

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

Case No. 2011-CP-10-3651
Case No. 2010-SC-87-2381

Hoang Berry..... Appellant,

v.

Stokes Import Collision.....Respondent

PETITION FOR A WRIT OF CERTIORARI

March 21st, 2013

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SC Court of Appeals

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Question Presented

Should a litigant, with a limited understanding of the English language,
have a right to a competent interpreter in Magistrates Court? 1

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- II. The court appointed interpreter was ineffective and unable to assist the Appellant with her communication with the trial court. 2

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QUESTION PRESENTED

1. Should a litigant, with a limited understanding of the English language, have a right to a competent interpreter in Magistrates Court?

STATEMENT OF THE CASE

On November 9th, 2010 the Appellant filed a Complaint against Stokes Import Collision Center in the Small Claim Court of Charleston County. There was a bench trial on May 2nd, 2011. An Order of Disposition was filed on May 3rd, 2011 in favor of Stokes Import Collision. Finally, a Return was prepared and signed by the Honorable James Turner on June 3rd, 2011. An Appeal was filed on May 23rd, 2011 in the Court of Common Pleas. The Appellant appeared in front of the Honorable Kristi L. Harrington on November 21st, 2011. On the 15th of December a judgment was entered in favor of Stokes Import Collision. The Order of Magistrate Turner was affirmed and the Appellants appeal was denied.

Appellant filed a Notice of Appeal to the Court of Appeals on February 1st, 2012. On January 9th, 2013 an Order affirming the lower court was filed with the South Carolina Court of Appeals. The South Carolina Court of Appeals filed an Order denying Appellant's Petition for Rehearing on February 21st, 2013.

ARGUMENTS

The Appellant respectfully offers and argues the following reasons why the Supreme Court should reconsider the Appellate Court's ruling in regard to the abovementioned case.

- a. The Appellant's limited English proficiency deprived her of equal access to justice and due process.

The Appellant has limited English proficiency. Although, there is documentation in Judge Turner's Return (R. pp. 3-4) which states an interpreter was present at trial, the actual transcript does not show the quality of communication between the Appellant and the Court. The Appellant believes and is concerned that there was a language barrier at the bench trial.

- b. The court appointed interpreter was ineffective and unable to assist the Appellant with her communication with the trial court.

The interpreter provided by the trial court in the abovementioned matter was unable to properly assist the Appellant with her communication with the court. Despite the fact that an interpreter was present for the bench trial, there was miscommunication between the Appellant and the trial court. The transcript from the trial court provides little help due to most of the recorded testimony being inaudible. The transcript from the Appellant's appeal in the Court of Common Pleas does show that a language barrier exists between the Appellant and the court.

For example:

Transcript of Record, November 21st, 2011, Court of Common Pleas

Ms. Berry: The reason I appealed that day because I'm not communicating with the first judge. I thought that I give all to him picture, everything and he looked at that, but he not.

And also I have some --

(Transcript, page 2, lines 8 - 12)(R. pp. 43, lines 8 - 12)

...

Ms. Berry: I'm here because I want to sue them.

The Court: Show who?

Ms. Berry: The Stokes Honda

The Court: I'm sorry?

Ms. Berry: The manager of Stokes Honda Collision.

The Court: Manager of who?

Ms. Berry: The manager from Stokes Honda.

The Court: Okay. What do you want to show them?

(Transcript, page 3, lines 5- 14) (R. pp. 44, lines 5 - 14)

The above transcript shows that the testimony is confusing and that the judge sought further clarification of the Appellant's statements. Based on the Appellant's communication barrier with the trial court it is in the best interest of justice that the Appellant's claim be remanded for retrial.

CONCLUSION

The language barrier between the interpreter, court and Appellant was fundamentally unfair to the Appellant. The Appellant was deprived of equal access to justice and due process. Therefore, the Appellant's claim should be remanded for retrial.

Respectfully Submitted,



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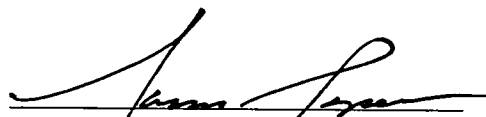
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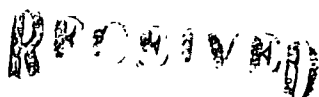
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals.

March 21st, 2013



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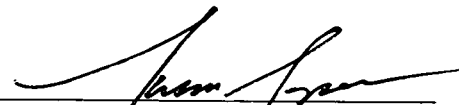
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PROOF OF DELIVERY

I CERTIFY THAT I HAVE SERVED a copy of the Petition for a Writ of Certiorari and Certification that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals by depositing a copy of the same in the United States mail, postage prepaid, on March 21st, 2013, addressed to its attorney of record, **Clay Walker**, P.O. Box 61140, Columbia, SC 29260, and **Tanya A. Gee**, Clerk, Court of Appeals, P.O. Box 11629, Columbia, SC 29211. And Clerk of Court, Supreme Court of South Carolina, P.O. Box 11330, Columbia, SC 29211.

March 21st, 2013



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SC COURT OF APPEALS

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March 21st, 2013

Via U.S. Mail

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Walker & Reibold, LLC
Attn: Clay Walker
P.O. Box 61140
Columbia, SC 29260

Re: Hoang Berry vs. Stokes Import Collision Center
Case No.: SC872010002381 (Smaill Claims Court)

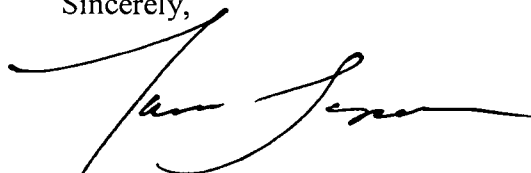
Dear Clerk:

Please find enclosed the original and six copies of the Appellant's Petition for Writ of Certiorari, Proof of Service and Appendix. I have enclosed a check for one-hundred (\$100.00) dollars for the filing fee. Please do not hesitate to contact me with any questions or concerns regarding this mailing.

Thank you for your attention to this matter.

With kindest regards, I remain

Sincerely,



Jason G. Soper

Enclosure, as stated

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