THE STATE OF SOUTH CAROLINA
In The Court of Appeals



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APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

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Case No. 2013-CP-10-4511

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County of Charleston, . . . . . Respondent,

v.

Walter G. McAdory, Landowner, and
Branch Bank and Trust Company, and
South Carolina Electric & Gas Company, Other Condemnees,

Of Whom

Walter G. McAdory is . . . . . Appellant.

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# FINAL BRIEF OF RESPONDENT COUNTY OF CHARLESTON

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Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Respondent

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(843) 958-4010

Attorneys for Respondent

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II. WHETHER THE TRIAL COURT ERRED WHEN IT LIMITED THE JURY'S INSPECTION OF THE PROPERTY TO ITS EXTERIOR AND THE OPEN ACCESS WAYS OF THE BUILDING.

## STATEMENT OF THE CASE

On July 11, 2012, Respondent County of Charleston (the "Condemnor") filed a condemnation action in the Charleston County Court of Common Pleas naming the Landowner Walter G. McAdory ("Landowner" or "McAdory") and Other Condemnees Branch Banking and Trust Company and the South Carolina Electric & Gas Company.

McAdory owns property located at 873 Folly Road, James Island, Charleston County, South Carolina, and identified as tax map parcel number 425-02-00-191. At the time of filing its action, the County deposited $51,670 into the Clerk of Court's Office as just compensation for the property. The Condemnor and Landowner entered into a consent order dismissing South Carolina Electric & Gas Company from the action.

The Landowner rejected the Condemnor's tender of payment. On October 16 and 17, 2013, the Honorable Deadra L. Jefferson conducted a jury trial in the Charleston County Court of Common Pleas for the Ninth Judicial Circuit Court to determine the amount of just compensation. The jury rendered its verdict and determined just compensation to be $63,158.

Landowner's counsel made a post-trial motion for a new trial, contending the verdict was the result of passion, caprice or prejudice based on the arguments that: (1) the court failed to allow Landowner to testify about the monetary value of the improvements and/or investments into the building on the property; (2) the Court did not allow the jurors to enter into the building on the property during the visit to the property; (3) the verdict was not supported by the evidence; and (4) the court did not charge the

jury on the Landowner being able to testify about the value of his property. (R. p. 0371, lines 5-16).

The trial court denied the Landowner's motion. The court found that the jury's verdict was not the result of passion, caprice, prejudice or some other influence outside of the evidence; that the Landowner was allowed to testify regarding value of the property and what was excluded was any reference to the monetary value of the enhancements; and that the jurors did, in fact, enter the building on the property, although the court had instructed them not to. (R. pp. 0375-76).

Appellant filed its Notice of Appeal on November 12, 2013, with this Court.

## STATEMENT OF FACTS

This action involves Charleston County's condemnation of a 0.030 acre portion of a 0.254 acre tract of land owned by Walter G. McAdory. There is a building located on the property that is approximately 2,400 square feet in size, which is leased by Lex-Tech Automotive, LLC as an automotive repair facility. McAdory is the sole member of Lex-Tech Automotive, LLC.

Pursuant to The South Carolina Eminent Domain Procedure Act, Charleston County condemned the 0.030 acre or 1,287 square foot strip of land along Folly Road for the public purpose of widening and constructing a section of intersection improvements located at S.C. Route 171 (Folly Road) and Road S-10-28 (Camp Road) in Charleston County. The project is referred to as the Folly and Camp Road Intersection Improvement Project. Folly Road is a congested, four-lane major thoroughfare on James Island that runs north to south. The purpose of the Project is to reduce traffic congestion at the intersection of Folly and Camp Roads by providing dual left-turn lanes for traffic travelling southbound on Folly Road turning eastbound onto Camp Road.

