

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

APR 13 2010

The Honorable R Markley Dennis, Jr , Circuit Court Judge **S.C. SUPREME COURT**

C A No 2009-CP-10-001551

Robert L Chimento, Scott Richards, Michael Williamson,
Jeremy Brestel, and John T Willis

Respondents,

v

Town of Mount Pleasant

Appellant

RECORD ON APPEAL

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filed separately pursuant to Rule 210(f), SCACR

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Robert L. Chimento, Scott Richards, Michael
Williamson, Jeremy Brestel, and John T
Willis,

Case No 2009-CP-10-001551

Appellants,

vs

Town of Mount Pleasant,

Respondent

ORDER

BY

JULIE J. HARRINGTON
CLERK OF COURT

2009 OCT - 1 PM 2 54

FILED

This matter comes before the Court on the appeal of Robert L. Chimento, Scott Richards, Michael Williamson, Jeremy Brestel, and John T. Willis (collectively, "Appellants") from their convictions for violating S.C. Code Ann. § 16-19-40 (2003). For the reasons set forth herein, Appellants' convictions are REVERSED.

FACTUAL AND PROCEDURAL HISTORY

"Texas Hold'em" is a popular version of the card game poker. The game is played with a standard deck of 52 cards. Each hand is begun with the payment of "blinds," mandatory bets by the player to the left of the dealer (the "small blind," usually half the minimum bet), and the player to that player's left (the "big blind," equal to the minimum bet). Each player is then dealt two cards face-down ("hole cards"), following which there is a round of betting.¹ The dealer then deals three cards face-up (the "flop"). These are "community" cards, meaning that the cards are shared by all players. There is another round of betting, following which the dealer deals the

¹ According to the uncontroverted testimony of expert witness Michael Sexton, *see infra*, betting (or checking, i.e., electing not to bet) is much more than simply laying a sum of money on the table. Rather, this is a key aspect of Texas Hold'em strategy and requires the exercise of skill.

“turn,” a fourth community card. Another round of betting follows. Finally, the dealer deals the “river,” the fifth and final community card. Following a final round of betting, cards are shown (the “showdown”) and the player with the best hand wins the pot.²

On April 12, 2006, approximately twenty individuals, including Appellants, gathered at the home of Nathaniel Stallings to play Texas Hold'em. The players gathered once or twice a week to play the game. The buy-in for players—the initial purchase of poker chips—was between \$5.00 and \$20.00. The small blind was 25 cents, and the big blind was 50 cents, pots averaged between \$5.00 and \$10.00. Tr 93, 98-99. Periodically, 50 cents was taken from the pot at each table to reimburse Stallings for the cost of food and beverages consumed by the players. Tr 126, 131. The home was not operated as a business and no one profited from the playing of the game other than the winning players.

Approximately one hour into the game, police officers with the Town of Mount Pleasant (“Town”) entered the home and arrested the players. Those present, including Appellants, were charged with violation of § 16-19-40, which provides,

If any person shall play at any tavern, inn, store for the retailing of spirituous liquors or *in any house used as a place of gaming*, barn, kitchen, stable or other outhouse, street, highway, open wood, race field or open place at (a) *any game with cards* or dice, (b) any gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (c) any roley-poley table, (d) rouge et noir, (e) any faro bank (f) any other table or bank of the same or the like kind under any denomination whatsoever or (g) any machine or device licensed pursuant to Section 12-21-2720 and used for gambling

developed over time. Tr 155

² During any given round of betting, a player may fold. The hand ends if all but one player folds. If the other players fold during the final round of betting, the remaining player is not required to show his hole cards. The expert testimony at trial indicated, based on an analysis of 103 million hands of Texas Hold'em, that 76 percent of hands are resolved by all but one player folding. Tr 206. Indeed, expert testimony presented below established that the player holding the best hand is frequently *not* the one who prevails because that player folds before the showdown, meaning that a player with a worse hand actually wins as a consequence of the play of the hand. Tr 161-62

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purposes, except the games of billiards, bowls, backgammon, chess, draughts, or whist when there is no betting on any such game of billiards, bowls, backgammon, chess, draughts, or whist or shall bet on the sides or hands of such as do game, upon being convicted thereof, before any magistrate, shall be imprisoned for a period of not over thirty days or fined not over one hundred dollars, and every person so keeping such tavern, inn, retail store, public place, or house used as a place for gaming or such other house shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months and forfeit a sum not exceeding two thousand dollars, for each and every offense

S C Code Ann § 16-19-40 (emphasis added) The specific allegation against Appellants was that they had played a “game with cards” in a “house used as a place of gaming ” Appellants disputed the charges, arguing that because Texas Hold’em is a game in which skill, not chance, predominates, it is not “gaming” within the meaning of § 16-19-40, and they were therefore not guilty of the charged offense

Appellants urged the trial court to adopt the “dominant factor” test for the purpose of determining whether Texas Hold’em was a game of skill Under this test, if the predominant consideration in the outcome of a game is skill rather than chance, that game does not constitute “gaming ”

A bench trial was conducted in the Mount Pleasant Municipal Court before the Honorable J Lawrence Duffy, Jr on February 13, 2009 The municipal court heard testimony from Nathaniel Stallings, Appellant Jeremy Brestel, Michael Sexton, a World Poker Tour player and commentator, Robert Hannum, Ph D , a professor of statistics and probability at the University of Denver, and Justin Hembree, one of the arresting officers

Mr Sexton and Dr Hannum presented expert testimony on the question of whether Texas Hold’em is a game of skill Mr Sexton has been a professional poker player for more than 30 years, and in that time has profited every year from playing the game Tr 141, 180 Mr Sexton stated that “the object of poker is to make correct decisions If you make enough correct decisions, you’re going to be a winning player ” Tr 149 More specifically, Mr Sexton

testified that Texas Hold'em involves at least ten skills "putting your opponent on a hand," *i.e.*, discerning the hole cards of other players, Tr 152-53, determining "when and how much to bet," Tr 155, computing percentages and odds, Tr 156-58, knowing when to fold, Tr 160, bluffing, Tr 160-62, knowing when and how to change one's style of play to confuse other players, Tr 164-65, exercising patience and discipline, Tr 168-69, exercising self-control, Tr 169, "playing position," *i.e.*, assessing one's chances based on the betting conduct of other players, Tr 171-73, and increasing one's skills through study and practice, Tr 173-74

Dr Hannum has spent the last 10½ years studying gaming mathematics and has done studies and published papers on the role of skill in poker and other games Tr 194-94, 209 Dr Hannum testified regarding two studies he conducted to test the effect of skills on outcomes in poker One study demonstrated that when one player employs strategy and the other does not, the strategic player will win the hand approximately 97 percent of the time Tr 196-97 Another study tested the effects of varying levels of skill, and determined that more-skilled poker players consistently prevail against less-skilled players Tr 197 Dr Hannum also testified that a statistical analysis of professional poker players demonstrated that past performance was a reliable indicator of future success, establishing that the skill of the player was the predominant factor in determining wins and losses Tr 199-201 This study also concluded "that the skill differences among poker players [are] similar to the skill differences among the top professional golfers " Tr 200

Following the trial, the municipal court issued a written order That court identified the issues before it as whether Texas Hold'em is predominantly a game of skill, and if so, whether playing Texas Hold'em constituted a violation of S C Code Ann § 16-19-40 Order at 2 After considering the testimony presented at trial, the municipal court found as a matter of fact on the

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basis of the testimony at trial that “Texas Hold’em is a game of skill. The evidence and studies are overwhelming that this is so.” Order at 3. Based on this finding, the municipal court concluded that if South Carolina applies the dominant factor test for determining whether an activity constitutes “gaming,” then playing Texas Hold’em would not be a violation of the statute. But the municipal court concluded that because neither the South Carolina Supreme Court nor the legislature had expressly adopted that standard, the court was obliged to find Appellants guilty. Order at 3-4.

Appellants subsequently noticed an appeal. This Court heard argument from the parties on August 4, 2009, and received briefs filed by Appellants and *amicus curiae* the Poker Players Alliance. This matter is now ripe for decision.

DISCUSSION

Appellants were convicted of violating S.C. Code Ann. § 16-19-40, which prohibits playing at “any game with cards or dice” while “in any house used as a place of gaming.” Appellants concede that Texas Hold’em is a game of cards, thus satisfying one of the two necessary elements for conviction. Appellants argue, however, that Stallings’ residence, where the game was being played, was not a “house of gaming” within the meaning of the statute. Appellants urge this court to uphold the finding of the municipal court that Texas Hold’em is a game of skill, and further to hold that the South Carolina Supreme Court, if faced with the question, would conclude that the term “gaming” should be defined according to the “dominant factor” test. Appellants reason that if Texas Hold’em is a game of skill, and if a game of skill is not “gaming” or “gambling,”³ then they were not “in [a] house used as a place of gaming,” and therefore cannot have violated § 16-19-40. Alternatively, Appellants maintain (1) that § 16-19-

³ The parties agree that the words “gaming” and “gambling” are synonymous and may be used interchangeably. See S.C. Jur. *Gaming* § 3 (2008) (“As legal terms, ‘gaming’ and ‘gambling’ are

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40 is ambiguous and must be construed in their favor pursuant to the rule of lenity, and (2) that § 16-19-40 is unconstitutionally vague and overbroad. The Court addresses these arguments in turn.

I STANDARD OF REVIEW

On appeal from a municipal court, this Court does not conduct a trial de novo, but reviews for errors of law only. *See State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) (citing *City of Columbia v. Felder*, 274 S.C. 12, 13, 260 S.E.2d 453, 454 (1979)). Further, a circuit court is “bound by the trial court’s factual findings unless they are clearly erroneous.” *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

II MEANING OF “HOUSE OF GAMING”

A The South Carolina Supreme Court Would Adopt The Dominant Factor Test.

The dominant factor test may be simply stated. An activity is “gambling” if chance predominates over skill in determining the outcome of the contest. *See, e.g., Johnson v. Phinney*, 218 F.2d 303, 306 (5th Cir. 1955). This is the test employed by the overwhelming majority of states. *See, e.g., Opinion of the Justices*, 795 So. 2d 630, 635-36 (Ala. 2001) (citing numerous cases). Under the dominant factor test, an activity is classified as either one of skill or chance, depending upon which element is dominant. *See Morrow v. State*, 511 P.2d 127, 129 (Alaska 1973). Four factors are relevant in determining whether skill predominates over chance:

(1) Participants must have a distinct possibility of exercising skill and must have sufficient data upon which to calculate an informed judgment. The test is that without skill it would be absolutely impossible to win the game. (2) Participants must have the opportunity to exercise the skill, and the general class of participants must possess the skill. (3) Skill or the competitors’ efforts must sufficiently govern the result. Skill must control the final result, not just one part of the larger scheme. (4) The standard of skill must be known to the participants, and this standard must govern the result.

the same.”)

*Id.*⁴

This Court agrees with Appellants that the South Carolina Supreme Court, if faced with the question, would adopt the dominant factor test for the purpose of defining the term “gaming” in § 16-19-40. To begin, the South Carolina Supreme Court has previously employed language very similar to that of the dominant factor test in deciding whether an activity was a prohibited lottery. In *Darlington Theatres v Coker*, 190 S C 282, 2 S E 2d 782 (1939), the court considered whether a “Jack Pot Night” by a local theater, in which a patron’s name was drawn out of a hat and a sum of money awarded, was a lottery. See *Darlington Theatres*, 2 S E 2d at 783. The court ruled that an activity is a prohibited lottery when three elements are present: “(1) The giving of a prize, (2) by a method involving chance, (3) for a consideration paid by the contestant or participant.” *Id.* at 786. The court resolved the case on the basis that the contestants paid no consideration for the opportunity to win. Because there was no dispute that the result of the contest was entirely driven by chance, the court did not address the meaning of the phrase “by a method involving chance.”

The issue arose again in *Johnson v Collins Entertainment Co*, 333 S C 96, 508 S E 2d 575 (1998). There, the South Carolina Supreme Court was called to address the issue of whether video poker machines were “lotteries” prohibited by the state constitution. See *id.*, 333 S C at 99, 508 S E 2d at 577. The majority of the Supreme Court concluded that video poker machines were not lotteries because “they do not involve a drawing and ‘tickets’ or other indicium of entitlement to a prize.” *Id.*, 333 S C at 104, 508 S E 2d at 579.

Justice Burnett, joined by now-Chief Justice Toal, dissented. Justice Burnett first noted

⁴ The alternative is the so-called “English Rule,” under which “a scheme involving any skill, no matter how *de minimis*, will not be classified as a lottery.” *Id.* at 635. There is no dispute here that the other activities enumerated in subsections (b) through (g) of the statute, such as roulette,

that the test for determining whether an activity is a constitutionally prohibited lottery was long ago set forth in *Darlington Theatres* ““(1) The giving of a prize, (2) by a method involving chance, (3) for a consideration paid by the contestant or participant”” *Collins Ent* , 333 S C at 108-09, 508 S E 2d at 581-82 (Burnett, J , dissenting) (quoting *Darlington Theatres*, 190 S C at 291, 2 S E 2d at 786) *Accord, e g* , *Nat’l Football League v Governor of Del* , 435 F Supp 1372, 1383 (D Del 1977) (“It is unquestioned that there are three elements necessary to a lottery prize, consideration and chance”), *Gandolfo v Louisiana State Racing Comm’n*, 78 So 2d 504, 509 (La. 1954) (“Lottery has been defined as a scheme for the distribution of prizes by lot or chance”), *State v Coats*, 74 P 2d 1102, 1106 (Or 1938) (“Three things are necessary to constitute a lottery, viz , prize, chance, and consideration.”) In Justice Burnett’s view, the outcome of the case was controlled by the question of whether prizes in video poker were distributed by a method involving chance *See Collins Ent* , 333 S C at 111, 508 S E 2d at 583 Justice Burnett stated that he would apply the dominant factor test “If a participant’s skill does not govern the result of the game, the scheme contains the requisite chance necessary to constitute a lottery On the other hand, if through the exercise of skill or judgment a participant can determine the outcome, the scheme is not a lottery My opinion is supported by the majority of jurisdictions which have considered this question ” *Id* , 333 S C at 113 & n 10, 508 S E 2d at 584 & n 10 (citing numerous cases in support of this position) Applying this definition, Justice Burnett concluded that chance predominated over skill in the video poker games at issue *See id* , 333 S C at 117, 119, 508 S E 2d at 586, 587 Then-Justice Toal agreed with Justice Burnett that the dominant factor test should govern the question of whether the outcome of a game was determined by chance *Collins Ent* , 333 S C at 120, 508 S E 2d at 588 (Toal, J , concurring and

faro, and craps are purely games of chance

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dissenting) She stated that “[Justice Burnett] has set forth the legal standard which should be used to define the term lottery as it appears in South Carolina's Constitution in a manner which is faithful to our Court's precedents and well within the mainstream of American court decisions ”

Id

Therefore, both of the South Carolina Supreme Court justices who considered the question in *Collins Entertainment* concluded that the dominant factor test was the appropriate rule for South Carolina. Moreover, there is no reason to believe that the remaining three justices would not have adopted the dominant factor test, had they found the question presented to them. Indeed, it is worth noting that in the course of its opinion the majority described § 16-19-40 as “prohibiting *games of chance or gambling devices* at state and county fairs ” *Collins Ent* , 333 S C at 101, 508 S E 2d at 578 (emphasis added) The majority's equation of the actual language of the statute—which refers to a “place of gaming”—to “games of chance” is a strong indication that the South Carolina Supreme Court, as a whole, believes that the term “gaming” in § 16-19-40 refers only to games in which the dominant factor is chance

It should also be noted that the South Carolina Attorney General has consistently applied the dominant factor test when providing opinions about whether certain activities are legal For example, in a 2004 Opinion the Attorney General stated

We have consistently stated that the test of whether a particular game is a game of chance or skill is governed by the so-called ‘predominance’ test This test was described in a recent [Attorney General's] opinion, dated May 5, 2003 as follows [h]istorically, it has been the opinion of this Office, as well as a majority of jurisdictions in this country, that a ‘game of chance’ is one in which the element of chance predominates over any skill involved On the other hand, a ‘game of skill’ is one in which the element of skill is predominant over the element of chance See, Ops S C Atty Gen , August 2, 2001, September 5, 1995, December 5, 1978, Op No 3629, supra. While the South Carolina Supreme Court has never squarely adopted this so-called “Dominant Factor” test, the dissent in Johnson v Collins Entertainment Co indicates that the Court would accept this rule

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Op S C Atty Gen (Jan 22, 2004) (citation omitted) ⁵

In summary, for the reasons set forth above this Court concludes that if confronted with the question, the South Carolina Supreme Court would adopt the dominant factor test for determining whether an activity constitutes “gaming” or “gambling ”

B Under The Dominant Factor Test, Texas Hold'em Is Not “Gaming” Or “Gambling ”

1 Plain Language

As noted above, the municipal court found the evidence “overwhelming” that Texas Hold'em is a game of skill This Court affirms that finding The evidence presented by Appellants convincingly establishes that the outcome of a typical hand of Texas Hold'em is primarily determined by the relative skill of the players A more skilled player will consistently beat a less skilled player, and a player's skill can be improved over time through study and practice Moreover, success at a game of Texas Hold'em requires reasoning and deductive skills that belie the notion that the outcome is determined solely—or even primarily—by the cards one is dealt Accordingly, this Court holds that Texas Hold'em is a game of skill *Accord Pennsylvania v Dent*, No 733-2008, Slip Op at 13 (Pa. Ct Com Pl Jan 14, 2009) (holding, under application of dominant factor test, that “it is apparent that skill predominates over chance in Texas Hold'em poker”), *In re Allen*, 377 P 2d 280, 281 (Cal 1962) (concluding, under application of the dominant factor test, that bridge is a game of skill)

As noted above, conviction under § 16-19-40 requires the state to prove two elements

⁵ The Court notes that it is not bound by the Attorney General's statement that poker is a game of chance See *Anders v S C Parole & Cmty Corr Bd*, 279 S C 206, 209-10, 305 S E 2d 229, 231 (1983) (per curiam) The Court notes that in 1986, the Attorney General concluded—without the benefit of any evidence such as that presented to the municipal court—that skill predominates over chance in golf, and thus that golf is a game of skill See Op S C Atty Gen (Mar 24, 1986) Uncontroverted testimony in this case established that skill plays an identical

First, that the defendant was in a prohibited location, and second, that the defendant was engaged in a prohibited activity. Proof of one without the other is insufficient to sustain a conviction. It is not illegal *per se* to play cards, nor is it illegal *per se* to be in, for example, a “tavern, inn, barn, kitchen, [or] stable.” Illegality inheres only in the simultaneous presence of both elements. Here, the Town maintains that Appellants were properly convicted because Appellants were playing cards—specifically, Texas Hold’em—in a “house used as a place of gaming.” The Town does not contend that Appellants were in any other type of prohibited place. Since there is no question that Appellants were playing a game of cards, their convictions will be sustained only if the Stallings residence was a “house used as a place of gaming.” For the reasons set forth above, this Court has concluded that Texas Hold’em is not “gaming” within the meaning of South Carolina law because skill predominates over chance. Necessarily, then, a place devoted exclusively to the playing of Texas Hold’em is not a “house used as a place of gaming” under § 16-19-40.⁶ Because Appellants were not in a prohibited location, their convictions under § 16-19-40 must be reversed.

2 Rule of Lenity

For the reasons set forth above, this Court holds that Appellants’ convictions must be reversed based upon the plain language of the statute. To the extent the statutory language is ambiguous, however, the rule of lenity provides an alternative—though no less powerful—basis for the reversal of Appellants’ convictions. Under well established law, “when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.” *State v*

role in golf and in Texas Hold’em. Tr. 200

⁶ The Court notes that Appellants dispute whether the term “house” in § 16-19-40 refers to a residence (as the Town seems to contend), or rather to a place maintained for the specific purpose of gambling. Although the Court finds this question relevant to the ambiguity of the statute, *see infra*, resolution of this question is not necessary for consideration of this issue.

Blackmon, 304 S C 270, 273, 403 S E 2d 660, 662 (1991) South Carolina adheres to the “rule of lenity—the principle that any ambiguity must be resolved in favor of the accused” *Berry v State*, 381 S C 630, 633-34, 675 S E 2d 425, 426-27 (2009)

The record evidence indicates that Nathaniel Stallings, his fiancée, and a roommate resided in the home where Appellants were arrested. Similarly, although the municipal court made no specific finding on this point, it does not appear that Stallings took any more from the pots, known as a “rake”, than was necessary to reimburse him as the host for the cost of food and beverages consumed by the others present. These facts raise the question of whether a residence to which others are invited to play cards thereby becomes a “house of gaming.” The statute does not define the term. Does the term “house” mean a residence, as the Town contends? Although such a reading of the statute is possible, it does not appear from the surrounding text that the legislature used the word “house” in its present-day sense of a residential dwelling. The statutory language refers to commercial operations (taverns, inns, and stores) and outbuildings (barns, kitchens, stable, or other outhouses).⁷ It is thus equally plausible, if not more so, that the term “house” is not intended to refer to a residence at all, but rather to a place maintained for the express and sole purpose of gambling. See WEBSTER’S II NEW COLLEGE DICTIONARY 535 (1999) (defining “house” in part as a “building used for a particular purpose, as entertainment”). If a residence can become a “house used as a place of gaming” one must wonder—for surely the statute provides no clues—when and how this transformation occurs. Does it occur when non-family members are invited to play? When an invitee brings along an individual previously unknown to the host? Is the taking of a profit necessary? Does it depend upon the frequency with which the game is played, or the nature of the game itself? These questions merely scratch

⁷ As Appellants note, in 1802, when § 16-19-40 was drafted, kitchens were often detached from

the surface of the issues that must be resolved in order to apply the statute to the playing of a game with cards or dice in a home

This ambiguity in the statute compels this Court to adopt the more narrow reading of the statute and conclude that a residence is not a “house of gaming” simply because persons are invited there on a regular basis to play Texas Hold’em

III VAGUENESS AND OVERBREADTH

As an alternative basis for reversing Appellants’ convictions, this Court concludes that S C Code Ann § 16-19-40(a) is unconstitutionally vague and overbroad ⁸

A S C Code § 16-19-40(a) Is Unconstitutionally Vague

“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*, ___ S C ___, 2009 WL 1851310, at *3 (S C S Ct June 29, 2009) (internal quotation marks omitted) A statute is unconstitutionally vague if it does not give reasonable notice to a person of ordinary intelligence of the conduct that the statute makes criminal *See State v Curtis*, 356 S C 622, 629, 591 S E 2d 600, 603 (2004) Phrased differently, if a person of common intelligence “must necessarily guess at [the statute’s] meaning and differ as to its applicability, it is unconstitutional ” *Guinyard v State*, 260 S C 220, 226, 195 S E 2d 392, 394 (1973), *see Kolender v Lawson*, 461 U S 352, 357 (1983)

This Court concludes that S C Code Ann § 16-19-40(a) in the absence of the dominant factor test is impermissibly vague, and as such cannot be applied to Appellants consistent with principles of due process In reaching this conclusion, the Court need look no further than the

the main dwelling house to reduce the risk of fire

⁸ This portion of the Court’s analysis applies only to subsection (a) of the statute, which addresses playing at “any game of cards or dice” in the enumerated places As discussed *infra*, this Court concludes that subsection (a) is severable from the remainder of the statute

testimony of Mount Pleasant Police Officer Justin Hembree, who managed the investigation of the poker games at the Stallings residence and was present at Appellants' arrest. Throughout his testimony, Officer Hembree struggled to state exactly what it was about Appellants' conduct that rendered their activity illegal. This Court does not fault Officer Hembree in any respect, but rather concludes that his difficulty with articulating the standard for arrest under the statute is the direct consequence of the statute's vagueness.

