

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

John Williamson, III and Kathryn J. Williamson,  
Appellants,

v.

The County of Orangeburg, Respondent.

---

Appeal From Orangeburg County  
Olin D. Burgdorf, Master-in-Equity.

---

Unpublished Opinion No. 2011-UP-052  
Heard November 3, 2010 – Filed February 10, 2011

---

**AFFIRMED**

---

Wm. Howell Morrison and Phyllis W. Ewing, both  
of Charleston; for Appellants.

D'Anne Haydel and Paul D. de Holczer, both of  
Columbia; for Respondents.

**FEW, C.J.:** The Williamsons challenged Orangeburg County's decision to condemn their property on the South Fork of the Edisto River for use as a public boat landing pursuant to section 4-9-30(4) of the South Carolina Code (Supp. 2010). The master-in-equity upheld the County's decision. The Williamsons appeal (1) the exclusion of newspaper articles from evidence and (2) the master's condemnation decision. We affirm.

### **I. Admissibility of Newspaper Articles**

"The admission of evidence is a matter left to the discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion." Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. . . . To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice . . . ." Fields v.

Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (internal citations omitted).

The Williamsons contend the master erred in excluding three newspaper articles from evidence that contained statements of county employees. They argue the articles are not hearsay because they were not offered for their truth, but rather as proof that the County acted in bad faith and abused its discretion in deciding to condemn their property. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Rule 801(c), SCRE. This case presents us with a double hearsay situation. To illustrate, "(county employee statements)" are the first level of hearsay and "The witness said . . ." is the second level of hearsay. [1]

Consequently, for the newspaper articles to be admissible, after determining whether each level is actually hearsay, we must assess whether each level falls within an exception to the hearsay rule. See Bain v. Self Mem'l Hosp., 281 S.C. 138, 145, 314 S.E.2d 603, 608 (Ct. App. 1984) ("[T]he general rule is that hearsay included within hearsay is not excluded if each part of the combined statements falls within some exception."). The actual out-of-court statements made by county employees concerning the condemnation decision are the first level, and we conclude are not hearsay because they are admissions by a party opponent under Rule 801(d) (2)(A), (C), or (D), SCRE. The second level is the statement by the newspaper asserting that a witness made a statement; therefore, these are offered to prove the truth of the matter asserted and constitute hearsay. Because they do not fall within any hearsay exception, the master was correct to exclude them.

## II. The Condemnation Decision

The Williamsons contend the County abused its discretion in determining that it needed a boat landing on the South Fork of the Edisto River and that it acted in bad faith. "[T]he decision of the question of necessity lies with the one to whom the state has delegated the authority to take property for a public use and is not subject to review by the court in the absence of fraud, bad faith, or abuse of discretion." Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 158-59, 121 S.E.2d 743, 747 (1961). Accordingly, judicial review of a legislative condemnation decision such as the one in this case is deferential. However, our review of the circuit court's decision is not deferential. See Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008) ("In an action in equity, tried with reference to a master, this Court reviews the evidence and determines the facts according to its own view of the preponderance of the evidence . . ."). In this case, the County conducted a survey to assess need and location preference and chose a boat landing which already existed, had been regularly utilized by its citizens for thirty years, could be put to use immediately, and presented minimal costs. We give due deference to the County's decision to condemn and find that it neither abused its discretion nor acted in bad faith.

**AFFIRMED.**

**SHORT and WILLIAMS, JJ., concur.**

---

[1] For example, one statement from an article was: "But Haydel said the law gives public bodies, such as council, the right to take private property as long as it is for public use."



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

FEB 24 2011

SC Court of Appeals

---

APPEAL FROM ORANGEBURG COUNTY  
Master-in-Equity

O. Davie Burgdorf, Master-in-Equity

---

Case No. 2007-CP-38-1424

---

John W. Williamson, III and Kathryn J. Williamson, ..... Appellants

v.

The County of Orangeburg, ..... Respondent

---

APPELLANTS' PETITION FOR REHEARING

---

Wm. Howell Morrison  
Moore & Van Allen PLLC  
40 Calhoun Street, Suite 300  
P.O. Box 22828  
Charleston, South Carolina 29413-2828  
(843) 579-7000  
Attorneys for Appellants

February 23, 2011

## TABLE OF CONTENTS

Table of Authorities .....	ii
Points Overlooked or Misapprehended.....	1
I. In affirming the master's post-trial reversal of his admission at trial of the newspaper articles into evidence, the Court of Appeals' Unpublished Opinion overlooks (i) that the Appellants relied to their detriment on the master's unconditional admission of the articles during trial, and (ii) that the party opponent declarants quoted in the news articles either testified and/or were present throughout the trial and never disputed the accuracy of their quoted, out-of-court admissions .....	1
A. The Unpublished Opinion overlooks and misapprehends the overwhelming proof that the County never considered the necessity for the taking before deciding to condemn .....	1
Argument .....	1
I. The Master Clearly Erred in Reversing His Evidence After the Record Was Closed .....	1
A. The Post-Trial Evidence Exclusion .....	2
B. The Accuracy of the Quoted Admissions Was Not Disputed.....	3
C. The Newspaper Articles Were Relevant and Probative.....	4
D. Exclusion Was Highly Prejudicial and Decisive .....	4
II. The County Never Considered the Necessity for the Taking Before Making the Decision to Condemn .....	5
Conclusion .....	9

**TABLE OF AUTHORITIES**

**Case**

Southern Dev. Land and Golf Co., Ltd. V. S.C. Pub. Serv. Comm'n,  
305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), *aff'd as modified*  
311 S.C. 29 (1993) .....8

**En Banc Request:** Central to this case is a question of exceptional importance: To what procedural and substantive standards will the judicial branch hold the legislative branch when it exercises its power to take private property by eminent domain. Appellants respectfully suggest a rehearing, *en banc*, under Rule 219, SCACR.

#### **POINTS OVERLOOKED OR MISAPPREHENDED**

- I. In affirming the master's post-trial reversal of his admission at trial of the newspaper articles into evidence, the Court of Appeals' Unpublished Opinion overlooks (i) that the Appellants relied to their detriment on the master's unconditional admission of the articles during trial, and (ii) that the party opponent declarants quoted in the news articles either testified and/or were present throughout the trial and never disputed the accuracy of their quoted, out-of-court admissions.**
- II. The Unpublished Opinion overlooks and misapprehends the overwhelming proof that the County never considered the necessity for the taking before deciding to condemn.**

#### **ARGUMENT**

##### **I. The Master Committed Clear Error in Reversing His Trial Evidence Ruling After the Record Was Closed.**

In its Unpublished Opinion of February 10, 2011, the Court of Appeals addresses the newspaper articles evidence issue as though it presents simply a question of whether the master erred in excluding the articles from evidence on the basis of hearsay. The Opinion made no effort to address the arguments that the quoted language was not admitted for the truth of the matters asserted. In failing to confront the other complexities of the evidence issue, the Court substantially overlooked or misapprehended this crucial evidence issue in several respects. As Appellants' Final Brief made clear, the actual issues are far more involved.

### **A. The Post-Trial Evidence Exclusion**

First, the master unconditionally admitted the news articles at trial when he stated to counsel for the County: "Again, like I said before, the evidence is in and you have objected to it. And I noted your objection, but I allowed it to be placed in evidence over your objection. (R. 346; lines 12-15) This ruling was clear and unconditional. Moreover, it was a reiteration of the master's prior ruling admitting the evidence after having heard some arguments of counsel on Respondent's motion in limine to exclude the articles. (R. 75, lines 7-16) As a direct result of that prior ruling, counsel for Appellants obtained from the master a short trial break for the express purpose of calling Jay Bender, the lawyer for the newspaper reporter who authored the article, to release the reporter from his trial subpoena. (R. 74, l. 20--75, l. 6)

Counsel for Appellants had served the subpoena on the newspaper reporter prior to trial in order to compel his appearance as a witness to verify the accuracy of the quotes attributed to the County employees. But for the master's unequivocal trial ruling admitting the articles into evidence, the reporter would have been called to testify. In his Final Order, however, the master inexplicably reversed his previous trial evidence ruling--after the trial was ended and the record closed--without acknowledging that he was removing the articles from evidence and after their admission had been relied upon. In so doing, the master whip-sawed the Appellants, eliminating crucial evidence from the record, after Appellants had relied, detrimentally, on the masters' trial ruling.

There is no disputing the fact that the master deprived the Williamsons of any opportunity to address the grounds for the post-trial exclusionary ruling or to cure the objection by calling to the witness stand the previously-subpoenaed reporter. The Court

of Appeals' Opinion compounds this error by overlooking the obvious unfairness and prejudice of the trial court's post-trial reversal of its evidence ruling. Regardless of the correctness, *vel non*, of the underlying hearsay ruling, there is no ignoring the prejudicial harm visited on Appellants by the unjustifiable procedure employed by the Master. Even a trial judge sitting without a jury cannot reverse himself, post-trial, to exclude crucial evidence previously admitted into the record, without having offered the party whose evidence is excluded notice and an opportunity to cure the basis for the exclusion.

