THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes III, Master-In-Equity

Civil Action No. 2021-CP-07-1507
Appellate Case No. 2022-000681

Beaufort County, Appellant,

v.

Adams Outdoor Advertising Limited Partnership and Bo Hodges, Respondents.

APPELLANT'S INITIAL REPLY BRIEF

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Introduction

Adams Outdoor and its real estate manager Bo Hodges (collectively, "Adams") do not dispute that—contrary to Beaufort County Community Development Code ("CDC") § 5.6.50(E) and the repeated admonitions of County staff—they defiantly replaced the wooden structural supports of (and re-erected) two decades-old nonconforming billboards over a weekend. Nor do they dispute that they had actual notice from the County that their conduct was unlawful.

So Adams argues that it is entitled to have its magistrate court convictions thrown out on technical procedural grounds, namely because a formal notice of violation was not sent before Adams was cited and because the citations did not repeat information that Adams already knew.

In an order drafted by Adams's counsel, the circuit court—though leaving untouched the magistrate's finding that Adams had actual notice that its conduct violated the CDC—bought Adams's argument and rejected the magistrate's ruling that any procedural defect was harmless.

That order's analysis section (Order on Appeal at 7-11) cites only *one* case to justify its conclusion: *Town of Sullivan's Island v. Murray*, 435 S.C. 22, 864 S.E.2d 909 (Ct. App. 2021). *Murray*, of course, dealt with the rule of lenity—a due process doctrine grounded in "the concept of fair notice"—that requires an ambiguous criminal law to be "strictly construed." *Id*. at 28-29.

The County's opening brief dismantled the circuit court's order, showing that: the rule of lenity does not apply, actual notice satisfies due process, and any procedural error was harmless.

In response, other than repeating the order and catastrophizing about a "police state," Adams *capitulates*: "While the Order does cite this Court's decision in *Town of Sullivan's Island v. Murray*, the Circuit Court's conclusion and reversal did not rest on the opinion." (Resp. Br. 14.) Adams also avoids citing the rule of "strict compliance" (as opposed to the rule of lenity's "strict construction") that it made up in the order adopted below. (Order on Appeal at 7, 10.)

So the decision below is left undefended, and unmoored from any legal authority or doctrine to justify declaring Adams "not guilty" in the face of its blatant violation of the CDC.

Sensing that the order below is left exposed, Adams seeks to revive a preemption argument that the magistrate court easily dispatched and the circuit court also refused to touch. It fails too.

Reply to Adams's Statement of the Facts

The County's opening brief described the various enforcement provisions contained in Article 9 of the CDC. (Cty. Br. at 3-5.) Adams ignores most of them, including:

> § 9.1.10 – "The provisions of this Article are intended to encourage the voluntary correction of violations, ***where possible***." (emphasis added)
>
> § 9.2.20(A) – "Any failure to comply with a standard, requirement, prohibition, or limitation imposed by this Development Code . . . shall constitute a violation of this Development Code punishable as provided in this Article."
>
> § 9.2.30 – "It shall be a violation of this Development Code to . . . J. Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or development approvals."
>
> § 9.3.10 – "Any person who violates this Development Code shall be subject to the remedies and penalties set forth in this Article."
>
> § 9.5.20 – "In addition, the County may use any combination of the following enforcement actions, remedies, and penalties in any particular order to correct, stop, abate or enjoin a violation of this Development Code: [discussing Stop Order, Permit Revocation, and Civil Remedies]."

(DX-3 at 1-6.)

Adams instead quotes the whole of §§ 9.4.40 and 9.4.50, but unwittingly identifies the lower court's error: "The Order's sole focus was §§ 9.4.40 and 9.4.50." (Resp. Br. 4.) Because Adams and the circuit court focus on §§ 9.4.40 and 9.4.50 alone, they both failed to recognize that the CDC affords the County flexibility for addressing violations of the code, and that the County properly enforced the CDC against Adams.

Under CDC § 9.5.10, "[a]ny person violating this Development Code shall be guilty of a misdemeanor …." (DX-3 at 5.) The violation exists, and is a prosecutable misdemeanor, when it occurs (DX-3 at 1, § 9.2.20(A)), regardless of whether the violator receives a warning notice.

