THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Master-In-Equity

Appellate Case No. 2024-001606

Beaufort County,

Appellant,

v.

Adams Outdoor Advertising Limited Partnership and Bo Hodges,

Respondents.

RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI

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Respondents Adams Outdoor Advertising Limited Partnership ("Adams") and Bo Hodges ("Hodges") (collectively, "Respondents"), by and through their undersigned counsel, pursuant to Rule 242(f), SCACR, submit this Return to Appellant Beaufort County's ("Appellant" or "County") Petition for Writ of Certiorari, wherein the County asks this Court to give third-level appellate review to overturn both the Court of Appeals and the Circuit Court and reinstate a magistrate's verdict concerning SCDOT-approved repairs to outdoor advertising displays.

COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Does the holding in *James v. State*, 372 S.C. 287, 641 S.E.2d 899 (2007) regarding S.C. Code § 17-25-45(H) require all courts in South Carolina to ignore or refuse to apply mandatory statutory language relating to notice requirements under all criminal statutes and ordinances?

COUNTER-STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On April 12, 2021, the County issued two Uniform Ordinance Summonses against Respondents (R. p. 362), bringing criminal charges for alleged violations of the County's Community Development Code ("CDC") § 5.6.50.E. (titled "Maintenance Standards for Off-Premises Signs") (R. pp. 360-61). A trial of the charges was held before the Beaufort County Magistrate's Court on July 14, 2021. The magistrate's July 23, 2021 Verdict found Respondents guilty of the two alleged violations, and in August 2021, the magistrate entered a sentence of a $1,087.50 fine for each ticket (totaling $2,175). (R. p. 284).

On appeal, the Beaufort County Circuit Court reversed the magistrate's verdict and vacated the sentence. Its Order on Appeal, entered April 22, 2022 (R. pp. 3-14) (the "Circuit Court Order"), found Respondents not guilty of the alleged violations on the basis that the County failed to follow the CDC's requirements for enforcement. Following oral argument, the South Carolina Court of Appeals affirmed the Circuit Court in an unpublished opinion. *See* Unpub. Op. No. 2024-UP-232, Case No. 2022-000681 (S.C. Ct. App. July 3, 2024) (the "Opinion"). The Court of Appeals denied the County's petition for a rehearing and the County filed its Petition for Writ of Certiorari with this Court on September 23, 2024.

II. STATEMENT OF THE FACTS

At issue in this appeal are two nonconforming outdoor advertising displays, or billboards, each containing two faces, which are located adjacent to US-21/Trask Parkway on opposite sides of the highway (the "Billboards"). (R. p. 102, line 24–p. 103, line 19). Trask Parkway is maintained by the South Carolina Department of Transportation ("SCDOT"), meaning the Billboards are controlled by the Highway Advertising Control Act, S.C. Code Ann. §§ 57-25-110

– 57-25-220 ("HACA"). (R. p. 102, line 24–p. 103, line 19; R. p. 222, line 13–p. 223, line1). Pursuant to the HACA, SCDOT promulgated regulations contained in Chapter 63 of the South Carolina Code of Regulations. Section 63-350 of the Code of Regulations prescribes maintenance standards for outdoor advertising signs controlled by the HACA. *See* S.C. Code Ann. Regs. 63-350 (R. pp. 384-85).

A. Adams Makes SCDOT-Approved Repairs to Its Billboards Located Along a SCDOT-Maintained Road.

Because the Billboards had been damaged by storms, strong winds, and other natural forces, Adams applied to SCDOT in early 2021 for permission to repair the Billboards, therein specifying the work requested to be performed. (R. pp. 516-26, 527-38). On or about February 3 and March 3, 2021, SCDOT granted the applications, giving Adams permission to make the requested repairs. (R. pp. 503, 505). Applying the objective criteria of S.C. Code Ann. Regs. 63-350.C.(4), SCDOT determined that the damage to the Billboards was less than fifty percent (50%) of each structure's replacement cost, meaning they could be repaired. S.C. Code Ann. Regs. 63-350.C.(4) (R. p. 384).

According to Hodges, SCDOT's review process in this regard is "very stringent[,]" as it inspects the signs both before and after the repair work and thoroughly considers the materials and data submitted to make sure it is "comfortable with [the applicant] meeting that 50 percent[]" mark. (R. p. 248, lines 2-23). In early April 2021, Adams notified the County of the repair work it would be performing pursuant to SCDOT's approvals. (R. pp. 89, 389-95). Thereafter, through a contractor, Adams began the specific SCDOT-authorized work. (R. p. 89; R. p. 218, lines 12-23).