These improvements required the widening of Folly Road, resulting in the condemnation of a strip of McAdory's property along Folly Road for expansion of the road right-of-way. The Project further involved the realignment of certain streets and the installation of four-foot wide bicycle lanes and five-foot wide sidewalks for improved vehicular and pedestrian safety along Folly Road. (R. pp. 0110-13). These Project improvements and the condemnation of a portion of McAdory's property necessitated

the relocation of two parking spaces on McAdory's property that were located within the acquired right of way.

In accordance with The South Carolina Eminent Domain Procedure Act, the County and McAdory made reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid. McAdory rejected the County's offer of just compensation. Thereafter, the County filed its Condemnation Notice and Tender of Payment and took possession of the portion of the property that is the subject of the action. The Landowner demanded a trial by jury. A jury trial to determine just compensation was held on October 16 and 17, 2013.

The Landowner argued for just compensation in the amount of $150,000. He arrived at this value by assuming a fair market value of **the land** and **the building** on the property of $375,000 before the condemnation. From that value McAdory subtracts the after condemnation fair market value of the **land only** in the amount of $225,000, for a difference of $150,000. (R. p. 0235, line 1-p. 0236, line 6)(Emphasis added). McAdory testified that he included the building in his initial valuation of fair market value but excluded it in the after condemnation fair market value because the building was rendered valueless by the condemnation. (R. p. 0236, lines 13-21). He also testified that after the condemnation, he cannot use the building, or rent it, and that it would be difficult to sell it. (R. p. 0237, lines 15-20). To the contrary however, he acknowledges the building could generate rental income in the amount of $1,700 per month. (R. p. 0243, lines 3-6).

The County's real estate appraiser was qualified as an expert during the trial and

testified that the just compensation was $51,670. (R. p. 0265, lines 18-20). The appraiser considered the value of the land only for his computation of fair market value before and after the condemnation because the condemnation did not affect the building – his opinion is that the building remains in tact as the new right of way would in no way impact the building and any improvements on it. (R. p. 0267, line 14-p. 0277, line 14). He testified the fair market value prior to the condemnation was $276,600. (R. p. 0265, line 23 – p. 0266, line 2). He further testified that he valued the site at $224,930 after the condemnation, for a difference of $51,670. He multiplied the amount of the acquisition of 1,287 square feet times $25 per square foot and arrived at a value of the acquisition of $32,170. He then added $19,500 as the cost to cure the relocation of the two parking spaces in the newly acquired right of way and to move his sign, for a total just compensation amount of $51,670. (R. p. 0267, lines 1-10). The jury determined just compensation to be $63,158.00.

## LAW / ARGUMENTS

### I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT EXCLUDED LANDOWNER'S EVIDENCE AND TESTIMONY OF THE ACTUAL COST TO IMPROVE HIS PROPERTY TO SUPPORT HIS OPINION OF VALUE FOR JUST COMPENSATION.

#### A. Fair Market Value is Not Based on the Actual Amounts Paid for Improvements Made to Property.

The trial court did not abuse its discretion when it excluded McAdory's evidence and testimony on the actual value of the monetary investments he made to his land and building to support his opinion of fair market value before the taking. "It is elementary that the admission or exclusion of evidence is a matter which is addressed to the sound discretion of the trial judge and that in the absence of a clear abuse of such discretion, amounting to an error of law, his ruling will not be disturbed." S.C. State Highway Dep't v. Wilson, 254 S.C. 360, 369 175 S.E.2d 391, 396 (1970).

Under South Carolina law, ". . . the measure of damages [is] the effect of such construction upon the market value of the remainder of the tract." S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 420, 131 S.E.2d 264, 268 (1963). "Therefore, as a general rule, where a part of a tract of land is taken . . . such damages are measured by the extent to which the value of the remaining property has been depreciated by reason of the proximity of the public improvement to the existing buildings." Id.