Prosecution is one remedy that the CDC gives the County to stem a violation, and CDC § 9.5.40 provides that "[t]he remedies provided for violations of this Development Code, whether civil *or criminal* may be cumulative and in addition to any other remedy provided by law, *and may be exercised in any order.*" (DX-3 at 6 (emphasis added).) So CDC § 9.5.10 and § 9.5.40 authorized the issuance of criminal summonses to Adams for violating the Development Code.

Adams's response statement includes several other assertions that require correction.

Adams claims that "[o]ver time, due to strong winds from multiple storms, as well as other natural forces, two of Adams' nonconforming billboards located within the County became damaged to such an extent that they had to be repaired." (Resp. Br. 5.) But Hodges was unable at trial to identify any storm that damaged the billboards. (Tr. 138:1-7.) Photos of the billboards instead showed wooden structural poles—the ones that Adams replaced—that were rotting from groundwater. (PX-2 at 8-19.)

Adams claims that the billboards "had to be repaired." (Resp. Br. 5.) Wrong—the billboards had to be removed. The CDC allows billboards to "be maintained only by painting or refinishing the surface of the sign face so as to keep the appearance of the sign as it was when originally permitted." (PX-7 at 1, 5.6.50(E)(2).) But a billboard that "has become dilapidated or structurally unsound," (e.g., has rotted structural poles) must be removed, and "any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign." (*Id.*)

Adams says that its billboards are "controlled" by the Highway Advertising Control Act ("HACA"), but the truth is that its billboards are governed by the HACA *and* by local codes.

Adams self-servingly calls SCDOT's review process "very stringent," but the record merely shows Adams's "Request for Repair" and a letter telling Adams that it "may repair the damage." (DX-2 at 2-3, 5.) The letter does not purport to give authorization on behalf of any other entity. Contrary to Adams's assertion, SCDOT never said that County approval for billboard repairs was not necessary, nor did SCDOT release Adams from the strictures of the CDC. (Resp. Br. 7.)

Adams explains how CDC § 5.6.50(E)(4)(c) gives the County more discretion to deny a repair request, but this actually means that the County's regulations are *more restrictive* than the state regulation, as such discretion allows for a greater number of grounds on which the County may deny approval. Adams claims that SCDOT approval "constituted the proper authorizations," Resp. Br. 7, but that approval did not constitute proper authorization from the County Code Enforcement Department as required by CDC § 5.6.50(E)(4)(b):

> To my knowledge **Beaufort County has issued no approvals for Adams to conduct this work** and will not issue approval for the complete rebuild of these signs since doing so will violate the Community Development Code. The onsite contractor called this a "repair" but had no official paper work other than [an SCDOT letter] which, as you should know, **is not a local permit** nor proper authorization to reconstruct an outdoor advertising display.

(PX-5 at 3) (emphasis added).

Adams falsely claims that it could not obtain County permission to rebuild the signs, even if it wanted to, because the Community Development Department did not exist in April 2021. (Resp. Br. 8.) But Greenway explained that he carried out the responsibilities of the Director of "[t]he Planning and Zoning Department" which is "responsible for enforcing the Community Development Code." The Community Development Department was not eliminated; rather the name of "the Community Development Department . . . was changed to the Planning and Zoning Department." (Tr. 102:20-25.) The functioning department remained. If the CDC's standards had been met, approval would have been available, as indicated by all the staff. (DX-1, DX-5, PX-5.)

Nor did Greenway make "determinations of fifty percent sign damage" based on a "drive by" of the work site. The fifty percent rule in CDC § 5.6.50(E)(4)(c) was never at issue. Greenway stopped at the site, saw that the signs were being completely rebuilt contrary to CDC § 5.6.50(E)(2), (3), and knew that the County had not authorized the work. He testified:

> I saw cranes parked on the side of [Highway] 21, in the right of way of 21, lifting poles into position in front of the McDonald's sign, and I knew that was not appropriate underneath the Community Development Code. So I stopped . . . . I walked across the road, found the superintendent, asked him to come over and show me his paperwork that he had authorizing that work by the County and a copy of his business license to do work in Beaufort County. And he couldn't produce neither. All he could produce was a letter from SCDOT.

(Tr. 104:16-105:3.)