S. C. Code Ann. § 16-19-40 provides no definition of the term "house used as a place of gaming." Simple logic dictates that "place of gaming" must mean something more than a location where one of the subsequently enumerated games is played, otherwise, the two elements required for conviction would become one. But, because the statute does not articulate what is meant by a "place of gaming," there is no way for people to know when they are in violation of the statute. Because it is not possible to discern what conduct is criminal, § 16-19-40(a) is unconstitutionally vague.

B S. C. Code Ann. § 16-19-40(a) Is Unconstitutionally Overbroad

This Court concludes that a significant due process concern is raised by the very broad reach of § 16-19-40(a). Section 16-19-40 sweeps within its ambit a very broad range of entirely innocent conduct. *Accord Papachristou v. City of Jacksonville*, 405 U.S. 156, 163 (1972) (holding vagrancy statute unconstitutional in part because it "makes criminal activities which by modern standards are normally innocent"). It criminalizes a variety of games played with cards or dice regardless of whether the dominant factor in a particular game is skill or chance. As Appellants note, if § 16-19-40(a) applies to their conduct—the playing of Texas Hold'em in a private home—then it is a virtual certainty that the statute is violated on a daily basis all over the state. The circumstances the Town points to as justifying Appellants' convictions are virtually

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indistinguishable from those attendant to a “Bunco Night” that might be hosted in any neighborhood in this state. The key difference is that Bunco, which involves the awarding of points for rolls of three dice, is unquestionably a game of chance. Similarly, any family that has ever played the children’s card game “Go Fish” while waiting for dinner at a restaurant where wine may be purchased has violated the statute, as has the youth group that plays a board game using dice while on a church picnic. Even a traveler playing a game of solitaire in an airport lounge is in violation of the statute. Simply put, § 16-19-40(a), as written, has the potential to make criminals of virtually every man, woman, and child in the State of South Carolina.

C Subsection (a) Is Severable

The vagueness and overbreadth of § 16-19-40(a) do not render the entire statute unconstitutional, because that provision is severable from the remainder of the statute. In South Carolina the “test for severability is whether the constitutional portion of the statute remains complete in itself, wholly independent of that which is rejected, and is of such a character that it may fairly be presumed that the legislature would have passed it independent of that which conflicts with the constitution.” *Sojourner v Town of St George*, 383 S.C. 171, 177, 679 S.E.2d 182, 186 (2009). This Court holds that the language of subsection (a), “any game with cards or dice” can be struck from the statute without doing violence to the remainder of the statutory text. The remaining statutory language is, as required by *Sojourner*, “wholly independent” of the stricken portion.

CONCLUSION

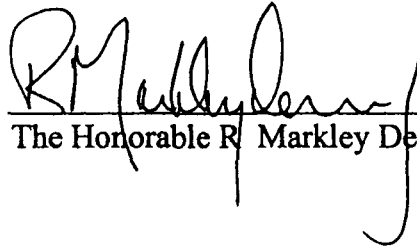
For the reasons set forth above, this Court concludes that the conduct in which Appellants were engaged—the playing of Texas Hold’em in a private residence—does not violate § 16-19-40, and Appellants’ convictions must be reversed. As an alternative and independent basis for the reversal of Appellants’ convictions, this Court concludes that § 16-19-40(a) is

11/11/15

unconstitutionally vague and overbroad

AND IT IS SO ORDERED

October 1, 2009


The Honorable R. Markley Dennis, Jr

Full 76

STATE OF SOUTH CAROLINA

MT PLEASANT MUNICIPAL COURT

COUNTY OF CHARLESTON

TOWN OF MOUNT PLEASANT,) Case No 98045DB
) Case No 98035DB
) Case No 98040DB
) Case No 98050DB
) Case No 98043DB
vs) FINDING OF FACTS AND ORDER

MOUNT PLEASANT
MUNICIPAL COURT

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ROBERT L CHIMENTO

JEREMY BRISTEL

MICHAEL WILLIAMSON

SCOTT RICHARDS

JOHN T WILLIS

This matter came to be tried on February 13, 2009 in the Town of Mt Pleasant It is admitted and is not contested that these defendants on April 12, 2006 were playing cards – namely Texas Hold-em in the home of Nathaniel Stallings in the Town of Mt Pleasant It is also uncontroverted that chips, money and cards were in front of each defendant – all of whom were seated at one of the two tables used for such purpose in the home

The State offered testimony that the participants in this card game were advised of its location and availability over the Internet from a portion of a website called “Charleston Poker Meetups com ”

The Defendants do not challenge any of those facts. Instead they challenge whether or not Texas Hold-em is a game of skill and therefore beyond or outside the scope of the Statute 16-19-40. They offered uncontroverted testimony from Michael Sexton, a professional poker player from Las Vegas, Nevada, who has been a full-time poker player since 1977 that Texas Hold em is a game of skill. It is a game where the average player can become a better and better player. The player can do so from books, articles, experience and/or tutoring. It is a skill that can and is developed. In his testimony he set forth many of the skills required – most important skill is betting - whether to fold, raise or call. He talked about math knowledge, the art of bluffing, the ability to change gears in your manner of play, patience and discipline, self control and continuing to study and to learn. He was an expert paid to testify by the National Poker Players Alliance.

Then Professor Robert Hannun, Ph D testified. He has taught Statistics and Probability for thirty (30) years. He has written books and papers on gaming including poker. In his uncontroverted opinion Texas Hold-em is a game of skill. Skill is the predominant factor in winning or losing in the game of poker. He has a study of this that has been used in a Law Review. In cross examination he differentiated between the games of skill and games of chance – listing roulette, slots, blackjack as all having house advantages and therefore not predominated by skill.

In 103 million poker hands studied in Texas Hold-em

Seventy-six percent are resolved before it gets to a show down.

Twelve percent of the remaining hands will not get to showdown but will be won by the lesser hand, and

Twelve percent of the time the best hand will win. This shows from that study that 88% of the outcome of hands are determined by skill.

He further testified that the consensus of the scientific community does agree that skill is the predominant factor in Texas Hold-em. He, too, was paid as an expert by the National Poker Players Alliance. He stated that in two cases, namely Wisconsin and Connecticut, has testified on behalf of the State, in two other states Colorado and here in South Carolina, he has testified for the Defense.

The Defense further cited the fact that in the dissenting opinion in Johnson v Collins Entertainment Co., Inc. 333SC96, 508 S.E. 2d 575(1998) – Justice Burnett and Chief Justice Toal

indicated that the “dominant factor” is the appropriate test in South Carolina – to determine whether a particular activity is a game of skill or not. The other justices in the majority in that case gave no indication of their opinion in that regard.

There are no clear guidelines given to this Court to follow. Each challenge to a particular gaming problem has been decided without the Supreme Court or the Legislature explicitly and precisely defining gaming or gambling house – key factors of determination in this case.

This Court, based on the above stated facts, finds that Texas Hold-em is a game of skill. The evidence and studies are overwhelming that this is so. On January 14, 2009, the State of Pennsylvania in a fact situation very similar to this one determined that Texas Hold-em poker is not unlawful gambling as defined by their gaming statutes because it is a game of skill, (Commonwealth of Pennsylvania vs Dent Case No. 733 of 2008). That Court said there are three elements of gambling: consideration, chance and reward. The determination hinged on whether or not Texas Hold-em was a game of chance or one where skill predominates. If the latter is true, then it is not gambling. The Court there accepted the “Dominant Factor” test. Studies by 35 Hofstra Law Review in Spring 2007 issue also opined that it is a game of skill. Therefore the Courts should look no further. The Honorable Thomas A. Jones, Jr. dismissed the gambling charges on January 14, 2009.

In the briefs filed with this Court, it is evident that the Courts in California, Missouri and Nebraska also accept the Predominate Factor test. If this Court knew that this State follows that test in this factual circumstance the decision would be simple. But it is not.

Here we have Nathaniel Stallings, who advertised on the Internet, who took twenty dollar (\$20) buy ins, who took a rake out of the pot to cover food and drink provided. In addition to all of that, he appeared in the Court of General Sessions for the Ninth Judicial Circuit in Charleston and pled guilty on January 5, 2007, to Operating a Gaming House. He paid \$747.50 to the Court.

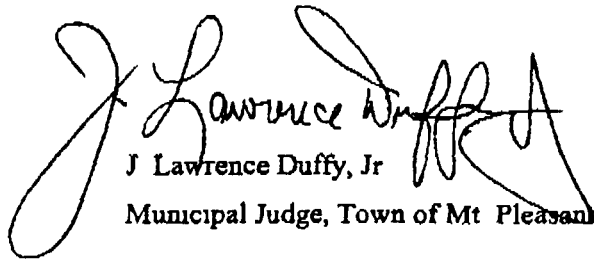
In addition, Code Ann. Section 16-19-40 reads as follows: “If any person shall play in any house used as a place of gaming at any games with cards or dice upon being convicted thereof, before any magistrate

There is no definition by the Legislature as to what will or will not constitute a house as a place of gaming

It is and appears to have been the public policy of the State of South Carolina to suppress gambling and that gambling in all forms is illegal in south Carolina (Holiday v Governor of the State of South Carolina etal 78 F Supp 918 (1914) Further the Attorney General in opinion No 04-18 dated January 22, 2004 indicates the Legislature prohibits playing of "any game with cards or dice"

In light of all of the matters set forth above, this Court will not set itself to definitively conclude that this State will or does follow the "Dominant Test" Theory and thus is compelled, since it has no clear guideline from the Legislature or from the majority of this Supreme Court to find the defendants guilty of violating Code Section 16-19-40, and therefore are required to pay the fines and assessments required by such a violation

AND IT IS SO ORDERED


J Lawrence Duffy, Jr
Municipal Judge, Town of Mt Pleasant

February 19, 2009

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MOUNT PLEASANT
MUNICIPAL COURT

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Robert L Chimento, et al ,	)	
	)	
Plaintiff,	)	
	)	
vs	)	Case No 09-CP-10-1551
	)	
Town of Mount Pleasant,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was held on August 4, 2009, commencing at 3 15 p m before The Honorable R Markley Dennis, Jr in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina, attended by Counsel, as follows

APPEARANCES

William W Wilkins, Esq
NEXSEN PRUET
P O Drawer 10648
Greenville, South Carolina 29603

-and-

Jeffrey A Phillips, Esq
PHILLIPS LAW FIRM
1425 August Street
Greenville, South Carolina 29605
Appearing for Plaintiffs

Ira Grossman, Esq
P O Box 745
Mount Pleasant, South Carolina 29465
Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island South Carolina 29457
dGarrison@sccourts.org

1 CLERK Your Honor, I believe everyone
2 is here for Chimento

3 THE COURT It's a minute early but
4 if everyone is here, I'll be happy to hear it

5 I have reviewed in part the appellate's
6 brief and memorandum that has been filed -- I
7 think I have a stamped copy, which is my copy, I
8 believe That's the brief that's been submitted
9 and filed, as well

10 Mr. Grossman, do you have any -- did
11 you submit any briefs or are you relying on the
12 record?

13 MR. GROSSMAN No, Your Honor

14 THE COURT Very well. The briefs
15 and the memorandums are incorporated fully in
16 the record of this proceeding for purposes of
17 review. You may rely fully on your memorandum.
18 It's not necessary to argue to the court here
19 today, it's a matter of -- you may proceed as
20 you deem fit and proper. I would suggest that
21 you stress -- there are certain parts that seem
22 to be the focal point, to me. I'm not trying to
23 control your argument but I -- I do see a little
24 bit of where it is going.

25 MR. WILKINS I understand, Your

1 Honor

2 THE COURT Thank you, sir. If you
3 will, identify yourselves and the parties that
4 you're representing.

5 MR. WILKINS My name is Billy
6 Wilkins with the firm of Nexsen Pruet.

7 THE COURT All right. I thought
8 that was the case and I'd forgotten to disclose
9 one other thing, Mr. Wilkins, -- excuse me,
10 Judge.

11 My son works for Nexsen Pruet in
12 Charleston. He's been employed with Nexsen
13 Pruet since he graduated. He was originally
14 in the Columbia office, which didn't create a
15 problem so much. I just would disclose it.

16 I have asked Ms. Druce to recuse --
17 I've recused myself from hearing those cases
18 where they are brought out of that office.
19 You're in the Greenville office, aren't you?

20 MR. WILKINS That's correct,
21 Your Honor.

22 THE COURT Okay. I -- whatever,
23 I mean either side. If you need to confer with
24 someone, I will be happy to stop and let you do
25 that. Mr. Grossman, that's up to you, sir.

1 MR. GROSSMAN Uh, -- (pause)

2 THE COURT Or I will recuse myself
3 if that's what you want, if you'd feel more
4 comfortable

5 MR. GROSSMAN Your Honor -- if
6 Your Honor doesn't feel comfortable and --
7 or feels that he can handle the case, then I
8 have no issue with it

9 THE COURT I assure you that it
10 won't have a thing in the world with how I am
11 going to rule. I just ---

12 MR. GROSSMAN Then I have no
13 objection

14 THE COURT --- want that to be
15 known ---

16 MR. GROSSMAN Yes, sir

17 THE COURT --- to both sides
18 I, frankly, just didn't catch it. I apologize
19 I should have noticed it before

20 MR. GROSSMAN I appreciate Your
21 Honor's candor. I have no objection to Your
22 Honor going forward

23 THE COURT Thank you, sir. Look
24 forward to hearing from you. Mr. Wilkins,
25 I'll be happy to hear from you

1 MR. WILKINS This is Mr. Jeff
2 Phillips, co-counsel. He is actually trial
3 counsel.

4 THE COURT All right, sir.

5 MR. WILKINS He is also from
6 Greenville.

7 THE COURT Very well.

8 MR. WILKINS Your Honor, on April
9 12th, 2006, the appellants were gathered in a
10 private residence playing Texas Hold'em. The
11 private residence was owned and lived in by
12 Nathaniel Stallings and his fiancée, located in
13 Mount Pleasant.

14 The police entered the residence,
15 arrested the appellants and charged them with
16 violating Section 16-19-40(a), which has two
17 elements. The first element is that the house,
18 Mr. Stallings's residence, be used as a place of
19 gaming, and, two, that in that house these
20 appellants played cards.

21 Now, I believe that I'd like to recite
22 to the court those things that we agree on, or
23 at least there's no basis for disagreement.
24 First of all, the statute uses the words
25 "gaming" and then "gambling." We agree that

1 these words are interchangeable

2 THE COURT I agree

3 MR WILKINS Synonymous

4 THE COURT I concur

5 MR WILKINS Number two, the
6 statute does not define "gambling"

7 THE COURT I agree

8 MR WILKINS The Random House

9 Dictionary does offer a definition and that is
10 "playing at a game of chance for stakes", and
11 Webster's Dictionary offers the following
12 definition, "playing games of chance for money "

13 There is no basis for disagreement that
14 in the *Johnson v Collins Entertainment* case
15 that our Supreme Court said that this section,
16 Section 16-19-40 prohibits "games of chance or
17 gambling devices "

18 As is, there is no disagreement that
19 based on uncontradicted evidence the trial judge
20 found, as follows He said, "The court finds
21 that Texas hold 'em is a game of skill The
22 evidence is overwhelming that this is so "

23 There is also no basis for disagreement
24 that in the United States the overwhelming
25 majority of courts have used what is known as a

1 dominant factor test in determining whether or
2 not an activity is gambling The dominant
3 factor test is a very simple one It simply
4 states that if winning the game predominantly
5 depends on chance, then it is gambling If it
6 predominantly depends on skill, then it is not

7 The trial judge stated in the record
8 that because Texas Hold'em is predominantly a
9 game of skill, under the dominate factor test
10 the appellants would not be in violation of this
11 section

12 But the trial stopped a little short of
13 applying the dominant factor test This is the
14 reason he did not, he said "I have no clear
15 guideline " -- I think he meant guides -- "from
16 the Legislature or from the Supreme Court",
17 'therefore I am not going to apply it in this
18 case Although, if I did, you would be not
19 guilty '

20 Well, I agree ---

21 THE COURT That's another way of
22 saying that it is a novel issue in this state

23 MR WILKINS It may be but I want
24 to ---

25 THE COURT It may not be

1 MR. WILKINS It is as not a novel
2 a case as they thought it was

3 THE COURT Exactly

4 MR. WILKINS The Legislature,
5 I agree, has provided absolutely no data, no
6 guides

7 THE COURT Correct

8 MR. WILKINS But I believe that
9 there is a clear and strong indication from our
10 Supreme Court that when faced with the issues
11 that Your Honor is faced with today it would
12 hold that the dominate factor test applies in
13 South Carolina

14 I say that for several reasons. The
15 *Darlington Theater* case back in 1939, whether
16 or not this activity was a lottery, which is
17 another form of gambling. Our Supreme Court
18 said 'Where is the test? Was there a prize
19 involved? Was there a consideration paid?
20 Did winning depend on chance?' And if those
21 three elements are there, it's gambling. If
22 they are not, then it's not

23 Then comes *Johnson v. Collins Enter-*
24 *tainment*. People with video gaming devices

25 THE COURT Correct

1 MR. WILKINS The majority of the
2 Supreme Court in that case went on kind of very
3 narrow ground, that is there were no tickets
4 being pulled with video gaming machines, so it's
5 not a lottery

6 But Justice Burnett, cited in the
7 *Darlington* case said, 'I will adopt the dominant
8 factor test.' He went on to explain that the
9 overwhelming majority of states followed the
10 dominant factor test, including our sister state
11 of North Carolina

12 Chief Justice Toal wrote separately and
13 joined Justice Burnett in his dissent. She
14 said, 'I will adopt the dominant factor test
15 because', she said, to do so in our court would
16 be "faithful to our Court's precedent
17 (*Darlington*) as well as within the mainstream of
18 American court decisions."

19 The majority did not take issue with
20 what Justice Burnett wrote or what the Chief
21 Justice wrote, again deciding this case on very
22 narrow grounds

23 But importantly in that decision, in
24 the majority decision, the majority said that
25 this section, 16-19-40, prohibits games of

1 chances and gambling devices, clearly signaling
2 that our Supreme Court understands that there is
3 a big distinction between games of chance, which
4 are prohibited by the statute, and something
5 else, games of skill

6 Importantly, the phrase "games of
7 chance" used by the majority opinion is not
8 found in the statute. What is found is "gaming"
9 and "gambling." So the Supreme Court equated
10 'games of chance' with 'gaming' or 'gambling.'

11 You have that statement by the Court,
12 two justices of our Supreme Court saying, 'I
13 would adopt the dominant factor test.' No
14 disagreement from anyone who ever indicated
15 that would not be the case.

16 For years we've had our Attorneys
17 General using the dominant factor test when
18 giving advisory opinions as to whether or not
19 something is prohibited or not.

20 I believe that if you take all of that
21 together, Judge, there's a pretty clear
22 indication that our Supreme Court recognizes
23 that the dominant factor test applies in South
24 Carolina. And if it applies, in this case these
25 convictions must be set aside.

1 Very briefly, I'll conclude, Your
2 Honor. If you decide not to apply the dominate
3 factor test, these convictions have got to be
4 set aside anyway because this statute, if
5 anything, without the dominant factor test
6 giving it meaning it's completely ambiguous.
7 As Your Honor well knows, all ambiguities need
8 to be resolved in favor of the defendants.

9 What is a "place of gaming"?

10 You can't go to any dictionary and find
11 it. You can't go to any case that I know of. I
12 did Google it, though, and I came up with one
13 hit that said "a place of gaming is a public
14 building in which a variety of games of chance
15 can be played."

16 If this court elects not to adopt the
17 dominant factor test, then there are some
18 Constitutional issues that should be addressed.
19 This statute is un-Constitutionally vague.

20 Our Supreme Court has made clear that
21 whenever a criminal statute is written, people
22 of ordinary intelligence must be placed on
23 notice of what the statute attempts to prohibit.
24 Otherwise, it is void for vagueness in violation
25 of the due process clause.

1 I think the best example that I can
2 give as to why this is un-Constitutionally
3 vague comes from the arresting officer himself,
4 Officer Henley (phonetic). He testified that he
5 had special training in vice, including
6 gambling. On the stand, he was cross-examined
7 by Mr. Phillips, 'Officer, how do you violate
8 this statute?' He said, 'Well, if the house
9 takes a profit it's gambling.' Of course, Judge
10 Duffy found that the house in this case did not
11 take a profit, so even under the arresting
12 officer's interpretation of the statute these
13 defendants were not guilty. But then later on,
14 when pressed a little harder, he said "Well, if
15 you play Texas Hold'em every now and then at Mr.
16 Stallings' residence, it is not gambling. But
17 if you do it " -- and he used the word
18 "constantly" -- "if you do it constantly it is
19 gambling", in violation of the law.