B. The County Issues Criminal Citations in Violation of Its CDC.

The County's then interim Administrator, Eric Greenway ("Greenway" or "Administrator"), purportedly drove by the Billboards on April 10, 2021 while the work was being

performed, stopped to question the contractor, and then emailed Hodges later that day and demanded that Adams cease work on the signs. (R. p. 356). Without having reviewed the documentation for Adams' repairs (R. p. 196, lines 7-17; R. p. 203, lines 1-12; R. p. 205, line 24–p. 206, line 5), Greenway characterized the work as a complete rebuild of the signs and advised that SCDOT authorizations were of no consequence, and that a County permit was required, but that the County would not issue such a permit.[1] (R. p. 356).

As with SCDOT's state regulations, the County's CDC contains a "fifty percent damage" ordinance relating to repairs of billboards, but unlike the state regulation, it lacks any objective criteria to guide the government official. *Compare* S.C. Code Ann. Regs. 63-350.C.(4) (R. p. 384), *with* CDC § 5.6.50.E.4.c. (R. p. 361). In deciding whether a damaged sign may be repaired, CDC § 5.6.50.E.4.c. confers sole, unbridled discretion on the Director of the Community Development Department ("Director") to form an opinion as to whether the sign is less than fifty percent damaged due to wind or other natural forces.[2] CDC § 5.6.50.E.4.c. (R. p. 361); CDC § 10.1.40 (definition of "Director" (R. p. 402)); (R. p. 199, lines 1-9).

At trial, Greenway testified that his determinations, on behalf of the County, that the Billboards were more than fifty percent damaged and that Respondents allegedly violated the CDC were made simply by driving past the site while the sign work was in progress. (R. p. 205, line 24-p. 206, line 3 ("I know what a complete rebuild of a sign is when I ride by it.")). However, it would be completely arbitrary, if not impossible, for the Director to determine "that the damage to

[1] Hodges testified that, based on his years of experience, SCDOT will request proof of local approval if it deems such approval necessary based on the type of permit application. (R. p. 215, line 12–p. 216, line 23). SCDOT determined that County approval for Adams' work was not necessary, but Adams would have obtained local permission if SCDOT had asked. (R. p. 248, line 24–p. 249, line 3).

[2] The Community Development Department was no longer in existence in April 2021, meaning it was impossible to obtain such permission under the actual text of the CDC. (R. p. 193, lines 1-5).

the sign was greater than 50 percent of its replacement cost as of the time of the damage[]" simply by driving by the sign. (R. p. 365 (CDC § 5.6.50.E.4.c.)).

Adams responded to Greenway's April 10 email, advising that SCDOT's approvals for the work were controlling and that Adams had not received any official notice or stop work order from the County. (R. pp. 354-55). Adams completed the repairs to the Billboards on April 11, 2021, and the County issued a Stop Work Order (R. p. 359) and the two Uniform Ordinance Summonses (R. p. 362 (the "Citations")) the next day. The Stop Work Order stated that County approval was required pursuant to CDC § 5.6.50, while the Citations alleged violations of CDC § 5.6.50.E.

Section 5.6.50.E. contains seven different subsections and subparagraphs (§§ 5.6.50.E.1.–4.a.–c. (R. pp. 360-61)), meaning Adams was not provided notice of which provision it allegedly violated or any detail as to the nature of the alleged violations. Additionally, the Citations did not list the owner, or address or legal description, of the subject property. The foregoing information is required under CDC § 9.4.50.B. (R. p. 399).

The County testified that it, rather than the clerk of court as required, mailed the citations to Respondents. (R. p. 399 (CDC §§ 9.4.50.C.-D.); R. p. 251, lines 17-22). Hodges testified that he did not know if he ever received the Stop Work Order, and that he did not sign the purported certified mail receipt for the Citations. (R. p. 238, lines 7-9; R. p. 239, lines 4-10; R. p. 251, line 17-p. 252, line 11; *see also* R. p. 89).[3] Prior to executing the Citations, the County failed to issue the required warning notice of alleged violation under CDC § 9.4.40, a mandatory prerequisite before a citation may be issued. (*See, e.g.*, R. p. 177, line 14-p. 178, line 14; R. p. 189, lines 14-21; R. p. 233, lines 1-8).

[3] "The County's exhibit 11 was not left with the Court. It was a receipt for certified mail ***purportedly sent*** to Defendants containing a stop work order and two citations sent after the work was completed on or about April 12, 2021." Magistrate's Return (R. p. 89 (emphasis added)).