**B. The Accuracy of the Quoted Admissions Was Not Disputed.**

In addition to the stealth reversal of his trial evidence ruling, the master's Final Order failed to mention a pertinent point about the quoted statements by the County's party-representatives. Two of the declarants, the County Attorney and the County Administrator, quoted in the newspaper articles were present in the courtroom throughout the trial. The County Administrator testified and discussed some of the contents of articles, never questioning the accuracy of the quotes attributed to him. (R. 218, l. 25--225, l. 9) The County Attorney was co-counsel for the condemnor. She sat at counsel table, made arguments and assisted with trial. The third declarant, Councilman Heyward Livingston, testified at trial. All three had ample opportunity, but none undertook to refute, repudiate or question the accuracy of any wording of any quote attributed to him or her in the newspaper articles before or after their admission into evidence at trial. Once the articles were admitted into evidence by the master, it would have been a simple matter for any of these County representatives to testify to any alleged inaccuracy. They had every motive and opportunity to do so--and by not doing so they impliedly acknowledged the accuracy of the quotes attributed to them by the reporter. Similarly,

had counsel for Appellants been given notice by the master that his admission of the articles was conditional, counsel could easily have called these witnesses to the stand to remove any doubt as to their accuracy and trustworthiness, even after releasing the reporter from his trial subpoena.

**C. The Quotes in the Articles Were Relevant and Probative**

The quoted statements of the County employees were probative of bad faith on the part of the County in its pursuit of the condemnation. By way of example, they included: (i) wrongful denials by the County Attorney of fact that the County had received certified notice from Appellants of the lease cancellation (R. 256, line 20--258, line 12; Final Appellants' Brief, p. 29); (ii) misstatements by the County Attorney to the public on of the law of condemnation (R. 625-26; Final Appellants' Brief, p. 30); (iii) statements intended to publicly denigrate the Williamsons' legal position and pressure them in the public forum into waiving their property rights. (Final Brief of Appellants, p. 32) and (iv) admissions in December 2006 of the County's decision to condemn the property.<sup>1</sup>

**D. Exclusion Was Highly Prejudicial and Decisive**

Admission of the County's quotes from the news articles could well have changed the master's final ruling on the merits. As explained in Appellants' Final Brief, the interview quotes from the County Attorney and County Administrator, combined with statements from the primary council member behind the taking, substantiated the

---

<sup>1</sup> It is not disputed that, on November 21, 2006, Council unanimously approved a motion by Councilman Heyward Livingston "to proceed with legal activity to reopen Ness Landing to the public." (R. 583). This occurred after a vote on September 5, 2006 instructing the County Attorney "to do whatever is necessary to keep the [Ness] landing open." (R. 577)

condemnor's gross abuse of discretion.<sup>2</sup> As the Court of Appeals noted, this testimonial evidence was in the form of non-hearsay admissions by a party under Rule 801(d)(2), SCRE. Bad faith, also described in condemnation decisions as gross abuse of discretion, was an element of Appellants' trial proof for which they shouldered the burden. That bad faith is manifest in the statements of the County's representatives for which they gave interviews to the local press.

The Unpublished Opinion overlooks entirely the substantial prejudice to the Appellants that resulted from the master's post-trial reversal of his trial ruling and his failure to offer Appellants any opportunity to overcome his post-trial evidence exclusion. Inexplicably, neither the master's Final Order nor the Opinion even acknowledges that this unsupportable ruling occurred.

**II. The Unpublished Opinion Overlooks and Misapprehends the Overwhelming Proof That the County Never Considered the Necessity for the Taking Before Making the Decision to Condemn.**

The essence of the landowners' challenge to the taking was the County's failure to consider the fundamental element of necessity prior to making the legislative decision to condemn. Any affirmance of the master's Final Order depends on the finding by the Court of Appeals that "the County conducted a survey to assess need and location preference and chose a boat landing which already existed, ... ." <sup>3</sup> But, affirmance is also dependent on such an assessment *having occurred before* the legislative decision to condemn. Without such an additional finding that the County conducted a rational

---

<sup>2</sup> These are spelled out in detail in the Final Brief of Appellants at pages 27-33.

<sup>3</sup> While the "need and preference" mantra was dutifully repeated by Berry Still at every opportunity, it is absolutely clear from the totality of the proof, that his repetition of that phrase is irrelevant to the "necessity" element at the center of this case.

assessment the element of necessity for the taking *prior to its condemnation decision*, the law is clear that the taking would be invalid and the landowners' challenge would prevail.

The Unpublished Opinion overlooks proof and misapprehends the record on this issue. The evidence simply cannot support a finding that the County *ever assessed need*, let alone that it did so prior to its condemnation decision.<sup>4</sup> The proof is addressed in detail in Appellants' briefs, but key aspects should make the point here.

Council's decision to take the landing was clearly made no later than November 21, 2006, well before the outside engineer, Berry Still, was retained. (R. 580-84) Heyward Livingston, the prime mover on Council behind the condemnation, testified clearly that after Council's votes in September and November 2006 to do whatever was necessary to keep Ness Landing open by necessary legal activity, Council left to the County Attorney and Administrator the implementation of that legislative will. (R. 297, l. 17--298, l.3) There is no evidence that Council *ever considered* Orangeburg's actual need for its own landing on its own side of the river. No "needs survey" was undertaken or even thought about when the legislative decisions were made by County Council in 2006.

The County first retained Berry Still as its engineer for this condemnation project in January 2007. He was hired by the County's outside condemnation counsel, who was retained in December 2006 after County Council voted to condemn Ness Landing. Berry Still admits that he was not hired to study or determine the need for another boat landing in Orangeburg County because that had already been determined. (R. 468, lines 11-17; 471, lines 6-16)

---

<sup>4</sup> It is apparent from the public comments by the County Attorney quoted in the disputed newspaper articles that the County *likely did not know* that it was required to assess necessity.

Q. "You were told and it was a given before you started that Orangeburg County had previously determined there was a need on the South Fork Edisto and they were going to acquire a new landing on the South Fork Edisto in their county.

Now, you knew that from the beginning.

A. Yes, sir, I did."

(Berry Still trial testimony at R. 471, lines 10-16)

The evidence is clear that Still was not retained by the County to study the actual need for another boat landing on the South Fork Edisto within Orangeburg County or to consider the practical availability of convenient public landings on the other side of the same river in the adjoining counties. (R. 372, lines 4-12; 378, lines 2-13;<sup>5</sup> 468, lines 11-17.) The need for another landing was assumed by Still because the County had previously decided that another such landing was to be procured on the Orangeburg County side.

Consistent with Berry Still's testimony, County Administrator William Clark testified that he was specifically charged by Council in September and November 2006 to reopen **Ness Landing**. The minutes of those Council meetings reflect those instructions. (R. 557, lines 11-24) Once Berry Still was hired a few months later to conduct a study as to the *location* of a landing, the *need* for which was presumed, Berry Still referred to the project as "Ness Boat Landing". (Exh. 13 at R. 600) This email and the other evidence demonstrate that there was always only one property under true consideration for the taking--Ness Landing. For irrefutable proof of this fact, and that the legislative decision to condemn occurred in 2006, one need only look to the County Administrator's letter of December 20, 2006 to fourteen state and federal agencies in which he explained that the

---

<sup>5</sup> The trial transcript reads "beneath or the landing" (R. 378, line 9). This is an obvious transcription error and it should read "the need for the landing."

County was going to "condemn a fee simple interest" in Ness Landing.<sup>6</sup> (R. 500, lines 8-19; Exh. 10 at R. 591-92) There can be no clearer public declaration of the legislative decision that had been made by Council. Copies of the letter were sent to Joe McLauchlin, Orangeburg County Engineer,<sup>7</sup> and Earl Whalen--who would later serve as members of the BLAC commission--informing them that Ness Landing was the chosen property. (R. 396, line 23--397, l.1) That commission performed its version of a survey months later. Its selection of a preferred location on the Orangeburg side of the river at Ness Landing is irrelevant, other than to complete the circuit on the implementation of Council's intentions for Ness since its dispute with the landlord commenced the prior year. Again, everything in 2006 occurred *before* the retention of Berry Still, who was the County's key witness for its claim to have conducted a "needs assessment" complying with the state's condemnation law prior to making its legislative condemnation decision. The evidence proves that claim by the County to be transparently bogus. The evidence is one-sided that Council and its agents always targeted Ness for this taking and that **no rational consideration** was given to the need for acquisition of an additional landing on the Orangeburg side of the South Fork Edisto. Nor did they consider the taking of Ness Landing in light of the easy availability of Claude's Landing just across the South Fork in Bamberg County.

As this Court is aware, the process of rational deliberation and reasonable exercise of judgment based on established criteria is spelled out in Southern Dev. Land

---

<sup>6</sup> The landowners were not favored with a copy of this letter directly affecting their land.