20 Well, neither of those can be correct,
21 I don't think, Your Honor. And I'm not
22 criticizing the officer, because he's doing the
23 best that he could to interpret a statute that
24 everybody who reads it is going to give it a
25 different interpretation.

1 And also it is Constitutionally
2 overbroad. If you read the statute, it
3 prohibits a wide range of conduct: children's
4 games, things that are protected and things that
5 the State has no interest in trying to prohibit.
6 It also includes a businessman in the lounge at
7 the Charleston Airport playing solitaire in the
8 bar, it would be prohibited under this statute.

9 If an appeal can be decided on a non-
10 Constitutional ground, then it should be,
11 leaving these Constitutional issues for another
12 day.

13 Members of the Supreme Court have
14 stated that the dominant factor test applies in
15 South Carolina. No one has indicated to the
16 contrary. Our Attorneys General have used it
17 for years when giving advice as to whether an
18 activity is prohibited or not.

19 So I believe, Your Honor, contrary to
20 what the trial judge thought, the dominate
21 factor theory -- I mean, the dominant factor
22 test is alive and well in South Carolina
23 already. If Your Honor adopts and applies it
24 to the facts of this case, these convictions
25 must be set aside. Thank you, Judge.

1 THE COURT Thank you, Mr. Wilkins
2 Mr. Grossman?

3 MR. GROSSMAN Thank you, Your
4 Honor.

5 THE COURT Yes, sir.

6 MR. GROSSMAN Your Honor, this is
7 a situation which the Town believes is a civil
8 matter, which has always been a civil matter as
9 far as I know in our laws, which is being made
10 complex.

11 I do disagree with Mr. Wilkins on some
12 of the things that he stated were fact in terms
13 of what the trial judge found. Let's start out
14 with the law. I am going to take his arguments
15 a little out of turn here, Your Honor.

16 THE COURT Okay.

17 MR. GROSSMAN As to the law being
18 vague and so forth, the statute is termed
19 "unlawful games and betting." Basically what
20 it is saying is that are certain games that you
21 can't play in a certain place -- and there's
22 several places, places that it lists. The
23 statute is old but basically one of the places
24 it says is a "place of gaming." You can't bet
25 on those games, make any side bets and so forth.

1 on those games

2 Now, in this particular case the
3 evidence showed that there were over twenty
4 people ticketed, playing the game when the
5 officers issued the search warrant and came
6 into the house. It was unconverted, even by
7 their own witness who was one of the gamblers,
8 that all five were gambling -- no question,
9 they were playing poker and they were gambling.

10 It is also uncontroverted and the Judge
11 found that the house did make a profit. There
12 was some disagreement as to what the profit was.
13 The Judge said in his Order, or put in his
14 Order, and I think he misstated that, but that
15 it was only for food and drink was the profit.
16 The testimony from the officer was that's how
17 the individuals in the house running the game
18 make a living. In fact, there was disagreement
19 between the witnesses as to how much profit the
20 individual in the house made. So there's no
21 question that he made a profit, but the amount
22 of the profit isn't what makes it a house of
23 gaming.

24 It seems quite simple to me. There are
25 certain things in the law that you can't define

1 to a finite degree. Now, what I stated to the
2 judge down at the lower level I think holds
3 here. A house of gaming, what is a house of
4 gaming?

5 What their argument has been all along
6 has been a clever distortion, a mischaracteriza-
7 tion, a bunch of buddies having a gambling game
8 just gambling for fun and that's basically what
9 this was. Two of the five appellants are
10 convicted felons. That's not what this was.
11 Okay? The house was making a profit, that's in
12 the record, there is no question about that.

13 So what you have here is a for-profit
14 gambling operation, close to \$6,000 in receipts.

15 THE COURT: Let me stop you for a
16 minute. You mentioned that two were convicted
17 felons. Do you -- that means that they have
18 already served their time?

19 MR. GROSSMAN: Yes, sir.

20 THE COURT: Are you saying that they
21 can't be one of the buddies playing poker, ever?

22 MR. GROSSMAN: No.

23 THE COURT: All right, I just wanted
24 to be sure.

25 MR. GROSSMAN: I think the

1 mischaracterization is that these were --
2 basically what the defense has stated is that
3 there was an elderly lady there, these were just
4 college buddies. I mean, there's been various
5 distortions put out there that that is the type
6 of game that this was. This was a for-profit
7 gambling operation.

8 The record was also clear that the
9 resident of the house who was running the game
10 did not even know some of the people who were
11 gambling in his house. So obviously he was not
12 friends with them.

13 In the transcript, I have it marked if
14 Your Honor wants to go through his testimony,
15 that would be Nathan Stallings, I asked him the
16 names of the individuals that were gambling
17 then, the actual names of the defendants. Not
18 only did he not know all of the individuals that
19 were in the house that were ticketed that night,
20 he did not even know the first and last names of
21 the five more celebrated appellants that are
22 here before Your Honor.

23 So if the resident of the house running
24 the game doesn't know the people in the game,
25 that tends to make someone think that perhaps

1 this was more than a friendly game amongst
2 friends I asked him how he defined a "friend"
3 and he said, and it's in the transcript,
4 "someone who is not my enemy "

5 I also asked him could anybody come up
6 there and basically gamble in the game, he
7 stated 'Well, it had to be a friend of a
8 friend ' Remember, again, this game was
9 advertised on the internet and that was
10 basically how people came into the game -- in
11 some respects Some others came, friends of
12 friends and so forth but basically that's the
13 way that the game was run

14 Now, again, what Mr Wilkins said was
15 that basically the State has no business
16 interfering in a game like this Now, this was
17 a for-profit game, it was in a residential
18 neighborhood, numerous tables set up The
19 video that was placed into evidence of the
20 confidential informant, and the officer
21 testified on the stand, that when the
22 confidential informant came in to play some
23 people didn't even acknowledge him, didn't say
24 'hello' It didn't appear that many of the
25 people even knew each other who were playing the

1 game. It appeared very clear that this was a
2 for-profit gambling operation and not friends
3 playing poker.

4 What difference does that make? It is
5 not illegal, in my reading of the statute, for
6 a group of friends to get together and gamble,
7 play poker in their house if it is not in a
8 gaming house. I know lawyers, police officers,
9 judges, I'm sure there are many people from all
10 walks of life who have friendly, low-stakes
11 poker games in their houses ---

12 THE COURT Let me ask you a
13 question.

14 MR. GROSSMAN Yes, sir.

15 THE COURT You're saying because it
16 is in a gaming house therefore we don't even
17 have to get to the dominant factor test because
18 it doesn't matter whether it is a game of skill
19 or chance?

20 MR. GROSSMAN Well, that is some-
21 what correct, Your Honor.

22 THE COURT I'm just asking you, is
23 that your position? Because, quite frankly, if
24 it is then I guess we can -- we can focus only
25 on that.

1 MR GROSSMAN I don't ---

2 THE COURT But I don't believe that
3 is correct Do you?

4 MR GROSSMAN No I believe that
5 there are two separate arguments here

6 THE COURT I think that it may be a
7 gaming house but we've still got to get back to
8 the ---

9 MR GROSSMAN (Affirmative nod),
10 dominant factor test

11 THE COURT --- dominant factor test
12 and we've still got to get to -- no question the
13 judge found that this particular game was a game
14 of skill, not of chance

15 MR GROSSMAN I am getting to that
16 argument, Your Honor I just took them out of
17 turn

18 THE COURT I understand but ---

19 MR GROSSMAN I don't disagree
20 I have to get to that argument and I will

21 THE COURT All right I'm sorry to
22 interrupt you but I just wanted to be sure that
23 -- I was going to say that maybe I could save
24 some effort, we could conclude that it was a
25 gaming house

1 MR GROSSMAN I appreciate that,
2 Your Honor The last thing that I was going to
3 say was that the resident of the house, Your
4 Honor, basically pled guilty to the operation
5 of a gaming house in General Session court, in
6 transfer court actually He pled guilty to the
7 charge, admitted that in open court for the same
8 evening in question when these individuals were
9 ticketed There is no question that it was a
10 gaming house

11 Now, this dominant factor test Now,
12 Mr Wilkins is somewhat correct, other states
13 have applied the dominant factor test We
14 don't The Constitution deals with lotteries, the
15 statutes deal with gambling, gaming and betting,
16 other than public officials So ---

17 THE COURT Well, let me ask you a
18 question

19 MR GROSSMAN Yes, sir?

20 THE COURT When I practiced law, I
21 had several Attorneys General but people would
22 ask me, 'Well, what is the strength of that
23 opinion?' I said, 'Well, they are a lawyer just
24 like I am and other lawyers, they just happen to
25 hold a position where somebody calls and asks

1 for an opinion ' But there's no question
2 there's no Attorney General's opinion that is --
3 that reference that as being, as making -- in
4 answering the question, 'Is this a violation of
5 that particular statute?' Is there ---

6 MR GROSSMAN No, sir In my
7 opinion the *Johnson* case, the other cases, the
8 dominant factor test, in my opinion what they
9 were applying it to in that case was applied to
10 poker machines and applied to lotteries and so
11 forth But, remember, that was a dissenting
12 two judges' opinion where they mentioned the
13 dominant factor test The dominant factor test,
14 Your Honor, does not apply in this case, it has
15 nothing to do with the statute The reason that
16 it is not in the statute is ---

17 THE COURT Then what did we use to
18 make that determination?

19 MR GROSSMAN The -- well, I think
20 you go by the statute, Your Honor The ---

21 THE COURT I understand that but
22 what do I use, because what you're saying then
23 as I understand -- and that's why I asked you

24 MR GROSSMAN Yes, sir

25 THE COURT Because if you go back to

1 my initial question to you, Mr. Grossman, and
2 pardon me for interrupting you, if it is
3 established that it is a gaming house ---

4 MR. GROSSMAN Which it is

5 THE COURT Well, assuming that I
6 agree with you, ---

7 MR. GROSSMAN Assuming, (affirma-
8 tive nod)

9 THE COURT Then it doesn't make any
10 difference from that point on whether they were
11 playing a game of skill or a game of chance
12 You said, 'well, I can't say that is necessarily
13 so '

14 MR. GROSSMAN Well, I think his
15 argument was different

16 THE COURT I'm asking you, do you
17 think that my review stops in determining
18 whether it is a gaming house because it doesn't
19 really matter whether the game is a game of
20 skill or a game of chance?

21 MR. GROSSMAN Yes Yes, that is
22 my ---

23 THE COURT That's what you believe
24 that the law says?

25 MR. GROSSMAN I do not believe

1 that the judge at the lower -- yes, I agree
2 I mean, I hadn't got to that part of my argument
3 but that's correct. Maybe I misunderstood Your
4 Honor. I don't believe that the skill or chance
5 argument applies, it doesn't apply because
6 that's not South Carolina law.

7 In their briefs, and I think one brief
8 was submitted by Mr. Goldstein from Washington,
9 D.C., which I believe was submitted to Your
10 Honor, they have a case in there from Colorado
11 law where the statute speaks of games of skill
12 as opposed to games of chance and therefore it
13 applies. Our legislature was actually very wise
14 when they wrote this statute to not put that in
15 there, because, Your Honor, if you put in the
16 distinction of skill or chance the Pandora's box
17 that that opens up is unbelievable.

18 THE COURT What box does that open
19 up?

20 MR. GROSSMAN Well, how about
21 professional football? Is that a game of skill
22 or chance? I guess you could open up "house"
23 and you could basically say ---

24 THE COURT Whoa, whoa, whoa, hold on
25 a second. That doesn't have anything to do with

1 -- a game of football is a game of skill, but
2 that's not -- just playing a game of football
3 doesn't violate the statute

4 MR. GROSSMAN No, but gambling is
5 what -- again, it is not -- that's exactly my
6 point

7 THE COURT Well, ---

8 MR. GROSSMAN It is not the game,
9 it's ---

10 THE COURT --- I don't understand
11 your point

12 MR. GROSSMAN It is not the game,
13 it is the gambling on the game. They are
14 focusing on the game, is it skill or chance?
15 That doesn't make any difference. It is the
16 gambling on the game. Again, skill or chance
17 has nothing to do with it. Why I am saying that
18 it was wise for our Legislature to ---

19 THE COURT Well, let me ask you this
20 crazy question

21 MR. GROSSMAN Yes, sir?

22 THE COURT Maybe you can educate me
23 Why do all these other states then go and define
24 it if it is just a bad idea?

25 MR. GROSSMAN All right, I'll tell

1 you why I think, Your Honor. I think because
2 many of the laws, like our laws, were written
3 long ago and they didn't foresee arguments from
4 organized gambling, uh, to basically overturn
5 the ---

6 THE COURT You know, I knew that was
7 coming in here, this fear factor of organized
8 gambling. That's what just -- the fear thing,
9 that doesn't -- people can draw laws to deal
10 with whatever they want to and that's what they
11 do. They do it so that people can be informed
12 and understand what it is that is described.
13 That's why -- well, rather than -- to use your
14 phrase, 'we'll leave it to chance as to whether
15 or not you violated the law.'

16 Because what you're saying is -- I
17 don't know how much they played for but I know
18 that my aunt played bridge twice a month, in a
19 house, and they all put in some money and
20 somebody provided food. Under your theory,
21 that's gambling.

22 MR. GROSSMAN No, it's not

23 THE COURT Yes, it is

24 MR. GROSSMAN No, it's not a
25 gaming house

1 THE COURT Whoa, whoa She invited
2 all sorts of people and sometimes they had
3 somebody that wasn't one of the regulars

4 MR GROSSMAN Doesn't make a
5 difference

6 THE COURT On what distinction?

7 MR GROSSMAN I will -- let me ---

8 THE COURT Tell me the difference

9 MR GROSSMAN I'll tell you the
10 difference, Your Honor Again, to me, and I can
11 only give you -- I'll give you something
12 analogous to it, which is what I did at the
13 lower level A house of prostitution You have
14 prostitution laws ---

15 THE COURT What ---

16 MR GROSSMAN If Your Honor will
17 let me continue, please

18 THE COURT Good gracious, we can
19 talk about the casinos out in Las Vegas and I
20 can tell you 'yes, that's a gaming house '

21 MR GROSSMAN But isn't -- aren't
22 there certain things in the law that Your Honor
23 has to take judicial notice of if -- I'll put it
24 another way How would Your Honor define a
25 gaming house?

1 THE COURT That's the problem
2 That's precisely the problem Thank you, Mr.
3 Grossman If I can't define it, then isn't
4 there something wrong?

5 MR. GROSSMAN But I think that ---

6 THE COURT No, no, I am asking a
7 question Isn't there something wrong if I
8 can't give you a definition?

9 MR. GROSSMAN No

10 THE COURT Oh, that's okay?

11 MR. GROSSMAN I believe -- and,
12 again, I can only tell you what my ---

13 THE COURT So it is okay for us to
14 have forty-six definitions of a gaming house?

15 MR. GROSSMAN I think that the
16 definition of it is, if you go by Black's Law
17 Dictionary, which I have, he cited other
18 dictionaries, it's similar to what they said --
19 of course leaving out the "skill" or "change"
20 (Reading) "Gambling is the active risk of
21 something of value, especially money, for a
22 chance to win a prize Gambling is regulated
23 by State and Federal law "

24 Now, they a definition for "gambling
25 place" Okay? (Reading) "Any location where

1 gambling occurs "

2 Now, so under your definition ---

3 THE COURT No Under that

4 definition then my aunt's house was a gambling
5 house

6 MR. GROSSMAN Technically

7 THE COURT Technically? There's no
8 technically about it

9 MR. GROSSMAN Your Honor, I
10 believe though -- I believe, though, which is
11 the reason that I stated all of the attributes
12 of this particular house, the numbers of people,
13 the fact that it was in a residential
14 neighborhood, that it was obviously a house ---

15 THE COURT Why do we keep saying
16 residential neighborhood? What difference does
17 that make?

18 MR. GROSSMAN It does because if
19 you look ---

20 THE COURT Another scare tactic,
21 isn't it?

22 MR. GROSSMAN It's not because due
23 to the fact that you have ---

24 THE COURT Let me say this, if
25 you're talking about a house, a gambling house,

1 which -- I believe ancient people even knew
2 what that was

3 MR. GROSSMAN Certainly

4 THE COURT A public place where
5 people went and they either paid money to be in
6 there or somebody -- listen, I'll give you an
7 example of one because I used to participate in
8 it when I was in college. It was before we
9 changed some laws. The Merchant Seaman's Club
10 ran a gambling house. I'm sorry. There was a
11 poker table in there and people used to go and
12 they played cards, and it was against the law in
13 this state for that to be done but it was done
14 in the 1960's. I guarantee you that it was
15 done, because I -- I didn't play but I watched
16 a lot of games there while I was consuming
17 alcoholic beverages and I was underage.

18 MR. GROSSMAN Yes, sir.

19 THE COURT So I am confessing all of
20 that right now. There is no question that's a
21 gaming house, no question, no ifs, ands or buts.

22 MR. GROSSMAN Yes, sir.

23 THE COURT What did I think the
24 forefathers were thinking about? I don't think
25 that they were thinking about my house. I think

1 that they were thinking about a place where the
2 public goes

3 MR. GROSSMAN Yes, and that's what
4 this was

5 THE COURT But, again, -- I say,
6 again, Mr. Grossman, ---

7 MR. GROSSMAN That's what this
8 was

9 THE COURT --- that brings us right
10 back to the real problem that we have because I
11 can't really argue against your conclusion, nor
12 can you argue against my conclusion. I am
13 entitled to my own definition of gaming house,
14 as you are. Therein lies the problem with a
15 statute that leaves it to anybody's
16 determination as to what a gaming house is

17 MR. GROSSMAN Your Honor, what I
18 would say in response to that is that it is up
19 to the legislature to change the statute if they
20 see fit

21 THE COURT Oh, I agree with you. If
22 they want to describe something, you're exactly
23 right. But until they do, it's not

24 MR. GROSSMAN But I think that the
25 issue that you have is where you are talking

1 about 'why do you say a residential neighbor-
2 hood?' For this very reason -- judges, police
3 officers, prosecutors -- obviously when a police
4 officer makes a case he has to use discretion,
5 he looks at the facts. Your Honor knows that
6 obviously a police officer, if someone is
7 speeding, if it is a fifty-five per hour speed
8 limit, does not write a ticket for one mile an
9 hour over the speed limit.

10 THE COURT Some do.

11 MR. GROSSMAN And I will tell you
12 this, if that happens a prosecutor has
13 discretion to say that will be *null prosed*
14 because that is a technical violation but we're
15 not going to go forward on the case and a judge
16 will dismiss that case if in fact he feels that
17 that doesn't technically accrue to a technical
18 or more than a technical violation.

19 THE COURT That's okay in applying
20 the law?

21 MR. GROSSMAN Your Honor, judges
22 and juries ---

23 THE COURT No. I'm asking you, is
24 it okay for people to just say 'well, I am not
25 going to do that one this time'?

1 MR. GROSSMAN Your Honor, I
2 believe that there is enough discretion in our
3 laws that in a case like this when you look at
4 the situation that we have in this case, there's
5 no question that it was a gaming house. The
6 problem, you say, is 'well, it's not defined and
7 you can come up with your own definition' but
8 the real problem is -- why, again, the statute
9 is written correctly is -- let's say that I
10 agree with Your Honor and I said, 'Okay, there's
11 no way to do it.' How could you define it? No
12 one can define it.

13 THE COURT You can't.

14 MR. GROSSMAN It can't be defined.
15 And the problem is, how could you define it? If
16 you said -- if you said -- if Your Honor will
17 permit me -- if you said, 'Okay, the house has
18 to make a certain amount of money.' Well, they
19 could change that, they could work that and say
20 'Oh, well, we're splitting it so two people get
21 a certain amount of money.' It would be
22 incredibly hard to totally define it.

23 And to me if over twenty people, people
24 that don't know each other, \$6,000 dollars
25 receipts, the man is meaning that was a house of

1 gaming

2 Why would his lawyer allow him to admit
3 that if it wasn't a house of gaming? He went
4 into court, a court of law, and pled guilty to
5 that very charge, operation of a house of
6 gaming. Now, ---

7 THE COURT Again, I -- I've just
8 been playing the devil's advocate for the
9 purposes of a gaming house. I think it's a
10 vague statute, I think it is extremely vague but
11 for the sake of this particular case, which is
12 what I have to confine my determination, based
13 on the record in this case, I ---

14 MR. GROSSMAN Yes, sir

15 THE COURT I don't quarrel with what
16 you're saying and I understand -- I understand
17 the logic for the conclusion. My concern,
18 again, goes back to -- if that's it, then the
19 case is over. It's done. Why would the judge
20 have to find it necessary -- you need to get on
21 to that second prong, which I think is kind of
22 unfortunately a problem area.

23 MR. GROSSMAN Which is the fact
24 that you feel that the statute is too vague?

25 THE COURT No, I -- I agree. I am

1 not even sure that I need to get there I think
2 that a challenge may come for that but I'm not
3 sure today is the day for that Be that as it
4 may, why if it is not necessary would the judge
5 make a finding that Texas Hold'em is a ---

6 MR GROSSMAN A game of skill

7 THE COURT --- game of skill?

8 MR GROSSMAN Well, the reason
9 that the judge did that, Your Honor, was because
10 Mr Phillips, over our objection, asked to be
11 heard on that Okay? I believe the lower court
12 was wrong to entertain the argument on whether
13 it was a game of skill or chance He did
14 entertain it but he told Mr Phillips that he
15 would give whatever weight he deemed appropriate
16 at the end of Mr Phillips' argument After
17 hearing all those arguments and reviewing the
18 statutes, the judge found correctly that there
19 is no guidance, which is the argument I would
20 make before Your Honor There is no guidance to
21 use the dominant factor test Under the plain
22 meaning and construction of the statute it was a
23 gaming house, the gentleman admitted that it
24 was The defendants admitted to gambling in the
25 house and, therefore, the defendants were guilty

1 as charged

2 I think I kind of understand Your
3 Honor's argument sort of leading me there, and
4 sometimes it takes a little while for me to get
5 to the right place but I think that's basically
6 where we are

7 I don't believe that the courts have
8 provided any real guidance for Your Honor to
9 rule any other way than to affirm this decision
10 and I don't believe that the lower court judge
11 made any error of law

12 I understand your argument, I under-
13 stand what Your Honor is saying about the house
14 of gaming, however I do -- and I respectfully
15 disagree with Your Honor in terms of the
16 definition because I think it would be difficult
17 to make a definition and I think the reason that
18 the other states got into trouble is because
19 they did define it and then they had to find
20 ways to get around it

21 THE COURT Well, let me just -- and
22 I haven't given a lot of thought to it and we've
23 been arguing this point for maybe ten minutes,
24 so I probably should not say a word. But, you
25 know, a statute could be drawn easily that if

1 you have a profit, meaning that you charged
2 admission to get in, that you have it available
3 and the public is admitted, that's section one,
4 -- section two, 'any home where the owner earns
5 any money, directly or indirectly ' It's
6 defined, is it not?