The Circuit Court's order adopted the magistrate's factual findings in this regard:

> In accordance with governing law, this Court must accept the magistrate's uncontroverted factual findings that: (1) the County failed to issue a Notice of Violation to Appellants in conformity with CDC Section 9.4.40; and (2) the County failed to comply with the requirements for the issuance of a Uniform Summons Ticket in conformity with CDC Section 9.4.50.

Circuit Court Order at 6 (R. p. 8).

STANDARD OF REVIEW

The County's Petition does not address the applicable standard of review, instead repeatedly mischaracterizing this case as being one about actual notice. In this appeal involving a criminal case that originated in Magistrate's Court, the standard of review is an error of law standard. "[A]n appellate court reviewing the circuit court's appeal may review for errors of law only." *State v. Williams*, 417 S.C. 209, 218, 789 S.E.2d 582, 587 (Ct. App. 2016).[4] "'In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception.'" *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001). Likewise, the 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).

ARGUMENT

This Court should summarily deny the Petition, which arises from an obscure section of an overwrought local zoning ordinance and presents no matters of importance to warrant the involvement of the Supreme Court. Both the Circuit Court and the Court of Appeals held, quite plainly, that the County ignored and violated ordinance provisions of its own creation, which served as conditions precedent to the issuance of criminal citations. The County designed and

[4] Unless otherwise stated, all internal citations are omitted.

adopted these code violation warning requirements to provide protection for Beaufort County citizens from overzealous enforcement of trivial zoning requirements, which could lead to criminal penalties such as fines and imprisonment. However, with this Petition, the County continues to stomp its foot in protest, insisting that it makes the rules but does not have to follow them.

The *James* opinion, the sole basis for the County seeking this Court's review, has no application to the case at hand, and it certainly does not conflict with the decision of the Court of Appeals. Additionally, the County makes no effort to, nor can it, refute the findings by the magistrate, Circuit Court, and Court of Appeals that the County did not comply with the CDC in issuing the Citations. The County's criticism of the case law referenced by the Court of Appeals is unfounded at best, and additional South Carolina common law exists in support of the court's analysis. Lastly, in the County's continued belief that it need not follow the laws or the rules, it failed to comply with procedural rules of this Court, including those governing service.

I. THE *JAMES* OPINION DECIDED AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IN A POST-CONVICTION RELIEF CASE, AND FOCUSED ON A SINGLE, SPECIFIC STATUTORY PROVISION WHICH ONLY REQUIRED ACTUAL NOTICE PURSUANT TO THIS COURT'S PRECEDENT

The County hinges its Petition entirely upon its perception that the Opinion conflicts with this Court's decision in *James v. State*, 372 S.C. 287, 641 S.E.2d 899 (2007). However, the very first sentence of the Petition reveals the County's misapprehension of the holding in *James* and its resulting faulty analysis. The County vastly overstates the holding of *James*, claiming the opinion (and multiple other opinions of this Court) stand for the proposition that "where a criminal statute requires written notice to the defendant, 'the law only requires actual notice.'" Petition at 1 (quoting *James*, 372 S.C. at 293, 641 S.E.2d at 902).

First, an in-depth examination of *James* is warranted, given its holding is the only justification provided for this Court's review. *James* involved claims for post-conviction relief

("PCR"), alleging that "his trial counsel was ineffective in not objecting to Respondent's sentence on the basis of the State's failure to provide Respondent [James] with written notice of its intention to seek LWOP [life without the possibility of parole] as required by § 17-25-45(H)." *Id*. at 289, 641 S.E.2d at 900. The PCR court denied relief because (1) "both Respondent and his trial counsel were aware of the State's intention to seek LWOP well in advance of Respondent's trial;" and (2) **written notice had been sent** to and received by Respondent's trial counsel, who was Respondent's agent for service of official documents. *Id*. The Court of Appeals reversed on the basis that Respondent himself did not receive a separate written notice of the enhanced sentence in accordance with the language of S.C. Code § 17-25-45(H). *Id*. at 290, 641 S.E.2d at 900.

As always, context is important to understand the *James* opinion, wherein this Court reversed the Court of Appeals on two grounds. It first recited the two-part standard required to establish an ineffective assistance of counsel claim: "counsel's representation fell below an objective standard of reasonableness and that but for counsel's errors, there is a reasonable probability that the result of the trial would have been different." *Id*. at 290, 641 S.E.2d at 901 (citing *Strickland v. Washington,* 466 U.S. 668, 687 (1984).

