

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Jocelyn Newman, Circuit Court Judge

Case No. 2017-002145

GLEND A R. COURAM ..... Appellant

v.

SHERWOOD TIDWELL ..... Respondent

**RESPONDENT'S PETITION FOR REHEARING**

The Respondent, Sherwood Tidwell, submits this motion for rehearing pursuant to Rule 221(a).

This Court concluded plaintiff had presented some evidence of a statutory violation which required submission of punitive damages to the jury. The Court seized on the point that some evidence of a statutory violation was proved 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.") 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.

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 actually no evidence of 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). The defendant had admitted liability. Thus, this is not an issue of having to prove civil liability. This is question of whether the plaintiff established a prima facie case of punitive damages.

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 a statutory violation---something which the Court has never before concluded.

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).

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

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**PROOF OF SERVICE**

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I certify that I have served Respondent's Petition for Rehearing on Glenda R. Couram by depositing a copy of it in the United States Mail, postage prepaid, November 2, 2021, to 104 Macaw Lane Lexington, South Carolina 29073.

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

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November 2, 2021

File No.: 20160881.000

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Re: Glenda R. Couram v. Sherwood Tidwell  
Case No.: 2018-001134  
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SC Court of Appeals

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Enclosed please find an original and six copies of Respondent's Petition for Rehearing in the above-referenced case. Please file the original and return the file stamped copy to our office in the enclosed self-addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

s/Timothy A. Domin  
Timothy A. Domin

TAD/crk  
Enclosure

cc: Ms. Glenda R. Couram (with enclosure)

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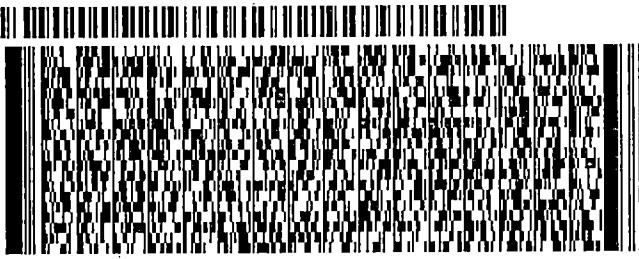
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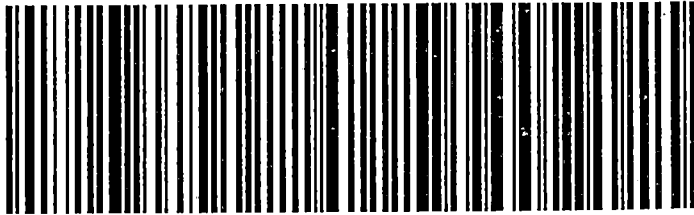
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SC Court of Appeals

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