Thus, the "wind damage" rule was not at issue because Greenway saw structural rebuilding, not wind damage repairs. In Greenway's communication with Adams, he ordered Adams to stop the illegal rebuilds. (PX-5 at 1-2.) Adams's general counsel responded that Adams would be completing the work, and threatened litigation if the County attempted to prohibit it. (*Id.*)

Adams rebuilt the billboards despite the County's ongoing, futile efforts to achieve voluntary compliance. On the next business day, the County issued the stop work order and citations. Contrary to Adams's brief (Resp. Br. 10), Hodges conceded that the order and citations were delivered, testifying "probably someone in my office" signed for him. (Tr. 148:7-149:1.)

Reply Argument

I. The lower court had no legal basis for finding Adams and Hodges not guilty.

Adams claims that the County failed to follow the technical procedural requirements of the CDC, and then concludes, without support, that such failure nullifies the conviction. But the County's opening brief shows that: (1) the process followed here is valid under the CDC, and (2) even if there was a procedural defect, nullifying the conviction was unjustified under any rule.

Adams's response brief (1) assumes its conclusion of a procedural defect, and (2) urges that the conviction was properly tossed because of the procedural defect—without identifying any legal doctrine that mandates or even justifies such a result.

A. The County followed the CDC in citing Adams.

The County showed that the CDC's remedies, both civil and criminal, "may be exercised in any order," and that its procedures for "voluntary correction of violations, where possible" do not require a written warning in every case. (Cty. Br. 3-4, 16-17 (citing DX-3, § 9.1.10, § 9.5.40).) The County's Code Enforcement Director, Audra Antonnaci, testified before the magistrate court that "the purpose of the warning system" is "simply to give someone who may not know that they're engaged in a violation" the instruction "that they need to abstain until they get the proper approval" where that is possible. (Tr. 95:7-13.) But blatant CDC violators are issued citations when the County's verbal directives are ignored. (Tr. 95:14-23.)

Further, none of the identified violations contain an element that the violator must have first ignored a warning. (Cty. Br. 3-5 (citing §§ 9.5.10, 9.2.20, 9.2.30, 9.3.10, 5.6.50, 9.5.20).)

Adams's only response to these CDC provisions is to say that "the County's ability to exercise the remedies in Division 9.5 in any order has no bearing on the plain procedural requirements of Division 9.4" regarding warning notices. (Resp. Br. 15.) But obviously, the ability to exercise remedies *in any order* disproves the alleged requirement of having to employ one of those remedies (warnings) *before* employing another remedy (citation).

To this, Adams makes the nonsensical claim that "warning notices and citations are not categorized as remedies or penalties under the CDC." (*Id.*) But all of Article 9 (Enforcement) "sets forth the remedies and penalties that apply to violations of this Development Code," § 9.1.10, which includes both warning notices and citations. Adams offers no basis for concluding otherwise.

Nor does Adams's "plain language" argument help the ruling below. True, the CDC says that if a warning is ignored, then the violator shall be cited. But it does not say that is the *only* time a citation may issue. Saying that "if A occurs, then B shall occur," does not dictate that B may occur only if A precedes it. The CDC is clear that "[a]ny person who violates this Development Code shall be subject to the remedies and penalties set forth in this Article." (DX-3 at 2-3, § 9.3.10.) And the legislative body was equally clear in stating, multiple times, that the CDC's remedies and penalties can be exercised in any order. (*Id*. at 5-6, § 9.5.40, § 9.5.20.)

That flexibility does not mean, contrary to Adams's absurd suggestion, that a person may stand trial for a charge "without having ever received a criminal citation or summons." (Resp. Br. 16.) A defendant must have notice of the charges against him, like Adams and Hodges did.

The County repeatedly warned them that proceeding to reconstruct the two billboards would violate the CDC—but they were recalcitrant, and proceeded anyway. Section 9.4.40 does not require the County to issue them a futile warning giving them time within which to comply (they had *already* refused to comply) before citing them. Likewise, § 9.4.50 does not require the County to rigidly list out information on a summons that the violator already knows because he has just submitted the details of the construction he plans to do *without* County approval. (DX-2; *see also* Tr. 144:22-23 (Hodges: "I was not asking for approval. I didn't need approval.").)

Adams accuses the County of trying to "inject ambiguity" into the CDC. (Resp. Br. 14.) On the contrary, it is Adams who seeks to inject ambiguity by ignoring all the provisions that show its conduct violates the CDC and by ignoring the County's authority to exercise the CDC's remedies and penalties against violations in any order. Adams is running away from the sole, inapposite authority (*Murray*) that Adams included in the circuit court order's analysis section, while simultaneously trying to justify the case's inclusion in that order.

