THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM MARION COUNTY
William H. Seals, Jr., Circuit Court Judge

Op. No. 2023-UP-143
(S.C. Ct. App. re-filed May 24, 2023)
Case No. 2019-CP-33-0675

John Pendarvis and Lawton Drew, ……. Respondents,

v.

South Carolina Law Enforcement Division and
South Carolina Department of Agriculture, ……. Defendants,

Of which, South Carolina Law Enforcement Division is…… Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that a Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on August 17, 2023.

QUESTIONS PRESENTED

I. Did the Circuit Court, as summarily affirmed by the Court of Appeals, err in granting a preliminary injunction that failed to maintain the status quo where the courts below have authorized the Respondents to complete cultivation as well as the harvest and sale of a hemp crop which, based on evidence presented, had THC levels to qualify as marijuana, a Schedule I controlled substance that is illegal to sell and purchase under South Carolina law?

II. Did the Circuit Court, as summarily affirmed by the Court of Appeals, err in using its equitable powers to enjoin legitimate and valid law enforcement action?

III. Did the Circuit Court, as summarily affirmed by the Court of Appeals, err in refusing to enforce Section VIII of the South Carolina Hemp Farming Program Participation Agreement and refusing to allow for the forfeiture or destruction of the Respondents' illegal hemp crop to proceed, a remedy to which the Respondent John Pendarvis had expressly consented?

IV. Did the Circuit Court, as summarily affirmed by the Court of Appeals, err in granting a preliminary injunction that was unsupported by the facts as pled by the Respondents in their Complaint?

STATEMENT OF THE CASE

This is an appeal from the grant of a preliminary injunction. On September 26, 2019, the Respondents John Pendarvis and Lawton Drew filed a Petition for Ex Parte Temporary Restraining Order, Motion for Preliminary Injunction, and Complaint for Declaratory and Injunctive Relief against the Petitioner South Carolina Law Enforcement Division ("SLED") and the South Carolina Department of Agriculture ("SCDA"). (R. 17-21). The Respondents allege that Pendarvis holds a 2019 Hemp Grower License issued by the SCDA with which he had planted two acres of hemp in Marion County having a value exceeding $300,000. The Respondents also alleged that they had learned that SLED intended to destroy the hemp crop at the Marion County site in accordance with its enforcement authority under the Hemp Farming Act, S.C. Code Ann. § 46-55-10, *et seq*.

On that same date, September 26, 2019, Circuit Court Judge William H. Seals, Jr. issued an Ex Parte Temporary Restraining Order that "temporarily restrained and preliminarily enjoined [Defendants] from entering onto the property under cultivation by Plaintiffs for the purpose of destroying the hemp crop planted thereon." (R. 15-16). Judge Seals made a finding that "Plaintiffs are likely to suffer immediate and irreparable loss or damage if Defendants proceed with destruction of Plaintiffs' hemp crop located in Marion County without the benefit

of due process and judicial review guaranteed to Plaintiffs by the South Carolina Constitution." (R. 15).

Judge Seals then scheduled a hearing on the merits of the request for a preliminary injunction on October 8, 2019. The Petitioner SLED made an appearance and filed a memorandum of law on October 7, 2019, which included a copy of the South Carolina Hemp Farming Program Participation Agreement entered between John Pendarvis and the SCDA; a copy of an August 28, 2019 letter from Derek Underwood, the SCDA Assistant Commissioner, to John Pendarvis; and a SLED Forensic Services Laboratory Report showing that hemp material contained a total delta-9-tetrahydrocannabinol (THC) percent dry weight of .48 with a +/- of 0.07% as of September 16, 2019. (R. 28-54).

At the October 8, 2019 hearing, counsel for the Respondents and counsel for SLED presented legal arguments only. No affidavits were filed, and no live testimony was presented to the Circuit Court.

Thereafter, on November 8, 2019, Judge Seals issued an Order granting a preliminary injunction thereby "prohibiting the Defendants from entering onto the property under cultivation issued by the Plaintiff for the purpose of destroying the hemp crop planted thereon be left in place pending resolution of the pending litigation." (R. 12). Judge Seals further ordered the Respondents "to continue to exercise reasonable and necessary farming practices to harvest the hemp crop."

(R. 12). He also authorized the Respondents to sell the harvested hemp crop and required the sales proceeds to be held in trust. (R. 12-13).

