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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

Meredith HuffmanAppellant

vs.

Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc.Respondents

**AIKEN ELECTRIC COOPERATIVE, INC'S PETITION
FOR REHEARING AND REHEARING *EN BANC***

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Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Respondent Aiken Electric Cooperative, Inc. hereby files this petition for rehearing and rehearing *en banc*. Respondent respectfully submits that rehearing or issuance of a new opinion affirming the circuit court judge's decision is warranted. The grounds for this petition are that the Panel's opinion in this matter overlooked or misapprehended several matters of fact and law. This matter is of exceptional importance as it involves the South Carolina Constitution and the statute enacted pursuant thereto.

In Opinion No. 5417 filed June 22, 2016, a Panel of this Court reversed the circuit court judge's order granting the Respondent's motion for summary judgment. The Panel overlooked or misapprehended several matters of law and fact in rendering the opinion. First, the Panel ignored and did not mention Article 1, Section 24. Second, the Panel overlooked, ignored and did not mention S.C. Code Ann. Section 16-3-1505 et seq. Third, the Panel improperly concluded that there was genuine issue of material fact which precluded summary judgment. Respondent's final brief is incorporated as herein by reference. As a result, this court should grant rehearing or rehearing *en banc* in this matter and upon rehearing, affirm the Trial Judge's grant of summary judgment.

MEMORANDUM IN SUPPORT OF PETITION

Respondent hereby petitions the Court for rehearing *en banc* or rehearing upon the following grounds:

1. The panel of the Court of Appeals overlooked and failed to address and consider whether Meredith Huffman's ("Huffman") claims against Aiken Electric Cooperative, Inc. were barred by the plain language of Article 1, Section 24, Victims Bill of Rights under the South Carolina Constitution and S.C. Code Ann. Section 16-3-1505 et.seq.

The Circuit Court Judge, in ruling on the negligence claim, ruled:

'In addition, imposition of such a duty of care would be inconsistent to the rights and duties of a crime victim and a witness to a crime under S.C. Code Ann. Section 16-3-1505 *et seq.* Section 16-3-1505 states that the crime victims and witnesses to a crime have a civic and moral duty to cooperate fully and voluntarily with law enforcement. Nothing in the Act suggests that a victim cannot press law enforcement to proceed with an arrest. Law enforcement, not the crime victim and witnesses to a crime, has the duty to investigate a crime and to decide whether and when to seek a warrant."

There was no appeal of the Circuit Court Judge's granting of summary judgment on the negligence claim. Thus, the ruling is the law of the case.

2. Respondent made the following argument in its brief:

"In the South Carolina victims of crime have certain rights guaranteed by the South Carolina Constitution and by statute. Act 1 §24 of the South Carolina Constitution provides for the 'Victim's Bill of Rights.' Act 1 §24(1) provides protection of victims, who are to be 'free from intimidation, harassment or abuse'. S.C. Code Ann. §16-3-1505 which outlines the legislative intent of the statutes regarding victim's rights, and recognizes '***the civil and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecuting agencies ***[recognizes] the importance of the citizen cooperation to state and local law enforcement efforts ***'

3. This is a case of exceptional importance. The people of the State of South Carolina voted to amend the Constitution to provide for victim rights, Article I, Section 24 (1998).

4. Article 1, Section 24(a)(1) of the South Carolina Constitution provides as follows:

"(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;"

Article 1, Section 24(a)(11) provides as follows

"(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

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The General Assembly, pursuant to Article I, Section 24, enacted statutes guaranteeing crime victim's certain rights.

5. S.C. Code Ann. Section 16-3-1505 provides as follows:

"In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of a crime, including victims of domestic violence and criminal sexual assault."

6. The Panel overlooked and did not mention these constitutional and statutory provisions in reversing the circuit court judge.
7. The Panel concluded that since the Respondent contacted law enforcement several times about "moving further with the case", this presented a question of fact as to whether Respondent was legally responsible for law enforcement's decision to arrest the Appellant. However, Article I, Section 24(7) grants a crime victim the right to confer with law enforcement and to confer about a reasonable disposition of the criminal case.

