THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge
G. Thomas Cooper, Circuit Court Judge

APPELLATE CASE NO: 2018-000948
CIVIL ACTION NO: 2015-CP-40-05598

Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster and Robert Collins,
Appellants,
v.
City of Columbia, North American Pipeline Management, and Layne Inliner,
Respondents.

INITIAL BRIEF OF RESPONDENT CITY OF COLUMBIA

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STATEMENT OF ISSUES ON APPEAL

The Respondent City disagrees with the Appellants' Statement of Issues on Appeal pursuant to Rule 208 (b)(2), SCACR and would state the issues on appeal as set forth below:

I. The Circuit Court did not err in issuing summary judgment finding that S. C. Code Ann. Section 16-11-780 is inapplicable to this case.

II. The Circuit Court did not err in issuing summary judgment that the Respondents NAPM and the City of Columbia would be immune from liability due to the "utility worker exception" found in S.C. Code Ann. Section 16-11-780(K)(3)?

The respondent would argue none of the other "Issues on Appeal" contained in the Appellants' Initial Brief are properly before this Court. SCACR 208(b) (1) (B).

STATEMENT OF THE CASE

This is an appeal from an order of the Circuit Court granting summary judgment to the Respondent City of Columbia regarding the cause of action brought by the Appellants in this action and based upon S.C. Code of Laws Section 16-11-780.

This action was commenced on September 11, 2015, and an Amended Complaint was filed on December 16, 2015, and a Second Amended Complaint on January 13, 2016. The seven Appellants sued eight Respondents, asserting causes of action for (a) trespass, (b) gross negligence, (c) nuisance, (d) violation of S.C. Code Ann. §16-11-780 for "destruction of archaeological structures," (e) "taking," (f) negligence, and (g) negligence per se. There was extensive discovery in this matter, as well as a series of assorted motions. One of these motions was to appoint Dr. Jack Leader, State Archaeologist, as an expert in this case, but the motion was denied.

The City of Columbia filed a motion for Summary Judgment as to all causes of action on October 20, 2017 and a hearing was held before the Circuit Court, the Honorable Jocelyn Newman, on January 3, 2018 at the Richland County Courthouse. On April 27, 2018, the co-Respondent, North American Pipeline Management ("NAPM") filed a motion for summary judgment on the claims arising under S.C. Code Section 16-11-780, and a hearing was held on that motion on May 8, 2018 before the Honorable G. Thomas Cooper.

All of the motions were heard and then taken under advisement. On May 16, 2018, Judge Cooper issued an order granting NAPM's motion for summary judgment on the archaeological claims. On May 23, 2018, Judge Newman issued an order granting the City's motion for summary judgment on the archaeological claim, but denying summary judgment as to the remaining causes of action.[1]

In the May 23, 2018 Order, Judge Newman states:

> "By Order filed on May 16, 2018, this Court determined that the statute upon which Plaintiffs rely for this claim is wholly inapplicable to this case. Specifically, the Court finds that there is no governing preservation or conservation authority which recognizes the alleged archaeological structures as either archaeological resources or historic structures. Additionally, a plain reading of S.C. Code Ann. Section 16-11-780(K)(3) would exempt the parties in this action from liability under this statute. The remainder of the conclusions of law contained in this Court's May 16, 2018 [sic] are hereby incorporated by reference; and the Defendant City of Columbia is entitled to judgment as a matter of law as the Plaintiff's claims for damages to and destruction of the archaeological structures"

Both orders have been appealed in this matter as to the archaeological claims brought by the Appellants. For the purposes of the appeal, any reference to the Order of the trial court will be a reference to the Order of Judge Newman which incorporate the findings and conclusions of Judge Cooper as the law of the case by the trial court.

[1] Judge Newman also granted summary judgment as to the claims of Plaintiff Pamela Collins, but that issue was not appealed and is not before this Court.

STATEMENT OF FACTS

The Respondent City of Columbia disagrees with the statement of facts as outlined by the Appellant. In the Appellants' Initial Brief, the Statement of Facts falsely assumes the existence of archeological resources on the subject property is not in dispute. However, the Respondents do not agree any historical structures exist on the subject property. Based upon the foregoing, the Respondent City of Columbia ("The City") would state the following as the facts of the case:

Appellants are landowners and residents of parcels of real property located on Castle Road in the City of Columbia, South Carolina. The City owns and operates the sewer lines that run beneath a portion of the Appellants' properties. Each parcel of land has a sewer easement held by the City, running across a back portion of each of the properties between Castle Road and approximately fifty feet from the banks of the Broad River. The easement grants to the City the right "to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size..." (Easement.)