As the County has explained, Cty. Br. 23-24, *Murray*'s "strict construction" language from the rule of lenity doctrine was simply a springboard for Adams's new sleight-of-hand "strict compliance" doctrine that does not exist in the case law. In this way, Adams could point to *some* case in an attempt to ignore established doctrines (actual notice, harmless error) which show that any procedural defect in the proceedings below do not justify a finding of "not guilty."

B. Even if there was a procedural deficiency, Adams's actual notice satisfied due process, any error was harmless, and the convictions stand.

Adams has no response to the arguments that it had actual notice of the basis for the citations, and that due process was fully satisfied. (Cty. Br. 6-13 (facts); 14-18 (due process).)

1. Adams's passing response to the actual notice doctrine is unavailing, and fails to justify the circuit court's decision vacating the convictions.

Adams seeks to dismiss the actual notice doctrine with one sentence: "The plethora of case law [the County] cites regarding actual notice in civil lawsuits involving constitutional rights violations, as well as zoning permit denials and the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(16), have no relevance to the matter at hand." (Resp. Br. 12.) But ignoring relevant case law does not make it go away.

The County's brief showed that due process (the doctrine referenced in the Order on Appeal at 9) is "not technical," demands "no particular form of procedure," and "is a flexible concept that calls for such procedural protections as the situation demands." (Cty. Br. 15 (quoting both civil and criminal cases)). The County also showed that where a government's self-imposed notice procedures go beyond the basic requirements of due process, failure to follow those additional procedures does not require invalidating the government's action. (*Id.* at 15-16.)

Adams does not show why these due process principles do not apply here. Due process, of course, applies in both civil and criminal contexts to require fundamental fairness in cases involving either property or liberty. Adams presents no reason, for example, why the due process

principles outlined in *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 642 S.E.2d 565 (2007) —which upheld the city's decision to prohibit the reconstruction of a billboard destroyed by a tornado—would not apply here, where the County cited Adams for defiantly reconstructing two billboards with structural supports rotted by groundwater and age.

Our Supreme Court observed: "Petitioner argues the Court of Appeals' decision violates its procedural due process rights because Petitioner allegedly had no notice of the issues decided by the City. Petitioner's argument fails because it had actual notice of the nonconformity issue . . . ." *Id*. at 234. Likewise, Adams had actual notice of the basis of the citations and of all issues below.

In any event, the rule that actual notice satisfies due process applies in criminal cases as well. In *James v. State*, 372 S.C. 287, 641 S.E.2d 899 (2007), our Supreme Court examined a case in which a defendant was sentenced to life in prison without parole (LWOP). This Court reversed the sentence because S.C. Code Ann. § 17-25-45(H) is "clear and unambiguous in its requirement that both a defendant and his counsel be served with written notice of the State's intention to seek an LWOP sentence prior to trial." *Id*. at 290. Since it was conceded that the defendant had not received such written notice, this Court ruled that the sentence was invalid.

The Supreme Court reversed. Since "[t]he purpose" of the statute is to "assure that a defendant and his counsel have actual notice that the State is seeking a sentence under the recidivist statute at least ten days" prior to trial, "so long as the defendant and his counsel, at least ten days prior to trial, possess actual notice of the State's intention" to seek such a sentence, "the statute has been satisfied." *Id*. at 294-95.

Thus, in the criminal context—even when the matter at hand is as weighty as a sentence of life incarceration without parole—a technical procedural defect (such as a lack of formal written notice like that alleged here) will not invalidate a sentence where the defendant has actual notice.

Faced with its obvious actual notice, Adams retreats further and states that due process had nothing to do with the ruling below, Resp. Br. at 1, 12, and insists that the lower court did *not* rely on the rule of lenity, i.e., a due process principle. (*Id.* at 13-14.)

Yet the *only* case that the lower court cited for its decision (*Murray*) and *all* the cases that Adams cites on appeal (there are only three) *are rule of lenity / due process cases*. In *Hinton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004), this Court applied the rule of lenity's requirement of strict construction to a statute that was "irresolvedly ambiguous." *Id*. at 342. Because the Parole Board's broad interpretation would trigger "an egregious due process violation," this Court rejected that interpretation. *Id.* at 341.