7 MR. GROSSMAN I think that would
8 improve it

9 THE COURT No, no, I am just saying
10 If -- and there may be others

11 MR. GROSSMAN And, Your Honor, I
12 think that -- I would be happy with you writing
13 that law

14 THE COURT Well, I can -- you say
15 it's difficult to write, I don't think it's that
16 difficult to write

17 MR. GROSSMAN I think that the
18 problem you have in the other states is when
19 they did define the skill versus chance argument
20 and so forth. I see what you're saying just in
21 terms of a house of gaming, I think you could
22 make criteria but I think that in some ways
23 sometimes, uh, -- I think it's difficult to
24 completely codify that. I see what Your Honor
25 is saying but I see the ---

1 THE COURT What is the date of the
2 statute?

3 MR. WILKINS The first was 1802,
4 Your Honor

5 THE COURT Right

6 MR. WILKINS I think it's been
7 amended along the lines ---

8 MR. GROSSMAN It has

9 THE COURT What was the last
10 amendment

11 MR. GROSSMAN I thought it was in
12 19--, ---

13 MR. WILKINS '76, I believe

14 THE COURT Okay

15 MR. GROSSMAN I see what Your
16 Honor is saying and, again, a revision possibly
17 but to say that in the meantime people can in an
18 unfettered way ---

19 THE COURT Not unfettered I think
20 -- you know, one of the things that we do and I
21 -- I agree with you, we shouldn't be
22 legislating. But I think that there are a lot
23 of things that are done -- we've seen some
24 examples of it in recent times with decisions by
25 our Supreme Court. Obviously I don't expect

1 whatever decision is granted here today that the
2 Legislature is going to immediately put together
3 a committee to start changing the statute. If
4 it goes beyond this point and the Supreme Court
5 addresses it, it might, because that's one way
6 that it is addressed, the legislature says okay
7 and that makes people move to another forum.
8 That's how the government branches work
9 together.

10 MR. GROSSMAN Right.

11 THE COURT Instead of the
12 legislature trying to deal with judicial aspects
13 and the judiciary trying to deal with the
14 legislative aspects. So, I don't disagree with
15 you. I understand what your argument is.

16 MR. GROSSMAN And I believe that
17 that would be a decision for a higher court to
18 make. At this level I think Your Honor is only
19 looking at whether Judge Duffy did the right
20 thing by not using the dominant factor test. I
21 don't think a couple of dissenting opinions in a
22 civil case, which I don't believe is directly on
23 point, was any reason for him to use the
24 dominant factor case. And I think certainly we
25 certainly proved beyond any reasonable doubt

1 that it was a house of gaming despite the fact
2 that Your Honor doesn't feel that the definition
3 of ---

4 THE COURT Oh, I couldn't agree with
5 you more that the -- from the standpoint of the
6 facts in this case. How do I -- as you stated,
7 there is a factual inference to be drawn from
8 the fact that a person admittedly pled guilty to
9 running a gaming house.

10 MR. GROSSMAN Correct. That's why
11 I think we're talking about, from a technical
12 area, obviously if a higher court wants to find
13 a different ---

14 THE COURT I understand.

15 MR. GROSSMAN --- way, but as far
16 as this court, I don't feel that Judge Duffy,
17 which is what we are obviously dealing with
18 here, looking through the legal decisions that
19 he made, made any error of law that should cause
20 this case to be reversed.

21 THE COURT Okay, thank you.

22 MR. GROSSMAN Thank you, Your
23 Honor.

24 THE COURT Mr. Wilkins, reply?

25 MR. WILKINS Just a couple of

1 things, Judge. Some of the things my friend has
2 said is neither here nor there but there is a
3 bill now pending in the State Senate that adopts
4 the dominant factor test.

5 THE COURT I'm sure there probably
6 is.

7 MR. WILKINS It's been recently
8 introduced and the legislative time just ran
9 out. I don't know where it is going to go, but
10 -- you know, who knows?

11 But just a couple things I want to
12 point out, Judge. The prosecutor says this was
13 a for-profit game. Judge Duffy said Mr.
14 Stallings took a rake out of the pot to cover
15 food and drink provided. That can't be
16 interpreted as a for-profit game, if he is being
17 reimbursed for Coca-Colas and potato chips or
18 whatnot.

19 I know what a house of gaming is,
20 Judge. It's a house where gambling takes place
21 and "gambling", under the predominate factor
22 test, means a game that is dominated -- the
23 winning is dominated by chance and not skill,
24 and it is unconverted that Texas Hold'em is
25 predominately a game where the winning is based

1 on skill

2 He says 'we proved it to be a gaming
3 house' over and over and I don't see how
4 "House of gaming" is the first element and the
5 next element "you play cards there " You can't
6 make it a house of gaming simply because cards
7 are being played there In that case, two basic
8 rules of statutory construction are violated
9 One, you can't prove the first element except by
10 proving the second element Number two, every
11 criminal statute should be read and interpreted
12 so that every word and every phrase is not
13 rendered surplusage or superfluous

14 Now, under his theory you don't need a
15 place where gaming, a house of gaming is clearly
16 where gaming occurs -- what does the statute
17 say, -- a house used as place of gaming You
18 don't need the words "a place of gaming" if all
19 you have to do is show that it is a house and
20 you're playing cards there The words "a place
21 of gaming" are rendered superfluous

22 So I would urge this court to apply the
23 dominant test Two justices, as just mentioned,
24 spent thirteen pages telling this state why the
25 dominant factor test should apply in cases where

1 the court is asked to determine 'is this
2 gambling ' Thank you, Judge

3 THE COURT Thank you very much
4 Thank you, gentlemen I appreciate it I will
5 of course review in depth the memoranda and the
6 record as well and revisit your arguments

7 I thank you, Mr Grossman, for allowing
8 my interruptions I apologize to you if ---

9 MR GROSSMAN No problem, Your
10 Honor

11 THE COURT As you always do, you are
12 so gracious with me I thank you Mr Wilkins,
13 thank you

14 (HEARING CONCLUDED)

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the Hearing
held before The Honorable R Markley Dennis,
Jr , on August 4, 2009,

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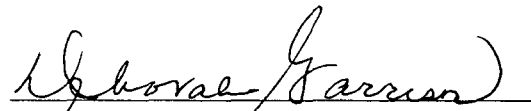
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23

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

October 22, 2009

Transcript of Municipal Court

IN THE MUNICIPAL COURT
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

TRANSCRIPT OF HEARING

TOWN OF MOUNT PLEASANT,

Plaintiff,

vs

CASE NOS 98045DB, 98050DB,
98040DB, 98035DB, 98043DB

ROBERT L CHIMENTO, SCOTT RICHARDS, MICHAEL
WILLIAMSON, JEREMY BRESTEL, and JOHN TAYLOR WILLIS,
Defendants

BEFORE THE HONORABLE JUDGE J LAWRENCE DUFFY, JR

DATE February 13, 2009

COPY

TIME 8 30 AM

LOCATION MOUNT PLEASANT MUNICIPAL COURT
100 Ann Edwards Lane
Mount Pleasant, South Carolina

REPORTED BY Sarah Ellis
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Transcript of Municipal Court

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Transcript of Municipal Court

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Transcript of Municipal Court

1 THE COURT My name is Lawrence Duffy
2 I'm going to be the presiding judge for this
3 municipal court for the Town of Mount Pleasant
4 It's the municipal court for the Town of Mount
5 Pleasant It is a court of criminal jurisdiction,
6 and since it is a court of criminal jurisdiction,
7 defendants in this court have certain rights and
8 privileges accorded by the Constitution of the
9 United States and both by the Constitution of the
10 State of South Carolina Since all defendants that
11 are involved in this case are represented by
12 counsel, I'm not going to go into that explanation
13 of rights as I normally do on a given court date
14 because so many people appear in this court without
15 counsel

16 So with that in mind, I just want to make
17 another announcement I want to make sure
18 everybody understands there's no form of picture
19 taking, phone calling, or two-way radioing out of
20 this courtroom So if you have a cell phone that
21 takes a picture, if you have a laptop that does, if
22 you have a camera that does so, now's the time to
23 go ahead and take it back to your car or to turn it
24 over to the police department for their custody
25 because we're not going to have cameras and that

Transcript of Municipal Court

1 sort of thing in this courtroom Other than that I
2 believe we're ready to start

3 The case of the State of South Carolina
4 versus these various defendants These be, Scott
5 Richards, Robert Chimento, John Taylor Wills (sic),
6 it looks like Mr Michael Williamson, and Jeremy
7 Brestel, is that correct? Does that make it
8 inclusive of all those who are before the Court?

9 MR GROSSMAN I think you said one,
10 Wills I think it's Willis

11 MR PHILLIPS John Willis Yes, Your
12 Honor

13 MR GROSSMAN Your Honor, if we could
14 have, I think Mr Phillips and I talked about this,
15 each defendant enter a formal plea just for the
16 record so we do it all right by the book

17 THE COURT Good enough Would each
18 defendant stand for me? As you stand, I want you
19 to announce your name and your plea for the record
20 to the Court Do you understand what you're doing?
21 Again, you can talk to Mr Phillips You can do
22 that right now if you so desire Okay We'll
23 start with you

24 MR CHIMENTO Robert Chimento, not
25 guilty

Transcript of Municipal Court

1 MR WILLIS John Willis, not guilty

2 MR RICHARDS Scott Richards, not

3 guilty

4 MR WILLIAMSON Williamson, Michael,

5 not guilty

6 MR BRESTEL Jeremy Brestel, not

7 guilty

8 THE COURT Good enough All have

9 entered not guilty pleas, and we're ready now to

10 undertake the start of the trial Mr Grossman, I

11 don't know if you want to make an opening statement

12 or just start with the evidence Since we don't

13 have a jury, I don't know that an opening statement

14 is required, but certainly you have that

15 opportunity to make one

16 MR GROSSMAN Your Honor, it's going

17 to be a very brief opening statement

18 As you know, these five defendants are

19 charged with violating 16-19-40, which is unlawful

20 games and betting This case is not about a

21 friendly poker game involving individuals who are

22 just college buddies and close friends and are

23 meeting to have a friendly poker game It is about

24 an unlawful gaming operation in a gaming house, and

25 these five defendants specifically gambling in it

Transcript of Municipal Court

1 and playing a game of Texas Hold'em and gambling on
2 that game

3 The facts are going to show that they were
4 gambling at 1405 Glencoe Street, which is in the
5 Town of Mount Pleasant, on April 12th, 2006 Our
6 case is going to be concise, but it's going to be
7 complete And I think after you hear all of the
8 evidence, I think it's going to be clear to you
9 what the law is I think it's going to be clear to
10 you that the defendants violated the law, and I
11 don't think there's any doubt in the Town's mind
12 that they should be convicted of violating that
13 law Thank you

14 THE COURT Yes, sir Mr Phillips, at
15 this time do you want to make an opening statement,
16 or do you want to wait till a subsequent time?

17 MR PHILLIPS I'll make it now, and
18 then I'll add to it later Just to respond to Mr
19 Grossman basically, he said it wasn't a friendly
20 poker game, but that is exactly what it was But I
21 would like also to point out there's a distinction
22 without a difference because the fact that it
23 wasn't a friendly poker game makes it illegal, if
24 it was a friendly poker game, would it then be
25 legal? And I think he would say it would not be

Transcript of Municipal Court

1 So whether it is or isn't doesn't matter

2 The question in this case is, is poker --

3 playing poker illegal? Was the place that they

4 were playing a house of gaming? And I believe that

5 we have come to the place where gaming is

6 synonymous with gambling, and we need to determine

7 whether or not playing poker is gambling Our

8 position, of course, has been and will continue to

9 be that the Supreme Court of South Carolina when

10 presented with this issue would adopt the dominant

11 factor test And that if the type of activity

12 engaged in is predominantly one of skill rather

13 than chance, then by definition it is not gambling

14 If it is predominantly chance rather than skill,

15 then it would be gambling

16 And also just a matter of -- as a matter of

17 a -- he mentioned that in the Town's mind that it

18 was gambling Of course, that's what the Town

19 thinks is quite irrelevant It's what the law says

20 and what the -- not only what the law says, what

21 the law means, what the statute says We're going

22 to focus on the law of this case and not on --

23 we're not interested in the Court or public opinion

24 whether it's for us or against us And I believe

25 that once we present our case and we make our

Transcript of Municipal Court

1 arguments as to the law, it will become clear that
2 the defendants are not guilty

3 THE COURT Thank you, sir

4 MR GROSSMAN Your Honor, I call
5 Officer Justin Hembree to the stand, please

6 THE COURT Place your left hand on the
7 Bible for me, please, sir, and raise your right

8

9 JUSTIN HEMBREE,

10 having been first duly sworn, was examined and
11 testified as follows

12

13 THE COURT Have a seat before we
14 proceed any further Let's hold it up a minute
15 In previous conference with the Court, it was
16 outlined that both Mr Grossman and you may have a
17 witness that should not be in here at this time or
18 should be sequestered I want to make sure that
19 has been done before we take any testimony

20 MR GROSSMAN I think we decided, both
21 of us, I think his witness -- other than the
22 defendant, his witness that we had a problem with
23 is going to be his first witness is my
24 understanding Therefore, I don't think he would
25 be sequestered, and our witness I think is just

Transcript of Municipal Court

1 going to be Officer Hembree at this point So I
2 think we're fine with no difficulty

3 THE COURT I just wanted to clear that
4 up before any testimony was taken because we had
5 that conference in chambers, and I wanted to make
6 sure we've complied without any objections from
7 each side

8 MR GROSSMAN Actually I'm going to
9 sequester Officer Kenneally in case I do decide to
10 call him So if you'll just sit outside, we'll get
11 you if we need you, but you don't need to worry
12 about sequestering

13 THE COURT That being taken care of,
14 go ahead

15

16 DIRECT EXAMINATION

17 BY MR GROSSMAN

18 Q Officer Hembree, how long have you been
19 employed with the Mount Pleasant Police Department
20 as a police officer?

21 A I'm currently in my eighth year of
22 employment

23 Q I want you to describe for the judge your
24 training and experience for me, please

25 A Well, once you're hired as an officer of the

Transcript of Municipal Court

1 Mount Pleasant Police Department, you attend a
2 criminal justice academy in Columbia After that
3 you complete a 560-hour specialized training
4 program, which is a field-training program Upon
5 completion of that program, you're released from
6 training, then you decide on a career track Once
7 you decide on a career track, which mine is
8 narcotics and vice, you can receive specialized
9 training in that career track to include drugs,
10 gambling, organized crime, prostitution, things of
11 that nature, general investigative techniques,
12 things like that And then obviously you have
13 on-the-job training, which is responding officer
14 service

15 MR PHILLIPS Your Honor, if I just
16 may ask, is he reading from something?

17 MR GROSSMAN Yeah I don't know what
18 he's got up there

19 THE WITNESS This is the report I
20 haven't read from it

21 MR GROSSMAN We don't need to have
22 that up there If you need to reflect on it, we'll
23 give it back to you

24 Q Now, Officer Hembree, obviously you know
25 these five defendants are charged with gambling,

Transcript of Municipal Court

1 correct?

2 A Yes, sir

3 Q Now, back in 2006, March of 2006, what
4 division did you work for with the Town of Mount
5 Pleasant

6 A I was assigned the Narcotics Unit

7 Q It would be narcotics?

8 A Yeah

9 Q What began the investigation that led to the
10 charges against the defendants?

11 A I diverged (sic) a confidential informant
12 As a result of brief debriefing, I learned of an
13 illegal gambling operation at 1405 Glencoe Street
14 The information included details of large numbers
15 of people from all over the Lowcountry that meet on
16 specialized dates, prearranged dates, and gamble
17 for money

18 Q With this information in mind, did you
19 conduct a surveillance of 1405 Glencoe Street?

20 A I did on several occasions

21 Q What exactly did the surveillance show, and
22 what did the surveillance entail?

23 A Well, towards the end of March, I began
24 surveillance on the house, both stationary and
25 mobile surveillance The first thing I noticed

Transcript of Municipal Court

1 was, in fact, the large numbers of cars and people
2 coming to and from the residence I noticed that
3 there were so many cars that oftentimes they would
4 park at the CVS store behind the residence and walk
5 to and from the residence

6 I observed that there were large numbers of
7 people that would pass each other They would come
8 and go at different times They didn't appear to
9 pail each other, talk to each other, anything in
10 that nature Some -- obviously some would maybe
11 recognize each other The majority didn't talk
12 when they were coming to and from cars, which led
13 me to believe they didn't know each other, and I
14 also did some mobile surveillance on the house

15 Q What did you see directly going on in the
16 house, or did you see anything going on directly in
17 the house?

18 A The only thing I saw going on in the house
19 is on one occasion I recall driving by, the front
20 door of the house was open I could see through
21 the door I don't know if it's glass or screen,
22 but I could see that there were people that
23 appeared to be gathered around the table It
24 appeared that they were all in a circle, had the
25 dealer playing cards, and it was consistent with

Transcript of Municipal Court

1 the information I had received

2 Q So how did you proceed next with the
3 investigation?

4 A Well, next, upon confirmation of the
5 information I received, it was discussed with a
6 supervisor, and subsequently we decided to send a
7 confidential informant in with an audio/video
8 recording device and sufficient police funds to
9 gamble

10 Q And did the confidential informant go inside
11 the house?

12 A Yes, sir

13 Q And did he get video of what was going on
14 inside the home?

15 A Yes, sir

16 MR GROSSMAN Now, Your Honor, at this
17 time I'd like to move into evidence we have -- I
18 believe that's CDRs, which obtain the audio and
19 video Your Honor, we have made copies of these
20 CDs, which we'd like to move into evidence as
21 State's Exhibit 1, and, Your Honor, I believe is a
22 true and accurate copy of what is on these digital
23 CDRs

24 Q Now, one of the copies -- we made copies of
25 those, correct?

Transcript of Municipal Court

1 A It's identical

2 Q And those copies are now ready to be played?

3 A Ready to be played

4 MR GROSSMAN Could we play those for
5 the Judge, please, Your Honor?

6 THE COURT Let the record reflect that
7 this exhibit is admitted by the attended defense
8 counsel There's no objection to this being
9 admitted into the record at this time

10 MR GROSSMAN Thank you, Judge

11 (State's Exhibit No 1 was marked for
12 identification)

13 (The CDs were played back for the
14 Court)

15 MR GROSSMAN All right, Justin If
16 you could return to the witness stand

17 Q Now, Officer Hembree, that's part of the
18 video that the informant took that evening,
19 correct?

20 A Yes, sir

21 Q Now, explain to the Judge in your training
22 and experience what you just saw on that video
23 When the defendant first walked in, what were your
24 thoughts in terms of your training as an officer
25 trained to investigate criminal activity?

Transcript of Municipal Court

1 A Well, there was two large tables One in
2 the kitchen area, one in the den, large numbers of
3 people, a variety of different age groups, anywhere
4 from what appeared to be early 20s to possibly late
5 70s, early 80s I observed that there were
6 gambling with cards for money There appeared to
7 be a buy-in, and there appeared to be money won and
8 money lost from what I saw Each person would
9 expend a certain amount of money for a certain
10 quantity of chips And some of the folks knew each
11 other I don't know if they'd played before or not
12 at the same residence, but a lot of them did not

13 Q Did a majority of people greet the
14 confidential informant when he walked in there or
15 speak with him?

16 A It didn't appear

17 Q Did a majority of the people interact at the
18 table with one another, at least from what you saw
19 on the video, in a way other than discussing the
20 actual terms of the game?

21 A No, sir

22 Q And there were two games -- there were two
23 rooms being used?

24 A Two separate rooms

25 Q Did you see a lot of furniture in the house?

Transcript of Municipal Court

1 A No, sir From the video it appeared that it
2 was sparsely furnished What would normally be the
3 kitchen area and den area were occupied by the
4 large tables and the large number of people

5 Q Now, with the information that you gleaned
6 from this video and your own surveillance, did you
7 obtain a search warrant to search the house at 1405
8 Glencoe Street?

9 A Yes, sir

10 Q And did you -- and, again, you did get a
11 search warrant to search the house?

12 A Yes, sir I had a search warrant

13 Q After you got the search warrant, obviously
14 did you plan on at some point entering the house to
15 search the house I'm assuming, correct?

16 A I did

17 Q Now, before we get into the actual search of
18 the home, explain for the Judge what goes into
19 planning such an operation in terms of searching a
20 house What did go on in planning this operation
21 in terms of the numbers of people you used, and
22 why, and so forth?