The Petitioner SLED filed an interlocutory appeal challenging the preliminary injunction issued by the Circuit Court citing a number of legal errors.[1] In adjudicating SLED's appeal of that preliminary injunction, the Court of Appeals ruled as follows:

> Respondents have harvested and sold the crop, and the sales proceeds have been deposited in trust pending the litigation's resolution. Therefore, a ruling on the issues pending before this court will have no practical effect on the controversy.

See, Pendarvis v. South Carolina Law Enforcement Division, Op. No. 2023-UP-143 (S.C. Ct. App. filed April 5, 2023). The Court of Appeals accordingly dismissed the appeal as moot.

Following the issuance of that decision, the Respondents' counsel sent a letter to the Court of Appeals advising of a "misapprehension of fact." Respondents' counsel wrote: "The appealed Circuit Court order allowed the Respondents to harvest and sell the crop, holding any proceeds of such a sale in trust. The Respondents have harvested the crop; however, it has not yet been

[1] There was no dispute that the Court of Appeals had appellate jurisdiction to review a preliminary injunction. As this Court has held, "[a]n order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable." *Curtis v. State*, 345 S.C. 556, 549 S.E.2d 591, 596 (2001). *See also*, S.C. Code Ann. § 14-3-330(4).

sold." *See*, April 5, 2023 letter filed with Court of Appeals. Thus, the Court of Appeals' finding that the appeal is moot was premised on facts not in the record. As SLED explained in its petition for rehearing, the fact that the hemp crop has not been sold demonstrates that there still exists a live controversy in that the Respondents continue to be authorized by the preliminary injunction issued by the Circuit Court to sell or distribute the crop.

The Court of Appeals ultimately granted SLED's petition for rehearing by order filed May 24, 2023, and filed a new "substituted opinion" by which the Court summarily affirmed the preliminary injunction on the merits pursuant to Rule 220(b), SCACR. The "substituted opinion" includes no discussion or analysis of the issues raised on appeal. Instead, the Court of Appeals cited only black letter law stating the purpose of and the elements of a preliminary injunction but nothing substantive. *See, Pendarvis v. South Carolina Law Enforcement Division*, Op. No. 2023-UP-143 (S.C. Ct. App. re-filed May 24, 2023).

The Petitioner SLED then filed a petition for rehearing directed at the "substituted opinion" which addressed the merits of the appeal rather than dismissing the appeal as moot. That petition was summarily denied by order issued on August 17, 2023.

STATEMENT OF FACTS

On May 1, 2019, the SCDA issued a 2019 Hemp Grower License to the Respondent John Pendarvis as authorized by the Hemp Farming Act. By its express language, the license authorized Pendarvis "to engage in the growing of hemp *on such approved growing locations on records with the Department* during the calendar year shown above." (R. 23). (Emphasis added). Pendarvis engaged in hemp cultivation at a site in Dorchester County which is not at issue in this litigation. Pendarvis' license was also utilized to cultivate a hemp crop on two acres in Marion County owned by the Respondent Lawton Drew. (R. 18). Drew did not hold a 2019 Hemp Grower License issued by the SCDA.

Or May 13, 2019, John Pendarvis entered into a South Carolina Hemp Farming Program Participation Agreement ("Participation Agreement") with the SCDA. Section II is titled "Licensed Growing Locations" and provides as follows:

> a. The Permitted Grower:
>
> i. Affirms that living (non-cut) Hemp shall not be grown, handled, or stored at any location other than the locations listed on the Permitted Grower's Application or Application Amendments(s);
>
> ii. Agrees to apply for registration of all growing, handling, and storage location, including GPS coordinates, and receives SCDA approval for those locations prior to having living (non-cut) Hemp on those premises; and

> iii. Acknowledges that Permit Holder shall Submit a Permit Amendment Application and obtain written approval from a representative of SCDA before implementing any change to the license sites stated on the Permitted Grower's Application.

(R. 50).[2] It is undisputed that the tract in Marion County at issue in this litigation was not a "licensed growing location" for Pendarvis. The Respondents made no allegation nor presented any evidence to contest that critical fact. Thus, Pendarvis breached the Participation Agreement by planting and cultivating hemp at the Marion County site.