<sup>7</sup> McLauchlin was also identified in the County's engagement letter to Berry Still, of January 5, 2007, along with the County Attorney as the people with whom Still was to coordinate his engineering consulting services "Re: J.B. Ness Boat Landing Project." (Exh. 11, R. 596)

and Golf Co., Ltd. V. S.C. Pub. Serv. Comm'n, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), *aff'd as modified* 311 S.C. 29 (1993). No one examined the immediate proximity, convenience, availability and adequacy of Claude's Landing or any other public landing within easy access to the citizens of Orangeburg County. The County's outside engineer assumed the need for Ness Landing on the same basis as did Councilman Livingston – the historical use of Ness Landing – thereby equating historical public use with necessity. (R. 469, lines 19-25) These are distinct requirements for any condemnation and cannot be conflated. The County decided in the fall of 2006 that it was not going to return a leased landing to its lawful owner. It took immediate and deliberate legislative steps to take a landing that it did not own, but had come to regard as its own. It made this decision oblivious to the law of condemnation and to the facts (i) that another suitable public landing was situated at a conveniently close location and (ii) that there was, in fact, no practical need to condemn another landing at such a nearby location.

It is completely revealing of the County's unawareness of the lawful requirement of necessity that Councilman Livingston would have voted as he did to reopen Ness Landing by force "even if Claude's Landing had been directly across from Ness Landing". (R. 289, lines 17-21) This admission displays an unfortunate ignorance of the responsibilities inherent in the use of the power of eminent domain.

### CONCLUSION

Cast in the best light, this case reveals a judicial willingness to condone an uninformed, unstructured, disorderly approach to a governmental taking of private property--all presided over by an involved County Attorney. At its worst, this is a case of governmental arrogance toward constitutional, private property rights to the point that the

condemnor refuses to acknowledge its obvious failure to comply with condemnation law. A governmental entity and its lawyers should be held to higher standards when taking property, just as they are when seeking as prosecutors to deprive a citizen of his liberty.

Long-standing decisions of this state's Supreme Court demonstrate that the citizens of this state have historically been served by a judicial branch with the energy and determination to closely guard private property rights. The citizens deserve that same energy and determination now.

Respectfully submitted,



---

Wm. Howell Morrison  
Moore & Van Allen PLLC  
40 Calhoun Street, Suite 300  
P.O. Box 22828  
Charleston, South Carolina 29413-2828  
(843) 579-7000

Attorneys for Appellants

February 23, 2011

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

FEB 24 2011

**SC Court of Appeals**

APPEAL FROM ORANGEBURG COUNTY  
Master-in-Equity

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-1424

John W. Williamson, III and Kathryn J. Williamson, ..... Appellants

v.

The County of Orangeburg, ..... Respondent

PROOF OF SERVICE

I certify that I have served a copy of Appellants' Petition for Rehearing via overnight mail, on February 23, 2011, addressed to its attorney of record, Paul D. deHolczer, of Moses, Koon & Brackett, PC at his office address of 1333 Main Street, Suite 650, Columbia, South Carolina 29201.

February 23, 2011



Wm. Howell Morrison  
Moore & Van Allen PLLC  
40 Calhoun Street, Suite 300  
P.O. Box 22828  
Charleston, South Carolina 29413-2828  
(843) 579-7000  
Attorneys for Appellants

**COPY**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

APPEAL FROM ORANGEBURG COUNTY  
MASTER-IN-EQUITY

O. Davie Burgdorf, Master-in-Equity

---

Case No.: 2007-CP-38-1424

---

John W. Williams, III and Kathryn J. Williamson ..... Appellants,

v.

The County of Orangeburg ..... Respondent.

---

**RESPONDENT'S RETURN  
TO  
APPELLANTS' PETITION FOR REHEARING**

---

Paul D. de Holczer, Esquire  
Clifford O. Koon, Jr., Esquire  
Moses Koon & Brackett, PC  
1333 Main Street, Suite 650  
Post Office Box 100261  
Columbia, South Carolina 29202-3261  
(803) 461-2300 / (803) 461-2309 Fax  
Attorneys for Respondent

March 3, 2011

**TABLE OF CONTENTS**

Table of Contents ..... i

Table of Authorities .....ii

Issues Raised by Appellants' Petition for Rehearing.....1

    I.    The Court of Appeals is alleged to have misapprehended or overlooked that Appellants' case was prejudiced by the Master's evidentiary rulings.....1

    II.   The Court of Appeals is alleged to have misapprehended or overlooked Appellants' evidence of lack of necessity in Respondent's action in eminent domain.....1

Argument.....1

    I.    The Court of Appeals did not misapprehend or overlook that Appellants failed to prove their case was prejudiced by the Master's evidentiary rulings.. .....1

    II.   The Court of Appeals did not misapprehend or overlook Appellants' failure to prove that Respondent's project lacked the necessity required of an action in eminent domain.....14

Conclusion..... 19

Certificate of Counsel.....21

**TABLE OF AUTHORITIES**

**CASES**

Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961) ..... 17

Bookhart v. Central Electrical Power Co-op, Inc., 222 S.C. 289, 72 S.E.2d 576 (1952) ...  
..... 17

Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956) ..... 8

Georgia Dept. of Transp. v. Jasper County, 355 S.C. 631, 586 S.E.2d 853 (2003) ..... 7, 8

Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009).... 2

Hospitality Ass'n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d  
113 (1995) ..... 17

Karesh v. City Council of City of Charleston, 271 S.C. 339, 247 S.E.2d 342 (1978) ..... 8

State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988) ..... 2

State v. Patterson, 367 S.C. 219, 625 S.E.2d 239 (S.C.App. 2006) (rehearing denied,  
certiorari denied.) ..... 1

USAA Property and Casualty Insurance Co. v. Rowland, 312 S.C. 536, 435 S.E.2d 879  
(Ct.App.1993) ..... 6

**SOUTH CAROLINA CONSTITUTION**

S.C. Const. art. XIV, § 1. .... 8

S.C. Const. art. XIV, § 4 ..... 8

**STATUTES**

S.C. Code Ann. § 4-9-25 (Supp. 2008) ..... 17

S.C. Code Ann. § 19-11-100 (Supp. 2008) ..... 17

## ISSUES RAISED BY APPELLANTS

- I. The Court of Appeals is alleged to have misapprehended or overlooked that Appellants' case was prejudiced by the Master's evidentiary rulings.
- II. The Court of Appeals is alleged to have misapprehended or overlooked Appellants' alleged evidence of lack of necessity in Respondent's action in eminent domain.

## ARGUMENT

- I. The Court of Appeals did not misapprehend or overlook that Appellants failed to prove their case was prejudiced by the Master's evidentiary rulings.**

Appellants claim the Court of Appeals misapprehended or overlooked that Appellants relied to their detriment on the Master's ruling admitting three newspaper articles. At the beginning of the hearing, Respondent's counsel moved in limine to exclude evidence and reference of four types: ". . . [t]he leasehold, the newspaper articles, anticipated or past negligence or anticipated or past criminal activity." (R. p. 63, line 5 - p. 68, line 3). The Master ruled on Respondent's Motion in Limine and denied Respondent's motion. (R. p. 55, line 18 - p. 57, line 25; p. 63, line 5 - p. 68, line 3; p. 73, line 23 - p. 75, line 17). To preserve an issue for appellate review, a contemporaneous objection must be made when the evidence is offered. State v. Patterson, 367 S.C. 219, 625 S.E.2d 239 (S.C.App. 2006) (rehearing denied, certiorari denied.). Respondent's counsel sought and obtained continuing objections to those matters raised in Respondent's Motion in Limine. (R. p. 85, line 12 - 19; p. 88, line 14 - 21; p. 93, line 24 - p. 94, line 1; p. 99, line 22 - p. 100, line 14; p. 103, line 19 - p. 104, line 5; p. 345, line 3 - 23).

Appellants had prior notice that Respondent would object to certain evidence (R. p.

55, line 18 - 20) and at trial Respondent's counsel handed the Master Respondent's Notice of Motion (in Limine), Motion in Limine and Memorandum of Law in Support of Motion in Limine. (R. p. 57, line 15 - 17). Appellants' counsel argues Appellants relied on the Master's ruling as a final ruling on the admissibility of the evidence which Respondent sought to exclude. The Master's ruling on Respondent's Motion in Limine was not the ultimate disposition on the admissibility of the evidence which Respondent sought to exclude. As our Supreme Court has said:

Trial judges must not be held, conclusively, to preliminary rulings made without benefit of all the pertinent and relevant evidence. We caution Bench and Bar that these pre-trial motions are granted to prevent prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence.

State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988).

The Court of Appeals did not misapprehend or overlook Appellants' reliance on the Master's evidentiary ruling. Citing Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009), this court stated: "The admission of evidence is a matter left to the discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion." Appellants' counsel misapprehended the Master's ruling on Respondent's Motion in Limine as an "unequivocal" final ruling on the admissibility of the evidence which Respondent sought to exclude. Appellants' counsel confirmed this misapprehension when he frankly stated in Appellants' Petition for Rehearing, "Similarly, had counsel for Appellants been given notice by the master that his admission of the articles was conditional, counsel could easily have called these witnesses to the stand to remove any doubt as to their accuracy and trustworthiness, even after releasing the reporter from his trial

subpoena.” (Appellants’ Petition for Rehearing, § B, ¶ 1, p. 3 - 4).

