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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Kristi L. Harrington, Circuit Court Judge

Civil Action No.: 2016-CP-10-5578
Appellate Case No.: 2018-000511

Town of Sullivan's Island, ...Respondent,

v.

Michael Murray, ...Appellant.

PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENT

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Pursuant to Rule 221(a), SCACR, Respondent Town of Sullivan's Island ("Respondent" or the "Town") hereby petitions for rehearing of the Court's opinion reversing the circuit court's order affirming Michael Murray's ("Appellant") municipal court conviction for violating Respondent's Town Ordinances requiring him to obtain and comply with the terms of a building permit for construction of a dock at a residential house. See Town of Sullivan's Island v. Michael Murray, Op. No. 5856 (Ct. App. filed September 1, 2021) (the "Opinion"), copy attached hereto. As explained herein, rehearing is warranted because the Opinion overlooks, misapprehends, and fails to address the arguments Respondent presented. Further, the basis for the Court's decision was not raised and ruled upon by the lower court. Therefore, this Court **must** grant rehearing and issue an Opinion affirming the lower court, because only issues that were raised and ruled upon at the lower court are properly before this Court.

INTRODUCTION

"When an appellate court rules on an issue not preserved for appellate review, the portion of the appellate court's opinion pertaining to the unpreserved issue should be vacated." Ulmer v. Ulmer, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006). Here, this Court's Opinion reversing the lower court turned on unpreserved issues and must be reconsidered. See **(Resp't Br. at pp. 13-16).**

Issue preservation rules are designed respect the ability of lower courts to make decisions, thereby allowing for meaningful and accurate appellate review; they thus concern the balance and respect between different courts. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (" . . . preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.") (citing cases).

Here, the appeal was decided on unpreserved issues – specifically, whether the Town's Ordinances gave Appellant notice of potential criminal liability and whether those Ordinances were impermissively vague. See **(Opinion at p. 7)** ("We reverse the circuit court's order affirming Murray's conviction because [Respondent's] ordinances failed to provide [Appellant] with fair notice that building a dock beyond adjacent docks was a criminal violation. Because this issue is dispositive, we need not address [Appellant's] remaining issues"). Because Appellant's arguments to that effect were not raised to and ruled upon below, this Court should grant rehearing and affirm the circuit court.

Additionally, as explained below in more detail, even if the Opinion were not a violation of the cardinal rule that an appellate court is bond to only consider those issues that are preserved for review, rehearing should still be granted because the Court erred in holding that the Town's Ordinances do not provide fair notice of potential criminal liability and that the Ordinances are impermissively vague. In making this finding, the Court ignored South Carolina's well settled appellate criminal law standard of review that forbids reviewing courts from making different factual findings from the trial court unless the findings of the trial court are clearly erroneous. Further, the Opinion overlooks Respondent's argument that Appellant violated Town Ordinances prohibiting constructing without a permit, or violating the terms of a permit, when he accepted a building permit and ignored the condition thereto, and that his conviction was for violating the conditions of the permit.

FACTS[1]

Appellant is the president and owner of American Dock and Marine Construction. **(R. at p. 231, ll. 5-15).** Jason Thompkins[2] hired Appellant to construct a dock at 1102 Osceola Avenue (the "Property"), located on Sullivan's Island. **(R. at p. 253-54, ll. 25-12).** The owners of the Property submitted permit applications to the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM") and received approval on May 15, 2014. **(R. at pp. 89-92).** OCRM approval is required before the Town can issue permit approval. **(R. at p. 192, ll. 21-24).**

Appellant then filed for a building permit from the Town on June 19, 2014. **(R. at pp. 86-97).** The Town issued a dock construction permit, which stated, "approved as noted" and provided a condition that the dock "must not exceed adjacent docks." **(R. at pp. 86-97).** Appellant explained at trial that he accepted the permit and the condition that he not build any dock exceeding adjacent docks:

> Q: And you acknowledged that the building permit application, which has been initialed by both Mr. Henderson, the zoning official and Mr. Robinson, the building official, specifically say 'Approved as noted;' correct?
>
> A: Yes, sir.
>
> Q: And those notations being the two notes, 'must not exceed adjacent docks,' and then the other issue with regard to ten feet from the adjoining property line; correct?
>
> A: That is correct.
>
> Q: And would you agree that those specific notations became a part and parcel of the building permit that was issued to your company relative to the construction of the dock [at the Property]?

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[1] A more extensive discussion of the facts can be found in Respondent's Brief.

[2] Mr. Thompkins is a member of C&B Beach House, LLC, which owns the Property. Mr. Thompkins, who was a defendant before the lower court, was acquitted and is not a part of this appeal. **(R. at p. 102).**

A: As far as I know, yes, sir.

(R. at pp. 244-45, ll. 18-8). The permit documents included a notice that **"I further understand that any deviation from the approved plans and conditions thereof shall constitute a violation of the Town of Sullivan's Island Zoning Ordinance." (R. at p. 88) (bold added).** The Town's Ordinances, like most municipal codes in South Carolina, provide that a violation of the zoning ordinance is a criminal violation. **(TOSI Ordinance § 1-7); (R. at p. 71);** (general penalty for violation of town ordinance or order, stating that such a violation constitutes a misdemeanor); see also **(R. at p. 77-78)** (Ordinances requiring building permits and governing building permits). The Town went further and included a specific notice in the permit documents to put the holder of a permit on notice that violation of the permit documents was a violation of the Town's Ordinances. **(R. at p. 88).**

It was undisputed at trial that Appellant violated terms of the building permit he had accepted. Appellant built the dock past adjacent docks by approximately ten feet and admitted to doing so. **(R. at pp. 23-25); (R. at p. 49); (R. at p. 242, ll. 1-5); (R. at p. 245, ll. 13-18)** (Appellant admitting that the dock he built exceeded the adjoining docks by at least nine feet).[3] On June 27, 2016,[4] the Property's owner applied for a certificate of occupancy; upon inspection of the Property, Respondent's Zoning Administrator discovered that the dock exceeded adjacent docks. **(R. at p.**

[3] The circuit court recognized the municipal court's factual finding in its ruling that Appellant accepted the condition of the permit and that he admitted he violated it. **(R. at p. 2).** Appellant did not contest that ruling in his Motion to Alter or Amend.