23 A A lot of different things come into play
24 when you're planning an operation, especially
25 quantity of people versus the amount of officers

Transcript of Municipal Court

1 that we have, the unknowns I had the opportunity
2 to run several vehicle registrations on the
3 property during surveillance, and they were from
4 all over the Lowcountry A lot of unknowns of
5 that You don't know everyone you're dealing with

6 Additionally, you have to contain issues on
7 a search warrant You want a full integrity of the
8 search warrant You don't want folks to be able to
9 freely leave or freely enter the property
10 undetected Therefore, you usually establish an
11 operational plan to assign tasks for officers
12 involved

13 Q And what you saw on the video and what you
14 saw on your surveillance, did you expect to
15 encounter large numbers of people? I guess large
16 being more than 15 or 20

17 A Yes, sir Based on the surveillance and the
18 video obtained, we figured that we would encounter
19 at least 15 to 20 people

20 Q How many officers did you wind up using on
21 the search warrant at 1405 Glencoe?

22 A Seven

23 Q Now, that search warrant was served on I
24 believe April the 5th, 2006, is that correct?

25 A No, sir It was April the 12th I believe

Transcript of Municipal Court

1 Q Was it? When was the search warrant served?
2 That's correct That'd be April the 12th Excuse
3 me I apologize It was April the 12th, 2006
4 Explain what happened on that day for the Judge if
5 you would

6 A Well, pursuant to the operational plan that
7 we had made, officers were equipped with all police
8 standard-issued duty equipment, and they were
9 assigned tasks Myself and another officer were at
10 the rear perimeter security just to make sure that
11 no one tried to run or escape from the residence or
12 to make sure there was no one at the back door upon
13 execution of serving the warrant, and the remaining
14 officers went in the front door of the residence
15 The Special Operations Unit members that assisted,
16 they went in first, and the two remaining
17 detectives went behind

18 Q Now, in a usual situation when officers are
19 going to gain entry into a place like that, they
20 don't know what's behind the door, correct?

21 A No, sir

22 Q Do they usually have their weapons drawn or
23 what position would they have their weapons when
24 they would go in in a normal situation like that?
25 What's the technical term for it?

Transcript of Municipal Court

1 A It would be a low rating position just based
2 on all the unknowns that you might encounter

3 Q But you wouldn't be actually breaking down
4 and pointing at somebody's head, would you?

5 A No, sir

6 Q So, again, the search warrant was served
7 Again, what happened from this point?

8 A Well, it was the evening of April the 12th
9 I recall that we arrived at the residence
10 Officers prior to the residence knew where we were
11 going They were given directions They were
12 given a description of the residence They were
13 given, again, all the information that we had, and
14 what they may encounter

15 Once we arrived on the scene, myself and
16 another officer remained at the rear of the road
17 like I've already told you The officers entered
18 the residence I recall them announcing police and
19 letting folks know that there was a search warrant
20 to execute the residence

21 Q And when you entered the house and the other
22 officers entered the house, what did you find?

23 A Well, again, large numbers of people,
24 approximately 20, I don't have an exact number,
25 between two separate rooms at two different tables

Transcript of Municipal Court

1 in the kitchen area and the den area There were
2 actually three tables, but two were set up

3 Q There were actually three tables in the
4 house?

5 A Yes, sir Green felt tables with the money,
6 the chips, and the cards

7 Q And were there individuals around the
8 tables?

9 A Yes, sir

10 Q Did they appear to be gambling?

11 A Yes, sir

12 Q They had a bunch of poker paraphernalia and
13 so forth out?

14 A Yes, sir

15 Q Cards on the tables?

16 A Yes, sir

17 Q Money being exchanged on the tables?

18 A I didn't see money exchanged obviously
19 because they stopped what they were doing when we
20 arrived

21 Q But there was money on the tables?

22 A There was money in front of each player

23 Q Correct

24 A Yes, sir

25 Q Now, describe to the Judge how the house was

Transcript of Municipal Court

1 furnished

2 A Again, it's sparsely furnished in the
3 kitchen area and the den There was seating
4 outside the foyers There was a television in the
5 den area, but it's not like a normal residence
6 Definitely it was mostly occupied by the large
7 green tables

8 Q Did it appear to you that in the condition
9 it was in with the tables and so forth that the
10 house was being used for the purposes of gambling?

11 A Oh, yes, sir

12 Q Specifically?

13 A Yes, sir

14 Q Did you see -- how big a house? Explain to
15 the Judge I mean, was this a 10-room mansion
16 you're going into where they could have had a whole
17 setup in another room, or explain to the Judge how
18 big the house was

19 A I don't recall exactly how big the house is,
20 but I'd guesstimate 1,500 square feet, somewhere in
21 that ballpark

22 Q Now, were the five defendants who pled not
23 guilty all in the house at that time, and were they
24 charged with gambling?

25 A Yes, sir They were all in the house, and

Transcript of Municipal Court

1 they were all charged with gambling They were
2 around the tables and so forth They were seated
3 at two separate tables

4 Q Were they in the same room, these five
5 defendants?

6 A No, sir

7 Q Now, did the individuals when you walked in,
8 did they appear to be college friends as Mr
9 Chimento has stated to the Associated Press in an
10 article not too long ago?

11 MR PHILLIPS I object, Your Honor

12 THE COURT I don't know what relevance
13 that's going to have to the statute So I'll
14 just --

15 Q Did they appear to be friends? Were they
16 conversing as if they were all very close friends,
17 or were they --

18 A They were definitely close to didn't know
19 each other

20 Q What did you seize from the house that day?
21 Is that basically on the table in front of you
22 right now, the chips, cards, and so forth, et
23 cetera?

24 A The only thing that's not on the table is
25 the various amounts of US currency that was in

Transcript of Municipal Court

1 front of these players

2 Q How much currency was seized?

3 A Total from the residence was \$5,869

4 Q And that currency of course is in the bank
5 right now, correct?

6 A Exactly We have the receipts for them we
7 can place into evidence as well

8 MR GROSSMAN Your Honor, I'd like at
9 this time to move all the chips, cards, poker
10 paraphernalia, and receipts for the money and so
11 forth into evidence if we could If we could mark
12 that as State's Exhibit Number 2

13 MR PHILLIPS Without objection

14 THE COURT State's Exhibit Number 2
15 accepted into evidence without objection

16 (Off-the-record discussion)

17 THE COURT And each one of the chips,
18 each one of the whatever's down there, mark with
19 the same number as 2 because it's going to be one
20 exhibit with multiple parts of it Just mark them
21 all as State's Exhibit Number 2

22 (State's Exhibit No 2 was marked for
23 identification)

24 Q Now, the five individuals that are in court
25 right now -- again, this happened in the Town of

Transcript of Municipal Court

1 Mount Pleasant, State of South Carolina, right?

2 A Yes, sir

3 Q Now, were any of these individuals taken to
4 jail that night?

5 A No, sir

6 Q The five defendants here today?

7 A No No one was taken

8 Q They were not taken to jail, the five
9 defendants, but they could have been taken to jail,
10 couldn't they?

11 A Yes, sir

12 Q Why could you take them to jail?

13 MR PHILLIPS Objection, Your Honor
14 What's the relevance?

15 MR GROSSMAN There's plenty of
16 relevance here

17 THE COURT I'm going to hear why he
18 didn't Go ahead

19 A Officer discretion We tried to be lenient
20 Also it was a citation

21 Q So you just wrote them a ticket?

22 A Yes, sir

23 Q Just wanted to make that clear

24 MR PHILLIPS Your Honor, I'd like to
25 know what the relevance was We're here to tell

Transcript of Municipal Court

1 whether they violated the statute Whether he
2 arrested them or not --

3 THE COURT Well, as opposed to a
4 warrant, he gave them a ticket That was the only
5 relevance

6 MR GROSSMAN It was a charging
7 document

8 THE COURT It was a charging document
9 issued That was all

10 MR PHILLIPS But what he did with
11 it --

12 MR GROSSMAN If you want me to
13 explain the relevance, I will

14 THE COURT No I already did that

15 MR GROSSMAN Perhaps you won't agree
16 on it, but I can go into that

17 THE COURT I already ruled on that
18 Let's go

19 BY MR GROSSMAN

20 Q Now, did you speak with the owner of the
21 house?

22 A I did

23 Q And what was his name?

24 A Nathan Stallings

25 Q And in speaking with him, what did he tell

Transcript of Municipal Court

1 you?

2 A I learned that the games were found on the
3 Internet, that often there would be large numbers
4 of people, that he sometimes did not know the folks
5 that were coming to and from the residence, and
6 that there was a \$20 buy-in, that he would make \$2
7 from each hand, and that this was his sole job

8 Q Let's talk about that, his job What did he
9 do for a living? Did he have a job?

10 A May I quote what he said?

11 Q You may quote If you need to refresh your
12 recollection from reading the report, please do

13 MR PHILLIPS Your Honor, I would like
14 for it to be done correctly for the record That's
15 not a correct way to refresh your recollection

16 MR GROSSMAN I think he -- if he
17 asked if he could refresh his recollection from
18 reading the report, I mean --

19 THE COURT Wait a minute You took
20 notes about talking to Nathan Stallings?

21 THE WITNESS Yes, sir

22 THE COURT I need you to refresh your
23 memory from them notes that you took

24 MR GROSSMAN He wrote it in the
25 report, Your Honor

Transcript of Municipal Court

1 THE COURT You wrote it in the report?

2 THE WITNESS Yes

3 THE COURT That's your notes?

4 THE WITNESS Yes, sir

5 THE COURT You wrote that?

6 THE WITNESS This is the only notes I
7 have

8 THE COURT And those are the notes you
9 wrote that night?

10 THE WITNESS Well, when I typed the
11 report

12 THE COURT Well, when you typed it

13 THE WITNESS Yes When I typed the
14 report

15 THE COURT Right after the
16 conversation occurred

17 THE WITNESS Yes, sir

18 MR PHILLIPS Is he going to be
19 allowed to read the report or refresh his
20 recollection?

21 THE COURT I just want him to refresh
22 his recollection, and then he needs to tell me what
23 happened

24 MR GROSSMAN You can refresh your
25 recollection Read from the report, and then tell

Transcript of Municipal Court

1 us what happened

2 THE COURT Well, I don't want you to
3 read verbatim from the report I just want you to
4 refresh your recollection and tell me what
5 happened

6 THE WITNESS I understand When asked
7 if he had a job, he said, this is it This is what
8 I've been doing for the past month, something -- if
9 I can't read it, that's what I recall from it
10 BY MR GROSSMAN

11 Q Say it again louder

12 A When asked what he did for a living, he
13 said, this is it I've been out of work for the
14 last month, something to that effect

15 Q Now, did you make -- did the officers there
16 make a short video of the evidence of what you
17 found in the home that night?

18 A Yes, sir

19 MR GROSSMAN Your Honor, again, I'd
20 like to move that into evidence, and that would be
21 State's Exhibit Number 3 if I'm recalling, which we
22 have a VCR tape made from the Pioneer mini tape
23 So that's Number 3

24 THE COURT This is from the material
25 taken from the house?

Transcript of Municipal Court

1 MR GROSSMAN No, no, Your Honor

2 This is of the defendants seated around the table,
3 and it's only 10 seconds of video So it's very,
4 very short

5 THE COURT Okay

6 (State's Exhibit No 3 was marked for
7 identification)

8 (The VCR tape was played back for the
9 Court)

10 Q Now, Officer Hembree, the five defendants
11 that, again, pled not guilty today were in that
12 house seated at those tables that evening?

13 A Yes, sir

14 Q And, again, it happened within the Town of
15 Mount Pleasant, State of South Carolina?

16 A Yes, sir

17 Q Officer Hembree, in your training and
18 experience from what you witnessed with your
19 surveillance, the videotape evidence we've shown,
20 and the appearing at that house that night, do you
21 believe that this residence was used for the
22 express purpose of gaming, of gambling?

23 A Yes, sir

24 Q Is there any doubt in your mind about that?

25 A No, sir

Transcript of Municipal Court

1 MR PHILLIPS Your Honor, I would
2 object to the fact that he is testifying quite
3 closely as an expert

4 THE COURT He's testifying based on
5 his experience as a police officer and his opinion
6 as to a house of gambling That's what he's doing,
7 and that's the scope of his knowledge and the scope
8 of his opinion

9 MR PHILLIPS Just as long as the
10 objection's noted for the record

11 THE COURT And that's the manner in
12 which it's being accepted by the Court

13 MR PHILLIPS Thank you, Your Honor

14 THE COURT You're welcome

15 Q And Officer Hembree, is there any doubt in
16 your mind that the five defendants who plead not
17 guilty and have been identified in court today that
18 they were gambling with money, playing a game of
19 cards or dice, but in this case cards, on the
20 evening in question?

21 A There's no doubt

22 MR GROSSMAN That's all I have, Your
23 Honor I do reserve the right to recall him back
24 in rebuttal if need be

25 THE COURT That's fine

Transcript of Municipal Court

1 MR GROSSMAN But at this time I have
2 no other questions

3 MR PHILLIPS Is it okay if I sit
4 down?

5 THE COURT Sure You don't have to
6 stand up Sit right there That's fine with me

7 MR PHILLIPS Thank you, Your Honor

8

9 CROSS-EXAMINATION

10 BY MR PHILLIPS

11 Q Officer Hembree, you testified that you
12 debriefed a confidential informant to find out
13 about this game What occasion did you have to
14 talk to this confidential informant?

15 A Well, you talk to informants in a variety of
16 different ways They call you on the phone, meet
17 with them in person Just different times I had
18 occasion to talk to him

19 Q How do you become a confidential informant?

20 A There's a variety of different reasons why a
21 person would become a confidential --

22 Q I didn't ask you -- why did he become your
23 confidential informant?

24 A Consideration for criminal charges

25 Q Consideration for formal -- former charges?

Transcript of Municipal Court

1 A Yes, sir

2 Q And what were the charges?

3 MR GROSSMAN I mean, I'm going to
4 object at this time, Your Honor Can we approach
5 the bench?

6 (Off-the-record discussion)

7 THE COURT Go ahead Based on that
8 information, ask what you want

9 Q To your knowledge, what consideration was
10 given to this defendant or to this confidential
11 informant?

12 A Well, the solicitors' office in Charleston
13 County, they are the determining factor to the
14 absolute adjudication of any case They make the
15 total decisions All we can do is make a
16 recommendation We document what the informant
17 says to specific law enforcement We submit it to
18 the solicitors' office They have something in
19 mind they want to do, and if they want to take into
20 consideration the information that we've
21 documented, they make the ultimate decision

22 Q Officer Hembree, isn't it true that the
23 solicitors' office takes -- puts great weight on
24 what the officers' recommendation is in terms of
25 consideration for working --

Transcript of Municipal Court

1 A I would imagine so

2 Q I mean, it's called working off charges,

3 right?

4 A That's one way to determine, yes, sir

5 Q And that's what this guy was doing?

6 A Okay

7 Q Is that true?

8 A He was working for consideration of charges,

9 yes, sir

10 Q And what was your recommendation to the

11 solicitor?

12 A I just -- basically my recommendation, I
13 don't recall specifically what I said, but, you
14 know, leniency He provided a lot of information
15 for us, not only on this case, but other cases
16 And additionally he undertook all the strife that
17 came from this case There were phone calls and
18 things of that nature after the fact He went
19 through a hard time

20 Q Well, were you aware that this confidential
21 informant ran his own home game?

22 A I'm not aware of that

23 Q Do you not think that might be something you
24 would want to find out about your confidential
25 informant before you put him into another game?

Transcript of Municipal Court

1 A With all due respect, you're stating that he
2 ran his own home game I don't have any proof of
3 that

4 Q If he did, wouldn't that have been something
5 you should have found out about?

6 A If it were learned through investigation on
7 him or he revealed it in a debriefing, I would be
8 aware of it, but, again, you're stating that he had
9 a home game

10 Q I'm asking you if you're aware of it
11 That's what I'm asking

12 A I'm not aware of any home game

13 Q What is your definition of gambling?

14 A There's a variety of different ways you can
15 gamble, but the simplest term is with cards or dice
16 and betting with the use of cards or dice according
17 to the statute

18 Q Does the statute say you need to be betting?

19 A I believe at the very end

20 THE COURT Do you want to look at the
21 statute?

22 THE WITNESS I have it here, sir

23 THE COURT I was going to make it
24 available to you

25 Q You have the statute there?

Transcript of Municipal Court

1 A Yes, sir

2 MR GROSSMAN Your Honor, I'm going to
3 just restate my objection We've been through this
4 kind of once before I don't think the officer is
5 an attorney And obviously he can ask him, does
6 the statute say this, does the statute say this,
7 but he is not --

8 THE COURT He can't interpret the
9 statute I interpret the statute, but he can say
10 what he thinks it says I'm the one who interprets
11 the statute

12 MR GROSSMAN Thank you, Your Honor

13 THE COURT Go ahead

14 A Yes, sir

15 Q If you could read the first three lines of
16 the statute down to where it says A, any games with
17 cards or dice

18 A If any person shall play at any tavern, inn,
19 store for the retailing of spirituous liquors or in
20 any house used as a place of gaming, barn, kitchen,
21 stable, or other outhouse, street, highway, open
22 wood, race field, or open place at any game with
23 cards or dice, any gaming table, commonly called --

24 Q That's --

25 A If I may, it goes on to say at the end, or

Transcript of Municipal Court

1 shall bet on sides or hands of such as do game,
2 upon being convicted thereof, before any
3 magistrate, shall be imprisoned for a period of not
4 over 30 days or fined not over \$100

5 Q It says, or shall bet, right? So that means
6 it doesn't have -- you don't have to be betting on
7 the sides of the game?

8 A I believe based on what my interpretation of
9 it, you do

10 Q If you play in a game in a kitchen,
11 according to the statute, at any game with cards or
12 dice, is that violating the statute?

13 A If it's for money and it's a house used for
14 gaming or betting use --

15 Q No In this statute there's a specific
16 place that says kitchen If you're playing in a
17 kitchen at any game with cards or dice --

18 MR GROSSMAN Now, he's asking him to
19 interpret it, not just --

20 THE COURT He's just asking him what
21 he thinks His interpretation doesn't control what
22 I think So I'm the judge

23 Q Would you arrest somebody if they were
24 playing in a kitchen at a game with cards or dice?

25 A If it were a for-profit game, yes, I would

Transcript of Municipal Court

1 Q What do you mean by for profit?

2 A They're making money off of it

3 Q Who's they?

4 A Whoever's hosting it and they commonly host
5 it as a money-making operation such as this one, I
6 would I would arrest them

7 Q But if they're not as you're -- under your
8 interpretation of it and determining who you're
9 going to arrest and who you're not going to arrest,
10 if they're not operating it for a for-profit
11 operation, you wouldn't arrest them?

12 A Well, someone has to be operating it for a
13 profit That's why it's gambling They're making
14 money off of it I'm sorry I'm not
15 understanding You're what-iffing, and there's a
16 lot of different situations --

17 Q Let's say five guys are playing poker

18 A Okay

19 Q Are you familiar with what a rake is?

20 A I'm familiar

21 Q Well, what if there's no rake, and they're
22 playing poker and -- there's no rake Is that
23 gambling?

24 A It's gambling

25 Q Would you arrest them?

Transcript of Municipal Court

1 A Well, based on the practices that I learned
2 in the Narcotics Unit in Mount Pleasant, it has
3 never been the practice of Mount Pleasant Police
4 Department to focus on four or five guys playing a
5 game of poker I've never even received a tip on
6 four or five guys playing poker The ones that I
7 do receive are the ones that draw large sums of
8 money, large numbers of people, that are solely
9 being used as a gambling house

10 Q Does it make a difference to you whether
11 five people are playing or whether 50 people are
12 playing if there's no rake?

13 A It depends if it's being ran as a business
14 for profit I think it makes a difference

15 Q By definition if there's no rake, how is
16 there a profit?

17 A Someone's making money on each hand
18 Someone's winning

19 Q Does that mean there's a rake? Do you know
20 what a rake is? Let's start back with that

21 A Well, it's -- may I refer to my notes?

22 Q If you need to

23 A It's an amount of money taken out by a
24 house

25 Q So if the house isn't taking any money -- in

Transcript of Municipal Court

1 other words, if there is no rake, does it make a
2 difference if there's five people playing or 50
3 people playing as to whether they're violating the
4 statute?

5 A Based on my understanding of the statute, it
6 does make a difference

7 Q It does?

8 A It does

9 Q The number of people playing?

10 A If they take a rake or not

11 Q Maybe I'm not being clear I'm sorry I'll
12 try to repeat myself in a clear manner Let's
13 assume that there is no rake

14 A Okay

15 Q By definition, the house is not making a
16 profit

17 A Okay

18 Q Does it make any difference to you whether
19 there's five people playing or 50 people playing as
20 to whether or not they are violating the statute?

21 A If there's no rake?

22 Q If there's no rake

23 A Yes Well, here's the thing Based on my
24 understanding of the statute, if it's a group of
25 people that randomly meet once every six months or

Transcript of Municipal Court

1 whatever they meet and they play a game of poker,
2 that's not a house of gaming My understanding of
3 the statute is a constant use of one location for
4 the purpose of gambling That's my understanding
5 of it

6 Q So now there's an additional element in your
7 mind that you will arrest people if they play too
8 much in one location?

9 A Well, I have a duty to investigate any
10 information I would receive I would investigate
11 it and then obviously consult with the Town
12 prosecutor and then decide if it meets all the
13 elements

14 Q Let's focus on my first question and not the
15 scenarios you have You went to how many nights
16 they're playing, but in one game if there's five or
17 50, does it make a difference to you as to whether
18 or not you would arrest them --

19 A No

20 Q -- or whether or not they're gambling?

21 A No

22 Q It doesn't make a difference?

23 A No

24 Q So --

25 A Excluding -- you're moving away from my

Transcript of Municipal Court

1 point My point is, is it a house being used
2 solely for the purpose of gaming?

3 Q I'm allowed to do that I'm asking
4 questions I'm trying to get your interpretation
5 of what this is If there's no rake and there's
6 five people playing, you indicated that you
7 wouldn't be interested in pursuing that

8 A In the past we have not pursued that because
9 frankly I just don't receive that kind of
10 information

11 Q Well, would it be violating the statute?

12 A If it were a constantly used place, I think
13 it would be If it established itself as a place
14 of gaming, I think it would be

15 Q What if they did it one night a week?

16 A Then I think they'd be setting a routine as
17 that place being a place of gambling

18 Q One night a month?

19 A It just depends I mean, if you're asking
20 my interpretation, I'm not the only guy that
21 investigates it There's a whole unit of people
22 We confer We make decisions We consult with the
23 Town prosecutor I mean, I can't -- this is a
24 what-if scenario In your scenario for your
25 defendants, there was a large number of people in a

Transcript of Municipal Court

1 house used for gaming, gambling for money, and the
2 house took a rake

3 Q I'm trying to figure out what is against the
4 law in the law enforcement's minds in the Town of
5 Mount Pleasant

6 MR GROSSMAN Your Honor, I'm going to
7 object here, and I don't want to keep objecting
8 He's covered the ground, and, really, is it
9 relevant?

