

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable Craig D. Brown, Jr., Circuit Court Judge

Indictment Number 2010-GS-07-01473 & 1489

Appellate Case Number 2011-182587

The State..... Respondent.

v.

Dequing Chen.....Appellant.

Unpublished Opinion No. 2012-UP-675
Submitted November 1, 2012 - Filed December 19, 2012

RECEIVED
JAN 04 2013
SC Court of Appeals

PETITION AND MEMORANDUM FOR REHEARING

In so much as the unpublished *per curium* opinion, affirmed pursuant to SCACR Rule 220 (b), holds that this case involved only a potential and not an actual conflict of interest, the Appellant petitions this Court for a rehearing.

In *State v. Gregory*, the South Carolina Supreme Court reversed conviction for commission of a lewd act upon a minor; reaffirming that: “[a]n actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to those of the defendant.” *Gregory*, at 450 (Internal citations omitted). The defense attorney in *Gregory* simultaneously

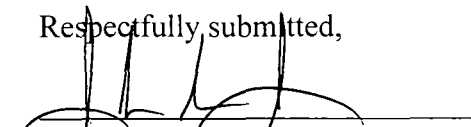
represented the defendant in a criminal matter and the assistant solicitor in her divorce action. The *Gregory* court found an actual conflict existed because defense counsel “placed himself in a situation ‘inherently conducive to divided loyalties.’” See also, *Wheat v. US*, 486 US 153, at 162-163 (1988) (“The likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even for those thoroughly familiar with criminal trials.”)

Undersigned counsel can locate no cases where a court condoned a person serving as a member of the litigation team for both opposing sides of an adversarial proceeding.

Briefly, in the trial of the case at bar, a language barrier required that the trial judge appoint an interpreter to provide assistance to the Appellant during the actual trial. ROA, pgs 10-18. However, this interpreter previously assisted the solicitor during his work product, pre-trial preparation of the alleged victim. Thus, the interpreter owed a duty of confidentiality to the state at the same time he owed a duty of assistance to the criminal defendant in the very same proceeding.

Therefore, because the interpreter in Appellant’s case labored under an actual conflict of interest, this Court should grant this Petition, reverse the Appellant’s convictions and sentences, and remand Appellant’s case for a new trial.

Respectfully submitted,



James A. Brown, Jr.
Attorney for the Appellant

Law Offices of Jim Brown, P.A.
1600 Burnside Street, Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

January 2, 2013
Beaufort, SC

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable Craig D. Brown, Jr., Circuit Court Judge


Indictment Number 2010-GS-07-01473 & 1489
Appellate Case No. 2011-182587

The State,.....Respondent

Deqing Chen,.....Appellant

PROOF OF SERVICE

Counsel for Deqing Chen hereby certifies that he has prepared and served a Petition and Memorandum for Rehearing on this 2nd day of January, 2013 upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Attorney for Respondent, William M. Blich, Esquire, Office of the Attorney General, PO Box 11549 Columbia, SC 29211-11549, (803) 734-3727.



James A. Brown, Jr.
Attorney for Petitioner

January 2, 2013

Law Offices of Jim Brown, PA
1600 Burnside St., Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

RECEIVED
JAN 04 2013
SC Court of Appeals