police Department shows that Reid was charged on Nov. 14, 2003.

Reid initially denied to a Winston-Salem Journal reporter that he was the same Reginald Reid charged with the assault.

However, Reid admitted that he was charged in the matter in a statement he posted on the local GOP's Facebook page Monday.

Reid, a native of Selma in Johnston County, had graduated from the College of Charleston in Charleston, S.C., in 2003 and was working as a substitute teacher in a school in Clayton, according to his statement and resume.

He reported a student to the full-time teacher of the class he was teaching, and the student accused Reid of physically abusing her, Reid wrote. He didn't explain why he reported the student.

The Camel City Dispatch, a local website, first reported that Reid was charged with that offense, as well as a second assault on a female in 2007 in Clayton. Court records show that a Reginald Cephus Reid with a birth date of April 21, 1981, was charged in 2007, but the legislative candidate's birth date is Aug. 18, 1979, and his middle name is Delano, according to Clayton police records and Reid.

Reid said he was living in Lynchburg, Va., in 2007 and was never charged that year with any offense in Clayton.

Reid suggested that the Parmon campaign provided the Camel City Dispatch with information about his 2003 arrest. Parmon initially declined to comment on the 2003 assault charge against Reid.

Parmon, when asked about Reid's accusation that she told the Camel City Dispatch about the charge against him, declined again to comment. Parmon said she hadn't read Reid's statement on the Forsyth County Republican Party's Facebook page.

Reid wrote on the GOP Facebook page that Parmon told one of his supporters Sunday that Reid was a woman abuser.

"I am no more a woman abuser than Ms. Parmon is a competent legislator," Reid wrote. "She can't pull off an October surprise."

"Who else could provide an arrest record from the sheriff's office of an expunged case?" Reid wrote. "This is a confusing mess — multiple Reginald Reids with incorrect arrest warrants."

The arrest record is available to the public, even though it doesn't show up in an online search of court records.

Reid wrote that he didn't want to run a negative campaign, adding that he wanted to talk about ideas and his vision.

"I purposefully avoided Ms. Parmon's issues," Reid wrote. "Ms. Parmon should realize that people who worship in glass churches should not throw stones."