10 THE COURT I don't know how relevant
11 it is to be frank with you since I don't have the
12 jury here to make the determination I can tell
13 you in Larry Duffy's mind it doesn't have a bit of
14 difference, but he's welcome to ask

15 MR PHILLIPS Thank you, Your Honor

16 Q Just for the citizens of Mount Pleasant, to
17 know whether or not they should fear being arrested
18 or not, if there's five people playing once a week,
19 you're saying that's a regular enough game they
20 might get arrested?

21 A I'm not the sole determining factor for what
22 happens to the entire Town of Mount Pleasant

23 Q You've been an officer for eight years, and
24 you have quite a bit of experience In your
25 experience would they be arrested?

Transcript of Municipal Court

1 A It depends on more details of the
2 investigation

3 Q What other details do you need?

4 A Is it a constantly used for-profit operation
5 out of one sole location?

6 Q We've assumed that there's no rake already

7 MR GROSSMAN Objection He's
8 answered the question then If there's a
9 for-profit, it would be If it's not, it wouldn't

10 MR PHILLIPS He's changed it, Ira
11 First, he said it wouldn't Then he said it
12 wouldn't (sic)

13 THE COURT You-all don't talk to each
14 other You-all talk to me

15 MR PHILLIPS Thank you, Your Honor

16 A If I misspoke, I apologize My
17 interpretation if it's for profit and it
18 establishes itself as a gaming operation, then,
19 yes, we would investigate it

20 Q So if it's for profit, you'd want to
21 investigate it and possibly pursue it then If
22 it's not for profit, then are there any other
23 elements that you consider as to whether or not
24 you're going to arrest somebody for playing poker?

25 A We would first investigate it and then

Transcript of Municipal Court

1 decide if it meets our criteria

2 Q What is your criteria?

3 A The state law

4 MR GROSSMAN He just answered it

5 Q Excuse me?

6 A The state law

7 Q What is your criteria of the state law?

8 A I just told you I'm sorry We just --
9 we're going in circles I just told you what my
10 interpretations are of the state law

11 Q I'm sorry If you've answered it, then I
12 apologize I'll ask it one more time What
13 specific criteria are you looking for other than if
14 the house takes a rake as to whether or not you
15 will bust a game or not?

16 A People meeting in a house of gaming or
17 building or anywhere used for gaming purposes for
18 profit, for gambling cards or dice for money

19 Q But my understanding is if it's for profit,
20 that's the rake part We are assuming that there's
21 no profit I want to know what additional factors
22 you look at If there's no profit --

23 A What additional factors?

24 Q If there's not a profit being taken, is
25 it -- in your opinion, is it against the law or

Transcript of Municipal Court

1 not?

2 MR GROSSMAN Objection He's
3 answered the question three times and said that the
4 Town does not investigate those types

5 THE COURT I understand, but he still
6 has an opinion whether he'd arrest them or not
7 Just tell him whether you would or you wouldn't

8 A Based on the way I learned -- the way I
9 learned the statute, I wouldn't think it would be
10 illegal

11 THE COURT Does that answer your
12 question?

13 MR PHILLIPS Yes, Your Honor Thank
14 you

15 THE COURT You're welcome Let's move
16 on

17 Q Is it illegal to have a large number of
18 people at your house?

19 A That in and of itself, no, sir

20 Q Did it look to you like the people in that
21 video were having fun?

22 A It looked like they were gambling for money
23 I mean, if that's a game they enjoy, I would assume
24 that they might be having fun

25 Q My question was simply, did it look to you

Transcript of Municipal Court

1 like they were having fun?

2 A And I answered it I would assume they
3 would be having fun I can't interpret all their
4 gestures

5 Q You were interpreting whether they knew each
6 other or not

7 A That's a lot easier If they don't speak to
8 each other, they probably don't know each other

9 Q So it's easier for you to tell whether two
10 people know each other or not as to whether or not
11 they're having fun?

12 A Yes, sir

13 Q Wow And did you hear people call each
14 other by their first names in that video quite a
15 bit?

16 A A few, yes, sir

17 Q Would that indicate to you that they knew
18 each other?

19 A Some folks do know each other

20 Q Did you ask people whether or not they knew
21 other people?

22 A I don't recall asking anyone that

23 Q And so you were just totally going on your
24 assumption by their body language they didn't know
25 each other?

Transcript of Municipal Court

1 A That in addition to other things
2 Surveillance supported that a lot of folks didn't
3 know each other They arrived and parked at
4 different times Vehicle registrations would come
5 back to different parts of the Lowcountry They
6 wouldn't speak to each other when they came and
7 left, things of that nature Also they arrived in
8 different age groups I believe there was an
9 80-some-odd-year-old female there sitting next to
10 an older 20s white male

11 Q And they can't know each other?

12 A Sure But they're not college buddies

13 Q Does it require them to be college buddies
14 to know each other?

15 A No, sir I was just saying that

16 Q Where is the rake?

17 A I would assume it would have been taken with
18 some of the seized money

19 Q So it's not here?

20 A We wouldn't have the seized money in our
21 possession

22 Q Did you comingle the money?

23 A Each person's individual money was placed on
24 an individual evidence sheet Once it goes into
25 evidence, they take that currency, and it all goes

Transcript of Municipal Court

1 into a bank account

2 Q So you have an evidence sheet that shows how
3 much money came from each person?

4 A Yes, sir

5 Q Do you have that with you?

6 A I have a lot of them, yes, sir

7 Q I would like you to look at your evidence
8 sheet and tell me how much raked money you seized

9 A I would have to add it all up How much
10 raked money I received?

11 Q Again, do you understand the term rake?

12 A Well, the amount of money taken by the
13 house Each person can't have the rake

14 Q Right

15 A There would only be one person

16 Q Right

17 A And seized from Mr Stallings was a larger
18 sum of currency

19 Q But there's also a buy-in, isn't there?

20 A There is a buy-in, sir

21 Q And if a person buys \$20 of chips and he
22 gets \$20 -- Mr Stallings gets \$20 and gives him
23 \$20 in chips, that's not a profit, is it?

24 A No, sir But my understanding is that he
25 gets \$2 from each hand

Transcript of Municipal Court

1 Q If that is your understanding, where was
2 that money?

3 A Well, he had \$300 in his pocket He said
4 that was the bank

5 Q Officer, when the house takes a rake, they
6 have to take it in chips, do they not?

7 A I'm not sure

8 Q Again, let me ask you this If people put
9 in 50 cents in a pot, and let's say there's eight
10 people in a pot, that makes \$4 How does the house
11 get their rake from that \$4 that's in the pot?

12 A I would assume, and I'm assuming, you're
13 asking my opinion, once the game is completed, the
14 house takes \$2 from the total winnings

15 Q Once the game is completed?

16 A Once each hand is finished

17 Q Once each hand is finished?

18 A Once each hand is finished

19 Q And so they would pull those chips aside?

20 A I would assume You obviously -- if this is
21 your argument that you know more about gambling
22 than me, you do My interpretation is that that's
23 what happened

24 Q What I'm doing is finding out You've made
25 some very specific allegations regarding a rake,

Transcript of Municipal Court

1 and I know that in your police investigation, you
2 want to be thorough, don't you?

3 A Sure

4 Q You kept everybody's chips separate, didn't
5 you

6 A Yes, sir

7 Q You kept everybody's money separate, didn't
8 you?

9 A Yes, sir

10 Q So I want to know where the separate money
11 or chips is that you took that represents the house
12 rake

13 A Well, no one would offer up that
14 information Mr Stallings told me that we would
15 only find about \$200 in the residence We found
16 \$1,941 for him alone So I would doubt anyone
17 would be forthright with the fact that there is a
18 rake or how much it is or where it's at or which
19 part of the money is the rake or --

20 Q So basically because you don't think you'd
21 have gotten a straight answer, you didn't ask?

22 A I would imagine it was asked at some point
23 I don't recall specifically

24 Q So do you have any evidence, any evidence
25 today that you physically took from the house --

Transcript of Municipal Court

1 and you took everything, didn't you? You took all
2 the money?

3 A Yes, sir

4 Q You took the money in the bedroom?

5 A Yes, sir

6 Q You took the money in the jar?

7 A I don't recall money in the jar

8 Q There was money in a jar Did you want to
9 look -- do you need to refresh your recollection on
10 that?

11 A No, sir

12 Q You took money in a sock drawer

13 A Okay

14 Q Didn't you?

15 A I'm assuming if you told me I did

16 Q I'm asking Do you not know where you got
17 your money?

18 A With all due respect, it's been three years
19 ago

20 Q Look at your report I want you to find out
21 where you got your money Once you have refreshed
22 your recollection, I will be glad to ask you the
23 question again

24 A It says \$1,941 in currency was seized from
25 his bedroom \$300 in currency was taken out of his

Transcript of Municipal Court

1 pocket He advised that the currency in his pocket
2 was the bank and the winnings for a game -- which
3 is the winnings for a game, but I think he said --
4 I'm pretty sure he said bank I'm positive he said
5 bank so

6 Q You're positive he said bank?

7 A He said bank And I know bank is not a
8 rake, but I understand that he said bank

9 Q You're referring to the \$300 in his pocket?

10 A Yes, sir

11 Q And then the \$1,941 was not in his pocket?

12 A It was in his bedroom

13 Q It was in the bedroom?

14 A Yes, sir

15 Q What other sources of money did you get?

16 A The money that each person had there in
17 front of them, and the money they intended to use
18 for gambling

19 Q When you said in front of them, you're
20 talking about the chips?

21 A Sitting in their hand in front of them, yes,
22 sir

23 Q But you're talking about chips, not money?

24 A No Currency They all had currency
25 underneath their chips

Transcript of Municipal Court

1 Q And so you seized money from his bedroom
2 You seized money from his pocket You seized money
3 from everybody's individual pockets, and you seized
4 everybody's individual chips?

5 A Yes, sir

6 MR GROSSMAN Objection He just said
7 also that there was money underneath the chips So
8 you're putting words into his mouth, but that's not
9 what he said

10 MR PHILLIPS I misstated it I'm
11 sorry

12 THE COURT Don't you-all talk to each
13 other I'm telling you for the last time If you
14 want to object to a statement or you want to ask
15 the Court to correct a statement, I'll be glad to
16 listen to corrections, but I don't want an
17 interchange between attorneys Am I clear?

18 MR GROSSMAN I apologize, Your Honor

19 MR PHILLIPS Thank you, Your Honor

20 THE COURT Thank you very much Let's
21 go

22 Q So you took the money from his pocket, and
23 you put it into a bag?

24 A Yes, sir

25 Q You took the money from everybody that

Transcript of Municipal Court

1 played in that game from their pocket, and you put
2 it into their bag?

3 A Yes, sir

4 Q You took the money and chips that were in
5 front of them at the table, and you put it into
6 another bag?

7 A Yes, sir

8 Q You took the money from the bedroom, and you
9 put it in a bag?

10 A All of Mr Stallings' money I believe was
11 together

12 Q So you put -- from Mr Stallings' money, you
13 put the money in his pocket and the money from his
14 bedroom in a bag?

15 A I don't specifically recall May I look at
16 my notes?

17 Q Yes, you may

18 A Total of \$2,241 So yes, sir It would be
19 the money from his pocket and the money from his
20 bedroom

21 Q That'd be the 1900 plus the 300?

22 A Yes, sir

23 Q Was there any -- looking at your report, was
24 there any other identifiable chips or money? In
25 other words, and I don't mean to screw it up as I

Transcript of Municipal Court

1 may, everybody had chips in front of them And you
2 took those chips, and you put them in a bag and put
3 their name on it Was there a pile of chips that
4 somebody said, that's not mine or that's the
5 house's or somebody didn't claim?

6 A I don't remember anyone specifically saying
7 that If there were chips that weren't in front or
8 positioned in front of an individual player, they
9 would be right here in front of us

10 Q If there were chips that weren't in front of
11 a player --

12 A If there were chips that were just sitting
13 in the middle of the table, they would have been
14 put in a general --

15 Q In the middle of the table, that would be
16 the pot they were currently playing for?

17 A It depends I mean, there was just -- there
18 were chips everywhere in the house I mean, all of
19 the chips that weren't assigned to a player were
20 put in one large sum

21 Q Were all the chips that were on or near a
22 table identified and accounted for?

23 A They weren't counted or given any kind of a
24 value They were just all put together and placed
25 into evidence

Transcript of Municipal Court

1 Q I didn't mean counted Accounted for

2 A Yes, sir

3 Q So were there any chips near the table that
4 you could have identified as being the house rake?

5 A We could refer to the video, and you could
6 let me know if it was the house rake I doubt Mr
7 Stallings would tell me if it were or not

8 Q Let me see if I can ask you a question, and
9 I'm going to try to ask clear questions I don't
10 always, but if I ask a clear question, could you
11 please answer it with a yes or a no and then
12 explain it if you need to

13 A Provided it doesn't need an explanation,
14 yes, sir

15 Q Start off with a yes or no though Is there
16 any chips or money from this entire raid that you
17 can identify as being the house rake?

18 A Are you asking my opinion?

19 Q It's a factual question, Officer
20 Factually, is there -- are there any --

21 A Well, the fact is that Mr Stallings had
22 over \$2,000 in currency, and he didn't tell me if
23 it was a rake or not And I doubt that he would to
24 this day It was an illegal operation I mean, I
25 could refer to the video and see if the money or

Transcript of Municipal Court

1 chips were just sitting in the middle of the table,
2 the video that was taken after of the search
3 warrant, but I can't answer that a direct yes or
4 no

5 Q You can't answer me that if you -- I guess
6 you can't, Officer, but I'm going to ask it again

7 MR GROSSMAN Your Honor, objection
8 He can't direct the witness on how to answer He's
9 answering it the best he can

10 THE COURT Let me ask the question

11 MR PHILLIPS Please do Thank you

12 THE COURT What he wants to know is
13 when you went into -- when the entire police
14 department went into the house, they saw chips in
15 the middle of the pot table

16 THE WITNESS I believe so

17 THE COURT They also saw chips in
18 front of each individual player

19 THE WITNESS Yes, sir

20 THE COURT There may have been money
21 that was also seated in the middle of the table or
22 with each player

23 THE WITNESS Yes, sir

24 THE COURT The monies that were taken
25 from the table where the players sat and was

Transcript of Municipal Court

1 directly in front of them were placed in separate
2 items or separate bags or separate identification
3 things, is that correct?

4 THE WITNESS Yes, sir

5 THE COURT The money that was sitting
6 in what I will call the middle of the table, what
7 did the police department identify that as? Did
8 they identify that as the rake, the pot, the --
9 what was that called?

10 THE WITNESS Well, it would have
11 probably been the pot, and there were chips
12 Any -- there was no currency taken that I recall
13 other than the currency that was on each person, in
14 front of each person or in the bedroom of Mr
15 Stallings, and by his own admission, he made \$2
16 from each hand

17 THE COURT I know what he told you,
18 but on the chip account aspects, other than the pot
19 and other than the players' each individual bag,
20 were there any chips on any table specifically by
21 any location identified as being separate from the
22 players? In other words, this pile of chips
23 belongs to nobody at the table

24 THE WITNESS May I refer to the video,
25 Your Honor?

Transcript of Municipal Court

1 THE COURT Sure You can look at
2 anything you want I think that's what he's trying
3 to get at, and if you don't know, say you don't
4 know That's all Am I correct on what you're
5 looking for?

6 MR PHILLIPS Yes, Your Honor

7 THE COURT Thank you very much

8 MR PHILLIPS Thank you

9 (The VCR tape was played back for the
10 Court)

11 THE WITNESS Your Honor, I'm assuming
12 the chips in the middle of the table would be the
13 pot That's the bets that have been placed

14 THE COURT Are there any chips that
15 you have accounted for in these pictures that don't
16 belong to the pot or the players? Is there any
17 separate pile of chips that does not fit a player
18 or the pot?

19 THE WITNESS Besides there was excess
20 chips that were just maybe sitting on the kitchen
21 counter or whatnot, you know, stacked in these
22 things

23 THE COURT Stacked in containers?

24 THE WITNESS Yes, sir But not in
25 play

Transcript of Municipal Court

1 THE COURT Not in play Those chips
2 that you got from the kitchen that were in, I'm
3 going to call them canisters or rolls, but they
4 were not in play?

5 THE WITNESS Well, I'd like to see the
6 kitchen scene

7 THE COURT Go ahead

8 (The VCR tape was played back for the
9 Court)

10 THE WITNESS I was trying to see, Your
11 Honor, if there was any surrounding chips

12 THE COURT That's good enough

13 THE WITNESS Yeah It doesn't appear
14 so

15 THE COURT He has no recollection of
16 any chips outside the scope of those which have
17 been accounted for as the pot of the players He
18 has no independent recollection of any other chips
19 Period That's it That's his testimony

20 BY MR PHILLIPS

21 Q Is there any record of chips being in a pot
22 underneath the dealer's chair?

23 A There was a Tupperware that had some chips
24 in it, yes, sir, but I don't recall if it was taken
25 specifically underneath his chair Again, there's

Transcript of Municipal Court

1 seven officers in there I was floating through
2 both rooms advising them of Miranda rights,
3 advising them of the search warrant I don't
4 recall if one officer might have picked it up and
5 placed it on the table I don't know that

6 Q So you do remember seeing a Tupperware
7 container with chips in it?

8 A The most recent memory I have of it was when
9 we opened the bag today, it was -- matter of fact,
10 if I may --

11 THE COURT Get up and go around there
12 and see what you want to look at

13 A This was in this Tupperware right there

14 Q Great Identifying this stack right here?

15 THE COURT That stack he said was in
16 Tupperware

17 MR PHILLIPS We need to mark that as
18 a separate exhibit

19 A Would you like the Tupperware as well?

20 Q That'd be great

21 MR PHILLIPS May I put this in here?

22 THE COURT That set of chips, and that
23 set of -- yeah That set of chips in that
24 container, whatever you want to call it, were
25 underneath someone's chair and is designated as

Transcript of Municipal Court

1 State's Exhibit, or it can be Defendant's Exhibit
2 I don't care You have any objection, Mr
3 Grossman?

4 MR GROSSMAN I'd assume it'd be
5 State's Exhibit

6 THE WITNESS Your Honor, just for
7 clarification, I don't recall it being underneath a
8 chair He's saying it is

9 THE COURT No But you said it was
10 found separately from everything else, and it was
11 in the container And it was not in front of any
12 player

13 THE WITNESS Yes, sir

14 THE COURT So whether it was under the
15 chair, I don't care

16 THE WITNESS Okay

17 THE COURT These chips are unaccounted
18 for except to the extent that they were in a
19 container

20 THE WITNESS Yes, sir

21 THE COURT Agreed?

22 MR PHILLIPS Agreed

23 MR COURT Let's move forward on that

24 BY MR PHILLIPS

25 Q Was there any beverages in the house?

Transcript of Municipal Court

1 A There was alcohol and some other stuff
2 there, yes, sir

3 THE COURT Wait a minute While I'm
4 thinking of it Mark that as State's Exhibit
5 Number 4 Without objection?

6 MR PHILLIPS I'd rather -- can we
7 make it Defense Exhibit Number 1?

8 THE COURT You can make it a defense
9 exhibit I don't care which exhibit it is
10 Defense Exhibit Number 1 Is there any objection?

11 MR GROSSMAN It's our evidence, but
12 obviously he wants to put under --

13 THE COURT He wants it marked as being
14 in the Tupperware when it was found That's all
15 That's it

16 (Defense Exhibit No 1 was marked for
17 identification)

18 BY MR PHILLIPS

19 Q Was there beverages?

20 A Different folks were drinking Some were,
21 some weren't, yes, sir

22 Q And what were they drinking?

23 A Beer

24 Q Was there anything other than beer there?

25 A It's been three years ago I don't recall

Transcript of Municipal Court

1 I didn't see any food on the video

2 Q Do you remember seeing any food in the
3 house?

4 A I don't remember if we looked in the
5 refrigerator or anything like that

6 Q Did you ask anybody whether or not -- where
7 the food or the beverages came from?

8 A May I refer to the report?

9 Q Certainly

10 A According to the affidavit for the arrest of
11 Mr Stallings, he advised Lieutenant Kenneally and
12 I that he used illegal proceeds from the gaming to
13 provide food and alcohol to its participants

14 Q I'm sorry I was talking Could you repeat
15 that?

16 A In the affidavit from Mr Stallings for
17 keeping unlawful gaming tables, it says that the
18 defendant advised myself and Lieutenant Kenneally
19 that he used illegal -- the proceeds from the
20 game -- the gambling to provide food and alcohol to
21 its participants

22 Q May I look at your affidavit, please?

23 A You want me to pull it out?

24 Q Yeah

25 MR PHILLIPS I need to get a copy of

Transcript of Municipal Court

1 that, please Sir?

2 THE COURT Make two copies so Mr
3 Grossman can have one in front of him Make two
4 copies In fact, never mind Make three copies
5 I want one in front of me Go ahead

6 MR PHILLIPS Thank you, Your Honor

7 Q You previously described this as a
8 casino-type operation?

9 A I made reference to the fact that it was
10 similar to casino style Green felt tables with
11 large chips and large numbers of people, yes, sir

12 Q But you will agree that it was -- you're not
13 trying to argue that it was a casino or casino --
14 or even casinolike except in the fact there were
15 two tables?

