



**FAX COVER SHEET**

TO: Mr. Daniel Shearouse, Clerk  
South Carolina Supreme Court  
@ 803-734-1499

cc: Mr. James Boyd  
@ 803-328-5747

FROM: Paula Knox Brown  
City Solicitor

DATE: January 12, 2016

RE: Christopher Wellborn v. City of Rock Hill  
Appellate Case No. 2015-002345

Please see the attached Motion with Return to Petition for Writ of Certiorari and Memorandum, the original of which is being mailed with copy to Mr. Boyd. I am waiting for the City to provide the necessary check for filing fees, at which time the documents will be mailed.

**RECEIVED**

JAN 12 2016

**S.C. SUPREME COURT**

CITY OF ROCK HILL SOLICITOR'S OFFICE

201 E. MAIN STREET, 3RD FLOOR, ROCK HILL, SOUTH CAROLINA 29730  
OFFICE 803/329-5619 FACSIMILE 803/326-3865



STATE OF SOUTH CAROLINA  
In the South Carolina Supreme Court

**RECEIVED**

APPEAL FROM YORK COUNTY  
COURT OF COMMON PLEAS

JAN 12 2016

JOHN C. HAYES, III, CIRCUIT COURT JUDGE **S.C. SUPREME COURT**

On Petition for Writ of Certiorari  
to the Court of Appeals of South Carolina  
Opinion No. 2015-UP-414

Appellate Case No. 2015-002345

Christopher A.  
Wellborn.....Appellant,


v.

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

MOTION TO FILE  
RETURN TO PETITION FOR WRIT OF CERTIORARI  
OUTSIDE OF TIME

Respondent moves before this Honorable Court to file the Return to Petition for Writ of Certiorari outside of time.

Appellant forwarded his Petition for Writ of Certiorari to Respondent on November 13, 2015 and filed it with the South Carolina Supreme Court. Respondent's attorney erroneously calendared the response for mid-December. Unable to complete and forward the document as planned because of an abbreviated work schedule regarding multiple doctor's appointments; docketing, trial, and preparation work for monthly jury trial terms and court session obligations; and, a mandatory city employee administrative function that consumed the better part of a week's time.

  
Paula Knox Brown  
Attorney for Respondent  
201 E. Main Street, Suite 300  
Rock Hill, South Carolina 29730  
803-329-5641

January 12, 2016  
Rock Hill, SC

STATE OF SOUTH CAROLINA  
In the South Carolina Supreme Court

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Christopher A. Wellborn.....Appellant,

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RETURN TO PETITION FOR  
WRIT OF CERTIORARI  
AND  
MEMORANDUM

Paula Knox Brown  
& Christopher E.A. Barton  
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803-329-5619  
Attorneys for Respondent

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**STATEMENT OF THE QUESTIONS PRESENTED ON APPEAL**

- I. Whether a writ of certiorari should be granted in this matter.
- II. Whether the Court of Appeals erred in affirming the Circuit Court's Orders, which in turn affirmed the Rock Hill Municipal Court's finding of contempt.
- III. Whether an issue not addressed by the Court of Appeals can be properly considered by the Supreme Court.

**STATEMENT OF THE CASE**

Appellant Christopher Wellborn represented David Cullen in Rock Hill Municipal Court. Anna Timothy-Miller represented the City of Rock Hill at trial. The Honorable Peter Lenzi presided over the trial on January 16, 2013. During the proceedings, Appellant was held in contempt on several grounds, which would later be reduced to writing by the trial judge and would form the basis of the contempt hearing requested by the Appellant. Mr. Wellborn requested and was granted a continuance until March 25, 2013 to obtain counsel to represent him at his hearing. James Boyd appeared on behalf of Appellant and filed a Motion for Recusal, which was received by the trial court on Friday, March 22, 2013. The motion was addressed by the court at the contempt hearing on Monday, March 25, 2013. That motion was denied. The hearing convened. Judge Lenzi considered and dismissed one allegation of contempt and found Appellant in contempt on the remaining two of three.

Judge Lenzi's Order of Contempt was issued on March 28, 2013. The Appellant's Notice of Appeal to the Circuit Court was mailed on April 10, 2013. The Return to Appeal was filed on May 1, 2013. Circuit Court Judge John C. Hayes, III, presided over the appeal hearing on August 27, 2013. James Boyd, Esquire, appeared for Appellant. Respondent was represented on appeal by City Solicitor Paula Knox Brown.

Judge Hayes's Order affirming the trial court was filed on October 2, 2013. Appellant's Motion to Reconsider was forwarded to the Circuit Court on October 9, 2013. The City of Rock Hill's Response to Motion to Reconsider was filed in the Circuit Court on October 25, 2013. Judge Hayes's Order denying the Motion to Reconsider was filed on November 13, 2013.

