

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 30 2016

SC Court of Appeals

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Steven H. John, Circuit Court Judge

Appellate Case No. 2015-001621

Retha Pierce Sturdivant, Appellant,

-vs.-

City of Conway, Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

WHETHER ARGUMENT 1 OF APPELLANT IS IRRELEVANT AND FAILS TO RAISE JUSTICIABLE ISSUES FOR APPEAL?

WHETHER ARGUMENT 2 OF APPELLANT IS IRRELEVANT AND FAILS TO RAISE JUSTICIABLE ISSUES FOR APPEAL?

WHETHER ARGUMENT 3 OF APPELLANT IS IRRELEVANT AND FAILS TO RAISE JUSTICIABLE ISSUES FOR APPEAL?

WHETHER ARGUMENT 4 OF APPELLANT IS IRRELEVANT AND FAILS TO RAISE JUSTICIABLE ISSUES FOR APPEAL?

WHETHER ARGUMENT 5 OF APPELLANT IS IRRELEVANT AND FAILS TO RAISE JUSTICIABLE ISSUES FOR APPEAL?

WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE VERDICT OF THE JURY IN THE MUNICIPAL COURT FINDING APPELLANT GUILTY OF THE OFFENSE OF DRIVING UNDER THE INFLUENCE?

WHETHER THE APPELLATE COURT SHOULD DISMISS THE APPEAL FOR FAILURE OF THE APPELLANT TO RAISE AND PRESERVE ANY ALLEGED ERRORS OF LAW BEFORE THE TRIAL COURT?

STATEMENT OF THE CASE

Retha Pierce Sturdivant (“Appellant”) was charged with Driving Under the Influence on January 8, 2012. The arresting officer was Josh Scott of the Conway Police Department. Appellant made a timely demand for a jury trial. Conway Municipal Court scheduled a jury term of court dedicated to pro se cases for May 28-30, 2014. May 28, 2014 was set for roster call and for setting cases for trial. Trials were to be held May 29, 2014 through May 30, 2014.

Appellant appeared on May 28, 2014, and wanted her trial that day. Her case was scheduled for May 29, 2014; but she stated that she had to go out of town for a funeral on May 29, 2014. Appellant’s case was then set for May 30, 2014. Appellant filed a handwritten motion for dismissal of the case because the case was not set on May 28, 2014. The court denied said motion before trial on May 30, 2014.

On the morning of May 30, 2014, the jury was selected, and both parties made opening statements. City of Conway (“Respondent”) presented one witness, Officer Scott who testified to the following: erratic driving of the Appellant; the existence of prescription pain pills in her possession at the time of arrest; a .00% reading on the data master; and the refusal of the Appellant to give a urine sample. Appellant testified to the following: she had been to church that evening; she had consumed no alcohol; she had not taken any of the pills that day; and she was not impaired. She also stated that she would have given a urine sample if she had been allowed to keep a portion of the sample for an independent test.

The parties then gave closing arguments, the judge charged the jury, and the jury

subsequently returned a verdict of guilty. Appellant was sentenced to a fine of \$997.00 or 48 hours of community service to be completed by July 1, 2014. From that conviction, this appeal followed.

The Appellant filed a Notice of Intent to Appeal, dated June 3, 2014. The Honorable Andy E. Hendrick filed a Return of the Municipal Court, dated July 1, 2014. The Appeal was heard by The Honorable Larry B. Hyman, Jr., on October 1, 2014, and resolved by Final Order filed on October 16, 2014, which affirmed the conviction of the Appellant and dismissed her appeal. The decision of the Court was announced in open Court on October 1, 2014, with the Appellant present.

The Form Order of the Honorable Larry B. Hyman, Jr., in Civil Case Number 2014-CP-26-3911, dated October 1, 2014 was filed on October 6, 2014, and a copy was mailed by the Office of the Clerk of Court for Horry County via first-class mail to Retha Pierce Sturdivant at 412 32nd Avenue S., North Myrtle Beach, SC 29582. The Final Order of the Honorable Larry B. Hyman, Jr., filed on October 16, 2014, was served by Respondent on Appellant on October 17, 2014, by first-class mail, with proper postage attached thereto on October 17, 2014. Appellant filed her Motion for Reconsideration on October 30, 2014 and served a copy on Respondent on November 6, 2014.