[4] This application date raises another important point – Respondent required an as-built survey upon completion of the *dock's* construction. The dock was completed in 2014 but, Appellant did not submit an as-built survey in 2014. **(R. at p 258, ll. 1-4); (R. at p. 181, ll. 13-15); (R. at pp. 249-49, ll. 18-11); (R. at p. 250, ll. 8-21).** In fact, the as-built survey was completed in 2016 but still not submitted to Respondent. **(R. at p. 49).**

179, ll. 15-25) ("I knew that we had issued permits for it, so I walked out on the dock, and I noticed 'my goodness, this has to be ten feet past the adjacent docks, violating the permit.'"). Subsequently, on June 29, 2016, the Town issued ticket number 5713 for violations of the Town of Sullivan's Island Ordinances Sections 5-10[5] and 21-75,[6] which provide the building permit requirement, because Appellant violated the conditions of the permit he obtained by building the dock past adjacent docks when the permit, which he agreed to comply with, included a condition that the dock not be built to extend past adjacent docks. **(R. at p. 5).**

The case proceeded to trial in municipal court on October 4, 2016. Appellant was found guilty of failing to comply with permitting requirements and fined $1,040. **(R. at pp. 130-279); (R. at p. 28).** Appellant appealed his conviction and filed a Notice of Intent to Appeal. The Honorable Francis J. Cornely filed a Return to Notice of Intent to Appeal on December 29, 2016. **(R. at pp. 52-55).** The circuit court affirmed Judge Cornely by Form 4 Order dated January 1, 2017 and filed on January 11, 2017. **(R. at pp. 3-4).** Appellant filed a Motion to Alter or Amend, which the circuit court denied via written Order. **(R. at pp. 56-57); (Order Dated February 23, 2018, R. at pp. 1-2).** This appeal followed.

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[5] Section 5-10 provides that an "[a]plication for a building permit shall be made in writing to the Building Inspector or his designated representative at the Town Hall on a form or forms approved and furnished by said Inspector" and supported with "[p]lans and specifications adequately describing the proposed erection, construction, improvement, alteration or repair. . ." **(TOSI Ordinance § 5-10, R. at pp. 77-78).**

[6] Section 21-75 provides that that no dock will be constructed without "approval of the Town of Sullivan's Island, U.S. Corps of Engineers, the Department of Health and Environmental Control/Office of Ocean and Coastal Resource Management (DHEC/OCRM) and any other governmental or regulatory agency with jurisdiction" and that "No dock shall be permitted to be constructed which extends into the channel or extends so far as to interfere with navigation." **(TOSI Ordinance § 21-75, R. at pp. 66-67).**

After briefing and oral argument, this Court issued its Opinion on September 1, 2021. In the Opinion, the Court held that Respondent's Ordinances "were vague as applied here, such that they did not provide [Appellant] with sufficient fair notice that the violation could result in criminal liability . . . [and that Section 21-75] failed to provide fair notice that this conduct was a criminal violation." **(Op. at p. 6).** The Court elaborated that Town ordinance section 21-75 is vague as applied because interference with navigation is not defined by the ordinance. **(Op. at p. 6).** As explained in more detail herein, those arguments addressed by the Opinion were unpreserved because they were not raised and ruled upon by the lower court. Further, it was undisputed as a factual matter at trial that Appellant understood and agreed to comply with the condition that the dock does not extend past any other docks. In addition to ruling on the basis of unpreserved arguments, the Opinion is inconsistent with the factual findings of the lower courts as well as Appellant's own testimony. The Court gave no explanation to why the undisputed facts that were adjudicated below should be overturned by the Opinion.

ARGUMENT

I. The Court overlooked, misapprehended, and failed to address Respondent's argument that Appellant's arguments on appeal – specifically, Appellant's arguments that Respondent's Ordinances were vague and failed to give proper notice of potential criminal liability- were not raised to and ruled upon by the circuit court and accordingly those issues were not properly before this Court.

The Opinion turns appellate procedure on its head, reversing a lower court based on issues that were not raised to and ruled upon by the lower courts. See **(Resp't Br. at pp. 13-16)** (discussing that the only issue preserved for appellate review was the issue of whether the circuit court correctly determined that strict construction of Respondent's Ordinances supported Appellant's conviction for violating those ordinances.) Beyond the technical preservation rules discussed below, there is fundamental unfairness to both the Respondent and the lower court in an appellate

court taking the reins of case that was tried almost five years ago and was affirmed by the circuit court over three years ago, and reversing the decision of both courts on issues that were not raised and ruled upon by the circuit court. See Herron, 395 S.C. at 465, 719 S.E.2d at 642 (". . . preservation rules are designed to give the trial court a fair opportunity to rule on the issues . . . .").

It is well settled in South Carolina that for an issue to be preserved for appellate court review, it must have been raised to and ruled upon by the lower court. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779–80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."); see also SCACR 210 (c) ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); see also, Wierszewski v. Tokarick, 308 S.C. 441, 444, 418 S.E.2d 557, 559 (Ct. App. 1992) ("We do not address this point, because it was not raised in the petition or addressed in the order. An issue is not preserved for appeal merely because the trial court mentions it."); State v. McClain, No. 2015-002595, 2017 WL 4838483, at *1 (S.C. Ct. App. Oct. 18, 2017) ("The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal.") (finding issue not raised for appellate review and dismissing appeal) (citing State v. Passmore, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005).