In early August 2019, Pendarvis did submit an amendment application to the SCDA to obtain "licensed growing location" status for the acreage in Marion County, but that application was not submitted until *after* the property in Marion County had already been planted. (R. 18, 47). By letter dated August 28, 2019, Derek Underwood, an Assistant Commissioner with the SCDA, advised Pendarvis that he was "unlawfully growing Hemp on acreage **that is not on record with the SCDA**. This is a willful violation of the Hemp Farming Program which requires a licensed grower to provide the SCDA with a legal description and global

[2] Section II is in compliance with Section 46-55-20(B)(1) of the Hemp Farming Act, which states in mandatory language that "[a] person applying for a license to cultivate hemp shall provide to the department a legal description and global positioning coordinates sufficient to locate the fields or greenhouses used to cultivate hemp." S.C. Code Ann. § 46-55-20(B)(1).

positioning coordinates of the land on which the licensee **seeks to cultivate hemp**." (R. 47). (Emphasis in original).

Section VIII of the Participation Agreement provides, in pertinent part, as follows:

> a. Permitted Grower acknowledges and consents to the forfeiture or destruction, without compensation, of hemp material:
>
> i. Found to have measured a delta-9 THC content of more than 0.3 percent on a dry weight basis;
>
> ii. Bearing off-label pesticide residue (or believed by SCDA to have had pesticides applied off-label), regardless of the source or cause of contamination; and
>
> iii. Growing in an area that is not licensed by SCDA.

(R. 52). Subsection (a)(iii) provides that the licensee consents to the forfeiture or destruction of hemp plants that are grown at an unlicensed site, including the Marion County site at issue in this litigation.

Additionally, on September 24, 2019, Douglas Robinson, a SLED Forensic Scientist, issued a Forensic Services Laboratory Report regarding hemp material obtained from the Marion County site on September 16, 2019. Those results showed that the hemp material contained a total delta-9-tetrahydrocannabinol (THC) percent dry weight of .48 with a +/- of 0.07%. (R. 48). This was

significant because the Hemp Farming Act defines "hemp" as "the plant Cannabis sativa L, and any part of the plant, including nonsterilized seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined THC levels for hemp." S.C. Code Ann. § 46-55-10(8). The term "federally defined THC level for hemp" means "delta-9-tetrahydrocannabinol THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. Section 5940, whichever is greater." S.C. Code Ann. § 46-55-10(7). Thus, the hemp material tested by SLED exceeded the "federally defined THC level for hemp" which thereby qualified as marijuana, which is a Schedule I controlled substance that is illegal to sell and purchase under South Carolina law.

ARGUMENTS

I. The Circuit Court, as summarily affirmed by the Court of Appeals, erred in granting a preliminary injunction that failed to maintain the status quo where the courts below have authorized the Respondents to complete cultivation as well as the harvest and sale of a hemp crop which, based on evidence presented, had THC levels to qualify as marijuana, a Schedule I controlled substance that is illegal to sell and purchase under South Carolina law.

The Circuit Court granted a preliminary injunction "prohibiting the Defendants from entering onto the property under cultivation issued by the Plaintiff for the purpose of destroying the hemp crop planted thereon be left in place pending resolution of the pending litigation." (R. 12). That ruling, while inartfully stated, permitted the Respondents to *complete* the cultivation, harvest, and sale of the hemp crop. That is evident from the Circuit Court's other directives as follows:

> The Court is also aware that the hemp crop has almost reached maturation and will imminently be ready for harvest. As such, the Court orders the Plaintiffs to continue to exercise reasonable and necessary farming practices to harvest the hemp crop. Upon harvest, the Plaintiffs are directed to deposit in to [sic] trust all sale proceeds from the harvest and hold those funds until such time as this litigation is resolved.

(R. 12). Thus, the Circuit Court permitted the Respondents to harvest *and sell* the hemp crop.

The Petitioner SLED filed an interlocutory appeal challenging the preliminary injunction issued by the Circuit Court citing a number of legal errors. Specifically, SLED argued that the preliminary injunction issued by the Circuit Court does not maintain the status quo by allowing the sale and distribution of a controlled substance. In affirming the result below, the Court of Appeals, however, erred in failing to recognize that the preliminary injunction went far beyond preserving the status quo by allowing for the harvest and sale of the hemp crop.

As this Court has made clear, "[t]he purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. South Carolina Department of Corrections*, 392 S.C. 361, 709 S.E.2d 639, 642 (2011). "The sole object of a temporary injunction is to preserve the subject of the controversy in its condition at the time of the order until opportunity is offered for full and deliberate trial investigation." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, 597 (2001).