At the hearing on Appellant's Motion for Reconsideration, Appellant announced that she had filed a grievance against the Honorable Larry B. Hyman, Jr., and as a result, he recused himself from this case by Form Order dated May 5, 2015. Subsequently, Chief Administrative Judge Steven H. John issued a letter to the Appellant and the Respondent dated June 1, 2015 requiring Respondent to file a written

response to Appellant's Motion for Reconsideration within 15 days of June 1, 2015. Respondent filed a Return to the Appellant's Motion for Reconsideration on June 12, 2015 which was forwarded to the Honorable Steven H. John and served on the Appellant via first class mail on June 12, 2015.

Appellant's Motion for Reconsideration came before the Honorable Steven H. John on June 26, 2015. The Court found that oral arguments would not assist the Court and that any additional arguments would be redundant and unnecessary. The Appellant's Motion for Reconsideration was denied and the Order of the Honorable Larry B. Hyman, Jr. filed on October 16, 2014 was affirmed in full. The Order of The Honorable Steven H. John was filed on June 26, 2015.

Appellant filed her Notice of Appeal on July 27, 2015. The Supreme Court of South Carolina issued an Order dated July 30, 2015 transferring the appeal to the South Carolina Court of Appeals. Appellant's Proof of Service indicates that she mailed her Amended Initial Brief on May 27, 2016 and Respondent received it on June 7, 2016. This Initial Brief of Respondent follows.

ARGUMENT

A. Argument 1 of the Appellant is irrelevant and fails to raise justiciable issues for appeal.

The record on appeal in this case consists of Appellant's Notice of Intent to Appeal and the Return of the Municipal Court. There being no transcript or tape from the Municipal Court, and there being no challenge to the return in reciting the factual findings of the Municipal Court, the review shall be based upon the facts is contained in

the Municipal Court's Return. City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct. App.2013).

Argument 1 of the Appellant is irrelevant and fails to set forth legal grounds for an appeal. Furthermore, Appellant fails to present errors of law raised and preserved in the lower courts. Appellant sets forth a broad and general statement that should be disregarded pursuant to Rule 208 (b)(1)(B), SCACR.

B. Argument 2 of the Appellant is irrelevant and fails to raise justiciable issues for appeal.

The record on appeal in this case consists of Appellant's Notice of Intent to Appeal and the Return of the Municipal Court. There being no transcript or tape from the Municipal Court, and there being no challenge to the return in reciting the factual findings of the Municipal Court, the review shall be based upon the facts is contained in the Municipal Court's Return. City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct. App.2013).

Argument 2 of the Appellant is irrelevant and fails to set forth legal grounds for an appeal. Furthermore, Appellant fails to present errors of law raised and preserved in the lower courts. Appellant sets forth a broad and general statement that should be disregarded pursuant to Rule 208 (b)(1)(B), SCACR.

C. Argument 3 of the Appellant is irrelevant and fails to raise justiciable issues for appeal.

The record on appeal in this case consists of Appellant's Notice of Intent to Appeal and the Return of the Municipal Court. There being no transcript or tape from

the Municipal Court, and there being no challenge to the return in reciting the factual findings of the Municipal Court, the review shall be based upon the facts is contained in the Municipal Court's Return. City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct. App.2013).

Argument 3 of the Appellant is irrelevant and fails to set forth legal grounds for an appeal. Furthermore, Appellant fails to present errors of law raised and preserved in the lower courts. Appellant sets forth a broad and general statement that should be disregarded pursuant to Rule 208 (b)(1)(B), SCACR.

D. Argument 4 of the Appellant is irrelevant and fails to raise justiciable issues for appeal.

The record on appeal in this case consists of Appellant's Notice of Intent to Appeal and the Return of the Municipal Court. There being no transcript or tape from the Municipal Court, and there being no challenge to the return in reciting the factual findings of the Municipal Court, the review shall be based upon the facts is contained in the Municipal Court's Return. City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct. App.2013).

Argument 4 of the Appellant is irrelevant and fails to set forth legal grounds for an appeal. Furthermore, Appellant fails to present errors of law raised and preserved in the lower courts. Appellant sets forth a broad and general statement that should be disregarded pursuant to Rule 208 (b)(1)(B), SCACR.

E. Argument 5 of the Appellant is irrelevant and fails to raise justiciable issues for appeal.

The record on appeal in this case consists of Appellant's Notice of Intent to Appeal and the Return of the Municipal Court. There being no transcript or tape from the Municipal Court, and there being no challenge to the return in reciting the factual findings of the Municipal Court, the review shall be based upon the facts is contained in the Municipal Court's Return. City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct. App.2013).