16 A I'm arguing that there were a large number
17 of people, green felt tables, large chips, money in
18 play, which is what you would see in a casino
19 That was my statement

20 Q Would you see couches used for chairs in a
21 casino?

22 A If it were at someone's house, yes, sir

23 Q So did you notice that there was a couch
24 that was used for chairs around the table?

25 A I did notice that on the video

Transcript of Municipal Court

1 Q And that would be considered normal den
2 furniture, right?

3 A On that particular night, it was a chair or
4 a seat for a gambling table Yes, sir It would
5 be normal for a den in a house

6 Q Do you have any idea whether those tables
7 were permanent or could be moved?

8 A I don't know that

9 Q You don't know whether the tables could be
10 moved or not?

11 A They were so large that we didn't take them
12 as evidence I'm sure they could be moved, yes,
13 sir

14 Q And there was a TV in there as well, right?
15 In the den?

16 A There was a TV, yes, sir

17 Q So the den had a couch and a TV?

18 A Okay

19 Q Didn't it?

20 A It appeared to be Yes, sir, it did

21 Q Was there any security there at all?

22 A I wasn't there during the games That's up
23 to the interpretation I wouldn't know if anyone
24 was assigned security or not

25 Q On the night that you raided the game, was

Transcript of Municipal Court

1 there any security there?

2 A No one announced themselves as security, no,

3 sir

4 Q Was there any security cameras?

5 A No, sir

6 Q Was there any cocktail waitresses?

7 A No, sir

8 Q Was there an ATM machine in there?

9 A No, sir

10 Q And I believe I saw on the video somebody
11 went all in, and it was for \$10, is that correct?

12 A If you saw it on the video, I assume it's
13 correct I don't remember that

14 Q You don't remember somebody going all in for
15 \$10?

16 A There was a lot of talk -- people talking
17 over each other and stuff I'm assuming it's the
18 truth

19 Q Officer, what you have previously referred
20 to as the affidavit of Nathan Stallings -- is that
21 what you referred to it as?

22 A I believe I did, yes, sir

23 Q I would like you to look at that document
24 again and tell me whether it's still your opinion
25 whether that's an affidavit of Nathan Stallings or

Transcript of Municipal Court

1 not

2 A It's a warrant affidavit for Nathan
3 Stallings

4 Q Did Nathan Stallings sign this at the
5 bottom?

6 A No, sir

7 Q Did he swear that the items and the wording
8 in this is true?

9 A I did

10 Q Did Nathan Stallings?

11 A No, sir

12 Q This is not Nathan Stallings' affidavit, is
13 it?

14 A I didn't say it was an affidavit of I said
15 it's an affidavit for It's a warrant affidavit
16 for his arrest

17 Q So everything that you said about -- in his
18 affidavit, just to make clear, Nathan Stallings did
19 not agree to any of this that you have here in
20 writing?

21 A It wouldn't be in the arrest warrant unless
22 he told me that So this is my arrest warrant
23 based on what Mr Stallings made

24 Q Do you think it's -- the statements he made
25 to you are important?

Transcript of Municipal Court

1 A Yes, sir

2 Q And you want to conduct a thorough
3 investigation, wouldn't you?

4 A Yes, sir

5 Q Why did you not make a statement for Nathan
6 Stallings to sign?

7 A Everyone's offered the right I don't
8 recall specifically if he declined it, but I do
9 recall that at the time that there was talk of him
10 becoming a cooperating informant with the Narcotics
11 Unit And, therefore, he's given certain leniency
12 in the belief that he's going to start cooperating
13 with the department

14 Q In making your case, you would not not get
15 an affidavit from somebody or a statement from
16 somebody because they want to cooperate with you?

17 A No, sir, I wouldn't But, again, this has
18 been three years ago He may have refused to give
19 a statement

20 Q Let's make -- to be clear, this was not made
21 for him to sign, was it?

22 A These are things told to me

23 Q This statement that was written was not made
24 for the purpose of him signing it

25 A It wasn't a statement made for him to sign

Transcript of Municipal Court

1 It was an arrest warrant for him

2 Q So it was not prepared for him to sign?

3 A No, sir It was prepared for me to sign and
4 the judge

5 Q And he didn't sign it?

6 A That's correct

7 Q And he wasn't offered the chance to sign
8 anything?

9 A I've never offered anyone the chance to sign
10 their own arrest warrant

11 Q Have you ever offered anybody the chance to
12 sign their own written statement?

13 A Sure

14 Q Did you offer him that chance to sign a
15 written statement?

16 A I'm sure it was offered to him

17 Q Well, where is the written statement that
18 you offered for him to sign?

19 A That doesn't mean he filled one out, sir

20 Q Isn't it also common for the police to fill
21 out the written statement and just get the
22 defendant to sign it?

23 A That's a matter of personal preference

24 Q Isn't it common?

25 A It's not common for me I don't do that

Transcript of Municipal Court

1 Either they give a statement or they don't The
2 case was made It's there

3 Q The point is, for whatever reason, you have
4 no statements from Nathan Stallings other than what
5 you said he told you?

6 A That's right And according to the
7 affidavit in the presence of Lieutenant Kenneally

8 Q But that affidavit is your affidavit, isn't
9 it?

10 A Yes, sir

11 Q It's not his affidavit?

12 A No, sir

13 Q If you would refer to the affidavit, which
14 is a statement that you wrote regarding what Mr
15 Stallings allegedly told you?

16 A Yes, sir

17 Q About halfway down the second paragraph
18 under where Texas Hold'em is in quotation marks, it
19 says that the defendant is the lawful leaseholder
20 of the residence

21 A Yes, sir

22 Q So this was Mr Stallings' residence, wasn't
23 it?

24 A Yes, sir

25 Q He lived there?

Transcript of Municipal Court

1 A Yes, sir

2 Q And his fiance lived there?

3 A Okay

4 Q Did you find out who lived there?

5 A Yes, sir

6 Q Did you find out that his fiance lived
7 there?

8 A According to Mr Stallings, yes, sir

9 Q And this is all according to what you said
10 Mr Stallings says?

11 A Correct

12 Q And there was also a roommate that lived
13 there?

14 A I don't recall that

15 Q You said on the same paragraph towards the
16 last sentence that the illegal games were
17 prearranged by the defendant through a website that
18 he owns and operates called
19 charlestonpokermeetups com?

20 A Yes, sir

21 Q So are you saying that Mr Stallings said
22 that he owns charlestonpokermeetups com?

23 A No, sir I believe there's -- and I've had
24 the opportunity to look at the site You can have
25 your own forum, your own little site within the

Transcript of Municipal Court

1 site, and he has that -- or admitted to having
2 that I wasn't aware of the site until he told me

3 Q But according to your statement about what
4 Mr Stallings said, you said that he said that he
5 owns and operates a website called
6 charlestonmeetups com

7 A It's miswritten, yes, sir But he owns the
8 site within the site or created a site, or however
9 that works I'm not positive on how that works

10 Q Down to the second to last paragraph you
11 said that he said, again, that he used the illegal
12 proceeds Did he use those terms, he used the
13 illegal proceeds?

14 A He advised that the proceeds -- he used the
15 term that the proceeds were used for food and
16 alcohol

17 Q So he didn't say that he used illegal
18 proceeds?

19 A I just want to say this is my affidavit not
20 his So --

21 Q I'm just making sure what's his words and
22 what's your words

23 A Right

24 Q So he never told you he had illegal
25 proceeds?

Transcript of Municipal Court

1 A I don't recall specifically if he
2 acknowledged that he knew it was illegal I know
3 that some folks in the house did acknowledge they
4 knew it was illegal, but they said it was just a
5 game, it should be legalized, and stuff like that

6 Q We're talking about Mr Stallings?

7 A I don't recall specifically his words It's
8 been three years ago

9 Q From the illegal gambling -- again, did he
10 ever call this illegal gambling?

11 A I don't recall if he did or not

12 Q To provide food and alcohol to its
13 participants So right there he's telling you that
14 he used the money to buy food and beverages,
15 correct?

16 A According to the affidavit

17 Q According to your affidavit

18 A Yes, sir

19 Q And nowhere in this affidavit that you have
20 alleged several things that he said, nowhere does
21 it have any mention of the rake

22 A Well, again, it's common --

23 Q Just let me -- please answer my question,
24 and then you can explain it Is there any mention
25 of a rake in this affidavit?

Transcript of Municipal Court

1 A No, sir

2 Q Now you can explain

3 A Well, in any investigation you usually get
4 partial truth from the defendants Very rarely are
5 they 100 percent cooperative and 100 percent
6 detailed Also an affidavit or arrest warrant are
7 reports all summary It would be impossible for me
8 to detail every single word that came out of
9 anyone's mouth Is he going to tell me this is a
10 for-profit business, and I made \$1,000 last week,
11 and that's how I live? I highly doubt it He did
12 say that this was his only job at the time

13 Q So are you saying that he wouldn't be -- are
14 you alleging that he wouldn't be truthful with you?

15 A Yes, sir

16 Q You are alleging that, but yet he will tell
17 you that he is, according to you, allegedly telling
18 you that this is how he makes his money?

19 A Yes, sir

20 Q But he wouldn't tell you about the \$2 rake?

21 A Well, when it comes to seizing all the money
22 from someone having it in their possession, I would
23 imagine they might not be entirely truthful

24 Q And without casting aspersions on the
25 truthfulness of this, it wasn't accurate, and

Transcript of Municipal Court

1 you're not accurate 100 percent of the time either,
2 are you?

3 A That's up to interpretation

4 Q How about the statement about him owning
5 charlestonpokermeetups com?

6 A It's miswritten I acknowledge that

7 Q So that's not accurate?

8 A It's accurate, but it's just not worded
9 properly in the warrant

10 Q If it's miswritten, it's not accurate, isn't
11 it?

12 A Okay It's not accurate

13 THE COURT I'm going to stop you right
14 now For the record so we'll have it in the
15 record, other than these questions and answers that
16 have been going back and forth between defense
17 counsel and the witness, the Court's going to make
18 the warrant affidavit dated May 1, '06 a court
19 exhibit, and it's into evidence On that basis,
20 neither side has to consent nor agree I'm just
21 having it for the record if somebody sometime down
22 the road in an appeal want to know what we were
23 looking at or reading, I'm making it a court
24 exhibit as opposed to either party's exhibit
25 Period If either side wants to object, you're

Transcript of Municipal Court

1 welcome to

2 MR PHILLIPS No, Your Honor

3 (Court's Exhibit No 1 was marked for
4 identification)

5 Q I want to -- just to be clear, you don't
6 regard yourself as any kind of expert with regards
7 to what the definition of gambling is?

8 A No, sir

9 Q So you can't make any statement one way or
10 the other or comment on skill and chance in the
11 game of poker?

12 A No, sir

13 Q In all this information that Mr Stallings
14 allegedly told you, did he tell you what the
15 betting limits for the game were?

16 A May I refer to the report?

17 Q Certainly

18 A According to the report and in
19 conversations, he advised that the game required a
20 \$20 minimum buy-in and that he made around \$2 per
21 game

22 Q Did he tell you what the -- are you familiar
23 with the term blinds? And if you're not, it's
24 okay

25 A The blind would be the bet, would it not?

Transcript of Municipal Court

1 First blind, second blind, things like that?

2 Q Yeah Small blind, big blind Did he tell
3 you what the small and big blinds were?

4 A No, sir

5 Q Based on the amount of money in your
6 experience in prosecuting gambling cases, on a \$20
7 buy-in game, would it surprise you to know that the
8 blinds were 25, 50 cents?

9 A It wouldn't surprise me

10 Q Could you please refer to that one section
11 of your police report where you talked about the \$2
12 and read that sentence please for me

13 A Stallings advised that the games at the
14 residence required a \$2 (sic) minimum buy-in, and
15 that he made around \$2 per hand

16 Q I think you said 2, but you meant \$20
17 buy-in

18 THE COURT \$20 buy-in

19 A \$20 buy-in, and he made around \$2 per hand

20 Q Was the term rake ever used?

21 A No, sir Or not that I recall I wouldn't
22 have known all of the lingo at the time

23 Q So in a 25, 50 cent game, it's entirely
24 possible that \$2 would be the average size of a
25 pot?

Transcript of Municipal Court

1 A If it were \$50 -- 50 cents placed on the
2 first bet, and then it's doubled that for the
3 second bet -- second blind or however you refer to
4 it by everyone seated around the table, I wouldn't
5 see any way that it'd be only \$2 unless everyone at
6 the table folded

7 Q How -- strike that So you're assuming that
8 everybody would stay in, and everybody would put in
9 their money for every bet?

10 A It's impossible for me to say who would stay
11 in and who would not

12 Q In your position as the investigating
13 officer and the money that you took and from what
14 Mr Stallings said -- which allegedly he said he
15 had \$300 in his pocket, is that correct?

16 A \$300

17 Q And how many buy-ins would that represent?

18 A 150 hands

19 Q How many buy-ins? How many \$20 buy-ins from
20 people?

21 A I don't know the amount on that I have no
22 idea

23 Q 300 divided by 20 is 15 So approximately
24 15 people there that night playing?

25 A Oh, yes, sir

Transcript of Municipal Court

1 Q And if we assume 20 hands an hour from two
2 tables, that would be -- 20 hands times \$2 would be
3 \$40, and two tables would be \$80 So in just a
4 little over two hours, nobody would have any money
5 if they took \$2 a hand, would they?

6 A Only the house takes \$2 a hand

7 Q But that money comes out of the money the
8 players bought in for So if your math is
9 correct --

10 A Does it, or does it come out of the bets? I
11 don't know

12 Q Let's assume that the \$20 that the player
13 gets in chips is placed in playing the game, and
14 the house takes their rake

15 A Okay

16 Q Then if there is a \$2 rake per hand and
17 there's a \$20 buy-in, which is indicated by the
18 \$300 in his pocket, there would be no more money on
19 the table in a little over two hours, isn't that
20 right?

21 A That's your argument I'm not sure

22 Q I'm just -- I'm doing the math

23 MR GROSSMAN Objection He said he's
24 not sure He doesn't know

25 THE COURT That's assuming people are

Transcript of Municipal Court

1 not buying no more chips I mean, that's a
2 question to which he cannot have an answer So I'm
3 just going to rule that's where we are Let's
4 move You can have a \$20 buy-in, but you can buy
5 another \$100 worth of chips I mean, there's no
6 answer for that

7 MR PHILLIPS Your Honor, that's all I
8 have for this witness

9 THE COURT Mr Grossman, do you have
10 any questions?

11 MR GROSSMAN Just very quickly, Your
12 Honor

13

14 REDIRECT EXAMINATION

15 BY MR GROSSMAN

16 Q Although it's difficult for you to identify
17 the rake or the amount of money, the \$2 per hand
18 that the defense took in, Mr Stallings told you
19 that, did he not, that he made \$2 off of every
20 hand?

21 A Yes, sir

22 Q And Mr Stallings told you there was a \$20
23 minimum buy-in?

24 A Yes, sir

25 Q Mr Stallings told you that he did not have

Transcript of Municipal Court

1 employment and that was his occupation was running
2 a game for money?

3 A Not exactly stated, but yes, sir

4 Q And he also used that money for beer or
5 whatever, but that was his employment was the game
6 as well?

7 A Yes, sir

8 MR GROSSMAN That's it

9 THE COURT Anything further?

10 MR PHILLIPS No

11 THE COURT You can have a seat
12 You're subject to recall by the Defendant or the
13 State

14 THE WITNESS Yes, sir

15 MR GROSSMAN Your Honor, at this time
16 the State rests

17 THE COURT State rests

18 MR PHILLIPS Can I state my motions?

19 THE COURT Go ahead

20 MR PHILLIPS Your Honor, the defense
21 position -- first of all -- just a couple of
22 arguments, but first of all, that the charge of
23 gambling is not defined currently in South
24 Carolina, and the only guidance that we have is
25 from the Johnson versus Collins case And it is

Transcript of Municipal Court

1 our argument that the supreme court if presented
2 with this question would adopt the prize, chance,
3 and consideration rule that most other states have
4 adopted in this regard If that is true, then the
5 test for this case becomes whether or not poker,
6 Texas Hold'em specifically, is more
7 predominantly -- or the predominant factor is
8 predominantly skill rather than chance or vice
9 versa

10 If it is chance, it's gambling If it's not
11 chance, then it's not gambling In this particular
12 situation, Your Honor, the State has a duty to
13 prove their case This is a criminal case, and
14 they have to prove their case beyond any reasonable
15 doubt Of course, in this particular case, they
16 presented no evidence on the issue of chance and
17 skill Therefore, they -- if that is the test,
18 then I would move for a directed verdict on the
19 ground they have not established a prima facie case
20 on what we believe the elements of gambling should
21 be

22 Secondly, Your Honor, even if that is not
23 the test that this Court intends to apply, then we
24 have to somehow define what house of gaming is, and
25 all -- the only evidence that we have is that some

Transcript of Municipal Court

1 people -- 15 to 20 people played poker two nights a
2 week at a private residence It's agreed that it's
3 a private residence It is not a public place

4 There is going to be dispute on the profit
5 issue, but even if there was a profit -- and we
6 will contend that the evidence will prove that
7 there was not Even if there was a profit, it is
8 not a public place, and every case law definition
9 or Webster definition or online definition I looked
10 at house of gaming, that is one of the elements it
11 needs to be So even under that definition that
12 the case should be -- that the verdict should be
13 directed for the defendants because it is not a
14 public place

15 Beyond that, I'm not sure how the Court
16 would define house of gaming, and I guess until --
17 if either of those two -- if either of those two
18 standards are not adopted, then we're kind of
19 arguing in the dark as to what we need to -- what
20 we need to -- what I need to prove in order to
21 exonerate my clients because the elements are not
22 clear

23 Now, that brings me to the third argument,
24 and that is, in South Carolina statutes are to be
25 strictly construed against the State And if a

Transcript of Municipal Court

1 defendant is charged with a crime, he must know
2 what the elements of the crime are that he is
3 supposed to have offended I believe that because
4 we are even here arguing this today, it is proof
5 that the standard is unclear, and, therefore, the
6 statute being strictly construed against the State
7 would require that a directed verdict be rendered
8 in favor of the defendants as well Thank you

9 MR GROSSMAN Your Honor, just real
10 quickly This skill versus chance argument, Your
11 Honor, the Town's contention has always been that
12 that is completely irrelevant The State of South
13 Carolina in the South Carolina Constitution talks
14 about lotteries Distinct from that, gambling is
15 statutorily prohibited in the South Carolina Code
16 of Laws That is what they are charged with here
17 today

18 The cases that he refers to in these skill
19 versus chance arguments are from a dissenting
20 opinion I might add in a case that has nothing to
21 do with criminal court Our burden is simply with
22 the South Carolina Code of Laws and what this
23 statute in particular describes as gambling, and
24 that is that these individuals were playing any
25 game Doesn't make a difference if it's Texas

Transcript of Municipal Court

1 Hold'em, skill or chance, or regular poker, or
2 whatever game it is It's not the game That's
3 not what this whole case is about It's not the
4 game No one cares about Texas Hold'em It's not
5 the game It's any game of cards and dice This
6 game has cards

7 MR PHILLIPS Your Honor, I would
8 object --

9 MR GROSSMAN I didn't interrupt you
10 Let me finish

11 MR PHILLIPS I don't want you looking
12 at my defendants and making the faces that you
13 made

14 THE COURT Just face me

15 MR GROSSMAN I apologize, Your Honor
16 I didn't realize my expressions were annoying

17 MR PHILLIPS They are

18 MR GROSSMAN But, again, this
19 ridiculous argument of skill or chance, it's
20 irrelevant And to be quite honest with you, I
21 don't think it can be proven anyway, but it doesn't
22 make any difference That is not for a criminal
23 case If Your Honor were to rule that way, two
24 guys rolling dice in an alley, the Town has to
25 prove whether it's skill or chance? It's

Transcript of Municipal Court

1 ridiculous

2 This is the way our law has been It's a
3 good law, and it makes total sense For the skill
4 or chance argument to come in would basically
5 legalize casinolike gambling operations like this
6 within the Town of Mount Pleasant and residential
7 communities So I don't think that that is
8 appropriate for Your Honor to hear that

9 Your Honor's order was -- and obviously I'm
10 not going to object to them putting in evidence of
11 the skill or chance because Your Honor's already
12 ruled on it I have objected I should restate
13 that I have always objected to skill or chance
14 being any part of this trial because it has no
15 relevance

16 I think Your Honor stated in his order that
17 he would allow them to argue it, but at the same
18 time, he hasn't decided what weight to give that
19 evidence And we would ask if Your Honor does
20 allow to hear, which I'm assuming you're going to,
21 that you give it no weight because it's ridiculous
22 It makes no sense and it has no bearing on this
23 criminal case or any other criminal case

24 Now, getting into the other argument about
25 whether or not we proved our case, I do believe

Transcript of Municipal Court

1 that it has to be a house of gaming I think it
2 was clear that we did prove that There was direct
3 testimony from the officer that the resident of the
4 house said he didn't have a job, that his job was
5 the money that he earned from the gambling
6 operation He also used those profits to provide
7 beer to them as well He also told him that he
8 made a cut of every hand, \$2 There was a \$20
9 buy-in

10 I think the direct testimony was clear
11 There were cards on the table These individuals
12 were playing cards It was a house of gaming
13 They were gambling upon that game That's all we
14 have to prove, Your Honor For Your Honor to rule
15 any way would basically legalize gambling in the
16 Town of Mount Pleasant and everywhere else in the
17 sense that in the Town of Mount Pleasant, we
18 couldn't prove a gambling case like this
19 Obviously Your Honor's court itself wouldn't have
20 that type of precedential threat But, again, I
21 think we've definitely proven our case, and I think
22 we go beyond this point

23 THE COURT Well, I think any time the
24 Court has to make a consideration of directing a
25 verdict pro or con, it always has to take the

Transcript of Municipal Court

1 evidence as a whole and view that evidence in a
2 light most favorable to the person who presented
3 the evidence and give them every benefit that that
4 evidence can elicit It doesn't mean that it's
5 sufficient to prove beyond a reasonable doubt
6 somebody's guilt or somebody's innocence, but it's
7 whether or not there's sufficient evidence
8 construing what has been testified to in a light
9 most favorable to accepting the testimony as to
10 whether or not that's enough evidence for the case
11 to proceed

12 Now, gambling as defined by a United States
13 code and as defined by the legal dictionary is
14 this, the act of something of value It takes
15 risking something of value, money usually, for a
16 chance to win a prize So if that chance is taken
17 to win the prize, then generally the prize is
18 gambling

19 Now, whether a particular game or whether a
20 particular incident is or is not a game of chance
21 or if it forfeits a definition by the US code or
22 what was construed as the code for 16-19-40 is a
23 matter of evidence and interpretation Certainly
24 there's enough evidence before this Court today to
25 say the State has sustained its burden of proof for

Transcript of Municipal Court

1 this case to go forward and directed verdict as a
2 result of this determination by the Court is going
3 to be denied

4 MR PHILLIPS Thank you, Your Honor
5 May we have a short break before we present our
6 case?

7 THE COURT How much time do you need?
8 I'll give you any break you need

9 MR PHILLIPS Ten minutes

10 THE COURT Well, I'm going to give
11 you -- it's going to be a 15-minute break

12 MR GROSSMAN Thank you, Your Honor
13 (A recess was taken)

14 THE COURT Go ahead

15 MR PHILLIPS Thank you, Your Honor
16 The defense calls Nate Stallings

17 THE COURT Place your left hand on the
18 Bible for me, please, sir, and raise your right
19 hand

20

21 NATHAN D STALLINGS,
22 having been first duly sworn, was examined and
23 testified as follows

24

25 THE COURT Have a seat please, and

Transcript of Municipal Court

1 state your name for the record

2 THE WITNESS My name is Nathan Daniel

3 Stallings

4 THE COURT Thank you

5

6 DIRECT EXAMINATION

7 BY MR PHILLIPS

8 Q Mr Stallings, are you the same Nate
9 Stallings whose house that this game was being
10 played at --

11 A Yes

12 Q -- that is the question at issue today?

13 A Yes

14 Q And I need to ask you some general questions
15 about that game, number one, and about your
16 involvement Were you employed at the time this
17 game was busted?