"In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner's property, and any benefits as provided in Section 28-2-360 may be considered." S.C. Code Ann. § 28-2-370. In addition, evidence which is relevant, material, and competent may be admitted as evidence and

considered by the jury for the purpose of determining the value of the land sought to be condemned and fixing just compensation. See S.C. Code Ann. § 28-2-340, and see also, S.C. Dep't of Transp. v. Burroughs & Chapin Co., 352 S.C. 535, 574 S.E.2d 751, 85 (Ct.App.2002).

South Carolina case law clearly provides for a property owner to offer testimony as to the value of his property. Abercrombie v. Abercrombie, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Ct.App.2007) citing Cooper v. Cooper, 289 S.C. 377, 378, 346 S.E.2d 326, 327 (Ct.App.1986). Furthermore, there is no question that a landowner does not have to be qualified as an expert on real estate valuation and damages to testify as to the value of his property. See S.C. State Highway Dep't v. Wilson, 254 S.C. 360, 370, 175 S.E.2d 391, 397 (1970). "[A landowner is] competent to give his opinion as to the value of the land and his damages. [Citation Omitted] ('Ours is in accord with the general rule that a landowner, who is familiar with his property and its value, is allowed to give his estimate as to the value of the land and damages thereto, even though he is not an expert.')." S.C. Dep't of Transp. v. Richardson, 335 S.C. 278, 282, 516 S.E.2d 3, 5 (Ct.App.1999).

Appellant McAdory mistakenly believes that the trial court ignored these well settled principles and prevented him from testifying about his opinion of fair market value for his property. To the contrary, the trial court admitted the following opinion of McAdory into evidence:

Q: Okay. Mr. McAdory, what do you think in your opinion as the landowner your property was worth before the taking?

A: Three hundred and seventy-five thousand dollars.

Q: And where do you get that number?

A: That was the amount that I purchased it for. When I purchased the property and obtained a mortgage the bank hired an appraiser. The bank appraisal came back at 375,000. That's what I paid. I believe fair market value is $375,000.

Q: And what do you think the property is worth after the taking?

A: After the taking I believe the property is just as the County states, $225,000.

Q: And how much do you as the landowner believe the County should pay you as just compensation?

A: The difference of 375 minus 225 which is 150,000.

Q: And would just compensation in the amount of $150,000 make you whole in your opinion as the landowner?

A: Yes, it would.

Q: And does this value of just compensation reflect your opinion as to the date of condemnation of July 11th, 2012?

A: Yes, it does.

Q: And do you believe that the improvements and outfittings to the building benefited you as the landowner?

A: Yes.

Q: And do you think the improvements and outfits that you did -- that were performed on the building add value to your property?

A: Yes.

(R. p. 0226, lines 11-25; p. 0227, lines 1-14).

Notwithstanding the above testimony (and the abbreviated, misleading excerpts to create this fictional error of law),[1] Appellant attempts to frame his alleged abuse of

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[1] Appellant cites the trial judge's "undue emphasis on a real estate expert's testimony" in reference to the normal practice of both sides utilizing battling experts to advocate for a particular amount in just compensation (Appellant Br. 10). Appellant fails to address the court's subsequent, comprehensive explanations, including the following:

> But he certainly can testify—like I said, I can come in and tell you that I think my house is worth a half a million dollars and I thought it was –before this happened my property was worth $500,000 and now after this happened I think it is worth $200,000. I think the law

discretion argument around the trial court's exclusion of the dollar for dollar value of items like paint, skylights, fence removal and replacement, tree and shrub removal, bay door replacement, installation of decorative plywood, electrical upgrades, surveys, and heating and air conditioning upgrade to the building. (R. p. 0155, lines 20-25; p. 0156, lines 1-25). By way of example, while these improvements and repairs may enhance the utility and marketability of the property, the fact that a landowner spends $1,000 on repairs and improvements does not necessarily correspond to a $1,000 increase in the fair market value of the property.