Consideration of issues not before the Court raises jurisdictional concerns - while discussed as issue preservation, it is important to note that the Court's Opinion amounts to a violation of its limited jurisdiction because an appellate court does not have jurisdiction over issues not raised before it. Ulmer, 369 at 490, 632 S.E.2d at 861 (2006) (" [the Court] has appellate jurisdiction over only those matters which are properly appealed."). Furthermore, because of this case's procedural posture (where the circuit court reviewed an appeal from the municipal court), the Court can only

confine its review to issues raised and ruled upon by the *circuit court*. See City of Rock Hill v. Suchenski, 374 S.C. 12, 16, 646 S.E.2d 879, 880 (2007) (stating that ". . . we may only review the circuit court's order for errors of law. We cannot determine error regarding an issue not addressed by the circuit court.") (also involving, as is the case here, an appeal from the municipal court to the circuit court); See also Williams v. Williams, 329 S.C. 569, 579, 496 S.E.2d 23, 29 (Ct. App.1998), *rev'd on other grounds,* 335 S.C. 386, 517 S.E.2d 689 (1999) ("The circuit court has the authority to hear motions to alter or amend the judgment when it sits in an appellate capacity, and these motions are required in order to preserve issues for further review by the Court of Appeals or the Supreme Court in cases where the circuit court fails to address an issue raised by a party.").

After the municipal court found Appellant guilty of failing to comply with the conditions set forth in his dock construction permit, Appellant appealed the municipal court's decision. **(R. at pp. 29-37).** In the municipal court's Return to Notice of Intent to Appeal, the municipal court stated:

> Based on the testimony presented, it is clear that the Defendant, Michael Murray, make a mistake building the dock further out than adjacent docks. Mr. Murray was aware of that condition from the building permit. Mr. Murray further did not turn in the asbuilt survey to the Town of Sullivan's Island as is required. Mr. Murray took responsibility for the violation and further that Mr. Murray indicated that it was not the fault of the homeowner, Jason Thompkins.

(R. at p. 55).

In the appeal to the circuit court, Appellant raised the following issues: 1) there was no evidence to show that the dock interfered with navigation; 2) Ordinance Section 21-75 does not require ensuring that docks do not exceed the length of existing docks;[7] and 3) Appellant complied

[7] If Appellant were to argue that this assertion raised the issue of notice to the circuit court, this is unclear and not specific; issues must be raised to the lower court with sufficient specificity to be

with Ordinance Section 5-10, which requires compliance with valid construction permits, by seeking a permit. **(R. at pp. 32-34).**

The circuit court denied Appellant's appeal from the municipal court. In denying Appellant's appeal, the circuit court, by Form 4 order, made its ruling with the following language: "The appeal filed by [Appellant] is denied. Based on the record, [Appellant] acknowledged notice of the zoning laws and permit requirements and was found in violation. [Appellant] has failed to demonstrate an error of law." **(R. at p. 3).** Appellant filed a Motion to Alter or Amend in response to the circuit court's denial. **(R. at. pp. 56-57).** In Appellant's Motion to Alter or Amend, Appellant raised the issue that the circuit court's "ruling does not address the primary issue raised by [Appellant] which is whether [Respondent] can enforce a requirement that has not been promulgated (that docks not extend past adjacent docks) and is merely an interpretation by [Respondent] of its authority and whether such enforcement can be in the form of criminal prosecution." **(R. at pp. 56-57).** Appellant was not convicted of violating a zoning ordinance requirement that docks not extend past adjacent docks. He was convicted of violating the conditions of a permit that he accepted. Notably, Appellant's motion to reconsider does not assert that Appellant did not have notice of the Town's Ordinances or that any Ordinance was vague or void for vagueness. In denying Appellant's Motion to Alter or Amend, the circuit court ruled:

1. Chapter 5-10 of the Town of Sullivan's Island's ordinances require an applicant seeking to construct to secure a building permit application.

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preserved for appellate review. See S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (finding that for preservation purposes, issues must have been "raised to the trial court with sufficient specificity."). Furthermore, the circuit court did not rule on this issue, and it was not raised in a motion to reconsider. **(R. at pp. 3); (R. at pp. 56-57); (R. at pp. 1-2).**

2. Defendant/Respondent (sic) submitted an application and accepted a building permit from the Town that included provisions that the dock not extend any further into Cove Creek than adjacent docks.

3. It is undisputed that the dock extends further into Cove Creek then the adjacent docks.

(R. at p. 2).

The circuit court ruled upon the issues of whether Appellant complied with permitting requirements. Appellant did not raise the issues of notice and vagueness in his Motion to Alter or Amend. Nonetheless, on appeal, Appellant raised: 1) the issue of whether his conviction for violating the condition of his building permit violates the rule of fair warning/notice and lenity; 2) whether Respondent criminalized conduct otherwise legal under state law; and 3) Respondent's actions were not arbitrary and capricious and violative of Due Process rights, before the Court in his Initial Brief. **(Appellant Br.).** Respondent asserted that those issues were not preserved. **(Resp't Br. at pp. 13-16).**

Thus, the record is clear that the issues Appellant set forth on appeal were not raised by Appellant and ruled upon by circuit court at the same time. **It is especially critical that Appellant did not even mention the words or phrases "void for vagueness" or "vagueness" or "notice" in his Motion to Alter or Amend. (R. at pp. 56-57).** These legal doctrines we not before the lower court and thus not properly before this Court.

Therefore, the Court should grant the Petition for Rehearing and issue an Opinion affirming the circuit court.

II. Even if the issues of notice and vagueness had been preserved for appellate review, and they were not preserved, the Court incorrectly held that the Town's Ordinances failed to provide notice of potential criminal liability and were vague when Appellant admitted at trial that he understood the conditions of the permit and violated those conditions.

