

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DAISY LYNNE MIMMS,

APPELLANT

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

Opinion No. 5252

PETITION FOR REHEARING

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AUG 14 2014

SC Court of Appeals

Pursuant to Rule 221(a), counsel for Daisy Lynne Mimms respectfully petitions this Court for rehearing. Counsel respectfully submits that the Court misapprehended the issue Petitioner attempted to present to the Court.

The Petitioner, charged with driving under the influence, believes the jury should have been allowed to consider her lack of criminal intent as she was unaware her chemotherapy treatment and her consumption of an alcoholic beverage would impact her ability to drive.

The relevant statute prohibits a person from driving a motor vehicle if her faculties are materially and appreciably impaired by the combination of drugs or substances and alcohol. The statute is devoid of any language regarding a mens rea requirement. However, courts are permitted to impose a mens rea requirement when one was not written into the statute. Morrisette v. United States, 342 U.S. 246 (1952), State v. Ferguson, 302 S.C. 269, 395 S.E.2d 182 (1990).

The Petitioner urges the Court to hold that in a driving under the influence case involving alleged impairment as a result of the consumption of drugs, if evidence is presented that the defendant was unaware of the effects of such drugs, the jury should be allowed to consider whether the defendant possessed criminal intent. Other jurisdictions, to the extent they have found similar statutes to be strict liability, have limited the application to charges based upon alcoholic content in a person's blood. Cf. State v. Young, 795 P.2d 285 (Haw. App. 1990), People v. Thorson, 496 N.E.2d 304 (Ill. 1986), State v. Bernhardt, 584 A.2d. 854 (N.J. 1991), State v. Glass, 620 N.W.2d 146 (N.D. 2000), City of Defiance v. Kretz, 573 N.E.2d 2 (Ohio 1991), and State v. Miller, 788 P.2d 974 (Or. 1990).

The Petitioner urges the Court to distinguish between matters in which an individual is charged with driving under the influence as a result of the consumption of alcohol and drugs as opposed to being charged as a result of the consumption of alcohol alone. Petitioner submits the Court is free to impose strict liability in the latter cases and allow a defendant to raise the issue of criminal intent in the former. This is a distinction trial courts will have no difficulty in making.

As there was no evidence at the trial that the Petitioner was aware of the effect her treatment would have on her and or that she was aware of any limitations, the jury should have

been allowed to make a determination as to her actions having before it the issue of criminal intent.

Accordingly, Petitioner Daisy Lynn Mimms respectfully requests this Court to grant her Petition for Rehearing.

Respectfully submitted,

Mark Wise

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This 14th day of August, 2014

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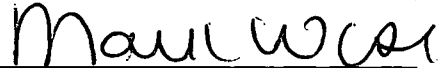
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Salley W. Elliott, Esq., attorney for Respondent, by depositing a copy of same in the United States Mail, postage prepaid, on this 14th day of August, 2014, addressed to Salley W. Elliott, Esq., Office of the Attorney General, Post Office Box 11549, Columbia, SC 29211.


Mark Wise
Assistant Public Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 14th day
of August, 2014

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/14/15

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