Rather, the trial court did, in fact, allow the Landowner to testify as to his opinion of fair market value, before and after the acquisition by the County, including the work performed to convert the property to an auto repair shop. Therefore, the Landowner was not deprived of an opportunity to express his view as to the property's value and damages resulting from the condemnation.

It is undisputed in the record that the County's acquisition is 0.030 acres of land from a 0.254 acre tract, and nothing more. South Carolina law allows a landowner to be compensated for the value of the property to be taken and any diminution of the

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> allows you to do that. But I don't think you get to bolster your opinion based on extrinsic proof that may or may not meet the elements of the requirements of the rules of evidence. And I am going to have to see.

(R. p. 0073, lines 9-22).

This excerpt adds context to the misleading excerpts that appear in Appellant's Initial Brief. The Trial Court did not categorically prohibit McAdory from testifying about fair market value and just compensation. The court did not state or imply that a real estate appraiser's testimony was preferred, but rather, it noted an observation of how condemnation proceedings generally unfold. It simply was the gatekeeper for ensuring the testimony comported with S.C. Code Ann. Sections 28-2-340 and -370, as well as the South Carolina Rules of Evidence.

remaining property. The law allows a landowner to be compensated for his land and all of its consequences, which is expressly stated in Wilson:

> In other words, he is entitled to full compensation for the taking of his land and all its consequences; * * * nor is there any requirement that the damage be special and peculiar, or such as would be actionable at common law; it is enough that it is a consequence of the taking. The entire parcel is considered as a whole, and the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and **all the reasonably probable effects of its devotion to that use**.

Id. at 367-368, 175 S.E.2d at 395 (1970)(Emphasis added).

However, the reasoning of the Court in Wilson does not extend to damages itemized on a cost per item or dollar for dollar basis. In particular, the South Carolina Supreme Court in Bolt affirmed the trial judge's refusal "to allow appellant to introduce testimony as to the cost of constructing new buildings to replace those which he claimed were worthless because of the location of the new highway."[2] Bolt, at 419, 131 S.E.2d

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[2] In addressing Appellant's repetitive arguments as to why McAdory's testimony regarding the spreadsheet estimate and invoice itemizing costs should have been admitted, S.C. Dep't of Transp. v. Burroughs & Chapin Co. is instructive. Burroughs & Chapin Co., supra. In this case, the South Carolina Court of Appeals acknowledged that the South Carolina Supreme Court has ruled that testimony regarding the value of mineral deposits on condemned land, including sand and gravel and limestone, is admissible because it influences the market value of land. 352 S.C. 535, 540, 574 S.E.2d 751, 753-54 (citing Seaboard Coast Line R.R. v. Harrelson, 262 S.C. 38, 42, 202 S.E.2d 1, 3 (1974)). In Burroughs & Chapin Co., the Court of Appeals applied this rationale to the admission of evidence of the value of timber on condemned land. Based on these cases, it is clear that South Carolina case law has allowed testimony regarding values of **natural resources** on condemned land; however, there does not appear to be any case law allowing the admission of testimony regarding the specific numeric value of itemized costs expended on a property. To do so would greatly prejudice entities properly exercising eminent domain authority when landowner's could, in turn, flood jurors with figures and numbers to confuse jurors and ultimately inflate just compensation.

These cases also bear on the fact that the condemned properties contained natural resources actually condemned. It is important to note here that the portion of McAdory's property condemned did not include or touch on any portion of the building located on the property. Therefore, this body of law clearly does not apply, nor is there any other case law extending this principle to allow specific dollar amounts regarding monies invested into a building wholly unaffected by a condemnation on a property, a

at 268. In Bolt, the landowner claimed that the government's condemnation of his property which did not include the building in question damaged the remainder of his property. The landowner sought to introduce the cost of building new chicken houses at another location on his property so he could continue to utilize his property as a commercial egg farm. The Court in Bolt rejected that proposition stating:

> We think that the lower court properly excluded such testimony. The buildings in question were not located on the right of way being acquired, the nearest being about 25 feet from the edge thereof. While the appellant was not permitted to prove the cost of building new chicken houses, he was permitted to testify as to the value of these buildings before the taking, that they could not be moved, and that they were worthless after the construction of the new highway.
>
> As pointed out above, **the measure of damages was the effect of such construction upon the market value of the remainder of the tract.** Therefore, as a general rule, where a part of a tract of land is taken for highway purposes in condemnation proceedings and damages are claimed by reason of the close proximity of the highway to buildings located on the remainder of the property, such damages are measured by the extent to which the value of the remaining property has been depreciated by reason of the proximity of the public improvement to the existing buildings. **Damage to the buildings must be considered in connection with the realty of which they are a part.**

Id. at 420, 131 S.E.2d at 268 (Emphasis added).

Similarly, the trial court excluded McAdory's attempt to offer evidence beyond the fair market value of his property by rejecting evidence on "the money investment into the property for the improvements to the land and the building thereon . . . ." (Appellant Br. 9).

Appellant accuses the trial court of "erroneously [ruling] as a matter of law that

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portion of which was condemned. Thus, the trial court was proper in excluding the testimony, and there was no error of law.

the landowner could not testify and explain his opinion on fair market value of his property before the condemnation and resulting damages to the same after the condemnation." (Appellant Br. 11). But the record before this Court does not support this assertion. The trial court ruled, "Motions in limine are not final. And I generally don't rule on them at all until I have heard the evidence . . . [Landowner] can say that I think my property has diminished in value. That becomes a weight issue. A lay person can always say what they think their property is worth . . ." (R. p. 0074, lines 1-3; p. 0074, lines 22-25). Moreover, during an in camera review of McAdory's testimony on direct examination, the trial court further stated:

> [Landowner] can give the diminution in value. He can testify about how he feels his property has been devalued . . . [h]ow he upfitted it really does not become relevant because he can't be compensated for it. The issue is I bought it for this purpose, I upfitted it for this purpose, I feel now I cannot use it for that purpose and this is how I was damaged...But, you know, you don't get a dollar for dollar value for everything you did to a property to increase its value . . . [b]ecause the value that is relevant and germane is the value at the time of the taking. So you would look at whether there was a diminution in value from that point as a result of something that was caused by the condemnation . . . [Landowner] can of course testify as to what he feels the value of his property is, why he bought it, what use he intended to have for it, and how he now feels he cannot use it for that purpose. All of that is within the ambit of his lay opinion. But what he spent is not germane to anything. . . . He can't be compensated for it. He can't get $13,658 back in addition to what the fair market value is.

(R. p. 0158, line 1-p. 0159, line 13).

Even after the Landowner proffers the law into the record and argues that the Wilson case allows landowners to testify as to their general, personal knowledge and experience, the trial court states:

> [N]othing you are saying is contrary to what I have already said . . . [t]he

> statute is clear . . . [t]o determine just compensation only the value of the property to be taken, any diminution in the value of the landowner's remaining property and any benefits as provided in 28-2-360 may be considered. The landowner is entitled to the value of the property under its most advantageous or profitable use including any use reasonably anticipated in the future. I have not restricted him from testifying as to what he thought the best and most reasonable use is. I have not restricted him from testifying his lay opinion what he believes the value of his property to be. However, he is not going to speculate on a dollar for dollar basis how he feels the property was improved or how he is entitled to recover a dollar for dollar amount. It is not allowed by the law.

(R. p. 0164, line 18-p. 0165, line 14).

The trial court's response to Landowner's counsel is wholly supported by the court in Bolt which provides:

> When the appellant was permitted to introduce testimony as to the value of the buildings before and after the public improvement for the purposes for which they were used and adapted, the jury was afforded ample criterion for determining the damages to the remaining property by reason of the proximity of the new highway to the buildings.