The Court, in a seemingly two-part holding, erroneously held that the Town's Ordinances were vague and did not provide Appellant with notice that violating them could result in criminal liability."[8] **(Op. at p. 6).**

The notion that a defendant must have fair notice of potential criminal liability is well settled, and the issues of notice and vagueness are interdependent; a vague statute is a statute that fails to give notice of what it prohibits or allows. See, e.g., Johnson v. United States, 576 U.S. 591, 595, 135 S. Ct. 2551, 2556, 192 L. Ed. 2d 569 (2015). A statute can be impermissibly vague for either of two independent reasons. First, it may fail to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Or, second, it may authorize[9] or encourage arbitrary and discriminatory enforcement." State v. Houey, 375 S.C. 106, 119, 651 S.E.2d 314, 321 (2007); see also Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001). Courts should consider common sense in evaluating void-for-vagueness questions. United States v. Biocic, 928 F.2d 112, 114 (4th Cir. 1991) ("Indeed, the legal test of statutory vagueness is one that is expressed essentially in terms of common sense."); United States v. Shrader, 675 F.3d 300, 310

[8] Respectfully, the Opinion's language results in confusion. As written, the Court's analysis jumps from analyzing two ordinances to analyzing one ordinance. The Court initially holds that the "*ordinances*" did not provide Appellant with fair notice that his conduct could result in criminal liability, but then continues that "the *ordinance* failed to provide fair notice this conduct was a criminal violation. **(Op. at p. 6)** (emphasis added). The Court then limits its analysis to discussion of Section 21-75's prohibition of construction in a manner that interferes with navigation and ultimately bases its holding on that Ordinance; the Court does not mention the Town's other Ordinances in its holding, and further does not mention the provisions of Section 21-75 which require approval of dock construction before such construction can take place, even though Appellant's conviction was for failing to comply with Respondent's permitting requirements. **(Op. at pp. 6-7).** Respondent will nonetheless discuss how the Town's Ordinances provide proper notice and are not vague in this Section.

[9] The issue of arbitrary and discriminatory enforcement is not part of the Opinion. Respondent will this focus its analysis on Houey's first prong, which formed the basis of the Opinion.

(4th Cir. 2012) (. . . and when a statute fails to provide an explicit definition, we may resort to ordinary meaning and common sense . . . .").

A. Appellant had notice that he was required to obtain and comply with a building permit to construct a dock.

Section 5-10 governs building permits generally (for all projects, not just docks), and requires application for permits before construction and provides that an "[a]pplication for a building permit shall be made in writing to the Building Inspector or his designated representative at the Town Hall on a form or forms approved and furnished by said Inspector" and supported with "[p]lans and specifications adequately describing the proposed erection, construction, improvement, alteration or repair . . . ." **(TOSI Ordinance § 5-10, R. at pp. 77-78)**. Section 5-9 also provides in part that it is illegal to construct without a permit from the Town. **(TOSI Ordinance § 5-9, R. at pp. 77)** ("**It shall be unlawful** to erect, construct, improve, alter or repair any building, sign, or other structure or any part thereof or alter any parcel of land in preparation of such erection, construction, improvement or repair **without first having obtained from the Building Inspector a written permit for such erection**, construction, improvement, alteration, or repair, pursuant to the provisions of this article. . . ") (double emphasis added). Section 21-75, which specifically governs construction of docks provides, in pertinent part, that no dock will be constructed without "**approval of the Town of Sullivan's Island**, U.S. Corps of Engineers, the Department of Health and Environmental Control/Office of Ocean and Coastal Resource Management (DHEC/OCRM) and any other governmental or regulatory agency with jurisdiction." **(TOSI Ordinance § 21-75, R. at pp. 66-67)** (double emphasis added). Finally, Town Ordinance Section 1-7,[10] provides that violating the Town's Ordinances constitutes a misdemeanor and put

[10] That Section reads, in full: "Wherever in this Code, or in any ordinance or resolution of the Town, or rule or regulation or order promulgated by any officer or agency of the Town under

the world on notice of the punishment for such violations of Town Ordinances. **(TOSI Ordinance § 1-7, R. at p. 71).**

The above Ordinances clearly require the applying party to obtain and comply with the conditions set forth in permits before construction, and failing to comply with a permit condition would invalidate the permit. The Ordinances also make it clear that violation of a Town Ordinance is a misdemeanor. Appellant was clearly on notice of the prohibitions. In fact, at the hearing, Appellant acknowledged many times that he had to obtain a permit before building the dock. The act of applying for a dock construction permit showed that Appellant was aware of the Ordinance and its requirements. Appellant would not have applied for a dock construction permit if he did not think it necessary or required. Appellant even admitted at trial that he had notice of the Ordinances and what they required, noting that he had complied with or attempted to comply with the Ordinances many times prior. **(R. at p. 240, ll. 8-10). (R. at pp. 242-43 ll. 24-9).**

Appellant even emphasized his construction experience on Sullivan's Island, further supporting the lower court's factual finding that Appellant had experience with the Town's Ordinances. Appellant, an experienced dock builder, built other docks on Sullivan's Island, and therefore built docks under Respondent's Ordinances before. **(R. at p. 231-32 11. 16-1)** ("Q: Okay. And have you constructed docks on Sullivan's Island? A: I have. Q: All right. Other than Mr. Thompkins' dock? A: I have. Q: And Isle of Palms? A: I have. Q: Any idea, approximately, how

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authority duly vested in him or it, any act is prohibited or is declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, and no specific penalty is provided for the violation thereof, the violation of any such provisions of this Code, or any such ordinance, resolution, rule, regulation or order shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days. Each day any violation of this Code, or any such ordinance resolution, rule, regulation or order shall continue shall constitute, except where otherwise provided, a separate offense." (emphasis added). **(TOSI Ordinance § 1-7, R. at p. 71).**

many docks you have constructed in your career? A: Hundreds."). Under South Carolina law, those with experience in an area or field can have notice of potential criminal liability by virtue of their experience. State v. Neuman, 384 S.C. 395, 405 683 S.E.2d 268, 273 (2009) (". . . we find a person of ordinary intelligence and judgment would be sufficiently apprised of conduct that would come within the purview of the statute. Clearly, one who is incarcerated in a correctional facility is aware of his status as an inmate and conduct the statute makes criminal.").

Appellant further acknowledged that his permit included a condition, and he was on actual notice of the condition contained within the permit. **(R. at pp. 244-45 ll. 12-9)** (Appellant agreeing that the specific notations and conditions of the permit, including the condition to not build the dock beyond adjacent docks, were part and parcel of the building permit.).