Assuming that the Master denied both parties’ motions for a directed verdict (R. p. 299; p. 332) at the conclusion of Appellants’ case, and ruled at the conclusion of Appellants’ case that he would admit the news articles, Appellants did not move after receipt of the Final Order, for the trial court to either reconsider the Final Order or to reopen the record so that Appellants could call and examine the reporters as to the veracity of the matters reported in the news articles. (R. p. 10). Moreover, Appellants have not explained or shown exactly how the articles are relevant or material to their case or how the exclusion of the articles is prejudicial to their case. The articles themselves do not evidence bad faith or abuse of discretion on the part of the County acting through the County Council.

Appellants argue facts outside the record when, in their Petition for Rehearing, they state that they had “served the subpoena on the newspaper reporter prior to trial” and “obtained from the master a short trial break for the express purpose of calling Jay Bender, the lawyer for the newspaper reporter who authored the article, to release the reporter from his trial subpoena.” (Appellants’ Petition for Rehearing, ¶ A, ¶ 1 - 2, p. 2; § B, ¶ 1, p. 3 - 4) (R. 74, line 20 - p. 75, line 6). Two different reporters (Lee Hendren and Gene Zaleski) authored the three articles in the record on appeal and nowhere does the record on appeal reflect which of the two reporters was under subpoena, much less that any reporter was under subpoena. Even if these allegations were in evidence, this event occurs at the beginning of the case, when the Master denied Respondent’s Motion in Limine. It was then that Appellants’ counsel misapprehended the Master’s ruling as a final ruling on the admissibility of the evidence which Respondent sought to exclude.

Appellants claim that the Court of Appeals misapprehended or overlooked “that the party opponent declarants quoted in the news articles either testified and/or were present throughout the trial and never disputed the accuracy of their quoted, out-of-court admissions.” There were three individuals quoted in the three newspaper articles which Appellants sought to introduce at trial: County Councilman Heywood Livingston, County Administrator William Clark, and County Attorney D’Anne Haydel. Appellants proffered three newspaper articles and they are part of the record on appeal. (R. p. 585, 623, 625).

Appellants called as a witness at trial County Administrator William Clark. (R. p. 214, line 17 - p. 262, line 18). Appellants’ counsel had full opportunity to examine Administrator Clark as to his statements reported in the newspaper articles. Appellants’ counsel did examine Administrator Clark about some of the statements reported in the newspaper articles. (R. p. 218, line 25 - p. 220, line 15; p. 221, line 3 - p. 225, line 9). As Appellants correctly note, “The County Administrator testified and discussed some of the contents of articles, never questioning the accuracy of the quotes attributed to him.” As the Master stated in the Final Order, “. . . [T]his court does not consider the content of the articles introduced at trial except as to those statements which a witness has confirmed making.”

Appellants also called as a witness at trial County Councilman Heywood Livingston. (R. p. 270, line 8 - p. 298, line 6). Appellants’ counsel had full opportunity to examine Councilman Livingston as to his statements reported in the newspaper articles. Appellants’ counsel did examine Councilman Livingston about some of the statements reported in the newspaper articles. (R. p. 277, line 9 - 12). Appellants did not call as a witness at trial

County Attorney D'Anne Haydel. Admittedly, none of the three individuals quoted in the news articles disputed the accuracy of their reported, quoted, out-of-court statements. What is significant is not that the three individuals did not dispute the accuracy of the reports, but that nothing in their reported, quoted, out-of-court statements is evidence of, much less relevant to, bad faith on the part of Respondent. Appellants' mere insistence that these reported statements evidence bad faith is not supported by either the totality of the articles themselves or the totality of the record of the trial.

Appellants argue the newspaper articles are not hearsay because they were not offered for their truth, but rather as proof that the County acted in bad faith and abused its discretion in deciding to condemn their property. Although Appellants have claimed the exclusion of the articles themselves, in their entirety, is prejudicial, the Appellants have not explained or shown exactly how the articles or the statements in the articles are relevant or material to their case or how the exclusion of the articles is prejudicial to their case. Moreover, the Appellants never sought to introduce only the quotes in the articles apart from the articles. Rather, Appellants sought to introduce the articles in their entirety without redacting those portions which constitute hearsay which are not party opponent declarants' statements.

The Court of Appeals correctly noted that the statements themselves were admissions by a party opponent; but also correctly noted that the newspaper articles constituted hearsay. Because these three newspaper articles do not fall within any hearsay exception, and because the articles themselves do not prove that the County acted in bad faith and abused its discretion in deciding to condemn their property, the Master was correct to exclude them. Appellants have not shown how the statements, although admissions, were admissions

against the County's interest, or how the statements proved the County acted in bad faith and abused its discretion in deciding to condemn their property. Because Appellants have asserted but not shown that exclusion of these articles was prejudicial to their case, the Appellants have failed to show prejudice from the Master's decision to exclude them.

Appellants' first example of "quoted statements" which were "probative of bad faith on the part of the County" (Appellants' Petition for Rehearing, ¶ C, p. 4) is characterized as "wrongful denials by the County Attorney of [sic] fact that the County had received certified notice from the Appellants of the lease cancellation". According to the County Administrator, the Poole letter (R. p. 572 - 573; Appellants' attorney's certified notice of the lease cancellation) was embarrassingly and mistakenly misplaced in the County Administrator's office. (R. p. 256, line 15 - p. 258, line 12). There is no evidence the County Attorney knew the letter had been received by the County when the County Attorney purportedly made the statement which the newspaper reported. Our courts have held that wrongful conduct cannot be predicated on mere negligence. USAA Property and Casualty Insurance Co. v. Rowland, 312 S.C. 536, 435 S.E.2d 879 (Ct.App.1993) (Citations omitted). Appellants' use of the word "wrongful" in this context, rather than "mistaken" or "incorrect", disingenuously implies the County Attorney knowingly made the statement with a bad faith motive. (Appellants' Petition for Rehearing, p. 4, ¶ C) The distinction is an important one in law: "Wrongful" means contrary to law or morality, characterized by unfairness or injustice or malice. Appellants use this word to intentionally impugn the integrity of the County Attorney and to advance the argument that she acted from improper motives –

although there is absolutely no evidence of this in the record.<sup>1</sup> These irrelevant and impertinent personal attacks on opposing counsel also appear in Appellants' final brief (Final Brief of Appellants, p. 22, "In reality, Mr. Still was a cooperative expert who was manipulated by the lawyers who retained him.")

Appellants' second example (Appellants' Petition for Rehearing, ¶ C, p. 4) is characterized as "misstatements by the County Attorney to the public on the law of condemnation." Appellants claim that the newspaper articles' summary reports of what the County Attorney said are misstatements, arguing that "It is simply not true, as a matter of law, that all that is required for condemnation of private property is that it be put to public use." That argument mischaracterizes the report of what the County Attorney said ("that all that is required"). In fact, each of the reported descriptions of what the County Attorney said, referenced by Appellants, is accurate as a matter of law:

- (a) Reporting, not a direct quote: "But Haydel said the law gives public bodies, such as council, the right to take private property as long as it is for a public use." (R. p. 626).
- (b) Reporting, not a direct quote: "Haydel said the boat landing serves the public purpose by providing public access to the river, which is a natural resource available to all." (R. p. 626).

Summary report (a) of what the County Attorney said is supported by the analysis supplied by the South Carolina Supreme Court in Georgia Dept. of Transp. v. Jasper County,

---

1

Counsel for Appellants made offensive personal attacks at oral argument when he offered his own opinion that counsel for the Respondent manipulated the Respondent's retained independent engineering consultant.

355 S.C. 631, 586 S.E.2d 853 (2003). In that case, the Supreme Court cited Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956):

The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies; and the due protection of the rights of private property will preclude the government from seizing it in the hands of the owner, and turning it over to another on vague grounds of public benefit to spring from a more profitable use to which the latter will devote it.

Edens, 228 S.C. at 573, 91 S.E.2d at 283. The involuntary taking of an individual's property by the government is not justified unless the property is taken for public use — a fixed, definite, and enforceable right of use, independent of the will of a private lessor of the condemned property. Karesh v. City Council of City of Charleston, 271 S.C. 339, 344, 247 S.E.2d 342, 345 (1978). Summary report (b) of what the County Attorney said is predicated on the South Carolina Constitution: “[A]ll navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, . . . .” S.C. Const. art. XIV [Eminent Domain], § 1 and § 4.

Appellants’ examples, mere summary reports of what the County Attorney said — editorially omitting content and context — are sterling examples of the dangers inherent in admitting newspaper articles for the truth of the matters asserted. Even assuming that the County Attorney is accurately reported — not directly quoted — in the newspaper as making these statements, Appellants have not demonstrated how these statements are probative of the County’s bad faith in the condemnation of Appellants’ property.

Similarly, assuming that the County Attorney is accurately reported — again, not directly quoted — in the newspaper (R. p. 626) as making these statements denying that the County ever received notice of Appellants’ closure of the boat landing, and even assuming

that the County Attorney did so knowingly, Appellants have not demonstrated how that is probative of the County's bad faith in condemning the boat landing. Even if Appellants are correct that these reports are accurate and the reported conduct shows bad faith, which Respondent denies, it merely shows bad faith in the County's communications to the newspaper and the general public and not bad faith in the condemnation of Appellants' property.

