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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2017-002145

GLENDA R. COURAM.....Appellant

v.

SHERWOOD TIDWELL ..... Respondent

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on December 16, 2021.

QUESTIONS PRESENTED

1. Whether the lower court erred by remanding this matter for a new trial over the issue of punitive damages where essentially the only claimed evidence relied upon was the issuance of a traffic ticket, which is not proof of anything.

2. Whether the lower court erred in remanding this matter for a new trial as opposed to a new trial only as to punitive damages.

STATEMENT OF THE CASE

This is a personal injury action in as a result of a motor vehicle accident between Couram and Tidwell in Richland County on September 18, 2015. Couram, appearing pro se, filed her Complaint on April 12, 2016, alleging negligence on the part of Tidwell. Prior to trial, negligence was conceded by the defendant without any concession of causation or proximate cause.

A jury trial commenced on June 15, 2017. Almost no evidence was presented concerning the manner of the accident other than a short reference to traffic suddenly stopping and the plaintiff's contention that it was a simple accident that resulted in injury to her. The Defendant moved for a directed verdict on the issue of punitive damages which was granted. On June 16, 2017, the jury returned a unanimous verdict in favor of Plaintiff in the amount of one thousand dollars ($1,000).

The plaintiff appealed citing a variety of grounds. The Court of Appeals reversed only as to the trial court directing a verdict as to punitive damages in an opinion filed

October 27, 2021 and ordered an entirely new trial, Couram v. Tidwell, Opinion 2021-UP-367. Tidwell moved for rehearing which was denied on November 3, 2021. That motion was denied December 16, 2021. This Petition is timely filed within 30 days of that decision.

ARGUMENT

I. THERE WAS NOT SUFFICIENT EVIDENCE OF PUNITIVE DAMAGES SUBMITTED BY THE PLAINTIFF IN THIS CASE AND THE COURT OF APPEALS SHOULD NOT HAVE RELIED UPON THE ISSUANCE OF A TICKET AS THE BASIS FOR ITS CONCLUSION THAT THERE WAS A STATUTORY VIOLATION.

Pursuant to S.C. Code § 15-32-520, in order to recover punitive damages, plaintiffs must prove by clear and convincing evidence that the harm was done as a result of the defendant's willful, reckless, or wanton conduct. The Court of Appeals found there was evidence of a statutory violation because the Defendant was issued a ticket. ("Tidwell was charged with a statutory violation. While that fact did not automatically entitle Couram to punitive damages, it did constitute negligence per se, making the issue of punitive damages a question for the jury.") To be clear, the plaintiff did not argue that issuance of a ticket was the basis for punitive damages, but this was the decision of the Court of Appeals.

Neither issuance of a ticket nor failure to contest the ticket is proper evidence of negligence, negligence per se or a statutory violation. Evidence of a ticket having been written or even the defendant failing to contest a ticket is not proof of anything relative to the facts of the accident. Samuel v. Mouzon, 282 S.C. 616, 320 S.E.2d 482, 484-85 (S.C. Ct. App. 1984) (improper for the court to allow evidence of issuance of a ticket or forfeiture of bond). The issuance of a ticket to a party should not even be admissible. If

it is admitted, it certainly is not proof of anything. There are many reasons to not allow the decision of a police officer to issue a ticket to become a proxy for evidence of civil liability or, as is the case here, to force the issue of punitive damages to go to a jury. A police officer does not typically witness the accident and did not witness this accident. What the police officer thinks about the cause of accident is not admissible even when the police officer is present to testify, unless the police officer has been qualified as an expert accident reconstructionist. State v. Kelly, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985); Thompson v. S.C. Highway Dept., 224 S.C. 338, 79 S.E. 2d 160 (1953). A police officer's decision to issue a ticket or arrest someone is typically just an accusation which is never substantive proof that someone actually committed the offense. This rule applies to felonies and misdemeanors alike. Thus, the decision of the Court of Appeals is in conflict with the prior decisions of this Court.

When there is a conviction in a criminal case, that may under some circumstances warrant a determination of a person being unable to contest the facts of the offense in a civil case. See Doe v. Doe, 346 S.C. 145, 551 S.E.2d 257 (2001) (collateral estoppel as a result of conviction of five counts of criminal sexual conduct with a minor). However, bond forfeiture in a misdemeanor traffic case is not proper substantive evidence per the Samuel case. Indeed, even the traffic court finding someone guilty of a traffic violation is not admissible in a civil case. S.C. Code Ann. § 56-5-6160 (evidence of a conviction for violation of Title 56 offense not admissible). That code section reflects a public policy that traffic court, where people are largely unrepresented, and where many non-lawyer magistrate and municipal judges are called upon to decide cases, is not the best place to determine future issues of civil liability for

motor vehicle accidents.

In this case, there was no evidence of any disposition of any ticket. Nor was there any evidence the Defendant driving too fast for conditions. He testified that he was traveling at 30 to 35 miles per hour. (R. p. 290, line 15-16). He testified that the traffic was moving slowly. (R. p. 290, lines 19-20). In fact, he testified that everyone was moving about the same pace until a big truck stopped. (R. p. 291-292). When he tried to move lanes, he could not otherwise see around one or more of the trucks. He slowed as he moved over, but as soon as he moved over, the plaintiff was there. (R. p. 292, lines 10-25). Likewise, plaintiff conceded this was simply an accident. While examining Respondent Tidwell, Couram stated, "It was an accident, just simple as that." (R. p. 164). The defendant had admitted liability. Thus, this is not an issue of having to prove civil liability. Likewise, the plaintiff conceded that this was a simple accident.

Quite simply, there was no evidence of conduct put forth by the plaintiff supporting punitive damages unless the Court is prepared to simply say that evidence of an accident standing alone is evidence of some statutory violation---something which the Court has never previously concluded.

II. IF THERE WAS AN ERROR AS TO NOT CHARGING PUNTIIVE DAMAGES, THE PLAINTIFF SHOULD HAVE BEEN GRANTED A NEW TRIAL ON PUNITIVE DAMAGES ONLY.

The second issue relates to the decision to grant an entirely new trial, as opposed to a new trial on punitive damages only. The Court's decision was solely as to the issue of punitive damages being submitted to the jury. Assuming that punitive damages should have been submitted to the jury, there is no reason why there should have to be a new trial as to actual damages. A new trial as to punitive damages only is

possible. Atlas Food Sys. & Servs. v. Crane Nat'l Vendors, 99 F.3d 587 (4th Cir. 1996) (upholding decision to have new trial on punitive damages only).

CONCLUSION

For the reasons stated, this Court should grant Tidwell's Petition for Writ of Certiorari to review the decision of the Court of Appeals.

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