As its first basis for reversal, this Court found that the respondent had not been prejudiced by not receiving a separate written notice of the intention to seek a LWOP sentence, based upon the following facts:

- During preliminary motions, "both Respondent and Respondent's counsel indicated that each was aware that Respondent was facing the possibility of an LWOP sentence[]" (*id*. at 291, 641 S.E.2d at 901);
- At the same hearing, "Respondent's counsel stipulated that the defense had received adequate notice[]" (*id*.);

- During the sentencing hearing, "the solicitor provided the court with a copy of the written notice he had previously given to Respondent's counsel[]" (*id*.);
- Respondent could not "demonstrate that that but for trial counsel's errors, there [was] a reasonable probability the result of the trial would have been different[,]" a necessary element of ineffective assistance of counsel (*id*. at 292, 641 S.E.2d at 902); and
- "Respondent indicated on several occasions, including months in advance of trial, that he knew he was facing an LWOP sentence under 'the habitual criminal act[]'" (*id*. at 295 n.5, 641 S.E.2d at 903 n.5).

The *James* opinion also reversed on the basis that, with respect to § 17-25-45(H), the ***specific* statutory section at issue**, this Court had previously held that actual notice was sufficient. *Id*. at 293-95, 641 S.E.2d at 902-03 (citing *State v. Washington,* 338 S.C. 392, 526 S.E.2d 709 (2000)). The Court elaborated:

> The purpose of § 17-25-45(H) is to assure that a defendant and his counsel have actual notice that the State is seeking a sentence under the recidivist statute at least ten days prior to trial. Accordingly, so long as the defendant and his counsel, at least ten days prior to trial, possess actual notice of the State's intention to seek a sentence under South Carolina's recidivist statute, the statute has been satisfied.

Id. at 295, 641 S.E.2d at 903.

In the County's misguided view, any criminal statute requiring written notice may be ignored so long as actual notice is demonstrated. Thus, the County asserts that all criminal laws in the South Carolina Code and every municipal code requiring written notice have been rewritten by the *James* decision, to substitute actual notice for written notice. This result is not what the *James* Court intended, nor can such extrapolation be supported by the *James* opinion's text or reasoning. The *James* holding contains no broad pronouncements on written notice generally, but focuses on and is limited to one particular statutory section. The *James* case has no application whatsoever to the County's zoning ordinance or any of the issues in the case at hand.

II. THE INSTANT CASE TURNS ON THE COUNTY'S VIOLATIONS OF ITS OWN REGULATIONS, NOT A DISTINCTION BETWEEN ACTUAL AND WRITTEN NOTICE

More importantly, this case concerns the County's multiple failures to follow and abide by its own ordinance, far beyond any distinction between actual and written notice. The result does not encourage violations of law — to the contrary, it requires compliance.

Beaufort County's zoning and development code of ordinances, the CDC, is divided into different articles, which in turn are separated into divisions. Article 9 of the CDC (titled Enforcement) regulates compliance and corrections, enforcement procedures, remedies, and penalties. (R. p. 396 (CDC § 9.1.10)). Division 9.4 (Enforcement Generally) contains the procedures to be followed in enforcing the CDC's provisions. (R. pp. 398-400). The sole focus of both the Circuit Court's order and the Court of Appeals' Opinion was Section 9.4.40 (the "Notice Ordinance") and Section 9.4.50 (the "Citation Ordinance"), the text of which is in the Record at pages 398-99. (R. pp. 398-99).

A. The County Failed to Issue a Notice of Violation Required by Its Own CDC.

The unambiguous language of CDC § 9.4.40 requires that the County **must, without exception,** issue a warning notice of violation when it "finds and determines a violation of" the CDC exists. R. p. 398; *see also* R. p. 176, lines 10-21. The Notice Ordinance further requires, in clear language, that such notice "be delivered via U.S. Mail or hand delivered" and contain all the information set forth in the section's four subparts, A. through D. CDC §§ 9.4.40.A.-D. (R. pp. 398-99); *see also* r. P. 176, line 22–p. 177, line 2.

The magistrate found that the County did not issue any warning notice of violation in compliance with the CDC, a fact that remains undisturbed on appeal. Verdict p. 4 (R. p. 282) (the County "fail[ed] to adhere to the formal notice requirements"); (*see also* R. p. 233, lines 1-7; R. pp. 8, 12-13 (Circuit Court Order)); Opinion ¶ 1.