Appellants' third example (Appellants' Petition for Rehearing, ¶ C, p. 4) is the same as Appellants' second example, but here Appellants make the bare accusation that the statements by the County Attorney were "intended to publicly denigrate the Williamsons' legal position and pressure them in the public forum into waiving their property rights." This accusation, based solely on the newspaper articles' summary reports of what the County Attorney said, is inappropriate, unsupported, impertinent and should be disregarded by this court. Even assuming that the County Attorney is accurately reported in the newspaper article as essentially making these statements, Appellants have not demonstrated how these statements are probative of the County's bad faith in condemning the boat landing. Even if Appellants are correct that these reports are accurate and the reported conduct shows ill will and bad faith, which Respondent unequivocally denies, it merely shows bad faith in the County Attorney's communications to the newspaper and the general public and not bad faith in the condemnation of Appellants' property.

Appellants' fourth example (Appellants' Petition for Rehearing, ¶ C, p. 4), which does not cite to any newspaper article at all, relates to a County Council vote in November of 2006. Respondent does not deny that, in September 2006, County Council, by unanimous

resolution, authorized its County Administrator and County Attorney, to “do whatever is necessary to keep the landing open.” (R. p. 116, line 13 - p. 117, line 24) and that, in November 2006, County Council, by unanimous resolution, further authorized its personnel, “to proceed with legal activity to reopen Ness Landing to the public.” (R. p. 118, line 15 - p. 119, line 22). The record is clear and uncontradicted that the County Administrator, with this authorization, pursued several alternatives simultaneously to make a landing on the South Fork of the Edisto available to the public, including 1) obtaining a consensual extension of the lease agreement with Appellants; 2) purchasing Appellants’ property; 3) acquiring an alternate site; and, 4) condemnation of a site. (R. p. 228, line 2 - 229, line 14). It was not until the County Council accepted an engineering study of the preferred location – Appellants’ property – for a landing on the South Fork of the Edisto River that the County proceeded with condemnation.

A review – whether in context in the articles or out of context below for purposes of illustration – of the direct and indirect quotes attributed to the County’s representatives evidences no bad faith or abuse of discretion by County in ultimately condemning Appellant’s property in September 2007, many months after the newspaper reports (The quotation marks are those supplied by the Times & Democrat):

**From Lee Hendren, County Seeking Way to Reopen Boat Landing, Times & Democrat, September 14, 2006, at 1A, 5A. (R. p. 623 - p. 624):**

“Property was provided for public boat landing purposes through an easement that was granted,” Orangeburg County Administrator Bill Clark said. (R. p. 623).

“If the property changed hands, there were provisions that allowed the new owners to terminate those easements at their discretion,” Clark said. (R. p. 623) “And that’s the situation we find ourselves in.” (R. p. 624).

“We had 15 to 20 individuals at that meeting who came to express their concern to have the landing remain open” to the public, Clark said. [in reference to a meeting a County Council meeting in late June, 2006] (R. p. 624).

Clark said he has talked with Williamson twice. “The first time was to get his concerns about the landing,” he said. “The second time was when I came back to him to address what I believe the county could do to address the concerns he gave me previously.” “I laid out a proposal for him. He didn’t commit one way or the other, but seemed interested in wanting to receive it in writing,” Clark said. One concern was liability. “I proposed an agreement that would indemnify him from liability,” Clark said. Another was litter. “We have a supervised crew that does cleanup activity,” Clark said. “I proposed that we place that location (on a list) as part of their rotation.” (R. p. 624).

“I am summarizing our last conversation into a letter. He will receive it next week. It will give him some official communication to respond to,” Clark said. “I want to remain optimistic about the dialogue at this point. We’ve given him some ideas to think about. He needs adequate time to review the proposal in writing,” Clark said. (R. p. 624).

**From Lee Hendren, Public vs. Private Rights: Landowner says he’s protecting his family; county trying to restore public access to river, Times & Democrat, December 12, 2006, at 1A, 6A. (R. p. 585 - p. 586):**

Reported, not a direct quote:

Orangeburg County is continuing its efforts to restore public access to the Ness Boat Landing on the Edisto River, County Attorney D’Anne Haydel says. (R. p. 585).

Reported, not a direct quote:

Since lease negotiations with the property owner broke down, the county is preparing to exercise its power of eminent domain, also known as condemnation, to acquire the property, she says. (R. p. 585).

Reported, not a direct quote:

Haydel said the document is by far the most formal and detailed of the county’s agreements for public use of privately owned property, such as boat landings. [in reference to an earlier lease between Georgia-Pacific Corp. and Orangeburg County Commission] (R. p. 586).

Reported, not a direct quote:

Their calls to the county to express their concerns are what alerted county officials to the situation, Haydel said. (R. p. 586).

The boat landing users have a valid complaint, she [Haydel] said, because, "from a legal standpoint, we still have a lease . . . We've never received written notice from anyone" that the property owner wanted to cancel the lease. (R. p. 586)

Reported, not a direct quote:

Haydel was surprised to learn that a revised contract existed. She said she would like to see a copy of it. (R. p. 586).

Reported, not a direct quote:

Haydel said the law gives public bodies, such as council, the right to take private property as long as it is for public use. (R. p. 586).

Reported, not a direct quote:

Haydel said the boat landing serves the public purpose to providing public access to the river, which is a natural resource available to all. (R. p. 586).

Reported, not a direct quote of the County Attorney:

Two of Williamson's requests were for a new access route to the boat landing and for more litter pickup and prevention efforts by county employees. Haydel said that could have been worked out rather easily. However, Haydel said the county could not accommodate two other requests. (R. p. 586).

One was the indemnification, and at one point in the negotiations, County Administrator Bill Clark said, "I proposed an agreement that would indemnify him from liability." (R. p. 586).

However, Haydel said new accounting rules won't allow the county to do that to an unlimited degree. The county can only purchase insurance with a stated maximum dollar amount. (R. p. 586).

The other request was for an increased presence of law enforcement personnel, but Haydel said, "We can't direct the Sheriff to give anybody special treatment." (R. p. 586).

At one point, Councilman Heyward Livingston, whose district includes that area of the county, said he thought the county should "go down and knock the gate down." (R. p. 586).

Reported, not a direct quote:

Haydel said the law is specific: it not only lays out the condemnation process, but actually spells out, word for word, the texts of the letters the county must send to the property owner. (R. p. 586).

**From Gene Zaleski, *Troubled landing on peaceful waters: County ready to use condemnation to restore access to Edisto site*, Times & Democrat, March 24, 2007, at 1A, 5A. (R. p. 625 - p. 626):**

Reported, not a direct quote:

The county sent out a letter March 16 to Williamson asking permission for an appraiser with expertise in eminent domain to visit the property next week, Orangeburg County attorney D'Anne Haydel said. (R. p. 625).

"We do not have a voluntary agreement with Mr. Williamson to sell or lease it," Haydel said. "This has not occurred. There has been a lot of discussion on how to do this on a voluntary basis . . . but this did not come to fruition." (R. p. 625).

All these issues, Haydel is convinced, are "100 percent in our (the county's) favor." (R. p. 625).

"The most important factor is public access," Haydel said, explaining that the newly completed study, commissioned by Orangeburg County Council, reveals and confirms the Ness landing is the best site for river access. (R. p. 625).

Reported, not a direct quote:

The condemnation process is both expensive and time-consuming. How long or how expensive can vary, says Haydel, adding that a voluntary surrender would obviously be much less expensive than the condemnation process. (R. p. 625).

Reported, not a direct quote:

But Haydel said the law gives public bodies, such as council, the right to take private property as long as it is for public use. (R. p. 626).

Reported, not a direct quote:

Haydel said the boat landing serves the public purpose by providing public access to the river, which is a natural resource available to all. (R. p. 626).

Reported, not a direct quote:

Haydel said the county has not received any notice to cancel this lease. (R. p. 626).

"I have not seen that document," she said. "There have been many sit-down meeting between the county and Mr. Williamson." [in reference to the lease cancellation letter (R. p. 572)] (R. p. 626).

No claim, emphasis, exaggeration or mischaracterization of any of these quotes can distort them into evidence of bad faith on the part of Orangeburg County. Appellants have

not shown through these quotes or otherwise that Orangeburg County or Orangeburg County Council, as a body, acted in bad faith to condemn Appellants' property for the boat landing.

**II. The Court of Appeals did not misapprehend or overlook Appellants' failure to prove that Respondent's project lacked the necessity required of an action in eminent domain.**

Appellants claim the Court of Appeals misapprehended or overlooked Appellants' alleged evidence of lack of necessity in Respondent's action in eminent domain. Appellants claim there is "overwhelming proof that the County never considered the necessity for the taking before making the decision to condemn" and that the "evidence simply cannot support a finding that the County ever assessed need, let alone that it did so prior to its condemnation decision." (Appellants' Petition for Rehearing, § II, p. 5 - 6) Appellants simply ignore the record, the sequence of events established by the record and the import of that sequence. The County considered a number of alternatives to condemnation and did not condemn Appellants' property until it had thoroughly studied the matter with the benefit of an engineering study which identified Appellants' property as the preferred alternative site for the J. B. Ness boat landing. The sequence of the events is set forth in outline fashion below:

March 15, 2005	Landowners purchased the property. (R. p. 78, line 2 - line 8).
March 1, 2006	Landowners cancelled the lease by having their attorney send a rescission letter (R. p. 572) to County. (R. p. 92, line 23 - line 25).
June 26, 2006	Landowners installed a gate and closed the boat landing without interference by the County. (R. p. 94, line 22 - p. 95, line 13).

