

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS**

John C. Hayes, III, Circuit Court Judge

Case No. 2013-CP-46-01010

The City of Rock Hill,

Respondent,

v.


Christopher D. Gessner,

Appellant.

**MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION AND MOTION
FOR RELIEF FROM JUDGMENT**

May 30, 2014

Other Counsel of Record:
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TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Case	1
Argument	1
Conclusion	2

TABLE OF AUTHORITIES

Standard Oil Company of California v. U.S., 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976) 1

State v. Gordon, Appellate Case No. 2013-000515 1

STATEMENT OF THE CASE

The Appellant was arrested and charged with DUI First Offense on August 2, 2012. Appellant filed a Motion to Dismiss and the motion was denied in Magistrate Court. On March 15, 2013, the Appellant was found guilty at a bench trial by the Honorable Judge Peter Lenzi. Appellant appealed to the Circuit Court and the appeal was denied by the Honorable Judge John C. Hayes, III. The Order denying the appeal was filed on April 4, 2014 and Appellant, through his attorney, Michael L. Brown, Jr., received written notice of the denial on April 7, 2014.

Appellant filed a Notice of Appeal with the Court of Appeals on May 1, 2014.

Appellant makes this Motion for Leave of Court to File a Motion of Reconsideration with the Circuit Court pursuant to Rule 60 of the South Carolina Rules of Civil Procedure.

The Appellant was arrested on suspicion of DUI and performed field sobriety tests at the scene of the traffic stop. At the incident site, the field sobriety tests were recorded via dashboard camera. During the administration of the Horizontal Gaze Nystagmus Test portions of the Appellant's head were not visible on the video recording. During the Walk and Turn Test portions of the Appellant's feet were not visible on the video recording.

Based upon these facts, Appellant moved to dismiss the action contending that Respondent failed to comply with *S.C. Code §56-5-2953* by failing to record each and every step of the walk and turn test. Appellant's Motion to Dismiss based upon these facts was denied, and the denial was upheld by the Circuit Court.

ARGUMENT

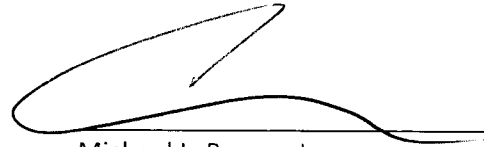
The South Carolina Court of Appeals must grant leave to allow a party to move the trial court, or Circuit Court when hearing an appeal from Magistrate's Court, when an appeal in the matter is pending before the Court of Appeals. *Standard Oil Co. of California v. U.S.*, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976). Pursuant to *State v. Gordon*, Appellate Case No. 2013-000515,

which was heard on March 6, 2014 and filed on April 23, 2014, which was during the pendency of this appeal, defendant's head must be visible on the video. Appellant seeks leave to move the Circuit Court to reconsider its' Order in the matter and to request relief from the Circuit Court's ruling.

CONCLUSION

The South Carolina Court of Appeals has jurisdiction to grant Appellant leave to file his motions in the Circuit Court and Appellant requests leave of the Court of Appeals to do so.

May 30, 2014



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May 30, 2014

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 229211

RECORDED
JUN 2 2014
SC COURT

Re: City of Rock Hill v. Christopher D. Gessner, Appellat Case Number: 2014- 001084

Dear Ms. Kitchings;

Please find the enclosed original and six copies of the MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION AND RELIEF FROM JUDGMENT. If you require anything further please let me know. Thank you.

Sincerely,



Sean F. Cronin

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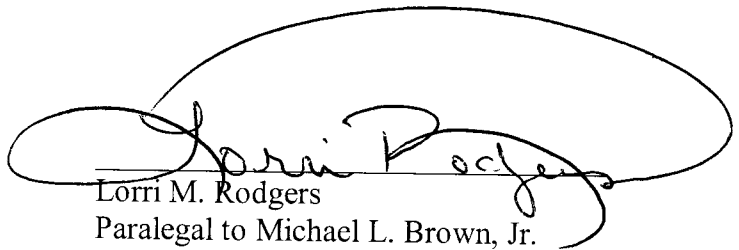
Appellant.

PROOF OF SERVICE

I certify that I have served the MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION in this matter on Lynn Strait, Clerk of Court for York County, by depositing a copy of the same in the United States Mail, postage prepaid, on May 30, 2014, at her address of record:

Clerk of Court, Sixteenth Judicial Circuit
P.O. Box 649
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May 30, 2014



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Christopher D. Gessner,

Appellant.

PROOF OF SERVICE

I certify that I have served the MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION in this matter on Paula Knox Brown, Assistant Solicitor, City of Rock Hill, by depositing a copy of the same in the United States Mail, postage prepaid, on May 30, 2014, at her address of record:

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May 30, 2014


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