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State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit S.C. Court of Appeals

John C. Hayes, III
Judge

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November 10, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Christopher D. Gessner v. City of Rock Hill
C.A. No.: 2013-CP-46-01010

Dear Ms. Kitchings:

I am no quite sure exactly what to do with the enclosed Order. I issued the Order as a result of Judge Cureton's Order, which is enclosed. I have filed the Order with the York County Clerk of Court. By copy to Michael L. Brown, Jr., Esq. and Paula Knox Brown, Esq.

Thanking you, I am

Yours very truly,

A handwritten signature in cursive script that reads "John".

John C. Hayes, III

JCHIII/fjk
Enclosures

Cc: Michael L. Brown, Jr., Esq. (w/enc.)
Paula Knox Brown, Esq. (w/enc.)

The South Carolina Court of Appeals

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SC Court of Appeals

City of Rock Hill, Respondent,

v.

Christopher D. Gessner, Appellant.

Appellate Case No. 2014-001084

ORDER

Appellant has filed a request for leave to file a Rule 60, SCRCP motion with the family court. Respondent did not file a return. After careful consideration, Appellant's motion is granted. This appeal is partially remanded for the circuit court's consideration of the motion. Appellant shall provide this court with a status update in thirty days.


FOR THE COURT

Columbia, South Carolina

cc:

Paula Knox Brown, Esquire

Michael Langford Brown, Jr., Esquire

FILED
2/13/14

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Christopher D. Gessner,)
)
 Plaintiff,)
)
 vs.)
)
 City of Rock Hill,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-01010

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SC Court of Appeals

ORDER

The Court of Appeals, by Order filed August 13, 2014, remanded this case to the York County Court of Common Pleas to review its Order in Christopher D. Gessner v. The City of Rock Hill, 2013-CP-46-1010, in light of a Rule 60(b)SCRCP motion entered by Gessner.

This is a first for the undersigned and exactly how to proceed is somewhat problematic. The Order from the Court of Appeals references no authority for the remand, however, Rule 240, SCACR, provides for same.

The grounds for the motion do not raise any issue readily cognizable under Rule 60(b) unless by a stretch Rule 60(b)(5) opens a door for review. While there is no prior judgment which has been reversed or vacated, the undersigned in City of Rock Hill v. Stroupe, 2014-CP-46-239, held that the Supreme Court ruling in State v. Sawyer, 2014 WL 4214429 (S.C. Aug. 27, 2014) made it clear to the Court that applying a substantial compliance standard in § 56-5-2953 case was incorrect. Sawyer, makes it clear that strict compliance is the standard courts must apply in analyzing compliance by law enforcement with § 56-5-2953. This is true even though the results may appear absurd as they did to the Court in City of Rock Hill v. Stroupe, 2014-CP-46-239).

J. A. H. C.

Applying a strict compliance standard to § 56-5-2953 requires, of course, total compliance. Therefore, if there are errors in the recording of one's conduct in a field sobriety test, the test fails to conform to the requirements of § 56-5-2953. It follows, that such error requires dismissal of the charges. See City of Rock Hill vs. Suchenski, 374 S.C. 182, 646 S.E.2d 874 (Ct. App. p. 2007).

In Gessner's case the Court has noted the onsite video recording did not capture Gessner's entire performance of the walk and turn test. Based on this "insignificant deficiency in the recording of [the] field sobriety test," the Court found no statutory violations. Sawyer, appears to render the Court's findings in the Order in this case erroneous.

The dilemma now is what can this Court do with this case as it is on appeal and was remanded for consideration of a Rule 60(b) SCRPC motion? Applying what the Court deems to be the Court of Appeals stretch, I find the Sawyer decision, at least to the extent of this Court reliance on it, at least clarified and at best vacated by ruling, the undersigned's application of Murphy v. State, 392 S.C. 626, 709, S.E. 2d 685 (Ct. App. 2011). This being the case, the Court grants Gessner's Rule 60(b) SCRPC motion, vacates the Order herein dated April 3, 2014, and grants Gessner's appeal from the Municipal Court of the City of Rock Hill. This results in the City Court's verdict of guilty being reversed and set aside and the charges on which said conviction was based dismissed.¹

IT IS SO ORDERED.

November 16th, 2014
York, South Carolina



John C. Hayes, III
Presiding Judge

¹ The Court has absolutely no idea where this case is now procedurally postured. The Court is confident the parties and the Appellate Courts can figure this out.

John C. Hayes, III, Judge
The Circuit Court of the Sixteenth Judicial Circuit
Moss Justice Center, 2nd Floor
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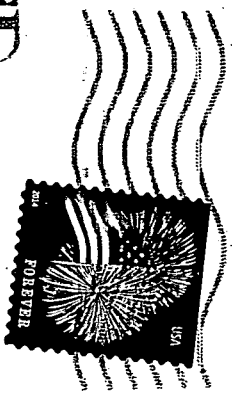
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