In 2007, Appellant David Brinkman discovered some large rock arrangements, which he believes to have been old bridge abutments, on his property located at 154 Castle Road, Columbia, South Carolina. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, Mr. Brinkman and Dr. Leader continued to keep in contact on a professional and social basis, including through

their respective memberships of the Columbia chapter of the Explorer's Club. In May 2008, the South Carolina Archives and History Center declined Mr. Brinkman's request for the bridge abutments to be considered for listing on the National Registry, stating, in short, "that a great deal more research and archaeological investigation and assessment will be necessary. . . ." (Letter to David Brinkman from State Historic Preservation Office, May 30, 2008). More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman. (Id.).

Subsequently, pursuant to a Consent Decree with the U.S. Environmental Protection Agency, the City engaged in a comprehensive inspection, remediation and maintenance program for its sewer lines, including the sewer line running across the Appellants' properties. After an inspection of those sewer lines revealed that "slip lining" maintenance was needed, Defendant North American Pipeline Management ("NAPM") began clearing the easements of obstructions, including vegetation, shrubbery and trees that had grown over the easements since the sewer lines were installed in the early 1980's. It is also undisputed that the entire portion of the properties upon which NAPM was working was a wooded, overgrown portion of the property without improvements.

The City hired various contractors (including the other Respondents in this action) to perform services specific to this effort, such as clearing of sewer easements, smoke testing, and visual inspections of the lines, construction repairs and remediation of the property after the completion of the project. However, before the project's completion, Appellants objected to the work and demanded all work cease; and all Respondents complied. Respondents were, therefore,

unable to complete the slip lining or post-project remediation of the area. To date, this work remains incomplete.

Appellants filed their Complaint on September 11, 2015, an Amended Complaint on December 16, 2015, and a Second Amended Complaint on January 13, 2016. The seven Appellants sued eight Respondents, asserting causes of action for (a) trespass, (b) gross negligence, (c) nuisance, (d) violation of S.C. Code Ann. §16-11-780 for "destruction of archaeological structures," (e) "taking," (f) negligence, and (g) negligence per se.

Six of the Appellants are the owners of real property on Castle Road: Appellants Modesta and David Brinkman own the property and reside at 154 Castle Road; Appellant James Coleman owns the property and resides at 150 Castle Road; Appellants Carl and Karen Foster own the property and reside at 142 Castle Road; and Appellant Robert Collins owns the real property located at 156 Castle Road, which is undeveloped, but does not reside there.

All of the remaining causes of action against the Respondents are pending with the trial court, but stayed pursuant to Rule 205, SCACR. Following the conclusion of this appeal, the remaining issues will be disposed below.

STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.Civ.P. 56(c). In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Brock Bank v. Best Capital Corp., 341 S.C. 372, 534 S.C.2d 688 (2000).

In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. NationsBank v. Scott Farm, 320 S.C. 299, 302 (1995). When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying on the allegations of his Complaint, but must disclose the facts he intends to rely on by affidavit or the proof. Shupe v. Settle, 315, S.C. 510, 516 (1994). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment. Id. at 516-517. "The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case." Fender and Latham, Inc. v. First Union Nat. Bank of S.C., 316 S.C. 48, 50 (1994).

ARGUMENTS

I. The Circuit Court did not err in finding S.C. Code Ann. § 16-11-780 inapplicable to this case.

A. The Court was not in error in its statutory interpretation of South Carolina Code of Laws Section 16-11-780.

At the heart of this appeal is S.C. Code Section 16-11-780 which was passed by the South Carolina General Assembly and which reads, in its entirety:

> ***SECTION 16-11-780.*** *Prohibition on entering certain lands to discover, uncover, move, remove, or attempt to remove archaeological resource; definitions; penalty; exception.*
>
> *(A) As used in this section:*
>
> *(1) "Archaeological resource" means all artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials.*
>
> *(2) "Archaeological value" means the value of the data associated with the archaeological resource. This value may be appraised in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.*
>
> *(3) "Commercial value" means the fair market value of the archaeological resource. When a violation has resulted in damage to the archaeological resource, the fair market value may be determined using the condition of the archaeological resource prior to the violation, to the extent its prior condition can be ascertained.*
>
> *(4) "Cost of restoration and repair" means the sum of the costs incurred for emergency restoration or repairs to an archaeological resource, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:*
>
> *(a) Reconstruction of the archaeological resource;*
>
> *(b) Stabilization of the archaeological resource;*
>
> *(c) Ground contour reconstruction and surface stabilization;*

(d) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(e) Examination and analysis of the archaeological resource, including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining resources that cannot be otherwise conserved; or

(f) Preparation of reports relating to any of the activities described in this section.