Id. at 420-421, 131 S.E.2d at 269.

Unlike the legal principles established in Wilson and Bolt, Appellant now attempts to create an error of law where one does not exist to rehabilitate the Landowner's faulty testimony at trial. The Landowner testified that the purchase price of the land **and the building** in 2011 was $375,000. This value represents the fair market value of the land and the building as of July 12, 2011, the date of the condemnation. However, in arriving at his opinion of just compensation, McAdory subtracts from his opinion of the value before the condemnation of $375,000 the County's value of $224,000, which as stated previously does not include the building. Nonetheless, McAdory attempts to fool the jurors into believing the building with all of the improvements he so desperately testified

to is worthless after the County's condemnation of the strip along Folly Road. But, at the same time, he testified he believed the building could produce $1,700.00 in rent per month. (R. p. 0243, lines 3-6).

From this, it is obvious that McAdory attempts to unreasonably inflate or "push up" his valuation of fair market value and just compensation by having inadmissible evidence of dollar for dollar values admitted into evidence in an attempt to confuse the jurors and by utilizing a value after the condemnation of the **land only**. This is improper. Appellant should not be able to exploit the appellate process without demonstrating an abuse of discretion. Appellant fails to show an abuse of discretion because his arguments are without merit. South Carolina law requires Appellant to show an abuse of such discretion that amounts to an error of law for this Court to disturb the ruling of the trial court. Because Appellant has failed to articulate an abuse of discretion or an error of law, this Court should reject Appellant's argument and affirm the ruling of the trial court.

### B. The Trial Court Properly Excluded the Contractor's Estimated Cost to Reconfigure the Property After the County's Acquisition.

Appellant suggests that the trial court misapplied South Carolina law when it ruled that it would not allow McAdory to testify about matters that were not based on his personal knowledge - that were hearsay. South Carolina law allows a landowner to testify about market value based on hearsay if it is within his general knowledge and experience. The Court in Wilson stated:

> Where the witness bases his opinion entirely or chiefly on incompetent or inadmissible matters, it has been held that his testimony must be rejected;

> but the fact that the witness's knowledge as to market value is largely hearsay will not exclude his opinion, provided the witness gives to such information the sanction of his own general experience and knowledge.

Id. at 371, 175 S.E.2d at 397 (citing 32 C.J.S., Evidence, § 546 (117), p. 449).

The trial court found that the estimates of the contractor were hearsay and not based on McAdory's general knowledge and experience. McAdory argues that the court should have allowed him to testify to matters of hearsay, including an itemized estimate/invoice in the amount of $96,000, regarding what a contractor suggested McAdory should do to his property after the condemnation. Appellant takes exception to the trial court's ruling that McAdory provide some "independent proof other than his word that he spent this money." (Appellant Br. 12). However, Appellant takes the language completely out of context. First, the trial court states:

> [Landowner] is entitled to whatever the fair market value is of the property at the time he purchased it and any diminution in value as a result of what the County did to it, less any improvements that resulted to him as a result of what the County did to it . . . But it becomes almost like a red herring when you start saying well I paid this much for that and I paid this much for that. Because then it confuses the jury in terms of once they have to be instructed that somehow I think that you know the property let's take it in the light most favorable to him the jury believes the property is worth 375 and then they start nickel and diming saying well he paid 13,000 for this so it increases it by that . . .You don't get dollar for dollar improvement for everything you put in a property...And he can testify from his lay opinion as to what he feels the diminution in the value of his property is, you know, because the law allows that . . . But to go through every amount of money he feels he put into it and that somehow he should be compensated for that is misleading because it is not accurate and it is not supported by any legal theory.

(R. p. 0160, line 11-p. 0161, line 15).

