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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS

RETHA PIERCE STURDIVANT)
APPELLANT)

RETURN OF THE
MUNICIPAL COURT

-v-

CITY OF CONWAY)
RESPONDENT)

Appellant was charged on January 8, 2012, with Driving Under the Influence. The arresting officer was Josh Scott of the Conway Police Department. Appellant timely requested a jury trial.

Conway Municipal Court scheduled a jury term of court dedicated to pro se cases for May 28-30, 2014. May 28th was set for roster call and for setting cases for trial. Trials were to be held May 29th and May 30th.

Appellant appeared on May 28, 2014, and wanted her trial that day. Her case was scheduled for May 29th. She stated she had to go out of town for a funeral on the 29th. Her case was then set for May 30th.

Appellant filed a handwritten motion for dismissal of the case because the case was not set on May 28th. The court denied said motion before trial on May 30th.

The morning of May 30, 2014, the jury was selected, and both parties made opening statements.

The state presented one witness, Officer Scott. He testified to Appellant's erratic driving, the existence of prescription pain pills in her possession, a .00% reading on the data master, and Appellant's refusal to give a urine sample.

Appellant testified that she had been to church that evening, that she had consumed no alcohol, that she had not taken any of the pills that day, and that she was not impaired. She stated she would have given a urine sample if she had been allowed to keep a portion of the sample for an independent test.

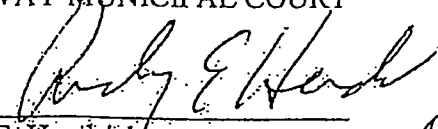
The parties then gave closing arguments, the judge charged the jury, and the jury subsequently returned a verdict of guilty.

Appellant was sentenced to a fine of \$997.00 or 48 hours of community service to be completed by July 1, 2014.

Respectfully submitted this 1st day of July 2014.

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CONWAY MUNICIPAL COURT



Andy E. Hendrick
Municipal Judge

Conway, SC

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
RETHA PIERCE STURDIVANT,)
Appellant)
vs.)
CITY OF CONWAY,)
Respondent.)

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT

FILED
Horry County
2014 OCT 16 PM 1:13
MELBAE HUGGINS-WARD
CLERK OF COURT

FINAL ORDER

Docket No.: 2014-CP-26-3911
Hearing Date: October 1, 2014
Judge: Larry B. Hyman, Jr.
Court Reporter:

Appellant's Attorney: Pro Se
Respondent's Attorney: O. Terry Beverly
Trial Location: Conway, South Carolina

THIS MATTER IS BEFORE THE COURT on Notice of Appeal based upon the Appellant's arrest and conviction for the offense of Driving Under the Influence. After the Appellant's arrest, she made a timely demand for a jury trial. At a term of court scheduled for May 28 – 30, 2014, the Appellant's case was set and tried on May 30, 2014. The jury, after hearing the testimony and reviewing the evidence, returned a verdict of guilty of the offense of Driving Under the Influence. From that conviction, this appeal followed.

At the call of the hearing on this appeal, the Appellant was given wide latitude in arguing her exceptions before this 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 Datamaster 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 City and viewed the in-car and Datamaster videos taken at the time of her arrest.

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The purpose of an appeal 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. S.C. Code Ann. § 14-25-105 (Supp 2012); 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)

"Any party has a right to appeal from the sentence or judgment of the municipal court to the Court of Common Pleas of the County in which the trial is held. Notice of intention to appeal, setting forth grounds of appeal, must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal is considered waived. The party appealing shall enter into a bond, payable to the municipality, to appear and defend the appeal at the next term of the Court of Common Pleas or shall pay the fine assessed." S.C. Code Ann. §14-25-95 (Supp.2010).

The record on appeal in this case consists of the 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 as contained in the municipal court's return. See City of Greer, 402 S.C. 609,611, 742 S.E. 15, 17 (Ct. App. 2013).

There are three (3) exceptions filed by the Appellant. The first exception challenges the conviction based upon a Datamaster result of .00% and the Appellant's denial that she had consumed alcohol or illegal drugs. 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. The officer also testified as to the Appellant's erratic driving.

The second exception in the Appellant's Notice of Appeal objects to her ill treatment leading up to the 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 her 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 final exception challenges the testimony of Officer Josh Scott. Appellant now objects to the testimony of Officer Scott as a drug expert and challenges his credibility. There is no record indicating that a timely objection was made at trial concerning the testimony of Officer Josh Scott. The determination of the credibility and believability of the testimony of a witness is the role of the jury.

Section 56-5-2930(A) of the South Carolina Code (Supp. 2013) 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 and 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..."

Based upon the Appellant's exceptions, and the record before me, I find that the Appellant failed to establish any errors of law by the Trial Judge. The Record also clearly indicates that there is sufficient evidence to support the jury's verdict of guilty of the offense of Driving under the Influence.

Therefore, it is:

ORDERED that the appeal by the Appellant be, and hereby is, dismissed.

AND IT IS SO ORDERED.



LARRY B. HYMAN, JR.
Circuit Court Judge

Dated this 16 day of OCT, 2014
at Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) 2014-CP-26-03911

Reitha Pierce Sturdivant,

Appellant,

v.

City of Conway,

Respondent

ORDER

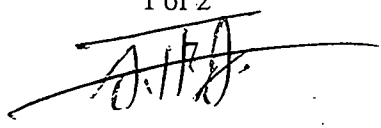
FILED
HORRY COUNTY
15 JUN 26 PM 2:10
MELANIE HIGGINS-WARD
CLERK OF COURT

This matter came before the Court on Appellant's Motion for Reconsideration of the Circuit Court's Order issued October 16, 2014 by the Honorable Larry B. Hyman, Jr. dismissing the Appeal of the conviction for the offense of Driving Under the Influence. Judge Hyman subsequently recused himself from this case by Form Order on May 5, 2015. Therefore, the ruling on this motion shall be made by the presiding Chief Administrative Judge of Common Pleas.

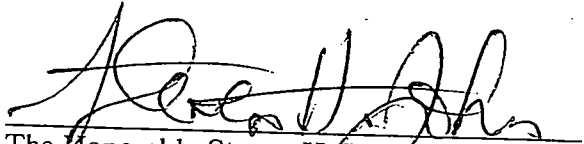
"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "The motion may in the discretion of the court be determined on briefs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

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

ORDERED that Appellant's Motion for Reconsideration is denied and the Order of the Honorable Larry B. Hyman of October 10, 2014 is affirmed in full.



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The Honorable Steven H. John
Chief Administrative Judge of Common Pleas
Fifteenth Judicial Circuit

June 24, 2015
Conway, South Carolina

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