July 2006 County Councilman Heyward Livingston met with John Williamson. (R. p. 95, line 7 - line 15).

August 2006 About six weeks after Mr. Livingston's first meeting, John Williamson met with County Administrator Clark and Deputy Administrator Whalen. (R. p. 102, line 11 - p. 103, line 11).

Summer 2006 Deputy Administrator Whalen met with Mr. Williamson several times and testified that all meetings were "very cordial." (R. p. 349, line 12 - p. 351, line 13; p. 354, lines 7 - 10). The talks were proceeding in a positive manner. (R. p. 351, line 1 - 13). There were no threats of condemnation. (R. p. 350, line 12 - 20; p. 259, line 22 - p. 260, line 13, p. 354, line 14 - line 22).

County Administrator Clark and Deputy Administrator Whalen investigated alternative locations for a boat ramp. (R. p. 356, line 5 - p. 357, line 24).

September 5, 2006 County Council, by unanimous resolution, authorized its County Administrator and County Attorney, to "do whatever is necessary to keep the landing open." (R. p. 116, line 13 - p. 117, line 24).

October 13, 2006 County Administrator Clark wrote Landowners stating that the County was prepared to address his concerns. (R. p. 112, line 22 - p. 115, line 12).

November 21, 2006 County, by unanimous resolution, further authorized its personnel, "to proceed with legal activity to reopen Ness Landing to the public." (R. p. 118, line 15 - p. 119, line 22).

November 2006 According to County Administrator Clark, as the negotiations and discussions with the Landowners continued, the County pursued several tracks simultaneously to make a landing on the South Fork of the Edisto available to the public. The various tracks, or alternatives, included 1) obtaining a consensual extension of the lease agreement; 2) purchasing the property; 3) acquiring an alternate site; and, 4) condemnation of a site: "My directive was to pursue all of these tracks, and that is why we engaged the boat landing commission to begin to explore alternate sites." "We made multiple different approaches to looking to open back up a site of public access." (R. p. 228, line 2 - 229, line 14).

January 5, 2007

County engaged Engineer Still to provide engineering consulting services to study potential alternative sites for a landing along the South Edisto. (R. p.410, line 23 - p. 411, line 18).

January 27, 2007

County Council voted in its publicly-noticed open-session planning meeting at its 2007 Retreat to make additional boat landings on the South Fork of the Edisto River, on the North Fork of the Edisto River, and on Lake Marion priorities ("community resource goals"). (R. p. 543, line 18 - p. 545, line 16).

January 29, 2007

Engineer Still introduced "the elephant in the room" and explained to the Boat Landing Assessment Committee that the process "will have no preconceived ideas." (R p. 422, line 9 - p. 424, line 22). Engineer Still addresses purpose and need. (R. p. 426, line 11 - p. 432, line 21). The Boat Landing Assessment Committee mailed out an assessment of need survey, the result of which indicated "... that yes; a majority of the people say it's needed." (R. p. 471, line 2 - line 5).

The Boat Landing Assessment Committee mailed out an assessment of need survey which announced a public hearing to be held on February 15, 2007. (R. p. 432, line 22 - p. 434, line 13). There were mail-outs and posters in the newspaper regarding the public meeting. (R. p. 394, line 1 - 5).

February 15, 2007

According to Deputy Administrator Whalen, there were 40 to 50 people who attended the public hearing. (R. p. 364, line 14 - p. 365, line 15). Deputy Administrator Young testified there were "up towards to 50" people who attended the public hearing. (R. p. 405, line 1 - line 6). According to Deputy Administrator Young, at the public meeting, the Boat Landing Assessment Committee had perhaps four or five sites mapped but also had the entire county map for the South Fork of the Edisto, and during the meeting the Committee members were asking people if they knew of any other locations along the river. (R. p. 399, line 7 - 23).

February 22, 2007

Engineer Still reported that the Boat Landing Assessment Committee reduced the number of potential sites from six to four which reduced the contract payment to his company, RPM Engineers. (R. 601).

February 28, 2007	Engineer Still reported that he had received the public comments and surveys. (R. 602 - 603).
March 7, 2007	Engineer Still reported that he had conducted site visits. (R. 602).
April 20, 2007	Engineer Still reported that the Boat Landing Assessment Committee presented its report to the County Council. (R. p. 504, line 19 - p. 505, line 2). According to County Administrator Clark, the final report was presented, voted on and accepted by County Council. (R. p. 547, line 17 - p. 548, line 15).
September 2007	The County provided Landowners with the unfiled Condemnation Notice.

Orangeburg County may "exercise powers of eminent domain for, among other public uses, "transportation and recreation." S.C. Code Ann. § 4-9-30 (Supp. 2008). Under S.C. Code Ann. § 4-9-25 (Supp. 2008), Orangeburg County is permitted to exercise those powers 'respecting any subject as appears to them necessary and proper for the . . . general welfare' and these powers must be liberally construed." Hospitality Ass'n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995) (emphasis supplied). ("The powers of a county must be liberally construed in favor of the county . . . ." S.C. Code Ann. § 4-9-25 (Supp. 2008)). The question of the public necessity of constructing a project as a whole is a legislative or political one. Bookhart v. Central Electrical Power Co-op, Inc., 222 S.C. 289, 72 S.E.2d 576 (1952).

The Court of Appeals specifically addressed the issue of necessity:

"[T]he decision of the question of necessity lies with the one to whom the state has delegated the authority to take property for a public use and is not subject to review by the court in the absence of fraud, bad faith, or abuse of discretion." Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 158-59, 121 S.E.2d 743, 747 (1961). Accordingly, judicial review of a legislative condemnation decision such as the one in this case is deferential.

(Unpublished Opinion No. 2011-UP-052, p. 3, § II)

Appellants have not shown that the legislative process – deliberations or decision-making – was arbitrary, incorrect, incomplete or unreasonable. County Administrator Clark testified that, in early 2007, Orangeburg County Council had held a retreat, a public meeting of council for planning purposes, and discussed and considered recreational priorities and the need for boat landings on three bodies of water: North Fork [of the Edisto River], South Fork [of the Edisto River], and Lake Marion. (R. p. 543, line 18 - p. 545, line 16). County Administrator Clark testified that, the report of the Boat Landing Assessment Committee was placed on the agenda for County Council, presented to County Council, and that County Council voted on the report at a public meeting. (R. p. 547, line 17 - p. 548, line 23).

Mr. Still testified without objection as an “expert in civil engineering, transportation engineering, site selection, site design and environmental considerations concerned with all of the above” (R. p. 420, line 1 - 10) that, the Boat Landing Assessment Committee studied the geographic area of Orangeburg County through which the South Fork of the Edisto River passes. (R. p. 427, line 18 - p. 428, line 7). He testified that the Committee mailed out questionnaires to the public for return (R. p. 432, line 22 - p. 437, line 15; p. 448, line 2 - p. 454, line 18) and held a public hearing to gather public input on various potential boat landing sites under consideration, purpose and need. (R. p. 437, line 18 - line 25; p. 439, line 18). Mr. Still testified extensively about the many aspects of the study which the Boat Landing Assessment Committee addressed. Mr. Still testified that the responses from the public at the public hearing and the responses of the public through the mailed questionnaires confirmed that there was a need for an additional landing on the South Fork of the Edisto

River. (R. p. 451, line 11 - p. 452, line 20; p. 470, line 15 - p. 471, line 5). Mr. Still testified, "We went and did the survey, an assessment of need survey, and it came back that yes; a majority of the people say it's needed." (R. p. 471, line 2 - line 5).

Of significance is that no expert witness testified for Appellants that an additional boat landing on the South Fork of the Edisto River would be redundant or unnecessary, or that Mr. Still's work, or the report of the Boat Landing Assessment Committee was deficient or insufficient. The Court of Appeals correctly noted that Respondent "conducted a survey to assess need and location preference and chose a boat landing which already existed, had been regularly utilized by its citizens for thirty years, could be put to use immediately, and presented minimal costs." (Unpublished Opinion No. 2011-UP-052, p. 3, § II).

### CONCLUSION

This case involves legislative or political action of the Respondent which was reasonably necessary to guarantee access to the South Fork of the Edisto River for public use. The Court of Appeals did not misapprehend or overlook that Appellants failed to prove their case was prejudiced by the Master's evidentiary rulings. Appellants sought to introduce newspaper articles at trial. These articles are hearsay and, because they do not fall within any hearsay exception, the master was correct to exclude them. Significantly, Appellants cannot show and have not shown any prejudice from the exclusion of the articles which, if admitted, are not probative of bad faith on the part of the Respondent.