This language demonstrates that the trial court did not prohibit hearsay regarding

improvements made to the property. The court only restricted dollar figures that McAdory wanted to testify to from a spreadsheet labeled "leasehold improvements" with itemized amounts totaling almost $70,000, including the installation of a HVAC system, repaving, electrical work, etc. (R. p. 0053, lines 3-5; p. 0055, lines 13-23). McAdory also attempted to testify to and admit into evidence another invoice/estimate prepared by a third party contractor to reconfigure the property after the condemnation totaling almost $96,000. (R. p. 0059, lines 6-13). The court exercised sound discretion by not allowing these specific itemized estimate/invoices as they would confuse and improperly influence the jury. Nevertheless, the trial court did not prohibit McAdory from testifying to his opinion of fair market value and just compensation. (R. p. 0064, line 25-p. 0065, line 10).

Second, with respect to the "extrinsic proof other than [McAdory's] word that he spent this money," Appellant fails to inform this Court about the lengthy discussion in the record regarding "intermingling" of moneys between McAdory as Landowner and McAdory as the sole member of Lex-Tech Automotive, LLC, the lessee of the property. Therefore, Appellant's point is a red herring regarding what proof the trial court required. The court even stated the extrinsic proof "doesn't matter because he does not get a dollar for dollar credit." (R. p. 0167, lines 9-15).

### C. Appellant Has Not Been Prejudiced by the Exclusion of Evidence Regarding Money Invested in the Building.

Even if McAdory can show some error of law, he must also show some resulting prejudice to him. He cannot and does not. In fact, the trial court noted that it was clear

based on the jury's verdict that the "jury did not wholeheartedly accept the testimony of the expert." (R. p. 0379, lines 4-6). The County's just compensation deposited into the court was $51,670, while the jury's verdict was $63,158, a difference of $11,488. The court noted the jury took other factors into account testified to by the Landowner. (R. 0379, lines 8-12). Without showing some resulting prejudice, this Court should reject the Appellant's argument and affirm the ruling of the trial court.

## II. THE TRIAL COURT DID NOT ERR WHEN IT LIMITED THE JURY'S INSPECTION OF THE PROPERTY TO ITS EXTERIOR AND THE OPEN ACCESS WAYS OF THE BUILDING.

Appellant mistakenly believes that the trial court prevented the jury from entering the property during the site visit pursuant to S.C. Code Ann. § 28-2-340(B). (Appellant Br. 18). That is not true. Section 28-2-340(B) provides that "[u]pon motion of either party, the court shall permit the jury to inspect the property which is the subject of this action." The trial court granted Appellant's motion. The trial court allowed the jurors full access to the property and defined the parameters of the site visit through the following discussion:

| | |
|---|---|
| MR. MURPHY: | Your Honor. |
| THE COURT: | Yes, sir. |
| MR. MURPHY: | Your Honor, just -- so I have an understanding in terms of when the folks -- the jury visits the property that they be allowed to walk in the back -- or just walk the entire property? |
| THE COURT: | They can walk the entire property. We are going to go in the back to see where the parking would be. Because that is one -- that is some of the testimony about curing the deficits to the property --- |
| MR. MURPHY: | And I would also --- |

THE COURT: --- as a result of the condemnation.

MR. MURPHY: I would also request they be allowed to go inside the office area ---

THE COURT: For what purpose?

MR. MURPHY: There has been testimony that the improvements don't have value in the afterwards.

THE COURT: He doesn't get compensated for improvements to the building. He gets compensated for the fair market value and the diminution in value. I am not going to fudge that issue. I am not going to mislead this jury. I have been liberal and I let those pictures in.

MR. MURPHY: Thank ---

THE COURT: And that will suffice.

MR. MURPHY: Thank you, Your Honor.

THE COURT: They are conducting business in that building, and we are not going to parade through it. We will look at the front. We will look at the back. We will look at the periphery. There will be no discussion. There will be no demonstrations. We will come back. We will have lunch. We may have charge conference before we go while they are loading them up and then we will proceed.

MR. MURPHY: Thank you, Your Honor.