In addition to the above, Appellant even received a specific written notice from Respondent that a violation of the permit documents was a violation of Town Ordinances. Specifically, Respondent issued Appellant a Certificate of Zoning Compliance on June 30, 2014, for the work to be done. **(R. at p. 88).** In a bold, capitalized, and underlined section of the Certificate entitled "**NOTICE**," the Certificate reads, in part:

> I hereby certify that I have read and understand the requirements of this permit, the conditions of approval of this permit, the conditions noted on the approved plans and that there are no restrictive covenants on the tract or parcel of land for which this permit is being requested. **I further understand that any deviation from the approved plans *and conditions thereof* shall constitute a violation of the Town of Sullivan's Island Zoning Ordinance.**

(R. at p. 88) (emphasis, double emphasis, and triple emphasis added).

The record is clear that Appellant had actual, clear, written notice that he would be in violation of the Town's Ordinances if he deviated from the approved plans for the to be constructed dock. Section 1-7 makes it clear that such violation of the Town Zoning Ordinance is criminal. **(TOSI Ordinance § 1-7, R. at p. 71).** Even if Appellant claimed he was not aware of Section 1-7, citizens

are charged with notice of laws and ignorance or mistake of law is no excuse. State v. Latimore, 390 S.C. 88, 98, 700 S.E.2d 456, 462 (Ct. App. 2010), aff'd as modified, 397 S.C. 9, 723 S.E.2d 589 (2012) ("Even if we presume [a defendant] was not notified of the changes to the statutory scheme, ignorance of the law is no excuse."); Cheek v. United States, 498 U.S. 192, 199, 111 S. Ct. 604, 609, 112 L. Ed. 2d 617 (1991) ("The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system . . . Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law.")

A person of reasonable intelligence using common sense would thus know what Respondent's Ordinances proscribe or allow. Respondent's Ordinances clearly require individuals and contractors to obtain and comply with permits before construction. Therefore, for these reasons this Court should grant rehearing and issue an opinion affirming the circuit court.

B. Appellant had notice that no dock on Sullivan's Island can be constructed so as to interfere with navigation.

Even though Appellant was convicted of violating the Ordinances' terms prohibiting construction without permits, the Court ruled that another portion of 21-75, which prohibits construction of docks that interfere with navigation, was vague. Even if this portion of 21-75 formed the basis of Appellant's conviction, which it did not, Appellant still had notice that failing to comply with this portion of 21-75 would result in criminal liability. Section 21-75, in addition to requiring permits for dock construction, provides that "[n]o dock shall be permitted to be constructed which extends into the channel *or extends so far as to interfere with navigation.*" **(TOSI Ordinance § 21-75, R. pp. 63-67)** (emphasis added).

The language contained in Section 21-75 is simple and precise, and clear enough for a person of reasonable intelligence using common sense to understand. The Town's Building Official

explained that common sense dictates that on a winding creek docks that protrude further seaward than the adjacent docks would interfere with navigation and create a safety hazard: ". . .you're in a boat and you're riding down a creek . . . and you're using those docks as a guide to go down the dock . . . [a]nd if one's sticking out there, you run (*sic*) in that dock." **(R. at p. 218, ll. 6-13).** This is common sense, and a person of ordinary intelligence would understand that a dock built in a way that blocks the normal course of boat traffic impedes navigation. Furthermore, Appellant was clearly on notice of the prohibitions provided in 21-75 because the condition contained in his building permit (which Appellant admits was a part of his permit), directly stemmed from that Ordinance. The reason the condition was included in the permit because of the 21-75's prohibition from construction that interferes with navigation; there would have been no other reason for Respondent to attempt to regulate the length of the dock. As discussed extensively above, in this particular case the Town even explained that to Appellant, he agreed and then proceeded to violate the permit.

Furthermore, it is clear that this portion of the Ordinance does not authorize arbitrary or discriminatory enforcement. There was ample evidence presented that the Ordinance was created to ensure safety. At trial, Respondent's Zoning Administrator testified that ". . . it's a long-standing interpretation of the Town that not extending so far as to interfere with navigation means that no docks subject to a permit can extend beyond adjacent doc[ks]." **(R. at p. 190, ll. 20-23).**

The Court cites Neuman for the proposition that a statute is only valid if it expressly states what it prohibits. **(Opinion at p. 6).** The Court in Neuman did not hold that a statute is *only* valid if it *expressly* states what constitutes prohibited conduct; at no point does Neuman state that. Rather, Neuman applied the legal standard detailed above, citing Curtis. 384 S.C. 403, 683 S.E.2d 272. Critically, Neuman even held the statute at issue in that case to not be impermissibly vague.

Id. at 405, 273. Common sense also dictates that Section 21-75 expressly prohibits constructing docks longer than preexisting docks, as doing so would interfere with navigation.

Respondent's Ordinance requiring that docks not be built so as to interfere with navigation required Appellant with sufficient notice of potential criminal liability. The Court erred in holding otherwise. The Court should grant rehearing and ultimately affirm the circuit court.

III. In making its own factual finding that Appellant did not have proper notice of potential criminal liability, the Court applied an improper standard of review and impermissibly ignored the factual findings of the lower court.

In finding that the Town's Ordinances did not provide Appellant with proper notice of potential criminal liability, the Court made its own factual finding and thereby applied an improper standard of review that did not accept the well-reasoned factual findings of the lower court.

"[I]n criminal cases, an appellate court sits to review errors of law only." State v. Banda, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006) (emphasis added). Thus, appellate review of criminal cases is significantly limited, as the "appellate court is **bound by the trial court's factual findings** unless they are clearly erroneous." Id. (double emphasis added). This is especially true with the situation presented in this case, where before review by the Court, a case from the municipal court is appealed to and reviewed by the circuit court. City of Aiken v. David Michael Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006) ("In criminal appeals from municipal court, the circuit court does not conduct a de novo review.") (emphasis added).