(5) "Posted lands" means lands where the State has complied with the notice or warning requirement which must either be posted or given to an offender pursuant to Section 16-11-600.

(B) The court may call upon the Office of the State Archaeologist to provide evidence to assist in determining, calculating, or computing archaeological value, commercial value, or the cost of restoration and repair of an archaeological resource.

(C) It is unlawful for a person to willfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.

(D) For a first offense, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined, imprisoned, or both, pursuant to the jurisdiction of magistrates as provided in Section 22-3-550.

(E) For a second offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or more than three thousand dollars or imprisoned not more than three years, or both.

(F) For a third or subsequent offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(G) For the purposes of subsections (E) and (F) of this section, a second, third, or subsequent offense on the same property as the first offense or on another posted property must include no offense that occurs more than ten years after conviction for the first offense.

(H) All equipment and conveyances including, but not limited to, trailers, motor vehicles, and water-going vessels that were used in connection with felony violations of this section are subject to forfeiture to the State in the same manner as equipment and conveyances are subject to forfeiture pursuant to Section 44-53-520, if the offender either owns the equipment or conveyance or is a resident of the equipment or conveyance owner's household.

(1) All equipment and conveyances subject to confiscation and forfeiture under this section may be confiscated by any law enforcement officer as provided in this section. The confiscating officer shall deliver the confiscated property immediately to the county or municipality where the offense occurred. The county or municipality shall notify the registered owner of the confiscated property by certified mail within seventy-two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the court. The confiscation hearing must be held within ten days from the date of receipt of the request. The confiscated property must be returned to the registered owner if the registered owner shows by a preponderance of the evidence that he did not know the confiscated property was used in the commission of the crime, that he did not give permission for the confiscated property to be used in the commission of the crime, and that the confiscated property had not been used for a previous violation of this section on the posted land where this offense occurred or other posted land.

(2) The county or municipality in possession of the confiscated property shall provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

(3) Forfeiture of property is subordinate in priority to all valid liens and encumbrances.

(4) A person whose property is subject to forfeiture under this section is entitled to a jury trial if requested.

(I) The landowner, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover the greater of the archaeological resource's archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney's fees and court costs.

(J) Nothing contained in this section shall limit or interfere with a landowner's lawful use of his property or with the state's ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

(K) Nothing contained in this section shall limit or interfere with:

(1) A landowner's lawful use of his property;

(2) The lawful acts of a landowner's employee, agent, or independent contractor acting in the scope of and in the course of his employment, agreement, or contract;

(3) The lawful acts of a utility worker acting in the scope of and in the course of his employment; or

(4) The state's ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

Because this matter on appeal is a case of first impression in South Carolina, the above statute was cited in its entirety to provide sufficient context of legislative intent. No case law exists interpreting this statute. In the Trial Court's order granting summary judgment in this

matter, the Trial Court construed this statute, specifically, Section 16-11-780(C) to be inapplicable to the facts and circumstances of the present case. As a preliminary finding, the trial court found that this statute is part of South Carolina's criminal code. The statute is located in Title 16 of the Code (Crimes and Offenses of the South Carolina Code of Laws) and contains language which is clearly criminal in nature, specifically the penalty provisions which provide for a term of imprisonment for offenses.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). However, "[a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

In ascertaining legislative intent, "a court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid–State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). If the statute is ambiguous, however, courts must construe the terms of the statute. Lester v. S.C. Workers' Comp. Comm'n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sloan v.

S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606–07 (2006). In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993). Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). The Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (S.C., 2011).