However, contrary to the Court of Appeals' presumed ruling pursuant to Rule 220(b), SCACR, the preliminary injunction issued by the Circuit Court does not fulfill that basic purpose. The Circuit Court's order *did not maintain the status quo*. Instead, the Circuit Court allowed the Respondents to *complete* the cultivation as well as harvest and sell the hemp crop. At the hearing, SLED

presented evidence that the hemp crop at issue exceeded the "federally defined THC level for hemp" which thereby qualified the hemp crop as marijuana, a Schedule I controlled substance that is illegal to sell and purchase under South Carolina law. *See*, S.C. Code Ann. §§ 46-55-10(7), 44-53-190.[3] In effect, the Circuit Court authorized and allowed for the Respondents to cultivate, harvest, and sell marijuana -- all of which is illegal under South Carolina law. The Circuit Court only required the sale proceeds of the marijuana to be placed in trust, but that does not serve the State's interests in enforcing the criminal laws that prohibit the cultivation *and sale* of marijuana. That did not protect the interests of the State and its citizens to prevent the distribution of a controlled substance. In effect, the Circuit Court, as erroneously affirmed by the Court of Appeals, has allowed *and continues to allow* for a controlled substance to be cultivated, harvested, *and distributed*. By no fair reading of this record did the preliminary injunction

[3] The record includes evidence presented by SLED that the hemp crop at issue exceeded the "federally defined THC level for hemp" which thereby qualified the hemp crop as marijuana. Specifically, a SLED Forensic Services Laboratory Report shows that hemp material contained a total delta-9-tetrahydrocannabinol (THC) percent dry weight of .48 with a +/- of 0.07% as of September 16, 2019. (R. 28-54). Notably, the Respondents concede that "[t]he trial court was actually presented with conflicting evidence about whether the hemp crop at issue exceeded the 'federally defined THC level for hemp.'" *See*, Respondents' Brief in Court of Appeals, p. 5. Thus, as SLED argues, the Respondents, who had the burden of proof, did not prove, nor did the Circuit Court find, that the hemp crop was not a controlled substance; yet, the Circuit Court allowed the crop to be harvested *and sold*, and the Court of Appeals affirmed that ruling. Certainly, in light of the Respondents' concession that there is conflicting evidence, the Court of Appeals erred in concluding that the preliminary injunction maintains the status quo.

preserve the status quo, and for that reason, a writ of certiorari should be issued and the preliminary injunction should be reversed.

II. The Circuit Court, as summarily affirmed by the Court of Appeals, erred in using its equitable powers to enjoin legitimate and valid law enforcement action.

Additionally, the Court of Appeals erred in failing to rule that the preliminary injunction entered by the Circuit Court improperly interferes with enforcement of criminal laws in contravention of normal powers of equity. Since the early 1900s, this Court has held that "[o]rdinarily a court of equity has no jurisdiction to restrain criminal proceedings." *Cain v. Daly*, 74 S.C. 480, 55 S.E. 110, 112 (1906). This Court recognized an exception only where "the ordinance or statute under which the prosecutions are had is clearly void and irreparable injury to property rights may result," and in that case, "equity may interfere." *Id*. That equitable principle was reaffirmed in *Harvie v. Heise*, 150 S.C. 277, 148 S.E.2d 66 (1929), where this Court explained that "equity will not interpose to enjoin the enforcement of a valid criminal law, or of prosecution under such law." 148 S.E.2d at 69. In that case, this Court denied writs of injunction to enjoin law enforcement from seizing and confiscating slot and vending machines.

In contrast to those cases, in the case at bar, the Circuit Court, as erroneously affirmed by the Court of Appeals, exercised its equitable powers to enjoin SLED

from enforcing the Hemp Farming Act and the Controlled Substances Act. That constitutes reversible error. The Respondents have not alleged, let alone made any showing, that those Acts, or any provisions thereof, are "clearly void." Neither the Circuit Court or the Court of Appeals declared nor even suggested that the underlying laws are "clearly void" or that the Respondents had made any showing that those Acts, or any provisions thereof, are "clearly void."

In sum, the Circuit Court, as erroneously affirmed by the Court of Appeals, exercised its equitable powers to enjoin SLED from enforcing the Hemp Farming Act and the Controlled Substances Act. That ruling is in contravention of established Supreme Court precedent and thus constitutes reversible error.

III. The Circuit Court, as summarily affirmed by the Court of Appeals, erred in refusing to enforce Section VIII of the South Carolina Hemp Farming Program Participation Agreement and refusing to allow for the forfeiture or destruction of the Respondents' illegal hemp crop to proceed, a remedy to which the Respondent John Pendarvis had expressly consented.