Conversely, in *State v. Miles*, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017), the Court declined to apply the rule of lenity to an unambiguous statute. *Miles* emphasized that the rule is grounded in the due process "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*. at 165. The rule is not intended to give a free pass to those who intentionally cross the line of illegality established in a law (like the CDC) that clearly proscribes their conduct.

Adams's last citation, *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991), also cites the rule of lenity, but had no occasion to apply it because the statute at issue was not ambiguous, did not require construction, and did not proscribe the defendant's conduct. *Id*. at 273-74.

Adams disavows *Murray*, but then cites cases involving the same doctrine, which Adams also disavows. Adams is left with no authority justifying the decision below. And it is also left with no authority supporting its novel "strict compliance" argument that seeks to bypass the "plethora of case law" showing that a defendant who has actual notice and the opportunity to present his defense is not entitled to have his conviction reversed on procedural notice grounds.

2. Any procedural defect clearly falls under the harmless error doctrine.

The magistrate court found, based on undisputed trial evidence, "that the Defendants received actual notice of the violation and had actual knowledge of the location of the violation," such that any "failure to adhere to the formal notice requirements were harmless" errors. (Verdict at 4.) The circuit court reversed without citing any authority or conducting harmless error analysis. The County did the analysis, and showed that the circuit court erred. (Cty. Br. 20-22.)

In short, most constitutional errors can be harmless, *State v. Odom*, 412 S.C. 253, 268, 772 S.E.2d 149, 156 (2015), and the harmless error doctrine avoids "reversals on purely formal and technical grounds" while assuring "that substantial justice has been done." *West v. Newberry Elec. Co-op*, 357 S.C. 537, 544, 593 S.E.2d 500, 504 (Ct. App. 2004) (quoting 5 Am. Jr. 2d *Appellate Review* § 711 (1995)).

The court below violated this doctrine. It reversed "on purely formal and technical grounds" that did not undermine Adams's guilt in any way, and thus *impeded* justice from being done.

Adams's defense of this result is an ipse dixit, and a circular one at that. Ignoring that its blatant disregard of the CDC is what triggered the citations, Adams says:

> The County's lack of regard for the process required by its CDC is a substantial and egregious error that required reversal of the Magistrate's rulings. "The Verdict must be reversed because there is no evidence that the County issued a Notice of Violation, a prerequisite to a Uniform Summons Ticket, and a requirement for criminal prosecution of an alleged violation of the CDC." Order p.10.

(Resp. Br. 21.)

Translation: the County's failure to follow formal notice requirements is not harmless because the County failed to follow formal notice requirements. This argument fails. *Cf. James*, 372 S.C. at 290 (reversing decision to vacate LWOP sentence where only alleged prejudice was that the defendant "was 'sentenced to [LWOP] in violation of the statute'") (internal citation omitted).

Nor can Adams rely on *Arizona v. Fulminante*, 499 U.S. 279 (1991), for the idea that *only* errors at trial may be considered harmless. The emphasis on "trial error" was to differentiate incidental errors during trial from "structural defects in the trial mechanism," such as "total deprivation of counsel at trial," which is not subject to harmless error analysis. *Id*. at 309.

In fact, *Fulminante* supports the County's position because it explains that "harmless-error doctrine is essential to preserve the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Id*. at 308.

Here, the undisputed facts adduced at trial show Adams's guilt. But the circuit court's order declaring Adams "not guilty" undermines public respect for the criminal process where, as here, there is no dispute that the trial by which Adams was found guilty was fair.

For these reasons, the circuit court's order should be reversed.

II. SCDOT sign regulations do not preempt the County's sign ordinance provisions.

Adams argues that the HACA[1] abrogates, i.e., preempts, the Beaufort County CDC, and that rebuilding the billboards therefore did not violate the CDC. Eschewing any legal guidance or test, Adams provides no authority to support this proposed "additional sustaining ground." The only cited case, *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), says nothing about preemption. Adams's preemption argument fails, and the courts below rightly rejected it.

[1] The General Assembly adopted the "Highway Advertising Control Act" to regulate outdoor advertising along federal highways and remain eligible for federal highway funding. The Act aims to "prevent distraction of operators of motor vehicles, promote the safety, convenience, and enjoyment of travel on highways within this State, and preserve and enhance the natural scenic beauty and aesthetic features of highways and adjacent areas." *U.S. Outdoor Advertising, Inc. v. South Carolina Dept. of Transp.*, 324 S.C. 1, 3, 481 S.E.2d 112, 113 (1997).