Notice of Appeal to the Court of Appeals was sent to Senior Solicitor Christopher Barton and City Solicitor Paula Knox Brown on November 20, 2013. Briefs were duly submitted for the Court's consideration. The Court did not require oral arguments. The Court of Appeals' per curiam opinion affirming the Circuit Court was filed on August 12, 2015. A Petition for Rehearing was filed by Appellant and was served on Respondent on August 25, 2015. The Court of Appeals' Order denying the petition was filed on October 23, 2015. This Petition for Writ of Certiorari followed.

### FACTS

Christopher Wellborn represented David Cullen in Rock Hill Municipal Court. Mr. Cullen's case was docketed for trial on January 16, 2013, at 9:00am and was called for trial on that day. (Verified Petition Alleging Contempt of Court, p.1, ¶2, L5, at Exhibit 1 to Return to Appeal; Return to Appeal, p.1, ¶1, L2). On the preceding Wednesday, January 9, 2013, Judge Lenzi conducted his docket call, which included a phone conference with Mr. Wellborn regarding the Cullen case. Over the phone's loudspeaker, "Mr. Wellborn spoke to the Judge, the Clerk, Solicitors Paula Brown, Anna Miller, and Kindle Johnson and informed the Court that the Cullen case was a definite trial. The Solicitor, Anna Miller, concurred." (Verified Petition Alleging Contempt of Court, p.1, ¶3, Ls 1-3, at Exhibit 1 to Return to Appeal].

On the morning of trial, neither Appellant nor his client was present for court. (Verified Petition Alleging Contempt of Court, p.1, ¶4 at #1.) The Court instructed Ms. Miller to contact Mr. Wellborn to find out why he was not in Court.

(~~Verified Petition Alleging Contempt of Court, p.1, ¶4~~) Ms. Miller did as instructed. In the course of talking with Mr. Wellborn by phone, she learned that he was in Charlotte having his car serviced. Mr. Wellborn was advised that the court intended to

strike his jury and proceed with the trial. (Affidavit of Anna Miller, p.1)

Once Appellant arrived and the trial began, Judge Lenzi addressed Mr. Wellborn's request to inform the jury why he and his client were late to court. Judge Lenzi specifically instructed Appellant not to address those matters in any way in the jury's presence. After a warning from the court when he apologized to the jury for being late, Mr. Wellborn completed his opening statement. He then asked permission to check in the hallway for his client, who had not yet arrived. On his way out of the courtroom and while passing the jury to exit the courtroom, Mr. Wellborn remarked that he wanted to explain to the jury why he and his client were late in arriving. Judge Lenzi saw the remark as direct disobedience to his oral order and found that and other behaviors and comments during the trial contemptuous.

The contempt hearing was continued to allow Mr. Wellborn time to engage counsel and for counsel to prepare. The hearing was held on March 25, 2013. Judge Lenzi held appellant in contempt on several, but not all, of the grounds for contempt in his bill of particulars.

The appellate process that brings this case before the Supreme Court on petition for writ of certiorari followed. A Notice of Appeal was filed first in the Circuit Court. The

Circuit Court affirmed the Municipal Court findings, but for one. The Court of Appeals affirmed the Circuit Court, declining in doing so to address two issues: one issue was not reviewed because a separate issue proved dispositive and another issue was not resolved because the Circuit Court did not rule on it.

### ARGUMENT

#### I. WHETHER A WRIT OF CERTIORARI SHOULD BE GRANTED IN THIS MATTER.

A writ of certiorari to the Court of Appeals is not a matter of right. It is discretionary. Rule 242(b) of the South Carolina Appellate Court Rules lists five (5) situations where issuance of the writ is appropriate.

- 1) Where there are novel questions of law;
- 2) Where there is a dissent in the decision of the Court of Appeals;
- 3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
- 4) Where substantial constitutional issues are directly involved;
- 5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242(b), SCACR.

A proper question is whether the issues raised in this appeal rise to that level. Here, there is no novel question of law, rather the Court is asked to re-examine well-established points of law in light of an unusual fact pattern; and, both parties have briefed those points before the Circuit Court and Court of Appeals, per the Appendix and Record in those courts, and continue to advocate for the positions expressed therein. Likewise, there is no dissent in the decision of the Court of Appeals. The Court of Appeals' decision conflicts with no prior Supreme Court decisions. There is no substantial Constitutional issue involved. No federal questions are involved, such that any conflict is created with existing United States Supreme Court decisions. Although not an exhaustive list, each example above is an exceptional circumstance, a matter of importance.

Issues such as those above warrant treatment by the State's highest court in order to avoid or resolve conflict in the law or to resolve a question that would certainly become fodder for a number of appeals on the same issue. In re Breast Implant Prod. Liab., 331 S.C. 540, 503 S.E.2d 445 (1998). The answer to our question has to be no. The issues in this case do not rise to that level.