Under Article 1(7), a victim has the rights:

"confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;"

Article 1, Section 24(6) provides:

"be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;"

The Panel's decision, which ignored the constitution and statutory provisions, waters the rights guaranteed to victims of crime by the Constitution and statutes regarding victims of crime.

8. The decision of the Panel is based upon inadmissible evidence. The decision is based upon opinion testimony from Officer Aldridge that Goss, in communicating with law enforcement, "had a sense of urgency". This is opinion testimony by a lay witness which is inadmissible. Rule 701, SCRE.
9. The Panel also improperly relied on testimony of Officer Aldridge since there is no evidence that Officer Aldridge was communicated his opinions to Officer Etheridge who made the decision to arrest.
10. The only other evidence relied upon by the Panel was from Officer Ethridge who testified:

"Moreover, Officer Ethridge testified,

I didn't have the video at that point in time so [Goss] wanted to know what I was going to do. Was I going to try to arrest her, lock her up, you know, speak with a magistrate, what to do. On the 21st, that's what I did is [sic] I went and spoke with a magistrate.

Q Did you feel that [Goss] was urging you to prosecute [Huffman]? ...

He was calling me. He was calling me just like any other victim would. You know, what are you doing? You know, what – I mean, he had people he had to answer to ...

Q Okay. And the reason he was calling you is because he wanted –

A To know what I was going to do with the case. Was I ---

...

Going to arrest her, yeah.

Officer Ethridge also testified 'I had spoke[n] with Sunshine [s]everal times[,] trying to obtain a copy of the video and [Goss] was calling me, wanting to know what I was doing with the case.'"

However, Goss had constitutional and statutory rights to have the communications.

CONCLUSION

A three judge panel of the Court of Appeals should not be allowed to erode and water down rights guaranteed by the South Carolina Constitution and by statute by failing to address them. In ruling on motion for summary judgment, only evidence that would be admissible can be considered. Rule 50(e), SCRCP. If the constitutional and statutory provisions are to have meaning, Gross' communication to Officer Ethridge must be deemed protected. Rehearing or rehearing en banc should be ordered and the order of the circuit court judge should be affirmed.



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Columbia, South Carolina
July 5, 2016

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PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Robert F. Goings, attorney for Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses this 5th day of July, 2016.

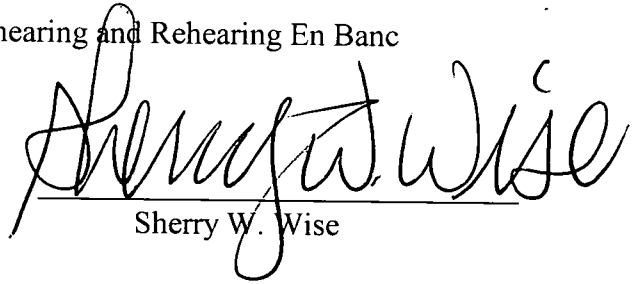
COUNSEL SERVED:

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PLEADINGS:

Aiken Electric Cooperative, Inc's Petition for Rehearing and Rehearing En Banc


Sherry W. Wise

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July 5, 2016

(Via Hand Delivery)

Honorable Jenny Abbott Kitchings
Clerk of Court
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1015 Sumter Street
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Re: Meredith Huffman v. Sunshine Recycling, LLC and Aiken Electric
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Dear Ms. Kitchings:

Enclosed herewith are the original and seven (7) copies of Aiken Electric Cooperative, Inc.'s Petition for Rehearing and Rehearing En Banc. Also enclosed is a check in the amount of \$25.00 for the filing fee. Please file the original and clock and return the additional copy to me.

With a copy of this letter to Robert F. Goings, attorney for the Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, I am serving a copy of the Petition for Rehearing upon them.

Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

cc: Robert F. Goings, Esquire
Breon C. M. Walker, Esquire