The Court of Appeals also erred in failing to consider that, in issuing the preliminary injunction, the Circuit Court erred in refusing to enforce Section VIII of the South Carolina Hemp Farming Program Participation Agreement and erred in refusing to allow for the destruction of the Respondents' illegal hemp crop to

proceed, a remedy to which John Pendarvis had expressly consented. The Court of Appeals' opinion includes no acknowledgment or discussion of this issue.

As the record fully demonstrates, the Participation Agreement as entered between the Respondent Pendarvis and the South Carolina Department of Agriculture (SCDA) includes Section VIII which is titled "Plant Destruction." Section VIII states in pertinent part:

> a. Permitted Grower acknowledges and consents to the forfeiture or destruction, without compensation, of hemp material:
>
> i. Found to have a measured delta-9 THC content of more than 0.3 percent on a dry weight basis;
>
> ii. Bearing off-label pesticide residues (or believed by SCDA to have had pesticides applied off-label), regardless of the source or the cause of contamination; and
>
> iii. Growing in an area that is not licensed by SCDA.

(R. 52). The SCDA determined that Pendarvis was in violation of provision (iii), as stated above. The SCDA advised Pendarvis that he was "unlawfully growing Hemp on acreage **that is not on record with the SCDA**. This is a willful violation of the Hemp Farming Program which requires a licensed grower to provide the SCDA with a legal description and global positioning coordinates of the land on which the licensee **seeks to cultivate hemp**." (R. 47). (Emphasis in

original).

Notably, and as discussed further below, the Respondents did not present any factual allegations in their Complaint nor present any evidence to the Circuit Court to dispute this stated fact. Without dispute, Pendarvis was never authorized by the SCDA to grow hemp in Marion County.[4] He did submit an amendment application to add the acreage in Marion County, but that was not submitted until *after* the property in Marion County had already been planted. That plainly violated the terms of the Participation Agreement, specifically Section II titled "Licensed Growing Locations," which required that "Permit Holder shall Submit a Permit Amendment Application and obtain written approval from a representative of SCDA *before implementing any change to the license sites* stated on the Permitted Grower's Application." (R. 50). (Emphasis added). Pendarvis also violated his agreement "to apply for registration of all growing, handling, and storage location[s], including GPS coordinates, *and receive SCDA approval for those locations prior to having living (non-cut) Hemp on those premises*." (R. 50).

[4] The Respondent Lawton Drew was not authorized either. Drew was not a licensed grower under the Hemp Farming Act and, thus, has no rights to the hemp crop at issue. The Act defines "licensee" as "an individual or business entity possessing a license issued by the department under the authority of this chapter to cultivate, handle, or possess hemp." S.C. Code Ann. § 46-55-10(10). Quite clearly, on this basis alone, the preliminary injunction should not have been entered in Drew's favor.

(Emphasis added).[5] Thus, it is undisputed in this record that Pendarvis violated these provisions by planting the Marion County site, which had not been authorized by the SCDA. His submittal of an amendment application *after* the site had been planted was untimely and did not comply with Section II requirements. In short, the Circuit Court erroneously granted a preliminary injunction where the *undisputed evidence* demonstrates that Pendarvis failed to comply with the terms of the Participation Agreement. And, as indicated, no preliminary injunction should have been issued to Lawton Drew who was not a licensed grower of hemp, which is another undisputed fact, and which presents an additional issue that the Court of Appeals did not address in its opinion.

Importantly, Pendarvis expressly consented to the destruction of any hemp crop "[g]rowing in an area that is not licensed by SCDA." (R. 52). Again, the evidence shows that the hemp crop being grown in Marion County was not at a location licensed by the SCDA. The Respondents do not and cannot dispute that fact.

Ultimately, the Court of Appeals erred in failing to recognize that hemp grown at an unlicensed location qualifies as contraband *per se*. *See*, S.C. Atty.

[5] Section II is in compliance with Section 46-55-20(B)(1) of the Hemp Farming Act, which states in mandatory language that "[a] person applying for a license to cultivate hemp shall provide to the department a legal description and global positioning coordinates sufficient to locate the fields or greenhouses used to cultivate hemp." S.C. Code Ann. § 46-55-20(B)(1).

Gen. Op., 2019 WL 3855186 (August 8, 2019) ("possession and handling of unprocessed or raw hemp material without a license is contraband per se and subject to seizure"). That presents a purely legal question and is at odds from established Supreme Court precedent. In fact, this Court has explained that contraband *per se* includes "things that may be forfeited because they are illegal to possess and not susceptible of ownership." *Mims Amusement Co. v. South Carolina Law Enforcement Division*, 365 S.C. 141, 621 S.E.2d 344, 348 (2005) (describing illegal drugs as contraband *per se*).