Here, as discussed above, Appellant was found guilty by the municipal court for failing to comply with the Town's Ordinances requiring Appellant to obtain and comply with the conditions contained within a permit. Appellant appealed that decision, and in its Return to Notice of Intent to Appeal, the municipal court held, among other things, that "[Appellant] testified that he was told not to build the dock further out than the adjacent docks" and that [Appellant] was aware of

that condition from the building permit." **(R. at pp. 54-55).** As stated above, the municipal court found that Appellant built the dock longer than adjacent docks and was on notice of the condition noted on his building permit forbidding him from constructing a dock longer than adjacent docks. **(R. at p. 55).**

Appellant appealed that decision to the circuit court. Via Form 4 Order, the circuit court affirmed the municipal court's factual findings. **(R. at p. 3); (R. at pp. 1-2)** This Court's Opinion contravenes the factual findings of the trial court by finding that that Appellant did not have notice of the requirements of the Town's Ordinances. **(Opinion at p. 7).** As stated above, a reviewing court can only replace the factual findings of lower courts with its own factual findings if such findings are clearly erroneous. Notably, the Opinion does not state that the municipal court made clearly erroneous factual findings or even address the factual findings below. It was error for this Court to make a *de novo* review of the evidence on appeal. Therefore, rehearing should be granted and an opinion issued affirming the circuit court.

IV. The Court overlooked or ignored the principal argument of Respondent that the circuit court did not commit error of law when it affirmed that a dock builder, who admitted that he was aware of conditions attached to his conditional building permit, ignored those conditions and built a dock that did not comply with the conditions set forth in the conditional building permit, thereby violating Respondent's Ordinances requiring a proper permit for dock construction.

The Court failed to address Respondent's primary argument that Appellant was properly convicted of violating the Town's Ordinances requiring him to obtain and comply with the conditions of a permit before construction of the dock. The Town's Ordinances clearly require a building permit before structures can be erected. **(TOSI Ordinance § 27-75, R. at pp. 66-67); (TOSI Ordinance § 5-10, R. at pp. 77-78).** Appellant was convicted of failing to comply with the agreed upon conditions set forth in a building permit. The Opinion does not address his conviction for failing to obtain and comply with a permit.

Here, as stated above, Appellant applied for a permit and the Town conditionally approved that permit, specifically noting that Appellant's dock must not extend beyond adjacent docks. **(R. at p. 87).** Appellant admitted that the condition detailed above was part of the permit. **(R. at pp. 244-45, ll. 12-9).** Appellant thus knew that the permit was conditional upon him building the dock the same length as adjacent docks and built the illegal dock anyway – thus violating the Town's Ordinances requiring compliance with pre-construction permits. See **(R. at p. 217, ll. 3-8)**; **(R. at p. 217, ll. 9-25)**; **(R. at p. 175, ll. 11-15)**; **(R. at pp. 218-19, ll. 14-5)**; **(R. at pp. 243-44 ll. 10-8)**; **(R. at pp. 244-45, ll. 18-8)**; **(R. at pp. 242-43, ll. 24-4)**. Appellant's conviction was justified.

Furthermore, by overlooking Respondent's primary argument, the Court also overlooks an important subpart of that argument- the fact that Appellant **accepted** the permit **as it was issued to him** and agreed to be bound by its terms. The South Carolina Code provides a mechanism for appealing permits. See S.C. Code § 6-29-800 (A)(1) (providing that board of appeals has the powers "to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance"); **(R. at p. 184, ll. 10-19)** Appellant was aware of the process for appealing a permit as issued. Appellant nonetheless chose not to appeal the permit as written. **(R. at p. 185, l. 6).**

Courts across this country have held that when an individual accepts the benefit of a building permit (specifically, the benefit of being able to construct something), those individuals agree to and must accept the conditions attached to them, thus constituting a waiver of appellate rights. See Lynch v. California Coastal Com., 3 Cal. 5th 470, 478, 396 P.3d 1085, 1090 (2017) ("Similarly, because plaintiffs here took advantage of their permit's benefits by building a seawall, they must now accept the permit's conditions."); Pfeiffer v. City of La Mesa, 69 Cal. App. 3d 74, 78, 137 Cal. Rptr. 804, 806 (Ct. App. 1977) ("It is fundamental that a landowner who accepts a building

permit and complies with its conditions waives the right to assert the invalidity of the conditions."); L.A. Dev. v. City of Sherwood, 159 Or. App. 125, 133, 977 P.2d 392, 396 (Ore. 1999) (citing Pfeiffer); Town of Flower Mound v. Stafford Ests. Ltd. P'ship, 135 S.W.3d 620, 629 (Tex. 2004). Appellant accepted the benefit of the permit (and the conditions attached) by beginning construction. Appellant agreed to be bound by the terms.

The Court should have considered this argument and should now grant rehearing and issue an opinion affirming the circuit court.

CONCLUSION

For the reasons stated above, the Court should GRANT rehearing, vacate the Opinion, and enter an opinion affirming the circuit court.

Respectfully submitted,

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September 15, 2021
Charleston, South Carolina

The South Carolina Court of Appeals

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Re: Town of Sullivan's Island v. Michael Murray
Appellate Case No. 2018-000511

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

cc: The Honorable Kristi Lea Harrington

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Town of Sullivan's Island, Respondent,

v.

Michael Murray, Appellant.

Appellate Case No. 2018-000511

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Opinion No. 5856
Heard September 23, 2020 – Filed September 1, 2021

REVERSED

Mary Duncan Shahid, of Nexsen Pruet, LLC, and Stephen Peterson Groves, Sr., of Butler Snow, LLP, both of Charleston, for Appellant.

John Joseph Dodds, III, of The Law Firm of Cisa & Dodds, LLP, of Mount Pleasant; and John Phillips Linton, Jr. and George Trenholm Walker, both of Walker Gressette Freeman & Linton, LLC, of Charleston, all for Respondent.

LOCKEMY, C.J.: Michael Murray appeals the circuit court's order affirming his municipal court conviction for violating the Town of Sullivan's Island's (TOSI's) ordinances related to the construction of a dock. He argues the circuit court erred by (1) applying TOSI's municipal code, (2) holding TOSI's interpretation of its enforcement authority did not violate the rule of fair notice, (3) failing to find

TOSI's ordinance criminalized conduct otherwise legal in South Carolina, and (4) failing to hold TOSI's actions were arbitrary and capricious. We reverse.