The County does not rebut or take issue with this finding, instead arguing that actual notice is sufficient for "blatant violators" of the CDC. Petition at 5. As set forth herein (*supra* Argument Sec. I., *infra* Argument Sec. III.), this position is completely lacking in legal support under South Carolina law. Additionally, the CDC contains no exception to the warning notice requirement, nor does it make reference to, let alone define, "blatant violators."

In support of its argument, the County contends, with reliance on the trial testimony of Code Enforcement Director Audra Antonacci, "that 'the purpose of the warning system' is 'simply to give someone who may not know that they're engaged in a violation' the instruction 'that they need to abstain until they get the proper approval' where that is possible." Petition at 5 (quoting R. p. 185, lines 7-13). Yet that is exactly the scenario that unfolded in this matter. It was possible for Greenway (and he was required) to utilize the "warning system" and issue the requisite notice, as he saw the work being performed two days before the Citations were issued.[5] Instead, he chose to confront Adams' contractor and fire off an overzealous email, which did not contain the information required of a warning notice under the Notice Ordinance.

The record contains no evidence of the County delivering a warning notice to Respondents via U.S. Mail or hand delivery, as explicitly required. And no communication or notice was issued to Respondents which "contained the requisite information of a Notice of Violation mandated by Section 9.4.40." Circuit Court Order (R. pp. 9-10). Under the Notice Ordinance, "[t]he notice **shall** state" information as to the location and nature of the alleged violation, including the CDC provisions alleged to be violated, as well as the following:

> [T]he necessary action to remove or abate the violation; C. The date by which the violation should be removed or abated; and D. The penalty for

[5] Even more, the County had notice of the specific work five days before it began. (R. p. 236, lines 4-24 (Hodges: "I sent [the Zoning Administrator] these two [SCDOT] applications, which included the pictures. … "I sent these in response when they asked for the pictures [on April 7].")).

> failing to remove or abate the violation, **stating that <u>if the nuisance recurs</u>, a notice to appear in the appropriate court in Beaufort County will be issued without further notice**.

CDC §§ 9.4.40.B.-D. (R. pp. 398-99) (emphasis added). The County never issued a written notice with the above information, including the required warning that failure to remove or abate would result in a court summons. The Court of Appeals correctly held that the CDC's plain and ordinary language required the County to issue a warning notice of violation, and that its failure to do so prevented the issuance of the Citations. Opinion ¶ 1.

B. The County Failed to Comply with the CDC's Requirements for Executing and Issuing Uniform Summons Tickets.

The County attempts to cast its failure to issue the required Notice of Violation as a minor technicality. Yet its failure to follow the CDC's mandate is no small defect. Without a warning Notice of Violation, **the County was not allowed to issue the Citations** and bring criminal charges against Respondents. CDC §§ 9.4.40, 9.4.50.B. (R. pp. 398-99). The County Code Enforcement Director, Audra Antonacci, testified that the Citation Ordinance, CDC § 9.4.50, governs the issuance of citations. (R. p. 177, lines 19-23). In pertinent part, § 9.4.50.B. states:

> **<u>If</u> the person(s) to whom a warning notice has been given <u>in accordance with Section 9.4.40</u>** (Notice of Violation), **fails to remove or abate the violation in <u>the time specified in the notice</u>**, the Code Enforcement Department shall fill out and sign, as the complainant, a Uniform Summons Ticket in the appropriate court of Beaufort County.

CDC § 9.4.50.B (R. p. 399) (emphasis added). Ms. Antonacci confirmed that a citation is only allowed if a compliant warning notice has been issued.

> Q: So if a warning notice has been given in accordance with 9.4.40, the County can issue a uniform summons ticket; is that correct?
>
> A: Yes.

(R. p. 178, lines 11-14). Ms. Antonacci executed and issued the Citations in this case and, as the then Director of the Code Enforcement Department, was the person responsible for enforcing the

provisions of the CDC. (R. p. 152, line 20-p. 153, line 11; R. p. 175, lines 19-24; R. p. 188, lines 3-6).

"When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning." *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). The literal meaning of § 9.4.50.B. is that the County is to execute a citation **only <u>if</u>** 1) the person charged was previously given a warning notice that satisfied with § 9.4.40, and 2) said person failed to correct the violation in the time specified in said notice. CDC § 9.4.50.B. (R. p. 398). The Opinion applied this literal meaning in reaching its conclusions. Opinion ¶ 1.

Because the County did not issue a warning notice in accordance with CDC § 9.4.40, it was prohibited by its own CDC from issuing the Citations.