Argument 5 of the Appellant is irrelevant and fails to set forth legal grounds for an appeal. Furthermore, Appellant fails to present errors of law raised and preserved in the lower courts. Appellant sets forth a broad and general statement that should be disregarded pursuant to Rule 208 (b)(1)(B), SCACR.

F. The Circuit Court did not err in affirming the verdict of the jury in the Municipal Court finding Appellant guilty of the offense of driving under the influence.

This is an appeal from a jury verdict of guilty of the offense of Driving Under the Influence in the Municipal Court for the City of Conway. "In criminal appeals from Magistrate or Municipal Court, the Circuit Court does not conduct a *de novo* review, but instead reviews for preserved errors raised to it by appropriate exception." State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct.App.2001). Furthermore, an Appellate Court reviewing the Circuit Court's appeal may review for errors of law only. *Id.* Therefore, an Appellate Court "is bound by the Trial Court's factual findings unless they are clearly erroneous." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

At the call of the hearing on the appeal before the Honorable Larry B. Hyman, Jr., the Appellant was given wide latitude in arguing her exceptions before the Court. During her argument, Appellant admitted that at trial she was given an opportunity to present evidence and cross-examine the witness against her. She also admitted that the jury heard the evidence that Appellant's data master result was .00% and that there was a refusal to give a urine sample. Appellant also admitted that the jury heard the evidence presented by the Respondent and viewed the in-car and data master videos taken at the time of her arrest.

The purpose of an appeal to the Circuit Court is not to conduct a retrial of the case heard below. "In a criminal appeal from the Municipal Court, the Circuit Court does not review the matter *de novo*; rather, the Court reviews the case for preserved errors raised by appropriate exception. South Carolina Code § 14-25-105. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011). In criminal appeals from the Municipal Court, the Circuit Court is bound by the Municipal Court's findings of fact if there is any evidence in the record which reasonably supports them. See Rogers v. State, 358 S.C. 266, 269 n. 1 594 S.E.2d 278, 279 n.1 (Ct.App.2004) City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct.App.2013).

The record on appeal in this case consists of Appellant's Notice of Intent to Appeal and the Return of the Municipal Court. There being no transcript or tape from the Municipal Court, and there being no challenge to the return in reciting the factual findings of the Municipal Court, the review shall be based upon the facts is contained in the Municipal Court's Return. City of Greer, 402 S.C. 609, 611, 742 S.E. 15, 17 (Ct.

App.2013).

The Appellant challenges the conviction based upon a data master result of .00% and the Appellant's denial that she consumed alcohol or illegal drugs, prior to her arrest. However, the Return of the Municipal Court indicates that prescription pain pills were found in the Appellant's possession and that the Appellant refused to give a urine sample. Officer Scott also testified as to the Appellant's erratic driving and prescription medicine bottles in her possession.

The Appellant objects to her ill-treatment leading up to the jury trial and during the trial. The Return of the Municipal Court indicates that her request for a continuance in order to be able to attend a funeral was granted and Appellant's trial was set for May 30, 2014. Also, Appellant's handwritten Motion for Dismissal was heard and denied prior to the trial on May 30, 2014.

The Appellant challenges the testimony of Officer Josh Scott. Appellant now objects to the testimony of Officer Scott as a drug test expert and challenges his credibility at the hearing regarding the appeal. There is no record indicating that a timely objection was made at trial concerning the credibility of the testimony or the qualifications of Officer Scott. The determination of the credibility and believability of the testimony of a witness is the role of the jury. Appellant failed to establish any errors of law by the trial judge. The record clearly indicates that there is sufficient evidence to support the jury's verdict of guilty of the offense of Driving Under the Influence.

Section 56-5-2930(A) of the South Carolina Code provides:

It is unlawful for a person to drive a motor vehicle
within this State while under the influence of

alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol or any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence...

Appellant filed a Motion for Reconsideration of the Circuit Court's Order issued October 16, 2014. At the hearing on the Motion, Appellant announced that she had filed a grievance against the Honorable Larry B. Hyman, Jr., Upon learning of the grievance filed by the Appellant, Judge Hyman recused himself from this case by Form Order on May 5, 2015. The Motion for Reconsideration was therefore heard by presiding Chief Administrative Judge of Common Pleas, the Honorable Steven H. John.

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits'." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "The motion may in the discretion of the court be determined on briefs filed by the parties without oral argument." Rule 59(f), SCRCP.

