

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF PICKENS )

2017-CP-39-00428

JOHN M. BURGESS, )

PLAINTIFF )

vs. )

MEMORANDUM OPINION

KATHERINE C. HUNTER )

**RECEIVED**

DEFENDANT. )

AUG 02 2018

SC Court of Appeals

This case was called before the Court on June 25, 2018 for a Jury Trial. The trial lasted the entire week and terminated with a jury verdict on June 29, 2018. The jury found in favor of Defendant Hunter. After the jury returned its verdict, Mr. Garcia, counsel for the plaintiff, made a motion for a new trial based on complaints he had made on June 26, 2018 concerning the conduct of the Court. On June 26, 2018, Mr. Garcia did not make a motion for a mistrial, did not make a motion for recusal of the trial court judge, and did not request curative instructions. Mr. Garcia's post-verdict new trial motion was based solely on his June 26, 2018 complaint. Mr. Garcia did not offer any evidence and did not request individual polling of the jurors. This Court denied his motion. Mr. Garcia did not make any other motions nor did he ask for any additional time, pursuant to Rule 59(b), to file a renewed motion for a new trial. On July 10, 2018, eleven days after the jury returned the verdict, Mr. Garcia filed an Amended Motion for a New Trial.

According to Rule 59(b), "the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." Mr. Garcia made an unsubstantiated Motion for New Trial in court, did not ask for additional time to file a

renewed motion, and filed his amended motion for a new trial 11 days after the Jury returned its verdict. The discretionary ten-day extension time limit included in Rule 59(b) is an absolute deadline and not subject to any additional extension. *Overland v. Nance*, No. 27800 (S.C. May 23, 2018) (finding that according to Rule 6(b) the “time for taking any action under Rules 50(b), 59, and 60(b) may not be extended.”) “A trial court judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.” *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006). Therefore, this Court does not have jurisdiction to rule on this motion because it is improvidently filed and improperly before the Court.

While the Court does not have jurisdiction over the motion, the Court notes that it strongly disagrees with Mr. Garcia’s improper and extraordinary exaggerations as to the Court’s conduct at trial. The allegations that Mr. Garcia raises were unsubstantiated at trial and he now attempts to substantiate them through a letter and an affidavit from a juror. Not only do the letter and affidavit appear to be written by Mr. Garcia, but Mr. Garcia also fails to recognize that it is improper for this juror to testify regarding the validity of the verdict. According to Rule 606(b),

[u]pon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processing in connection therewith.

*See State v. Pittman*, 373 S.C. 527, 553-55, 647 S.E.2d 144, 158-57 (S.C. 2007) (“[g]enerally, juror testimony is not allowed regarding the deliberations of the jury or internal influences. . . and may not be the basis for impeaching a jury verdict.”) The only time this rule is relaxed is when there are allegations of external influence on the jurors and the case law treats this exception narrowly. “External influence on a jury involves situations where jurors receive information during deliberations from some outside source.” *State v. Galbreath*, 359 S.C. 398,

405, 597 S.E.2d 845, 848 (S.C. 2004). None of Mr. Garcia's allegations fall within this exception to the rule.

The Court notes that in both its opening and closing charge on the law to the jury, the Court instructed the jury that the jury is the sole judge of the facts and for the jury not to assume from anything the Court said or did that the Court had an opinion about the facts. Therefore, while the Court does not have jurisdiction to rule on this motion, the Court is concerned that this motion merely amounts to gratuitous mudslinging on the part of Mr. Garcia. Further, Defense counsel references Mr. Garcia's circuitous and long winded examination of witnesses and the Court concurs with that assessment. Throughout the trial, the Court afforded Mr. Garcia wide latitude in examining witnesses.

The Court has decided to issue this Memorandum Opinion because of Mr. Garcia's lack of understanding of the rules and to signal to him that his successive, untimely and improper motion does not stay the time to file an appeal.



Pickens Common Pleas

**Case Caption:** John Burgess VS Katherine Hunter

**Case Number:** 2017CP3900428

**Type:** Order/Other

So Ordered

s/ Edward W. Miller