The Court of Appeals did not misapprehend or overlook that Appellants failed to carry their burden and prove that Respondent's action in eminent domain was unnecessary.

Appellants claim the “evidence simply cannot support a finding that the County ever assessed need, let alone that it did so prior to its condemnation decision.” A careful review of the record on appeal flatly contradicts this claim. The Court correctly found that the County had established necessity to the satisfaction of the applicable standard. The rule in this State is that the decision of the question of necessity lies with the one to whom the State has delegated the authority to take property for a public use, subject to judicial review.

RESPECTFULLY SUBMITTED,



---

Paul D. de Holczer, Esquire  
Clifford O. Koon, Jr., Esquire  
Moses Koon & Brackett, PC  
1333 Main Street, Suite 650  
Post Office Box 100261  
Columbia, South Carolina 29202-3261  
(803) 461-2300 / (803) 461-2309 Fax  
Attorneys for Respondent

March 4, 2011

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM ORANGEBURG COUNTY  
MASTER-IN-EQUITY

O. Davie Burgdorf, Master-in-Equity

---

Case No.: 2007-CP-38-1424

---

John W. Williams, III and Kathryn J. Williamson ..... Appellants,

v.

The County of Orangeburg ..... Respondent.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that Respondent's Return to Appellants' Petition for Rehearing complies with Rule 211 (b), SCACR and is in compliance with the Supreme Court's Order dated August 13, 2007.



---

Paul D. de Holczer, Esquire  
Clifford O. Koon, Jr., Esquire  
Moses Koon & Brackett, PC  
1333 Main Street, Suite 650  
Post Office Box 100261  
Columbia, South Carolina 29202-3261  
(803) 461-2300 / (803) 461-2309 Fax  
Attorneys for Respondent

March 4, 2011

COPY

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM ORANGEBURG COUNTY  
Master-in-Equity

O. Davie Burgdorf, Master-in-Equity

---

Case No. 2007-CP-38-1424

---

John W. Williamson, III and Kathryn J. Williamson ..... Appellants,

v.

The County of Orangeburg ..... Respondent.

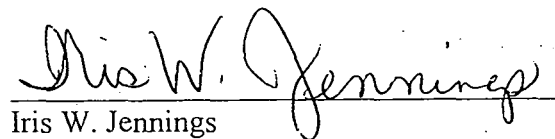
---

**PROOF OF SERVICE**

---

I, Iris W. Jennings, do hereby certify that I have this date, March 7, 2011, served a copy of **Respondent's Return to Appellant's Petition for Rehearing** in the above-captioned appeal on the following individuals by United States Mail, with sufficient first class postage affixed, addressed as follows:

Wm. Howell Morrison, Esquire  
Phyllis W. Ewing, Esquire  
Moore & Van Allen, PLLC  
40 Calhoun Street, Suite 300  
Charleston, SC 29401-3535

  
Iris W. Jennings

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Master-in-Equity

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-1424

**RECEIVED**  
MAR 16 2011  
SC Court of Appeals

John W. Williamson, III and Kathryn J. Williamson, ..... Appellants

v.

The County of Orangeburg, ..... Respondent

APPELLANTS' REPLY ON PETITION FOR REHEARING

Wm. Howell Morrison  
Moore & Van Allen PLLC  
40 Calhoun Street, Suite 300  
P.O. Box 22828  
Charleston, South Carolina 29413-2828  
(843) 579-7000  
Attorneys for Appellants

March 14, 2011

Other Counsel of Record:

Paul D. deHolczer  
Moses, Koon & Brackett, PC  
P.O. Box 100261  
Columbia, South Carolina 29202  
(843) 461-2317  
Attorneys for Respondent Orangeburg County

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Introduction ..... 1

    I. Legislative Condemnation Decision ..... 1

    II. Evidence Issue ..... 6

---

Conclusion ..... 9

**TABLE OF AUTHORITIES**

**Cases**

Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d 306 (1970) ..... 1

---

Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008)..... 2

I'On, LLC v. Town of Mt. Pleasant, 338 SC 406, 526 SE2d 716 (2000) ..... 7

Southern Dev. Land and Golf Co., Ltd. V. S.C. Pub. Serv. Comm'n,  
305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), *aff'd as modified*  
311 S.C. 29 (1993) ..... 1

Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)..... 7

## INTRODUCTION

Respondent, County of Orangeburg, continues to avoid the two core issues. First, upon due consideration of the objections and arguments made during trial, the Master admitted the newspaper articles into evidence. Appellants relied on that ruling. After the trial was over and the record closed, the Master reversed his evidence ruling without explanation, without benefit of notice, motion, argument or any opportunity for Appellants to be heard on the issue. Such procedure is unsupportable as a matter of law.

Second, the undisputed facts are susceptible of only a single inference as to when the "legislative condemnation decision" was made.<sup>1</sup> At the time that decision was made by way of council's legislative resolutions and unanimous votes in September and November 2006, there had been *absolutely no consideration* of the necessity for the condemnation. Such a condemnation does not meet the minimum requirements for a lawful taking under existing South Carolina law as set forth in Southern Dev. Land and Golf Co., Ltd. v. S.C. Pub. Serv. Auth., 305 S.C. 507, 509, 409 S.E.2d 428 (Ct. App. 1993), aff'd in part, rev'd in part 311 S.C. 29 (1993) and Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d 306 (1970).

### I. "LEGISLATIVE CONDEMNATION DECISION"

Addressing the core issues in reverse order, Appellants call attention to facts that are not in dispute. The "legislative condemnation decision" by the County, pursuant to unanimous resolution, authorized County personnel "to proceed with legal activity to reopen Ness Landing to the public" on November 21, 2006. This unanimous vote was consistent with a prior unanimous resolution, on September 5, 2006, authorizing the

---

<sup>1</sup> This is the term utilized by the Court of Appeals in its Unpublished Opinion No. 2011-UP-052, at p.3, § II (2/11/11).

County Administrator and County Attorney to "do whatever is necessary to keep the landing open." As it must, the County acknowledges these votes, but disputes that they constitute the "legislative condemnation decision".

The Opinion of the Court of Appeals makes clear that the legislative condemnation decision is subject to deferential judicial review on appeal. However, the standard of review of the Master's equitable decision is not deferential, inasmuch as the appellate court reviews the evidence and determines the facts according to its own view of the preponderance of the evidence. See Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008).

The County's position in this action is that the legislative condemnation decision did not occur until the statutory condemnation process was formally commenced in 2007. This is inconsistent with the clear dates of the legislative condemnation decision and irreconcilable with the testimony of County Administrator, William Clark, that he was duty-bound to implement the legislative decision after the September and November 2006 resolutions passed County Council:

Q. "Those votes happened and you explicitly were charged with effecting the will of council on that."

A. "Yes, sir, but I'm also charged with executing the economic development priority too . . . ." (R.557, ll. 16-20)

In furtherance of his duty to execute the unequivocal legislative decision, the County Administrator sent his letter of December 20, 2006 to the fourteen (14) state and federal agencies regarding "J.B. Ness Landing Project" "involv[ing] the County condemning a fee simple interest . . ." in Ness Landing. (R. 591: Plf.'s Exh. 10) At the time of this broadly published declaration to all potentially interested governmental

agencies, the County had retained outside condemnation counsel. (R.559, ll. 18-20) But, the County makes no credible claim to have considered the requirement of necessity in any respect by that point in time. Council had no information from any consultant, engineer, expert or other source based on a study of what to do about the landing issue or whether adequate and convenient access already existed. (R. 248, ll. 14-23; p, 282, l. 12-16) Soon thereafter, in January 2007, the newly-retained outside counsel ordered the "discrete" title search of one property--Ness Landing, thereby revealing his appreciation of precisely which property his client was in the process of condemning. (R. 559, ll. 21-25)

What transpired beginning in 2007, under the close supervision of the County Attorney, was an effort to put a rational and deliberative face on a plainly defective condemnation. Here again, County Council had previously voted to take Ness Landing in prior months. The evidence is overwhelming that Ness Landing was to be condemned and that *all involved*--County Counsel, County Administrator, County Attorney, outside counsel, outside engineering expert, members of the BLAC committee and the newspaper--knew it. Indeed, the outside engineer, Berry Still, admitted that the County did not retain him to evaluate the necessity of another landing on the Orangeburg side of the South Fork Edisto:

Q. But let me make sure you and I are clear on this record here. You didn't undertake to study the necessity of condemning or taking another landing on the South Fork Edisto in Orangeburg County. You were hired to find the best site for such a landing.

A. Correct. . . . (R.468; ll. 11-17)

. . . .

Q. . . . but I do want to make sure we're clear on this.

You were told and it was a given before you started, that Orangeburg County had previously determined there was a need on the South Fork Edisto and they were going to acquire a new landing on the South Fork Edisto in their county.

Now you knew that from the beginning.

