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AUG 26 2015

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

SC Court of Appeals

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**APPEAL FROM YORK COUNTY**  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

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Case No. 2013-CP-46-01178

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Christopher A. Wellborn, Appellant,

v.

The City of Rock Hill, ..... Respondent

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PETITION FOR REHEARING

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(803) 328-2600  
Attorney for Petitioner

The Petitioner petitions the Court for a rehearing in this case on the following grounds:

1. **THE MUNICIPAL COURT ERRED IN FINDING THE PETITIONER IN CONTEMPT WHEN THERE WAS NO RECORD OF THE PROCEEDING?**

The decision of the Court found that, “the Municipal Judge did not err in holding Wellborn in contempt for conduct not recorded in a trial transcript because the Municipal Judge’s contempt order clearly and specifically stated how Wellborn’s conduct violated the Court order”. While the Municipal Judge’s contempt order stated how the Petitioner’s conduct allegedly violated a court order, there was no record of the trial in which the alleged contempt occurred. Since there was no record of the trial in which the contempt occurred there was no way a reviewing court can determine if in fact the Petitioner’s conduct was contemptuous. It is important for the reviewing court to be able to review the record because there was a factual dispute as to the alleged contempt conduct committed by the Petitioner. Without a record there is no way that a reviewing court can determine if the trial judge abused his discretion in holding the Petitioner in contempt. The case of *Carly v. Hallie*, 277 SC 377, 382, 287 SE2d 915, 918, and (1982) cited in the decision involves a case in which the Appellate violated a family court custody order. In that case, the conduct did not occur in court but occurred outside the presence of the court. In that situation a hearing can be held to determine if contempt occurred. In the present case the alleged contempt occurred in the presence of the Court. No witnesses testified as to the contempt. Therefore it was incumbent upon the Court that the Court have a record of the proceedings.

**2. THE MUNICIPAL JUDGE ERRED IN NOT RECUSING HIMSELF.**

This Court cited Rule 501, Canon 3(E)(1)(d)(iv), SCARC which requires a Judge to disqualify himself or herself in a proceeding in which the Judge's impartiality might be reasonably in question, including instances when the Judge is likely to be a material witness. The Canon addresses exactly the situation in the present case. In this case the Municipal Judge brought the Rule to Show Cause against the Petitioner. No witnesses testified against the Petitioner in the contempt hearing. The Judge made a factual finding of the conduct allegedly committed by the Petitioner. The Petitioner under oath denied the conduct. In judging who was correct, it is obvious the Municipal Judge could not fairly and impartially make a ruling that the Petitioner's version of the events was correct. This Court is basically making a ruling that in a factual dispute between a Judge and an Attorney in a Municipal Court without a record the Judge is always correct. This was a factual dispute in which the Municipal Judge was alleging one set of facts and the Petitioner was alleging another set of facts. The Municipal Judge could obviously not be impartial and rule against himself. This was a clear instance in which the Judge was required to recuse himself.

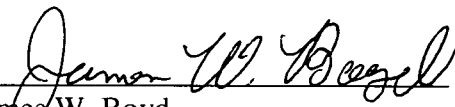
**3. WAS THE PETITIONER'S CONDUCT REQUIRED TO VIOLATE SECTION 22-3-950 OR SECTION 40-5-510?**

This Court found that it was not necessary to address whether the Petitioner's conduct came within the review of Section 22-3-950 or Section 40-5-510. While a Municipal Judge has the inherent authority to punish for contempt, what constitutes contempt is controlled by Section 22-3-950 and Section 40-5-510. The lower Court did not make a finding that Petitioner violated Section 22-3-950 but did make a finding that Petitioner violated Section 40-5-510. There was no finding by the lower Court that the

Petitioner's conduct constituted disorderly conduct. Since the statute controls what constitutes contemptuous conduct, the lower court erred in upholding Petitioner's citation for contempt.

**Conclusion**

All of the above reasons the Petitioner requests that the Court grant this Petition for rehearing.

  
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August 25, 2015

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

**RECEIVED**  
AUG 26 2015  
SC Court of Appeals

**APPEAL FROM YORK COUNTY**  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

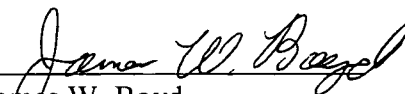
Christopher A. Wellborn, ..... Appellant,

v.

The City of Rock Hill, ..... Respondent.

**PROOF OF SERVICE**

I, James W. Boyd, certify that on August 25, 2015, I served the within Petition for Rehearing of Appellant on Respondent by depositing a copies of the same in the United States mail, postage prepaid, addressed to its attorney of record, Paula Knox Brown, Assistant Solicitor, 201 E. Main Street, 3<sup>rd</sup> Floor, Rock Hill, SC 29730, I further certify that all parties required by Rule 208 to be served have been served.

  
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August 25, 2014