"In order to pre-empt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 94, 530 S.E.2d 890, 893 (2000) (citing *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990)).

"Where an ordinance is not preempted by State law, the ordinance is valid if there is no conflict with the State law." *Bugsy's*, 340 S.C. at 95.. "As a general rule, 'additional regulation to that of State law does not constitute a conflict therewith.'" *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 214, 574 S.E.2d 196, 199 (2002) (quoting *Fine Liquors*, 302 S.C. 550 at 553). To show a conflict between state and local laws, "both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand." *Fine Liquors*, 302 S.C. at 553, (quoting *McAbee v. Southern Ry. Co.*, 166 S.C. 166, 169-77, 164 S.E. 444, 445 (1932)).

The HACA does not preempt the entire field of highway billboard regulation. To the contrary, it explicitly states that "[n]othing in this article abrogates or affects the provisions of a lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this article." S.C. Code § 57-25-220; *see also Covenant Media of South Carolina, Inc. v. City of North Charleston*, 493 F.3d 421, 424 (4th Cir. 2007) ("HACA, however, does not purport to provide exclusive regulation for billboards, and it contemplates that municipalities may enact stricter regulations of billboards. See S.C. Code Ann. § 57-25-220.").

Nor is there irreconcilable conflict between CDC provisions and State law that would invalidate the County's sign ordinance. The HACA, along with SCDOT regulations promulgated under it, applies to billboards along federally-funded highways in South Carolina. Beaufort

County CDC sign provisions apply to signs that are located in Beaufort County. A billboard that is located along a federal highway *and* within Beaufort County can comply with both regimes.

Having to do so does not establish a preemption defense. Many activities are subject to state *and* local regulations. *See, e.g., Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 660 S.E.2d 264 (2008) (indoor smoking prohibited by state law in certain places, and by local ordinance in additional places); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196 (2002) (state law closed alcohol retailers on Sundays, and local ordinance closed bars between 2:00 AM and 6:00 AM on other days); *Barnhill v. City of North Myrtle Beach*, 333 S.C. 482, 511 S.E.2d 361 (1999) (state law prohibited using personal watercraft between sunset and sunrise, and local ordinance prohibited launching/beaching personal watercraft between 9:00 AM and 5:00 PM in the summer); *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990) (state law authorized red dot signs at liquor stores, and local ordinance prohibited internal illumination of those dots).

Adams argues that some requirements in the CDC and SCDOT regulations are the same, but the fact that Adams must comply with both does not put the CDC in conflict with State law. *Denene*, 352 S.C. at 214. Likewise, Adams argues that some regulations are different, but "mere differences in detail do not render them conflicting." *Fine Liquors*, 302 S.C. at 553.

To show a conflict, Adams must show that the statute and ordinance "contain either express or implied conditions which are inconsistent or irreconcilable with each other." *Id.* Adams has shown neither, so its preemption argument fails. *See, e.g., Township of Homer v. Billboards By Johnson, Inc.*, 708 N.W.2d 737 (Mich. Ct. App. 2005) (holding Michigan Highway Advertising Act did not preempt local sign ordinances); *Scadron v. City of Des Plaines*, 606 N.E.2d 1154 (Ill. 1992) (holding Illinois Highway Advertising Control Act did not preempt local sign ordinance).

A. The CDC's billboard regulations are more restrictive than the State's.

Because S.C. Code § 57-25-220 states that HACA does not abrogate or affect provisions of an ordinance "which is more restrictive" than State law, Adams argues that the County's sign provisions in the CDC are *not* more restrictive than SCDOT regulations for highway billboards. Adams contends that if the SCDOT regulations are more restrictive and thus abrogate the CDC, then Adams was allowed to ignore the County's sign code. Adams is wrong for several reasons.

To begin, the CDC is more restrictive than the HACA because the CDC forbids new billboards from being erected anywhere in Beaufort County. (PX-7 at 1, CDC § 5.6.50(A).) So existing billboards in Beaufort County are nonconforming as to the CDC, and new billboards cannot be erected. In contrast, the HACA does not prohibit new billboards. S.C. Code Ann. § 57-25-140(A) (listing allowed categories of outdoor advertising signs, including those in commercial and industrial zones). The CDC is more restrictive because it prohibits erection of a new billboard in Beaufort County, even if the proposed location would comply with the HACA.