FACTS/PROCEDURAL HISTORY

Murray owns American Dock and Marine Construction (ADMC) and is a licensed marine contractor. ADMC specializes in dock, boatlift, and other construction in wetlands areas. Jason Tomkins hired ADMC to construct a dock (the Dock) at 1102 Osceola Avenue. In 2014, Murray obtained an accessory structures permit from TOSI for the construction of the Dock. As part of that permit, TOSI also issued ADMC a Certificate of Zoning Compliance, which stated, "Move pierhead, floating[, and] boatlift landward to not exceed adjacent docks." Additionally, the permit required Murray to submit an "as-built" survey[1] to TOSI when he completed the Dock.

ADMC completed the Dock in 2014. Murray's as-built survey showed the Dock extended nine feet past the adjacent docks. Subsequently, TOSI arrested Murray and Tomkins and charged them with violation of TOSI's ordinance sections 21-75[2] and 5-10.[3] Murray moved to dismiss the charge, arguing that TOSI's interpretation was arbitrary and that the dock did not interfere with navigation because the boundaries of the body of water are not fixed and move with the flow of the body of water. The municipal court denied Murray's motion.

The case proceeded to a bench trial before the municipal court. Joseph Henderson, TOSI's zoning administrator, testified Murray's construction plan showed the Dock extended beyond adjacent docks. He explained he approved the permit but added a specific condition under the work description section that the Dock not extend beyond adjacent docks. Henderson spoke with Murray about this requirement. He testified TOSI's interpretation of section 21-75 was that docks could not extend farther than adjacent docks because they would interfere with navigation. He testified that by constructing the Dock beyond adjacent docks, Murray violated the terms and conditions of the permit that was issued.

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[1] An "as-built" survey is a survey performed after construction is completed indicating the metes and bounds of the final location of the structure.

[2] Town of Sullivan's Island, S.C., Code § 21-75 (2007) ("No dock shall be permitted to be constructed which extends into the channel or extends so far as to interfere with navigation.").

[3] Town of Sullivan's Island, S.C., Code § 5-10 (2005) (requiring builders to submit permit applications in writing to the TOSI Building inspector).

Randy Robinson, TOSI's chief building inspector, testified he established TOSI's requirement that docks cannot exceed adjacent docks. He testified TOSI requires new docks not exceed adjacent docks in order to facilitate navigation because the docks act as a guide going down the water.

Murray testified the Dock was built at mean low water; thus, there was no navigability where the Dock was located because it was on mud plats. Murray stated navigation was in the centerline of the body of water, and there was no reason to navigate near a dock. Murray stated his crew lined up the docks the best they could. He admitted he reviewed the permit's language that the Dock could not "exceed adjacent docks" and signed the permit. He also acknowledged the Dock extended beyond the adjacent docks by 9.2 feet. Murray admitted the specific notation "must not exceed adjacent docks" was a part of the building permit.

TOSI argued that Murray was required to have a permit to construct the Dock, it gave specific approval with conditions, and Murray did not meet those conditions. Murray argued TOSI's decision not to allow the construction of a dock beyond adjacent docks was TOSI's interpretation, and the ordinances did not state a dock could not exceed adjacent docks. He further asserted TOSI presented no evidence the Dock interfered with navigation. Murray claimed the only condition on the permit was that he submit an as-built survey. The municipal court found Murray guilty of the offense and ordered him to pay a fine of $1,040.

Murray appealed to the circuit court, arguing TOSI presented no evidence the Dock interfered with navigation and that no legal requirement prohibited a dock from exceeding adjacent docks. Murray further asserted no evidence supported his conviction because he complied with all requirements for approval to construct the Dock. He also argued the condition contained in the permit was ambiguous. Murray claimed he did not have fair notice that building the Dock nine feet forward of adjacent docks was a criminal violation and TOSI's prosecution of such an unwritten standard was arbitrary.

The circuit court affirmed Murray's municipal court conviction, stating, "Based on the record, Murray acknowledged notice of the zoning laws and permit requirements and was found in violation. Murray has failed to demonstrate an error of law." Although the circuit court found TOSI's ordinances contained no express requirement prohibiting a dock from extending farther than adjacent docks, it concluded Murray was required to obtain a building permit for the Dock, the

permit prohibited the Dock from extending past adjacent docks, and it was undisputed the Dock extended past adjacent docks. This appeal followed.

ISSUES ON APPEAL

1. Did the circuit court err by affirming Murray's municipal court conviction based on TOSI's ordinances?

2. Did the circuit court err by affirming the municipal court because TOSI's ordinances violated the rule of fair warning of potential illegality?

3. Did the circuit court err by failing to find TOSI's interpretation of its authority resulted in criminalizing conduct that was otherwise legal under South Carolina law?

4. Did the circuit court err by failing to hold TOSI's actions were an arbitrary and capricious violation of Murray's due process rights?

STANDARD OF REVIEW

"In criminal appeals from municipal court, the circuit court does not conduct a de novo review." *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007). "In criminal cases, the appellate court reviews errors of law only." *State v. Vinson*, 400 S.C. 347, 351, 734 S.E.2d 182, 184 (Ct. App. 2012). "Therefore, our scope of review is limited to correcting the circuit court's order for errors of law." *Suchenski*, 374 S.C. at 15, 646 S.E.2d at 880.

LAW/ANALYSIS

Murray argues the circuit court erred in affirming his conviction. He asserts sections 21-75 and 5-10 do not prohibit a dock from extending farther into the channel than adjacent docks. He asserts TOSI's interpretation that a dock cannot extend past adjacent docks was an unpromulgated and noncodified requirement that did not provide fair warning of criminal liability. We agree.

Section 21-75(B)(1) states, "No dock shall be permitted to be constructed which extends into the channel or extends so far as to interfere with navigation . . . ." "It shall be unlawful to erect, construct, improve, alter or repair any building, sign, or other structure . . . or alter any parcel of land in preparation of such erection, construction, improvement or repair without first having obtained from the

Building Inspector a written permit for such erection . . . ." Town of Sullivan's Island, S.C., Code § 5-9 (2007). Section 5-10 requires permit applications be made in writing to the TOSI building inspector.