The Court has considered Appellant's Motion, the Respondent's Reply, and all other matters in the Clerk of Court's file. Appellant fully presented her arguments to the Circuit Court on Appeal and in her Motion for Reconsideration. The Court found that oral arguments would not assist it in this matter and that any additional arguments

would be redundant and unnecessary. After careful consideration, the Honorable Steven H. John denied the Appellant's Motion for Reconsideration and the Order of the Honorable Larry B. Hyman, Jr. was affirmed in full.

G. The Appellate Court should dismiss the Appeal for failure of the Appellant to raise and preserve the alleged errors before the trial court.

In the absence of a tape or transcript from the Municipal Court included in the record on appeal, and neither party challenges the accuracy of the Return of the Municipal Court in reciting the factual findings of the Municipal Court, review is based upon those facts in the Municipal Court's Return. Consequently, it is error for an Appellate Court to consider facts not included in the Return of the Municipal Court. State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). "The Appellate Court's review in criminal cases is limited to correcting the Order of the Circuit Court for errors of law." City of Rock Hill v. Suchenski, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007).

Appellant failed to raise any errors of law at trial. In State v. Johnson, 324 S.C. 38, 476 S.E.2d 681, 682 (1996), the Supreme Court held that an issue must be preserved for review by being ruled upon by the trial judge, following a contemporaneous objection on a specific ground. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000). "The objection should be addressed to the trial judge in a sufficiently specific manner that brings attention to the exact error." State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213, 216 (2001).

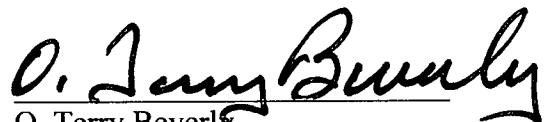
If a party does not object properly, the party is procedurally barred from raising the issue on appeal. State v. Pauling, 322 S.C. 95, 470 S.E.2d 106, 109 (1996). The

Return of the Municipal Court does not set forth any objections of the Appellant. Moreover, the objections of the Appellant made during the hearing before The Honorable Larry B. Hyman, Jr. did not relate to the errors claimed in this Appeal, or any errors of law. Furthermore, Appellant has not provided a transcript of the proceedings in the trial court to support that she preserved any issues for appeal.

CONCLUSION

The Trial Court's findings are supported by the evidence contained in the record. The jury properly considered the evidence presented and returned a verdict of guilty against Appellant of driving under the influence. Appellant failed to contemporaneously object or raise the alleged errors in a specific and exact manner before the trial judge. As a result, Appellant is procedurally barred from raising the issue on appeal. Therefore, the appeal of Appellant should be dismissed. Furthermore, the orders of the lower court affirming the conviction of the Appellant of the offense of driving under the influence and the Order denying Appellant's Motion for Reconsideration should be affirmed.

Respectfully submitted,



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June 27, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Circuit Court

Honorable Larry B. Hyman, Circuit Court Judge
Honorable Steven H. John, Circuit Court Judge

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JUN 30 2016

SC Court of Appeals

Appellate Case No. 2015-001621

Retha Pierce Sturdivant,..... Appellant,

-vs.-

City of Conway,..... Respondent.

PROOF OF SERVICE

I certify that I have served the **Initial Brief of Respondent**, by depositing a copy of it with the U.S. Post Office, via Certified Mail Receipt #7015 1520 0000 8028 8463 and Regular Mail, postage prepaid, on June 27, 2016, addressed to Appellant, **Retha Pierce Sturdivant, 412 32nd Avenue South, Atlantic Beach, South Carolina 29582-4716.**

I further certify that all parties required by Rule to be served have been served.

This 27th day of June, 2016



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JUN 30 2016

SC Court of Appeals

June 27, 2016

Honorable V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Retha Pierce Sturdivant v. City of Conway*
Appellate Case No.: 2015-001621

Dear Ms. Allen:

Enclosed for filing please find one (1) original and six (6) copies of **RESPONDENT'S INITIAL BRIEF** and **PROOF OF SERVICE** of the same. Upon filing, I respectfully request that you please return a clocked copy to me in the enclosed self-addressed and stamped envelope. By copy of this letter with stated enclosures via U.S. mail, I have served a copy of the Brief upon Appellant, Retha Pierce Sturdivant.

Thank you for your assistance with this matter.

Sincerely yours,

O. Terry Beverly
O. Terry Beverly

OTB/ejs
Enclosures



cc: Retha Sturdivant
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