(R. p. 0333, lines 22-25; p. 0334, lines 1-25; p. 0335, lines 1-4).

Since the Landowner made the motion, the trial court satisfied its obligation to allow the jurors to visit the property. The statute is clear and unambiguous. Upon motion of either party the court is required to allow the inspection of "the property which is the subject of the action." The property that is the subject of this action is a .030 acre strip of land that does not include any portion of the building whatsoever. Initially, the trial judge instructed the jurors not to enter the automotive garage on the property and stated, "We are going to look at the land. That is what is being condemned." (R. p.

0332, lines 25-p. 0333, line 1). The trial judge also stated, "They are conducting business inside the business. We are not going in there." (R. p. 0333, lines 7-8). However, the trial judge allowed jurors to walk around the entire property, including the back of the property where the two parking spaces would be relocated. (R. p. 0334, lines 3-6).

Again, Appellant attempts to undermine the trial court's exercise of discretion in prohibiting the jurors from entering the building. Appellant raised the argument that there was testimony that the improvements did not have any value after the condemnation, to which the trial judge responded, "[Landowner] does not get compensated for improvements to the building. He gets compensated for the fair market value and the diminution in value . . . I am not going to mislead this jury." (R. p. 0334, lines 14-17).

Even if the court's initial denial of the jurors' inspection of the building that was wholly unaffected by the condemnation were improper, Appellant cannot prove an error of law. To the contrary, Appellant makes no mention of the fact that jurors did, in fact, enter, observe and inspect the inside of the building during the site inspection despite the trial judge's instructions. The trial court noted in response to the post trial motion of McAdory's counsel:

> [The jurors] saw while we were on the property every single one of them went in there and looked in. So I don't think you can really claim any prejudice from that. When we went to the back of the building all of them went. They looked inside the shop, and they saw it. So even though I said they weren't going to go, when we got there I just went ahead and let them do it because I just wasn't going to interrupt – I felt to interject myself at that point would have had a more disruptive influence. And so they

> went into the building. They went into the back of the building. They saw the lifts. They went inside. They all went beyond the threshold of the back of the building. And they all went inside and they looked at it.

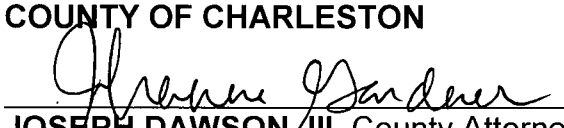
(R. p. 0372, lines 7-19). From this language, there is no question that there is no error of law that could have resulted from the trial court initially prohibiting the jurors from entering the building. Therefore, this argument fails as a basis for overturning the sound discretion of the trial court.

## CONCLUSION

This Court should deny the relief sought by the Appellant and affirm the trial court's ruling that the Landowner's testimony was properly limited, and that the Landowner was not entitled to have the jurors inspect the inside of the building, which was not affected by the condemnation, or in the alternative, that there was no error in the trial court initially prohibiting the jurors from inspecting the building. Therefore, this Court should affirm the trial court and uphold the verdict of the jury.

Respectfully submitted,

**COUNTY OF CHARLESTON**



**JOSEPH DAWSON, III**, County Attorney
**BERNARD E. FERRARA, JR.**, Deputy County Attorney
**BRADLEY A. MITCHELL**, Assistant County Attorney
**JOHANNA S. GARDNER**, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

**ATTORNEYS FOR RESPONDENT**

Charleston, South Carolina
November 4, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

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Case No. 2013-CP-10-4511

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County of Charleston, . . . . . Respondent,

v.

Walter G. McAdory, Landowner, and
Branch Bank and Trust Company, and
South Carolina Electric & Gas Company, Other Condemnees,

Of Whom

Walter G. McAdory is . . . . . Appellant.

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Final Brief of Respondent County complies with Rule 211(b), S.C.A.C.R.

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
Attorneys for Respondent County of Charleston

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