Moreover, even if the mandatory prerequisite notice had been issued, "[t]he summonses did not comply with the provisions of Section 9.4.50 B of the Community Development Code[.]" Magistrate's Verdict p. 4 (R. p. 282). The Citations were facially deficient and effective service of the same was not accomplished. Six elements or pieces of information must be included in a citation, which is to be signed by the County's Code Enforcement Department, then provided to the Clerk of the appropriate Beaufort County court who mails a copy to all persons named in the ticket. (R. p. 399 (CDC § 9.4.50.B.-D.); R. p. 178, lines 15-19).

The Citations speak for themselves (R. p. 181, lines 3-10) and the magistrate's finding that they do not contain the required information remains undisturbed on appeal.

> The County failed to (1) identify the owner of the land upon which the alleged violation took place; (2) list the address where the alleged violation took place with any specificity; and (3) the nature of the violation. **The magistrate found that the "Summonses did not comply with the provisions of Section 9.4.50B[.]" There is no evidence in the record to disturb this finding.**

Circuit Court Order at 10-11 (R. pp. 12-13) (quoting Verdict p. 4 (R. p. 282)) (emphasis added). Nor does the County dispute that its Citations were deficient. *E.g.*, Petition at 5.

In further violation of the Citation Ordinance, the County's Code Enforcement Director testified that she, rather than the court's clerk, sent the Citations to Respondents, in contravention of the plain and unambiguous language of CDC § 9.4.50.C.-D. (R. p. 251, lines 17-22; *see also* Verdict p. 4 (R. p. 282)). Additionally, the County only mailed one copy of the Citations, rather than mailing separate copies to each of the Respondents as required by § 9.4.50.D. (R. p. 251, line 9–p. 252, line 12; R. p. 399).

It is clear and undisputed that the County failed to follow the CDC's provisions governing the issuance of criminal charges. Because the County failed to issue the Citations in accordance with its own code, the Court of Appeals was correct in affirming the Circuit Court's reversal of the magistrate's rulings.

In conclusion, the two reviewing courts, the Circuit Court and the Court of Appeals, correctly found that Beaufort County must strictly comply with the requirements of its own CDC.

C. The County's Harmless Error Argument (Still) Warrants No Consideration.

The County complains that the Court of Appeals did not conduct a harmless error analysis (Petition at 10), failing to realize that its argument in this regard lacks any basis and was thus not deserving of any discussion. The County cites the same case law as it did below (*compare* Petition at 10, *with* Appellant's Final Br. at 21), meaning its only support for claiming a harmless error in the issuance of a local ordinance citation are cases involving trial and evidentiary procedures. However, such reliance only makes sense, as harmless error is a doctrine based upon errors at trial during the case's presentation to the jury.

> [T]he Court has applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless. . . . The common thread connecting these cases is that **each involved "trial error" — error which occurred during the presentation of the case to the jury**, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.

Arizona v. Fulminante, 499 U.S. 279, 307-08 (emphasis added) (case cited in Petition at 10). The County's harmless error contention is a red herring and has no bearing on this appeal.

III. THE COUNTY'S CRITICISM OF THE CASES CITED BY THE COURT OF APPEALS MISFIRES

The County attacks the Opinion's citations to binding precedent in support of guiding principles that are dispositive of this case. Beyond the irony in the County's argument that a post-conviction relief case with a wholly distinct ineffective assistance of counsel standard must control, the County's captious criticism is off the mark.

A. The Opinion's Reliance Upon Binding Precedent for Controlling Points of Law Is Appropriate and Well-Founded.

1. *State v. Boston*, 433 S.C. 177, 857 S.E.2d 27 (Ct. App. 2021).

The Court of Appeals correctly applied the principle in *Boston* that "[S]tate courts can develop state law to provide their citizens with a second layer of constitutional rights…" *Boston,* 433 S.C. at 182, 857 S.E.2d at 30. As with *Boston* and the state protection against unreasonable searches and seizures, this Court has the authority to interpret the requirements set forth in the CDC's notice procedures at issue, which may afford additional constitutional rights for notice and service of process. Like the procedural requirements for issuing search warrants in *Boston*, the Court of Appeals here correctly interpreted the CDC in a way that provides greater protection than the federal Constitution, "a second layer of constitutional rights," specifically as to its notice procedures. *Id*. Law enforcement must adhere to requirements before issuing a warrant, and similarly, the County must comply with the CDC's requirement of written notice before issuing a citation to pursue fines or jail time against those alleged to be in violation of its ordinances.

2. *State v. Leopard*, 349 S.C. 467, 563 S.E.2d 342 (Ct. App. 2002).