A. Yes, sir, I did. (R. 471; ll. 8-16)

The obvious defects in the BLAC process were documented in the Final Brief of Appellants beginning at p. 20. But even giving credence, for the sake of argument, to the County's claims that a reasonably objective process of evaluating "need" was undertaken beginning in January 2007, which Appellants deny, the record remains clear that the County's evaluation *disregarded the presence* of Claude's Landing on the Bamberg County side of the river. The survey drawn up by the County Attorney did not even inquire about access to Bamberg County's landings:

Q. Well, if it is something that under some circumstances needs to be considered, Mr. Still, wouldn't it have been the sensible and fair thing to do to put in the survey this question: If you boat on the South Fork Edisto, do you ever use Bamberg County landings across from Orangeburg County?

Wouldn't that be an obvious, easy inquiry to get important information for this survey?

A. I think that could have been a question on the survey. . . . (R. 485; 17-25)

Moreover, the unequivocal testimony of Councilman Heyward Livingston was that he would have voted to condemn Ness Landing even had Claude's Landing been located directly across the South Fork Edisto from Ness Landing. (R. 289, ll. 17-21) This testimony from the prime mover on council for the Ness taking proves that, even had proper evaluation occurred, it would have made no difference. Thus, at best for the County, any consideration of "need" was made in a vacuum, ignoring the public's ease of access to Bamberg's existing public landings. Indeed, the key issue of whether

Orangeburg County's residents already had ample access to the South Fork Edisto was assiduously avoided by the County and its all of its processes.

The testimony of Councilman Livingston raises the issue of first impression in this State, as explained in Appellants Final Reply Brief,<sup>2</sup> and not addressed in the Court of Appeals' Opinion: Could the necessity requirement for a landing on the Orangeburg side of the river be objectively satisfied when the County ignores a convenient public landing situated a short distance away on the Bamberg County side of the river? In other words, can Orangeburg County's stated "need" for its citizens not to be inconvenienced with a three-minute drive to an existing public landing in Bamberg County objectively satisfy the prerequisites to the condemnation of private property? Appellants submit that the answer is decidedly "no". This condemnation creates redundant public services provided by contiguous counties. River access is close and convenient three minutes away. But Orangeburg County declares its "need" for another landing remains unsatisfied because the Bamberg landing does not have Orangeburg County's name on it. This is the core problem avoided in the Opinion and by the County in its case. The best that Orangeburg does to address this question is refer to the testimony of its canoeing witness who provided the common sense testimony that it is more convenient to paddlers to have more landings on a river than fewer landings. Carried to its logical conclusion, this truism would require counties to condemn landings every half mile or so along the length of every river in the state for some marginal added convenience of paddlers. Such testimony is irrelevant to the real question of whether it is *objectively necessary* for the

---

<sup>2</sup> At pages 1 - 7.

County to take Ness Landing from private owners so that Orangeburg County can have a public landing to compete with a public landing just upstream in Bamberg County.

The Court of Appeals should confront the timing of the "legislative condemnation decision" and the transparent inadequacy of the study performed-- after the fact of the condemnation decision--but with a pre-ordained result and with a complete avoidance of the central question: whether reasonable access already existed regardless of which county it is in. Will the power of condemnation be available to Orangeburg County to declare that it needs its own public landings simply to keep pace with Bamberg County's public landings? For that is the purported "necessity" that the judiciary is condoning in this case.

## II. EVIDENCE ISSUE

The County's brief raises several arguments relating to the newspaper articles, all of which avoid the obvious central point. The Master reversed his evidence ruling after trial, without acknowledging that he was taking a 180-degree turn from the admission of the articles at trial, and without affording Appellants any opportunity to the to cure the objections. Respondent's Brief makes various the arguments, some never made before, others obviously weak, and at least one patently wrong. First, there was nothing "preliminary" about the Master's decision admitting the newspaper articles. The record of the arguments and multiple objections clearly leads to the opposite conclusion.

As for the argument that, after the articles were admitted, the Appellants should have examined the County's live witnesses to confirm the accuracy of their quotes, the question is "why". The testimony was in evidence. As was pointed out in Appellants' Petition for Rehearing, the appearance of the declarants on the witness stand did afford

the County a free chance to have the witnesses dispute the quotes attributed to them. None did.

As for the suggestion that Appellants were obliged to move the Master to alter or amend his ruling that reversed his own evidence ruling under SCRCP 59(e), this argument was waived by Respondent in its Final Brief, and for good reason. There was no reason to believe the Master overlooked the issue. As the parties' appeal briefs make clear, this issue was hotly contested at trial and explicitly ruled upon. There is no suggestion in the record that the Master inadvertently reversed himself in excluding the news articles. As Respondent's Final Brief implicitly acknowledged, Rule 59(e) is not applicable. *See generally* I'On, LLC v. Town of Mt. Pleasant, 338 SC 406, 526 SE2d 716 (2000); Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

The argument that Appellants were not prejudiced by the Master's post-trial exclusion of the evidence and that Appellants failed to demonstrate the relevance of the evidence are two sides of the same argument. In denying that anything in statements quoted in the newspaper was probative of bad faith, the County presumes that the newspaper articles constituted the sum total of the Appellants proof of bad faith. This is incorrect in that the *primary allegation* of gross abuse of discretion from the landowners derives from the process by which the legislative condemnation decision was reached in the fall of 2006 in a state of ill-conceived anger over the landowners' lawful erection of a gate on their own property. That anger resulted directly from the negligence and willfulness of county officials.

First, the County admitted, for the first time, at trial that the Administrator, Mr. Clark, had mistakenly mislaid the certified letter from Terry Poole, Esq. informing the

County of the Williamsons' termination of the lease pursuant to its terms. The impact of this mistake, when it occurred in the summer of 2006, was that neither the County Attorney nor Council was made unaware of the lawful lease cancellation. Second, the County Attorney neglected to check public records where she would have readily found documentation of the landowners' right to cancel the lease. The effect of these mistakes can hardly be overstated: County Council was *wrongly led to believe* that the erection of the gate by the landowners was extra-legal and highhanded. Councilman Heyward's (understandable) reaction was to publicly declare a desire to "go down and knock the gate down". The two votes to condemn Ness Landing were taken in September and November before any rational analysis required by law was performed. Once these votes were taken in mistaken anger, as a direct result of the errors cited above, the condemnation train had left the station and achieved considerable momentum. It became too difficult for the responsible county employees not to implement the wishes of Council--whose misunderstandings were partly their fault--to regain control of Ness Landing.

In the Times & Democrat article of December 12, 2006,<sup>3</sup> the County Attorney revealed the effect of both Mr Clark's misplacement of the lease cancellation letter and of her failure to check the public records:

"The boat landing users have a valid complaint, she said, because, 'from a legal standpoint, we still have a lease.... We've never received written notice from anyone' that the property owner wanted to cancel the lease."

"Haydel was surprised to learn that a revised contract existed. She said she would like to see a copy of it.

---

<sup>3</sup> Final Brief of Appellants, p. 31.

And so we see the genesis of the overreaction by Councilman Heyward Livingston, and the votes to condemn taken in September and November, 2006. Due to the County's own mistakes, the "legislative condemnation decision" was conceived in a flurry of anger and hurt feelings. This is the essence of the abuse of discretion of which the landowners complain. And all of it was exacerbated by the public campaign waged in the press by the County Attorney against the landowners and documented in Appellants' Final Brief and Final Reply Brief.

### CONCLUSION

The date of the legislative condemnation decision is indisputable, as is the fact that no rational consideration of the necessity of the taking had been made at that point in time. The Master committed clear error in reversing his trial ruling admitting relevant evidence of the County's ineptitude and its public campaign against the landowners amounting to gross abuse of discretion. Finally, the process conducted by the County in 2007, after the fact of the legislative decision, was fundamentally flawed for its failure to consider Bamberg County's landings in its analysis. This ill-conceived taking by condemnation was borne of bureaucratic ineptitude. The County's attempt to justify it after-the-fact cannot correct the mistakes previously made because the County, in truth, does not need this redundant public landing.

Respectfully submitted,



Wm. Howell Morrison  
Moore & Van Allen PLLC  
40 Calhoun Street, Suite 300  
Charleston, South Carolina 29401  
(843) 579-7000

Attorneys for Appellants

---

March 14, 2011

# The South Carolina Court of Appeals

John Williamson, III and Kathryn J.  
Williamson,

Appellants,

v.

The County of Orangeburg,

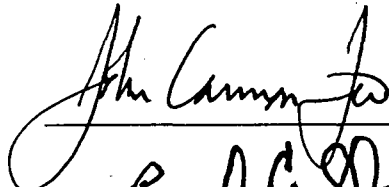
Respondent.

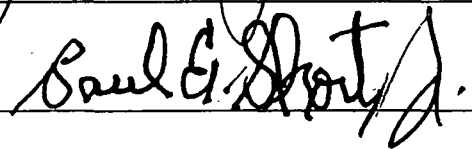
The Honorable Olin D. Burgdorf  
Orangeburg County  
Trial Court Case No. 2007-CP-38-01424

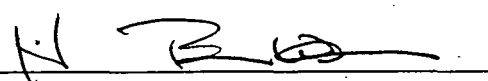
## ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

  
\_\_\_\_\_  
C. J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

cc: Wm. Howell Morrison, Esquire  
Phyllis W. Ewing, Esquire  
D'Anne Haydel, Esquire  
Paul D. deHolczer, Esquire

**FILED**

March 24, 2011