The CDC also imposes more restrictive maintenance and repair standards for billboards than does the HACA and SCDOT regulations. CDC § 5.6.50(E)(2) states that billboards "may be maintained ***only*** by painting or refinishing the surface of the sign face or sign structure so as to keep the appearance of the sign as it was when originally permitted." (PX-7 at 1 (emphasis added).) If repairs beyond "painting or refinishing" are necessary, the CDC states that the billboard "cannot be repaired without: a. Notifying the Code Enforcement Division in writing of the extent of the damage, . . .; and b. Receiving written notice from the Code Enforcement Department authorizing the repair work…." (PX-7 at 2, CDC § 5.6.50(E)(4)(a), (b).)

The consequences for making repairs without authorization are severe: "Any such sign that is repaired without the department's authorization shall be removed by the County, and the costs and expenses of such removal shall be paid by that person or entity making the unauthorized

repairs." (*Id.*, CDC § 5.6.50(E)(4)(b).) "Any structural or other substantive maintenance to a sign shall be deemed an abandonment of the sign, shall render the prior permit void, and shall result in removal of the sign without compensation." (PX-7 at 1-2, CDC § 5.6.50(E)(2).)

The SCDOT's maintenance regulations, however, are less restrictive than the CDC in several ways. First, signs that comply with HACA may be maintained and repaired as needed, *without* having to notify the SCDOT. (PX-9 at 4, SCDOT Reg. 63-350(A), (B).) But under the CDC, every billboard is nonconforming, so all maintenance (save painting) requires notice to *and authorization* from the Code Enforcement Department. This more restrictive requirement is not abrogated by the HACA, and Adams's refusal to comply with it violated the CDC.

Second, the HACA maintenance rules for nonconforming signs allow "Replacement of nuts and bolts," "Additional nailing, riveting or welding," and "Manipulation to level or plumb the device, but not to the extent of adding guys or struts for stabilization of the sign or structure." (PX-9 at 4-5, SCDOT Reg. 63-350(C)(7).) But the CDC is more restrictive because it classifies these additional categories of maintenance to be "repairs"—requiring authorization for the work.

Third, the owner of a nonconforming sign under the HACA can conduct additional maintenance once it has notified the SCDOT of such work beforehand. (PX-9 at 5, SCDOT Reg. 63-350(C)(8).) But again, the CDC is more restrictive because it requires the Code Enforcement Department's written notice authorizing such repair work other than painting or refinishing.

Fourth, the SCDOT regulation states that "[r]easonable repair and maintenance of a nonconforming sign is not a change which would terminate nonconforming use." (PX-9 at 4, SCDOT Reg. 63-650(C)(7).) Again, the CDC is more restrictive because any nonconforming sign repaired without the Code Enforcement Department's approval, or that receives structural or other substantive maintenance, must be removed. (PX-7 at 1-2, CDC § 5.6.50(E)(2), (4)(b).)

In all these ways, CDC § 5.6.50 is more restrictive than State law.

Under S.C. Code § 57-25-220, the HACA does not abrogate any of these CDC provisions. Adams was subject to the requirements of CDC § 5.6.50(E), and it violated § 5.6.50(E)(2), (3), and (4)(b) when it replaced the poles and rebuilt its billboards without the Beaufort County Code Enforcement Department's authorization.

B. Provisions about rebuilding a "partially destroyed" sign are not at issue.

Adams's response argument ignores the foregoing provisions. Instead, Adams emphasizes similarities between SCDOT Reg. 63-350(C)(4) and CDC § 5.6.50(E)(4)(c), to contend that CDC sign regulations are not more restrictive.

Adams dwells on the wrong provisions. CDC § 5.6.50(E)(4)(c) concerns the potential rebuilding of a billboard that has been "partially destroyed by wind or other natural forces." (PX-7 at 2.) The County did not cite Adams for violating CDC § 5.6.50(E)(4)(c). Nor did Adams ever invoke that provision. Adams never asserted to the County that its nonconforming billboards were partially destroyed by wind or other natural forces. And the County never saw wind damage to Adams's billboards. Rather, the County Administrator saw that Adams's agents were taking down the billboards, replacing the structural poles, and re-erecting the billboards without County approval, in violation of CDC § 5.6.50(E)(2), (3), and (4)(b). Section 5.6.50(E)(4)(c) was never at issue.