The County also takes aim at the Opinion's reference to *Leopard*, a pure statutory construction case concerning the meaning of a statutory definition of a class of people protected by a domestic violence statute. The County argues that the mandate of literal statutory construction does not mean that the County must comply with the written notice procedures required by its regulations. Petition at 11. Once again, the County misconstrues the issue. The Opinion quoted *Leopard* for the statutory interpretation principles requiring that the plain and unambiguous text of the CDC be enforced as written.

> "When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. . . . words must be given their plain and ordinary meaning **without resort to subtle or forced construction to limit or expand the statute's operation**. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant."

Opinion ¶ 1 (quoting *Leopard*, 349 S.C. at 470-71, 563 S.E.2d at 344) (emphasis added).

The CDC's Notice and Citation Ordinances and the criminal citations issued to Adams are penal in nature and must be construed strictly against Beaufort County. *Leopard*, 349 S.C. at 471, 563 S.E.2d at 344. The plain, unambiguous language of the CDC, applied under its literal meaning, requires that a warning notice be given in accordance with CDC Section 9.4.40, and if the violator fails to remove or abate the violation in the specified time and manner after receiving said notice, *then* a Uniform Summons Ticket may be served. CDC § 9.4.50 (R. p. 399).

Here, the County must face the highest level of scrutiny, as it has the authority to draft and amend the CDC's provisions. And "'[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.'" *Leopard*, 349 S.C. at 471, 563 S.E.2d at 345. Thus, the intent of the County's legislative body, County Council, is most clearly evidenced by the unambiguous text that it enacted in CDC §§ 9.4.40 and 9.4.50. But, even assuming, *arguendo*,

that strict compliance with the CDC's notice and citation requirements may frustrate legislative intent, "the plain language of the statute cannot be contravened." *Leopard*, 349 S.C. at 473, 563 S.E.2d at 345 ("'Despite this possibility of frustrating legislative intent, however, we are confined to the statutory language....'" (*id.*)). That is because "[i]f it is desirable public policy [for actual notice to suffice], that public policy must emanate from the legislature." *Id.*

3. *Criterion Ins. Co. v. Hoffmann*, 258 S.C. 282, 188 S.E.2d 459 (1972).

Lastly, the Court of Appeals correctly applied the strict compliance holding in *Criterion* to the instant case. The *Criterion* Court noted that "it is the province of the lawmakers to create a right of action, to provide for process and to declare the procedures for collecting from one's own insurance carrier." *Criterion*, 258 S.C. at 290, 188 S.E.2d at 462. While the subject matter may differ, similar to *Criterion*, the County's right to recovery here, via the issuance of citations and pursuit of remedies such as fines or jail time, "is a creature of the legislature[,]" (*id.*), the legislative body being County Council. Except for the Notice and Citation Ordinances, adopted by Council, the County is unable to issue citations such as the ones at issue here.

Thus, contrary to the County's argument, its creation of the ordinance authorizing the County to pursue enforcement remedies provides a statutory benefit to the County that most certainly is "contingent upon following a [] notice procedure." Petition at 11.[6] CDC Section 9.4.50 "exclusively govern[s] the manner in which an action is brought against an [alleged CDC violator]." *Criterion*, 258 S.C. at 293, 188 S.E.2d at 464. In order to issue a citation and bring such an action, the County is required to first issue a warning notice of violation. *Supra* Argument

[6] Striving to excuse its noncompliance, the County characterizes the procedure as "futile." Yet it had time to issue a proper warning notice (*supra* pp. 11, 11 n.5), and moreover, it is irrelevant whether the procedure would have been futile. Pursuant to binding precedent discussed herein, the plain text of the CDC requiring an advance written notice with specific information must be strictly construed and literally applied.

Secs. II.A.-B. As the *Criterion* Court held, because the County ordinance's terms are clear and unambiguous, "there is no room for construction and we are required to apply the statute according to its literal meaning." *Criterion*, 258 S.C. at 292, 188 S.E.2d at 463 ("[T]he procedural obligations that the [County] must discharge in order to recover, **since they are prescribed by statute, are viewed by the courts as mandatory, and <u>strict compliance with them is a prerequisite</u> to recover**." (*id.*)).[7]

"The statute made service of a [written warning notice] a condition precedent to [the County's] recovery. If it is advisable that the statute be changed, it is within the province of the legislature to do so." *Id*. at 294, 188 S.E.2d at 464. Thus, consistent with *Leopard*, issued thirty years later, *Criterion* mandates that plain and unambiguous statutory language be applied literally, as the legislature's intent is reflected in the statutory text, whereby that text must be strictly complied with.