Importantly, if contraband *per se* cannot be possessed or owned, then it does not constitute "property" entitled to any protection or safeguards under the Due Process Clauses of the South Carolina and United States Constitutions. *See*, *United States v. Farrell*, 606 F.2d 1341, 1344 (D.C. Cir. 1979) (*per se* contraband may be summarily forfeited without any due process protections); *Cooper v. City of Greenwood*, 904 F.2d 302, 305 (5th Cir. 1990) ("[c]ourts will not entertain a claim contesting the confiscation of contraband *per se* because one cannot have a property right in that which is not subject to legal possession"). *See also*, *United States v. Jeffers*, 342 U.S. 48, 54 (1951); *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699 (1965). Consequently, the Respondents cannot claim "property rights" with respect to the hemp crop for which they admittedly did not have a license to grow at the Marion County site.

In sum, the Circuit Court issued a preliminary injunction which disregarded express contract terms and which failed to acknowledge that the hemp at issue is contraband *per se* under the law. Instead, the Circuit Court, as erroneously affirmed by the Court of Appeals, allowed the Respondents to complete the cultivation, harvest, and sale of a crop that was in clear violation of the Participation Agreement.

IV. The Circuit Court, as summarily affirmed by the Court of Appeals, erred in granting a preliminary injunction that was unsupported by the facts as pled by the Respondents in their Complaint.

Lastly, the Court of Appeals failed to recognize that the preliminary injunction as entered by the Circuit Court was unsupported by the facts as pled by the Respondents in their Complaint, and accordingly, there was no factual basis for the preliminary injunction. The Court of Appeals did not even address this issue.

The proof requirements for obtaining a preliminary injunction are well established. Under South Carolina law, "[a] plaintiff's entitlement to an injunction *requires the complaint to allege facts sufficient to constitute a cause of action for an injunction* while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation." *FOC Lawshe Ltd. Partnership v. International Paper Co.*, 352 S.C. 408, 574 S.E.2d 228, 232 (Ct.

App. 2002). (Emphasis added). The Complaint filed by the Respondents, however, alleges only as follows:

> 7. On May I, 2019, Plaintiff John Pendarvis was issued a Hemp Grower License from Defendant SCDA. *See* Exhibit A.
>
> 8. On August 10, 2019, Plaintiff John Pendarvis filed a Hemp Farming Program Acreage Amendment Application with Defendant SCDA to add two acres of crop in Marion County.
>
> 9. That the Plaintiff Pendarvis did plant two (2) acres of hemp crop in Marion County on property which is owned by Plaintiff Drew.
>
> 10. That the crop has been grown and cultivated and is nearing maturing for harvest.
>
> 11. That the crop grown on the property of Plaintiff Drew by Plaintiff Pendarvis has great value and that a loss of the crop at this time would cause enormous financial loss to the Plaintiffs.
>
> 12. On September 25, 2019, Plaintiffs were informed by Defendant SLED that the two (2) acres of crop located in Marion County would be destroyed in the next few days.

(R. 18). That is the extent of the "facts" as pled and verified by the Respondents in their Complaint. There were no other "facts" presented as evidence by the Respondents in support of their motion for a preliminary injunction. The Respondents did not file any supporting affidavits.

Critically, the Complaint does not allege that the hemp crop was less than

the "federally defined THC level for hemp." Also, the Complaint fails to plead facts to show that the Respondents complied with the terms of the Participation Agreement entered between Pendarvis and the SCDA. Specifically, the Complaint does not allege that the Respondents received authorization from the SCDA to grow hemp at the Marion County site as required by the Participation Agreement and state law. Moreover, while the Respondents allege that Pendarvis did file an application to grow hemp at the Marion County site with the SCDA, the Respondents do not allege that the application was granted *before* the hemp crop was planted in Marion County as is also required under the terms of the Participation Agreement. In fact, it is undisputed that the Respondents never received authorization from the SCDA to plant hemp in Marion County. *That is uncontradicted in the record*. Thus, the facts as alleged by the Respondents, even if proven true, do not provide the evidentiary support for the preliminary injunction that was issued. For this additional reason, the issuance of the preliminary injunction was in error which warrants this Court's review by way of writ of certiorari.

CONCLUSION

Based on the foregoing discussion, the Petitioner South Carolina Law Enforcement Division respectfully requests that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

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