The trial court was persuaded by the clear, plain and unambiguous language of Section 16-11-780(C):

> *(C) It is unlawful for a person to willfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.*

Where a statute is not ambiguous, the rules of construction do not apply. "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct.App.2005) (citing Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (S.C., 2000); Bayle v. South Carolina Dept. of Transp., 344 S.C. at 122, 542 S.E.2d at 739 (Ct.App.2001)). "When the terms of a statute are clear, the court must apply those terms according to their literal meaning." Georgia-Carolina Bail Bonds v. County of Aiken, 354 S.C. at 24, 579 S.E.2d at 334 (Ct.App.2003) (citing Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002); Holley v. Mount Vernon Mills, Inc., 312

S.C. 320, 440 S.E.2d 373 (1994); Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct.App.1999); see also Parsons v. Georgetown Steel, 318 S.C. 63, 65, 456 S.E.2d 366, 367 (1995) ("Where the terms of a relevant statute are clear, there is no room for construction."). Eagle Container v. County of Newberry, 622 S.E.2d 733, 366 S.C. 611 (S.C., 2005).

The clear reading of the statute evidences the legislature's intent to criminalize individuals unlawfully entering on the lands of another "for the purpose of" removing or injuring an archaeological resource which does not belong to them.

The Appellants argument in their initial brief is wholly without merit. The Appellants would put forth the idea that the gravamen of the unlawful act outlawed by this statute is the entering on the lands of another. That would transform this statute into a form of criminal trespass, analogous to SC Code Ann. Section 16-11-620, commonly referred to as "trespassing" or "trespass after notice".

But a cursory reading of the entirety of Section 16-11-780 reveals unquestionably that the gravamen of the criminal act addressed is the disturbing of an "Archaeological Resource" as defined by the statute. And because a criminal statute requires a degree of *mens rea*, the wrongdoer must have knowledge that the land contains such an archaeological resource. The legislature's intent in this act is clear that entering onto the lands of another *for the purpose* of interfering with an archaeological resource is a criminal act. Inasmuch as Appellants brought this as civil suit, this criminal statute is inapplicable.

II. THE CIRCUIT COURT CORRECTLY INTERPRETED S.C. CODE SECTION 16-1-780, THEREFORE THE LIABLITY OF THE RESPONDENTS FOR "ACTUAL AND CONSTRUCTIVE KNOWLEDGE OF THE EXISTENCE OF

HISTORICAL AND ARCHAELOGICAL RESOURCES" IS NOT BEFORE THE COURT.

The Appellants included in their Statement of Issues on Appeal that the Respondents should be liable on other grounds than the statute, but that was not argued nor preserved below. If this Court upholds the Order of the Trial Court granting summary judgment on the cause of action based upon the archaeological resource statute, the remaining causes of action, including other grounds for liability, will be litigated below upon remittitur.

III. THE ARCHAELOGICAL RESOURCES HAVE NEVER BEEN DESIGNATED AS HISTORIC BY ANY APPLICABLE AND/OR GOVERNING PRESERVATION OR CONSERVATION AUTHORITY

The Appellant's belief that this small site is historic despite never having been declared such is the crux of the conflict in this litigation. The Appellants, specifically Appellant Brinkman, insists that the entirety of the known world should accept as true *his* opinion that this bridge abutment exists on this property. The City of Columbia, in its duty to inspect, repair and maintain its sewer lines, hired contractors and engineers to preserve the integrity of the Castle Road line which runs adjacent to the Broad River. While it is true that the Appellants would seek to have the rocks on their property identified as historic, their efforts have been fruitless.

As the trial court found, "Thereafter, in May, 2008, in response to Mr. Brinkman's request for a listing on the National Registry, the South Carolina Archives and History Center – State Preservation Office (SHPO) determined, among other things, additional research and other steps needed to be complete before the site could be eligible for consideration".

The trial court relied on the Letter to David Brinkman from the State Historic Preservation Office, May 30, 2008 which questioned, in pertinent part:

> "... Whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this areas of the river before, during and immediately following the Civil War."

In 2015, when the work on this project was performed by the Respondents, this site had not been declared historic by SHPO. Today, as this appeal is considered ten years following the original SHPO determination, the site is still not designated as historic by a person or department with the authority to do so.

IV. THE TRIAL COURT NEVER "CONCLUDED THAT DESIGNATION ON THE NATIONAL REGISTER WAS A REQUIREMENT FOR S.C. CODE SECTION 16-11-780 TO BE APPLICABLE IN THIS CASE.