We do not have those types of issues in this appeal. No question or issue presented in this appeal qualifies as an exceptional circumstance or as a point of law so significant that the highest court of our State needs to resolve it. The writ of certiorari is unwarranted in this case. The petition for writ of certiorari should be denied.

**II. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE CIRCUIT COURT'S ORDERS, WHICH IN TURN AFFIRMED THE ROCK HILL MUNICIPAL COURT'S FINDING OF CONTEMPT.**

In the Court of Appeals, Appellant sought a reversal of the Circuit Court's Order. Aside from two grounds that are not properly before this Court for consideration, Mr. Wellborn's appeal raised the following grounds:

- 1) The contemptuous conduct is not clearly and specifically reflected in the record.
- 2) The court erred in finding Mr. Wellborn in contempt of court "concerning his violation of the court's order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury.

Reviewing the case to determine whether the Circuit Court's decision was clearly erroneous or lacking in evidentiary support, the Court of Appeals affirmed the Circuit Court's finding that judges have the inherent authority to find behavior in their courts contemptuous. Several authorities were cited to that effect, including the Curlee v. Howle, 277 S.C. 377 (1982);

Curlee v. Howle, 287 S.E.2d 915 (S.C. 1982) opinion noted in the Appellant's Petition for Writ of Certiorari. See State v. Passmore, 363 S.C. 568, 571, 611 S.E.2d 273, 275 (Cl. App. 2005); Stone v. Reddix-Smallis, 295 S.C. 514, 369 S.E.2d 840 (1988); State ex rel. McLeod v. Hite, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979). As mentioned in the Petition, the contemptuous acts at issue in Curlee involved disobedience to a court order and did not occur in the presence of the Court. As such the acts were not recorded on audio equipment as they occurred, nor were they transcribed in any way immediately after they occurred. Nothing in the Curlee opinion or in any other cited opinion states that contemptuous conduct must be memorialized on audio equipment as it is happening or immediately captured in a transcript in order for a court to properly find the behavior at issue contemptuous. Nothing in the Curlee opinion or any other cited opinion indicates that any court is stripped of its ability to hold a party in contempt for disobedience to a court order or any other contemptuous acts unless the acts themselves are contemporaneously audio recorded or transcribed. The commitment of the acts to writing and/or audiorecording in anticipation of the contempt hearing or during the recording of the actual contempt proceedings appears to suffice and to satisfy the requirement that contempt findings have support in the record in Curlee and other sources.

The Court of Appeals addressed this issue correctly. Their decision was not clearly erroneous nor was it without evidentiary support. There is no reason for the Supreme Court to re-examine this issue. Certiorari should be denied.

**III. WHETHER AN ISSUE NOT ADDRESSED BY THE COURT OF APPEALS CAN BE PROPERLY CONSIDERED BY THE SUPREME COURT.**

Because the Court of Appeals found that the inherent ability to declare behavior contemptuous rests with all judges, they declined to address whether §§22-3-950 and 40-5-510 applied. Because the Court of Appeals declined to address the issue and declined to reconsider their declination, only the validity of that declination can be considered on appeal, not the underlying applicability of the statutes to this case. The question is whether they were legally correct in so doing. As stated in the Court of Appeals' Order, "an appellate court need not address a remaining issue when its determination of another issue is dispositive of the appeal." Order, Court of Appeals, quoting *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

The Court of Appeals resolved the appeal on another ground and did not need to address this issue. They were within their authority to do so. They were correct in doing so. The Court of Appeals should be affirmed.

As mentioned, Mr. Wellborn's appeal raised another ground, which cannot be considered on its merits at this point. The issue is that the Honorable Peter Lenzi erred in failing to recuse himself in the trial court proceedings on the contempt issue. The Circuit Court's original Order did not address this issue. Likewise, the Circuit Court's Order denying the motion to reconsider did not address this issue. The Court of Appeals properly declined to consider the issue, since the Circuit Court did not rule on it and the issue was not addressed in Appellant's Rule 59 motion or subsequently in the Circuit Court's Order regarding the request for rehearing. The Court of Appeals has correctly declined to address this issue. The Court of Appeals decision was not clearly erroneous nor was it without evidentiary support. It was not an abuse of discretion amounting to an error of law. The Supreme Court does not need to re-examine this issue. Certiorari should be denied.

#### CONCLUSION

Finding both evidentiary support for the Circuit Court's affirmation of the trial court's decisions and no abuse of discretion, the Court of Appeals affirmed the Circuit Court. That decision was without legal error, was based on evidentiary support, and was not an abuse of discretion. The Court of Appeals decisions were proper. There is no issue here warranting Supreme Court review. Certiorari should be denied.

Respectfully submitted,



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January 8, 2016