In any event, if Adams's signs had been "partially destroyed by wind or other natural forces," then Adams still would have had to seek the County Director's determination as to whether the sign could be rebuilt under CDC § 5.6.50(E)(4)(c). That process is separate from any SCDOT approval. SCDOT approval would be necessary for a highway billboard sign owner to comply with SCDOT regulations. The County Director's determination about rebuilding a partially destroyed sign would be necessary under the CDC. Adams's rhetoric notwithstanding,

the County has never claimed that it can "veto" SCDOT approval. Rather, the County simply argues that SCDOT approval is no substitute for complying with the CDC's regulations.

CDC § 5.6.50(E)(4)(c) applies to every commercial off-premises sign in Beaufort County that is partially destroyed by wind or other natural forces. (PX-7 at 2.) It is more restrictive than SCDOT Reg. 63-350(C)(4) because the state rule applies only where "a nonconforming device"—that is, a sign that does not comply with the provisions of the HACA—has been partially destroyed. (PX-9 at 4; *see also id.* at 3, SCDOT Reg. 63-342(P), defining "Nonconforming Sign".) In other words, CDC § 5.6.50(E)(4)(c) applies to every partially destroyed billboard in Beaufort County, while SCDOT Reg. 63-350(C)(4) would apply only to billboards that are nonconforming under HACA standards.

CDC § 5.6.50(E)(4)(c) affords the Director[2] broad latitude to determine whether a partially destroyed sign may be rebuilt. Although the provision requires any rebuilt sign to be consistent with all current requirements of the chapter (if the Director determines that the damage was greater than 50 percent of the sign's replacement cost), the Director's determination of whether to allow the sign to be rebuilt is not constrained by a percentage-of-damage analysis. As Adams recognizes (Resp. Br. 24), this makes the CDC rebuild provision more restrictive than SCDOT's.

SCDOT Reg. 63-350(C)(4) is on its face less restrictive. There, the Department must consider "replacement costs as determined by nationally recognized catalogues of vendors of construction and outdoor advertising materials." (PX-9 at 4.) If the Department determines that the damage was greater than 50 percent of the sign's replacement costs, then the sign must be dismantled and not erected again. (*Id.*)

[2] Director refers to the Director of the Beaufort County Planning and Zoning Department, which was formerly called the Community Development Department. (Tr. 102:16-25.)

The fact that Adams convinced the SCDOT that it could "repair" its billboards for less than 50 percent of the sign's replacement costs does nothing to satisfy any part of the CDC's sign provisions. The CDC provisions that regulate billboards are more restrictive than the HACA and SCDOT regulations, so Adams has no argument to justify its failure to comply with the CDC's provisions. Adams deliberately made repairs to its billboards without the Code Enforcement Department authorization required by the CDC. Adams thus violated the CDC, and the magistrate court properly convicted Adams.

Conclusion

Adams fails to provide a meaningful defense of the circuit court's decision, and provides no legal doctrine or authority justifying that court's ruling that an alleged procedural defect requires a finding of "not guilty." Adams had actual notice of its violations, reconstructed its dilapidated billboards despite the County's repeated warnings, and exercised the full panoply of due process rights at trial. The magistrate court concluded, in light of the entire record, that any procedural defect was harmless and did not affect Adams's guilt. Its verdict should be reinstated.

Respectfully submitted,

s/ Brittany Ward

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes III, Master-In-Equity

Civil Action No. 2021-CP-07-1507
Appellate Case No. 2022-000681

Beaufort County, Appellant,

v.

Adams Outdoor Advertising Limited Partnership and Bo Hodges, Respondents.

PROOF OF SERVICE

I certify that on September 8, 2022, I have served all counsel in this action with a copy of **Appellant's Initial Reply Brief**, via electronic mail, to the following addresses:

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September 8, 2022

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South Carolina Court of Appeals
Honorable Jenny Abbott Kitchings
1220 Senate Street
Columbia, South Carolina 29201

In re: *Beaufort County v. Adams Outdoor Advertising and Bo Hodges*
Appellate Case No. 2022-000681

Dear Ms. Kitchings:

Please see the enclosed Appellant's Initial Reply Brief for filing in the above-captioned matter. Under Rule 262(a)(3), SCACR and the Order issued by the Supreme Court of South Carolina on May 6, 2022, we will be filing this document only electronically, unless the Court requests otherwise. Should the Court need anything additional, please do not hesitate in contacting our office at (423) 899-3025.

Respectfully,

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