Any discussion of the National Registry by the trial court in this matter came directly from the record of the case, specifically the letter from SHPO to Appellant Brinkman. The trial court's conclusion was "no authoritative body has designated this site as historically significant and Plaintiff's own archaeological expert believes additional archaeological work and research are needed, [therefore] Plaintiff's claims under Section 16-11-780 fail as a matter of law."

It is axiomatic that in order to prevail under Section 16-11-780 the property must contain an archaeological resource as defined therein. Having failed to show such a resource, the Court was correct in its statement and there was no error of law.

This Issue on Appeal is not properly before this Court therefore and should be stricken.

V. THE CIRCUIT COURT'S MISSTATEMENT OF THE LAW IS NOT GROUNDS FOR REVERSAL.

The inclusion of "for the sole purpose" does not eliminate the need for that to be a purpose or one purpose. The Court was clear; there was no historical structure so thus no purpose of the City to disturb it. But even if the trial court misinterpreted a portion of the statute, the ruling is so clear and the language of the statute so unambiguous, that it supports the decision and there is no grounds for reversal.

VI. THE CIRCUIT COURT PROPERLY APPLIED THE UTILITY WORKER EXCEPTION AS CONTAINED IN S.C. CODE SECTION 16-11-780(K)(3).

Section 16-11-780(K)(3) states, in pertinent part:

> *(K) Nothing contained in this section shall limit or interfere with:*
>
> *(3) The lawful acts of a utility worker acting in the scope of and in the course of his employment; or*

The Appellants, in their initial brief, argue, "The plain language reading of the statute indicates that it applies to the personal liability of utility workers who are engaged in and acting within the scope and court of their employment."

That interpretation is without any merit. In fact the Appellants state, further down in their brief, "Presumably, the Legislature enacted the 'utility worker exception' to shield individual employees from criminal liability for the destruction of archaeological resource as long as they are acting within the scope of their employment." That is the clear intention of the legislature, but the Appellants want this Court to rewrite the statute to provide that this provision would subject corporate and municipal entities in a manner which is not written into the statute.

It is wholly uncontroverted that the only purpose for any person, agent or representative of any of the Respondents or Defendants in this action for being on the property of the Appellants was to perform work on the sewer line of the West Columbia Basin Sanitary Sewer System. It is also wholly uncontroverted that immediately upon the Appellants alleging that there was a historic structure on the property, the work ceased.

The trial court was correct in finding that the Appellants' claims of destruction of archaeological structures would fail as a matter of law under the provisions of the statute which protect the actions of utility workers. The language of the statute is broad and encompassing, "Nothing contained in this section shall limit or interfere with" utility workers. The General Assembly could not have been more definite in their assertion that this criminal statute, and all of its provisions, did not apply to utilities. The work done in this case was utility work.

CONCLUSION

In this matter, both of the trial courts have correctly interpreted the plain meaning of the language contained in S.C. Code Ann. Section 16-11-780. The statute is clearly a criminal statute designed to protect historical and archaeological resources from wrong doers who seek to do harm to those sites, but exempts from liability inadvertent damage caused by the lawful work of utility workers. The Trial Court found, appropriately, that the City's actions were not in violation of this criminal section and could not lead to civil liability as alleged by the Plaintiffs.

For these reasons, the conclusions of the trial courts in the orders granting summary judgment on the grounds herein, should be AFFIRMED.

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THE STATE OF SOUTH CAROLINA
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Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster and Robert Collins ..... Appellants,

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PROOF OF SERVICE

The undersigned hereby certifies that he served a copy of the *Initial Brief of Respondent City of Columbia* and *Designation of Matter* upon counsel for the parties by placing them in the United States mail, first class postage prepaid to them at their addresses shown below on this 26th day of November 2018:

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November 26, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster and Robert Collins v. City of Columbia, North American Pipeline Management, and Layne Inline
Court of Appeals Case No.: 2018-000948

Dear Ms. Kitchings:

Enclosed for filing, please find the original and eight (8) copies the *Initial Brief of Appellant* along with the *Proof of Service* in the above referenced case. Please return the extra copies to the courier of this letter.

By copy of this letter, I am serving same on counsel for the parties.

Sincerely,

W. Michael Hemlepp by Jaime Ulfe, Esq.

W. Michael Hemlepp, Jr.
Sr. Assistant City Attorney

WMH/jlh
Enclosure(s) as Stated

cc: Counsel of Record