B. Additional South Carolina Appellate Decisions Confirm the Opinion's Reasoning Is Correct.

The County also attempts to chastise the Court of Appeals for only citing one case in support of the strict compliance holding. Petition at 11. While no more than one source of authority is necessary, especially in a truncated unpublished opinion on an issue of little to no import or substance, other binding precedent exists, such as this Court's opinion in *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011).

The question in *Roberts* was whether a DUI case must be dismissed if the law enforcement agency's failure to comply with the statutory requirement to videotape a DUI arrest did not meet

[7] In the event that courts relieved against the consequences of neglectful procedural practices, as in the circumstances here, it would "lead to the establishment of a mischievous precedent, and to great uncertainty and confusion in the determination of future cases of a similar nature." *Id*. at 294, 188 S.E.2d at 464.

one of the four statutory exceptions, when "the plain language of the statute provided that the 'failure to produce videotapes would be a ground for dismissal if no exceptions apply.'" *Roberts*, 393 S.C. at 346, 713 S.E.2d at 285.

Applying the rules of statutory construction to ascertain the legislature's intent, the *Roberts* Court opined that "[o]ur appellate courts have strictly construed section 56-5-2953 and found that a law enforcement agency's failure to comply with these provisions is fatal to the prosecution of a DUI case." *Id.* Reading the plain language of the statute, the court found that if there were no exceptions to the statutory requirement, dismissal was warranted. "As evidenced by this Court's decision in *Suchenski*, the Legislature clearly intended for a *per se* dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953."

Finding that there was no statutory exception to excuse the town's noncompliance with the clear language of its "statutorily-created obligation," the *Roberts* Court held that dismissal was the appropriate sanction. *Id.* at 349-50, 713 S.E.2d at 287. "[T]he Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance." *Id.* at 349, 713 S.E.2d at 386.

If unambiguous, the language of the statute is paramount in determining legislative intent, and the text must be construed in light of the statute's intended purpose. *Id.* at 342, 713 S.E.2d at 283. There is no doubt that the text of the Notice and Citation Ordinances is clear and unambiguous, meaning County Council fully intended that a warning notice ***must always*** precede a criminal citation. Unlike the statute in *Roberts*, the CDC contains no exception to this requirement and there is no excuse for the County's noncompliance with its statutorily-created obligation. In light of the ordinance's intended purpose to warn an alleged violator and encourage

compliance before criminal penalties are sought, failure to issue a notice of violation defeats the intent of the legislature and strict compliance with the CDC provisions must be enforced.

IV. THE COUNTY'S PETITION AGAIN DEMONSTRATES ITS PROCLIVITY TO IGNORE RULES

The County failed to timely serve its petition for writ of certiorari on counsel for Adams within thirty (30) days after the Court of Appeals entered its August 22, 2024 Order denying the County's petition for rehearing, in accordance with Rules 242(c) and 262(c), SCACR. Scott D. Bergthold, as evidenced by the Proof of Service he signed on September 23, 2024, attempted to serve the Petition on counsel for Adams via email. Service by email must be accomplished by "[a] lawyer admitted to practice law in South Carolina[.]" *See* Order No. 2024-04-24-01, Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), at ¶ (d) (S.C. Sup. Ct. filed April 24, 2024). Mr. Bergthold is not admitted to practice law in South Carolina, but was instead admitted on a pro hac vice basis by the Beaufort County Magistrate's Court prior to the trial of this action in 2021.

In that regard, the County also failed to comply with Rule 404(c), SCACR, as it did not immediately provide (and, to Respondents' knowledge, has yet to provide) the Supreme Court with a copy of the order granting Mr. Bergthold's pro hac vice admission.

This case is all about the County's failure to follow its own rules of prescribed conduct and it appears that it cannot be bothered to follow the Rules of this Court either.

CONCLUSION

South Carolina's highest Court should pay short shrift to the County's appeal of its attempt to impose $2,175 in fines over SCDOT-approved repair work. The Beaufort County Court of Common Pleas and the South Carolina Court of Appeals correctly held that the County failed to issue the mandatory predicate notice, prohibiting its issuance of the Citations, which also did not

meet and were not served in accordance with the CDC's requirements, and therefore Respondents are not guilty of any alleged violation of the Beaufort County CDC.

Respectfully submitted,

s/Evan P. Williams

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November 4, 2024
Mt. Pleasant, South Carolina