"Any person violating . . . this Zoning Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined and/or imprisoned, . . . in an amount of no more than $500.00 or imprisonment for 30 days or both." Town of Sullivan's Island, S.C., Code § 21-192 (2005).

> Violation of the provisions of this ordinance or failure to comply with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 30 days, or both . . . . Each day such violation continues shall be considered a separate offense.

Town of Sullivan's Island, S.C., Code § 5-75 (1997).

"[P]enal statutes are to be strictly construed. This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute's scope be resolved in the defendant's favor." *State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017). "One of the foundations of the rule of lenity is the concept of fair notice—the idea that those trying to walk the straight and narrow are entitled to know where the line is drawn between innocent conduct and illegality." *Id.* "Criminal ordinances are, of course, to be strictly construed and a defendant has a right to know just wherein he is charged with the commission of a crime . . . ." *Town of Conway v. Lee*, 209 S.C. 11, 18, 38 S.E.2d 914, 917 (1946).

"The void-for-vagueness doctrine rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009) (quoting *State v. Houey*, 375 S.C. 106, 113, 651 S.E.2d 314, 318 (2007)). "A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application." *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001).

"[T]he terms of a penal statute . . . must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties . . . ." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926). "[A]ll the Constitution requires is that the language convey sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices." *S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 506, 757 S.E.2d 388, 392 (2014) (alteration in original) (quoting *Curtis*, 345 S.C. at 572, 549 S.E.2d at 599)).

We hold the circuit court erred in affirming Murray's municipal court conviction because TOSI's ordinances were vague as applied here, such that they did not provide Murray with sufficient fair notice that violation could result in criminal liability. Further, TOSI failed to present evidence the docks actually interfered with navigation or in any way extended into the channel. Here, Robinson's testimony was the only evidence that Murray's dock interfered with navigation, and his conclusory statements were premised on only the permit notation and not the legal provisions of any ordinance. TOSI presented no evidence of how the dock actually interfered with boats navigating the channel.

Moreover, the ordinance failed to provide fair notice this conduct was a criminal violation. The United States Supreme Court in *Connally* held a criminal statute that required employers to pay a minimum wage equivalent to the "current rate of per diem," as determined by the Oklahoma Commissioner of Labor, was unenforceable because it did not state a specific sum sufficient to give fair notice. *Connally*, 269 U.S. at 393-94. The Court held the statute failed to provide an ascertainable standard of guilt because it did not forbid a specific or definite act. *Id.* Here, TOSI's ordinance did not expressly proscribe the prohibited conduct—constructing a dock farther into the waterway than adjacent docks—for which Murray was found guilty. Moreover, like in *Connally*, the prohibited act was not determined by the language of the law itself, but instead by a decision of a government employee.

Without an express prohibition in the ordinance itself, the ordinance lacked proper standards for adjudication. *See Neuman*, 384 S.C. at 402, 683 S.E.2d at 271 (providing "procedural due process requires fair notice and proper standards for adjudication" (quoting *Houey*, 375 S.C. at 113, 651 S.E.2d at 318)). Testimony at trial showed there were different interpretations regarding what constituted a dock that interfered with navigation. *See Connally*, 269 U.S. at 393 ("The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions."). The

ordinance that TOSI claims prohibits the construction of a dock from extending past other docks only states a dock cannot interfere with navigation. This broad statement renders the ordinance vague as TOSI sought to apply it here because interference is not defined and was based solely on the interpretation of the building inspector. *See Connally*, 269 U.S. at 391 ("[T]he terms of a penal statute . . . must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties . . . ."). Because the building inspector decided what constituted prohibited conduct without any guidance from the codified language, the citizenry was not informed what acts were criminal. *See McBoyle v. United States*, 283 U.S. 25, 27 (1931) ("To make the warning fair, so far as possible the line should be clear."). Thus, the ordinance was too vague to support criminal prosecution. *See Bouie v. City of Columbia*, 378 U.S. 347, 351 (1964) ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939))).

We reverse the circuit court's order affirming Murray's conviction because TOSI's ordinances failed to provide Murray with fair notice that building a dock beyond adjacent docks was a criminal violation. Because this issue is dispositive, we need not address Murray's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("In light of our disposition of the case, it is not necessary to address [the] remaining issues.").

CONCLUSION

For the foregoing reasons, the circuit court's order affirming Murray's conviction is

REVERSED.

KONDUROS and MCDONALD, JJ., concur.

RECEIVED
Sep 15 2021
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Kristi L. Harrington, Circuit Court Judge

Civil Action No.: 2016-CP-10-5578
Appellate Case No.: 2018-000511

Town of Sullivan's Island, ...Respondent,

v.

Michael Murray, ...Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's **PETITION FOR REHEARING**, on Appellant by electronic mail on September 15, 2021, addressed to its attorneys of record as follows:

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Subject:	Town of Sullivan"s Island v. Michael Murray, 2018-000511
Date:	Wednesday, September 15, 2021 4:56:00 PM
Attachments:	JPL LT to COA filing Petition for Rehearing.pdf 2021-09-15 - Petition for Rehearing.pdf Town of Sullivans Island v. Michael Murray - Opinion.pdf

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Counselors,

Attached for service upon you in connection with the above-referenced matter, please find Respondent's Petition for Rehearing.

With kind regards,

M. Eugenia. Minniti
Paralegal

WALKER GRESSETTE FREEMAN LINTON LLC

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Thomas P. Gressette, Jr.
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September 15, 2021

Via U.S. Mail and Email

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
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RE: Murray v. Town of Sullivan's Island
Appellate Case No. 2018-000511
WGFL File No.: 6670.018

Dear Ms. Kitchings:

Enclosed for filing please find Respondent's Petition for Rehearing and Proof of Service in the above-referenced appeal, along with the $50 filing fee for the Petition. Thank you for your courtesies in filing these with the Court.

Sincerely yours,

WALKER GRESSETTE FREEMAN & LINTON, LL

John P. Linton, Jr.

Enclosures as stated

cc: Stephen P. Groves, Sr., Esq.
Mary D. Shahid, Esq.
John J. Dodds, III, Esq.