18 A Yes

19 Q Where were you employed?

20 A I was employed with Island Carpentry

21 Q And had you been employed with Island
22 Carpentry for the last month prior to that?

23 A A little more than a month

24 Q And did you ever tell Officer Hembree or
25 anyone else that you were unemployed at the time?

Transcript of Municipal Court

1 A No

2 Q Did you ever tell Officer Hembree that your
3 occupation was, quote, this is it, meaning running
4 a poker game?

5 A No

6 Q Did you make any money running this poker
7 game?

8 A No

9 Q What was the buy-in for the poker game?

10 A The buy-in varied from, you could say, \$5 to
11 \$20

12 Q Was \$20 the minimum or the maximum?

13 A The absolute maximum

14 Q Did you take a rake?

15 A Yes

16 Q How much was the rake?

17 A It was 50 cents when we raked

18 Q You didn't rake every hand?

19 A No

20 Q Why not?

21 A Because we have a goal, a financial goal

22 Q And what's the goal?

23 A To pay for the food and beverages

24 Q So once you got enough to pay for the food
25 and beverages, you would stop?

Transcript of Municipal Court

1 A Yes

2 Q Were there nights where you didn't make
3 enough to cover the food and beverages?

4 A Of course

5 Q What happened then?

6 A Either I took a loss or whether sometimes a
7 player that was cashing out that had won some
8 money, he would chip in five bucks to help us get
9 there

10 Q So if you used all of the rake to pay for
11 food, is it fair to say this is a not-for-profit
12 operation?

13 A Yes

14 Q Did you tell Officer Hembree that that was
15 your occupation?

16 A No

17 Q Did you tell Officer Hembree that you had
18 only about \$200 in the whole residence?

19 A No

20 Q Do you recall telling him anything about
21 \$200?

22 A I recall he asked me how much money I had on
23 me, and I told him I had roughly some amount,
24 whatever amount I quoted, in my pocket, which was
25 the bank And how I came to that amount, I did a

Transcript of Municipal Court

1 quick calculation of how many people were there,
2 put a \$20 bill on it, and that's what I came up
3 with And I did that number by hand

4 Q And that was -- how much was in your pocket?

5 A I believe \$300

6 Q Did you feel the need to tell him about any
7 money that was stored in your bedroom?

8 A No

9 Q What money was found in your bedroom?

10 A What money as you mean how much, or --

11 Q Where --

12 A I had some money in a drawer that was for
13 bills I had rent money and bill money in a
14 drawer, and I had another five gallon jar that was
15 halfway filled with change that had money in it
16 that my fiance and I were saving for vacation

17 Q And what happened to that jar?

18 A They turned the jar upside down, shook out
19 all the money and the change, took the cash, and
20 left the change in the center of my bed

21 Q And what happened to the rent money and bill
22 money that was in your sock drawer?

23 A They took that as well

24 Q If the front door to your house was wide
25 open and you were to drive by, how much of any

Transcript of Municipal Court

1 poker table could you see?

2 A When you mean how much, I'll just say this
3 You could see possibly one to two people, but I
4 think that was also noticed in the video Even
5 close up coming through the door, you could not see
6 an entire table

7 Q You could see the person sitting on the end?

8 A On the end of the table

9 Q And is that table in the kitchen round?

10 A Yes

11 Q Is the table in the living room oval?

12 A I don't think so It was square

13 Q It was square?

14 A Rectangle

15 Q Rectangle?

16 A Yes

17 Q Where did you get the table in the kitchen?

18 A The table in the kitchen was fabricated by
19 my roommate

20 Q Tell us how

21 A How?

22 Q Yeah

23 A It was a plastic table bought from Costco
24 that had fold-down legs on it with a white plastic
25 top, and then we had a piece of cardboard and a

Transcript of Municipal Court

1 cardboard piece of plywood cut into a circle with
2 some fabric on it so the cards wouldn't slide And
3 that was set on top of the table that I bought from
4 Costco

5 Q When you started having people over to play
6 poker -- first of all, why'd you do it?

7 A Because I enjoy playing poker

8 Q How long have you been living in Charleston?

9 A At the time four months I think I signed
10 my lease at that house in January and prorated my
11 rent in January So the lease was signed
12 mid-January

13 Q Did you see playing poker as a way to meet
14 people?

15 A It was a way for me to meet other poker
16 players and to meet people as well

17 Q How many nights a week did you play
18 initially?

19 A Initially? At my house?

20 Q Yes

21 A Once

22 Q And did you eventually add a second game?

23 A Yes

24 Q Why?

25 A Because a friend of ours was hosting a game

Transcript of Municipal Court

1 on a Wednesday night, and they could no longer host
2 at that house So I adopted Wednesday night as
3 well as Sunday

4 Q And was the table in the living room as a
5 result of that switching of the games?

6 A Absolutely It was John Willis' table in
7 the living room We took it from his house because
8 his mother wouldn't let us play anymore and put it
9 in my living room

10 Q If somebody won -- let's say -- what was the
11 average pot? What was the average pot for if
12 somebody --

13 A It's hard to give an average, and the reason
14 being because there's a forced bet, which is a
15 blind, a small and a blind And no one has to call
16 after that So it could have been 75 cents up to,
17 you know, anywhere from 20 to 30 bucks

18 Q That'd be a maximum for a hand?

19 A Probably I mean, if you had 10 people at a
20 table with \$20, you have \$200 If everybody went
21 all in, you could win 200 bucks

22 Q But did everybody ever go all in on 10
23 people?

24 A No If you would like for me to reflect on
25 what our average pot was to the best of my

Transcript of Municipal Court

1 knowledge, our average pot was between 5 and \$10

2 Q And if you hadn't met your goal for the
3 pizza and beer money, how much would you rake from
4 that pot?

5 A I never raked more than 50 cents

6 Q So that was a maximum rake?

7 A That was it It was a big blind

8 Q Did most of the people that played in that
9 game have employment?

10 A Yes

11 Q Did you ever host a game that say started in
12 prior to the standard time people would normally
13 get off work?

14 A No It started at 7 00 normally

15 Q Occasionally would you have a weekend game
16 that started earlier than that?

17 A No

18 Q Did you always start at 7 00?

19 A Always started at 7 00

20 Q Did you ever rely on this game for income
21 from the rake?

22 A No

23 Q Do you know what is -- what I'm referring to
24 if I say that poker is a 0 sum game?

25 A No

Transcript of Municipal Court

1 Q Would it be true that if there were 10
2 people at the table and everybody had \$20 in the
3 pot, there would be \$200 on the table?

4 A Yes

5 Q And then if somebody wins \$30, that means
6 somebody else has lost \$30 or other combination of
7 people have lost \$30?

8 MR GROSSMAN Objection He is sort
9 of leading him, Your Honor I've been sort of kind
10 of taking it easy with my objections, but that's
11 going a little too far

12 THE COURT I don't know what those
13 calculations really mean, but I'm going to let it
14 in I mean, I don't have any idea Go ahead

15 Q At any time could the amount on the table be
16 more than \$200?

17 A Yes

18 Q How?

19 A Because if let's say 10 people buy in for
20 \$20, you have \$200 Let's say one guy loses his
21 \$20, he'll re-buy back in Now, you have \$220 on
22 the table

23 Q And so it could only go up incrementally by
24 \$20? By the buy-ins

25 A By the buy-ins If two people bought back

Transcript of Municipal Court

1 in, that'd be \$40

2 Q On a night, what would the -- if there was a
3 big winner -- what would a big winner take home?

4 A I mean, if you left with \$100 bucks, you
5 were a huge winner

6 Q What's the average win maybe?

7 A You mean like if -- what's the average -- if
8 I was to take -- had a list of what everybody made,
9 what was the average win? If you were the person
10 that won the most that night, what was that
11 average?

12 Q Yeah

13 A It was between I'd have to say 40 and 60
14 bucks

15 Q That was the big -- average big win?

16 A If you bought in at 20 and left with 40 you
17 did pretty good

18 Q Did you live at this house?

19 A Yes

20 Q Did your fiance live at this house?

21 A Yes

22 Q Anybody else?

23 A Yes

24 Q Who?

25 A Ed Wilson

Transcript of Municipal Court

1 Q Who was he?

2 A A roommate

3 MR PHILLIPS Your Honor, that's all I
4 have

5 THE COURT Mr Grossman

6

7 CROSS-EXAMINATION

8 BY MR GROSSMAN

9 Q When, again, did you move into 1405 Glencoe
10 Street?

11 A Mid-January

12 Q Mid-January of when? '06?

13 A Of the year of the raid Yes, '06

14 Q You said you rented, right?

15 A Yes

16 Q You lived there with your fiance, and you
17 lived there with Mr Wilson, right?

18 A Yes

19 Q Now, the people who are playing poker there
20 that night, were they your friends?

21 A They were not my enemies

22 Q That's not what I asked you Were they your
23 friends?

24 A I would consider them my friends

25 Q You would consider them your friends

Transcript of Municipal Court

1 A Sure

2 Q You know them They're your friends, right?

3 A Uh-huh

4 Q Other than your fiance and your roommate,
5 Mr Wilson, and the five defendants over here, what
6 were the name of your friends that were over that
7 night? About 18 more of them What were the name
8 of your friends, their names?

9 A Griffey

10 Q Hold on a second Let me write this down

11 A Griffey, Riley, LT

12 Q Hold on a second

13 A Bryan

14 Q Hold on Let's --

15 A You just asked a question

16 Q I know I want to go slowly because I'm
17 going to write this down

18 A I just want to go so I don't forget

19 Q Griffey Go ahead

20 A Riley

21 Q Now, give me as much of the name that you
22 have

23 A I am

24 Q Griffey?

25 A Riley

Transcript of Municipal Court

1 Q Riley Is that R-1 -- how do you spell
2 that?

3 A I don't know It's not my name

4 Q But he's your friend You don't know how to
5 spell his name?

6 A Huh-uh

7 Q All you have is Riley?

8 A You asked me what I know That's what I
9 know

10 Q Hold on a second Go ahead

11 A LT

12 Q Is that all you got?

13 A That's it

14 Q Close friend?

15 A Yeah

16 Q Next

17 A Mitch

18 Q Next

19 A Ryan

20 Q Last name?

21 A I'm answering like you told me

22 Q I'm asking you for as much of the name --

23 A And that's what I gave you

24 Q Next

25 A Ryan

Transcript of Municipal Court

1 Q I got that

2 A Another one

3 Q You got anymore than that? Just the first
4 name or the last name? I'm asking you

5 MR PHILLIPS Your Honor, he's asked
6 and answered that question about five times

7 Q Next

8 A How much time do you want me to take here?

9 Q I don't care As long as it takes

10 A How many names have I given you?

11 Q You've given me six

12 A And the five defendants here, that's 11 So
13 that's half already It's been three years ago I
14 remember probably about as much as Officer Humphrey
15 (sic) does

16 Q There is no Officer Humphrey that's
17 testifying

18 A I'm sorry This officer there His memory
19 was vague as well So is mine

20 Q So your memory is vague So this case
21 hasn't been on your mind at all since that date?

22 A Sure hasn't

23 Q So that means on the night in question, on
24 the night in question, you remember the five
25 defendants that are here, right here today You

Transcript of Municipal Court

1 know their first and last names completely?

2 A No

3 Q You don't?

4 A No

5 Q You don't know, but they're friends of
6 yours?

7 A Yes

8 Q Let me ask you a question

9 A Sure

10 Q What's your definition of friend?

11 A Someone that I associate myself with and
12 that's not my enemy

13 Q So does that mean anybody that you meet is
14 your friend?

15 A No

16 Q So you associate with them?

17 MR PHILLIPS Your Honor, can I ask
18 what the relevance is?

19 THE COURT I don't know, but I gave
20 you broad expanse on cross I'm going to give him
21 broad expanse on cross I don't know what the
22 point is, but I'm going to give him room

23 Q Again, was this game a friendly game amongst
24 friends? You said it was friends, but these
25 friends you say you don't know -- the six names

Transcript of Municipal Court

1 that you listed you don't know first or last names
2 Do you know if any of them work?

3 A Those are all first names I gave you

4 Q They're all first names Do you know where
5 any of those people work?

6 A Where they work now? No

7 Q Did you know where they worked then?

8 A I can't remember where they worked then

9 Q Do you know any of their phone numbers?

10 A I don't know anybody's phone number

11 They're all programmed in my cell phone

12 Q You don't know any of your friend's phone
13 numbers?

14 A I sure don't They're programmed into my
15 cell phone

16 Q Do you have all these people programmed into
17 your cell phone? Every one of them?

18 A I have a lot of them

19 Q You do? But you don't know their last
20 names?

21 A I already answered that

22 Q Do you know where they worked at the time?

23 A I answered that too

24 Q Have you kept in contact with them since
25 this incident?

Transcript of Municipal Court

1 A Some of them

2 Q You regularly socialize with these friends?
3 Any other way other than playing poker?

4 A No

5 Q No other way other than playing poker?

6 A Playing poker and maybe a night out on the
7 town

8 Q Who have you gone out on a night on the town
9 with out of that group of six that you gave me
10 right there?

11 A LT, Riley, Griffey

12 Q So you go out on a night on the town with
13 them once in a while Where do you go with them?

14 A Downtown

15 Q Where?

16 A The bars

17 Q Like what?

18 A Henry's

19 Q How many times?

20 A I can't remember

21 Q And the other people in the house, you just
22 don't remember their names at all You know there
23 were other defendants You just don't know who
24 they were at all, but you knew their names at the
25 time?

Transcript of Municipal Court

1 A Exactly Three years pass by --

2 Q So obviously --

3 A -- you forget --

4 Q -- so obviously you weren't very close
5 friends with these people since you don't remember
6 their names?

7 A I was at the time

8 Q You were close -- hold on a second

9 A After three years, I don't remember

10 Q You were close friends with them at the
11 time?

12 A We were friends

13 Q I asked you if you were close friends

14 A It depends on what your definition of close
15 friends are

16 Q So you were --

17 A Define close friends Define close friends

18 Q Somebody that you socialize with outside of
19 the world of just coming to your house and playing
20 poker

21 A Okay

22 Q Were they more than that?

23 A Some of them

24 Q So some of them you didn't know other than
25 them coming to your house and playing poker?

Transcript of Municipal Court

1 A Correct

2 Q You didn't know them at all

3 A I knew them from playing poker

4 Q That's the only way They came to your
5 house and you knew them from playing poker, right?

6 MR PHILLIPS Your Honor, let's move
7 on

8 A They may have been friends of a friend, but
9 then they became my friend So I didn't have to
10 initially know them

11 Q Your definition of friend is a little more
12 tangential When you meet someone, if they're not
13 your enemy --

14 A You asked me I've answered that already

15 Q You're going to answer my questions Your
16 lawyer is --

17 A I've already answered what you're asking

18 Q I'm going to ask you another question If
19 you meet somebody and they're not your enemy, are
20 they then automatically being your friend?

21 A I've answered that already, no

22 Q I'm asking you again

23 A No I've already answered that

24 Q Now, how do these friends of yours that you
25 don't know their names specifically --

Transcript of Municipal Court

1 A Because of the latter half that I did know,
2 not the first half that I didn't know

3 Q And the first half too How did they come
4 to be invited to play at your house?

5 A Through a friend of mine

6 Q Who? What friend? What's his name?

7 A I don't know

8 Q You don't know his name?

9 A No You asked me a question

10 Q Did you advertise this game on the internet?

11 A Yes

12 Q And that was -- was it this poker-meet-up
13 site that Officer Hembree referred to? Was it --

14 A Yes

15 Q -- on that site? Now, obviously you don't
16 necessarily own the website, correct?

17 A Right

18 Q But the part of it -- I guess, is it one of
19 those things -- and I'm not internet savvy so
20 excuse me If I make a mistake, correct me Is it
21 one of those types of situations where I guess you
22 go on there, you figure out how to do it, and then
23 you set up your own link to say come play poker at
24 such and such --

25 A It's a social network site

Transcript of Municipal Court

1 Q A social network site But you used it for
2 the express purpose of inviting people to play
3 poker at your house?

4 A No I used it to meet -- I went there
5 initially to meet other poker players

6 Q Did the website indicate --

7 A I just moved here in California So I
8 didn't know a lot of people I played poker in
9 California We have poker games there

10 Q Sure

11 A I wanted to continue --

12 Q Illegal poker rooms?

13 A Legal poker rooms there I wanted to
14 continue my hobby So if I was searching for other
15 poker players, I resorted to the internet

16 Q So you did resort to the internet to find
17 people to play poker at your house?

18 A To find other poker players Whether it be
19 at my house, their house, or anybody else's house

20 Q But you were playing games at your house at
21 the time, were you not?

22 A At the time of April the 12th? Yes

23 Q Now, let me ask you a question What were
24 the qualifications? I mean, was there some
25 standard that you used, or could anybody who

Transcript of Municipal Court

1 answered the ad on the internet come over and play?

2 A There was no standard

3 Q So anyone could come over?

4 A Sure

5 Q Wouldn't make any difference?

6 A No You could not just knock on my door and
7 I open it up and you say come on in This is a
8 social network so people knew people on there So
9 let's say I found a game on there, and I went and
10 played at that game I just met five to 20 people
11 in one night

12 Q Understood What I'm asking you for, there
13 was no -- there were no disqualifications Let's
14 say a convicted felon were to get on that site and
15 say, I want to come over and play Would you know
16 that he was a convicted felon, or you'd invite him
17 over to play?

18 A If he knew someone that was already a part
19 of the social network that was established online
20 and they knew him, then, yes, he was invited But
21 you could not cold knock on my door and walk in

22 Q But he could cold knock on the internet,
23 right?

24 A If you knew someone that was already
25 established on meetup com, which is basically

Transcript of Municipal Court

1 through a friend network Of a friend of a friend
2 of a friend

3 Q So if someone say had a record for being a
4 pedophile

5 A I don't know anybody's record I don't
6 know I don't know anybody's record in here

7 Q Well, maybe you didn't know what their
8 record was You were going to let them play as
9 long as they knew somebody else on meetuppoker com,
10 correct?

11 A I don't know anyone's record It's not my
12 job to know people's record

13 Q Did you talk to everyone who came over and
14 played poker before they came over to your house?
15 Did you actually talk to them on the phone or speak
16 with them?

17 A I didn't have to If they were a friend of
18 a friend If they called and said, hey, Chris is
19 coming over with me, do you mind? Sure Do you
20 have room? Sure

21 Q Then why would you have it that you would
22 want a friend of a friend -- I mean, why would you
23 have that in place that it would have to be a
24 friend of a friend if you weren't going to be --
25 what was the reason?

Transcript of Municipal Court

1 A Because like you said, I don't want a
2 pedophile or a masked murderer walk in my door

3 Q And when your friends who did that
4 specifically somehow --

5 A We were friends so I trusted them

6 Q But they weren't checking records or
7 doing --

8 A I don't know that I can't speak for them

9 Q So it's possible that they would bring a
10 convicted felon?

11 A It's possible Anything's possible

12 Q Did you get cut \$2 per every hand?

13 A No

14 Q You didn't?

15 A No

16 Q So Officer Hembree's lying when he said
17 that?

18 A Yes

19 Q That's just absolutely not true?

20 A Absolutely not true

21 Q Did you get a cut of any kind?

22 A Yes

23 Q What was the cut?

24 A 50 cents

25 Q So the only thing that he said wrong was the

Transcript of Municipal Court

1 dollar amount?

2 A No He said a lot of stuff wrong, but in
3 reference to the money in the rake, yes

4 Q Now, was there a \$20 buy-in to get in the
5 game?

6 A Yes And it wasn't required You could buy
7 in for \$5 20 was the maximum

8 Q Let's talk about your employment Are you
9 employed right now?

10 A I own my own company

11 Q What company is that?

12 A Knock Down Restoration

13 Q Knock Down Restoration Where's that
14 located?

15 A Mount Pleasant

16 Q Where exactly?

17 A 1226 White Flat Road

18 Q What does it do?

19 A Home repair and restoration

20 Q What was your employment on April 12th,
21 2006?

22 A I was working for Island Carpentry

23 Q Island Carpentry?

24 A Yes

25 Q Who was your boss?

Transcript of Municipal Court

1 A Rob Chimento

2 Q Oh, defendant Robert Chimento?

3 A We're friends

4 Q Did you fill out a tax return for the year
5 2006?

6 A Yes, sir, I did

7 Q You did?

8 A Yes

9 Q Did you list that as your place of
10 employment? And remember, you are under oath, and
11 you do understand what that means

12 A I do understand

13 Q If you commit perjury, you could be facing
14 prison time?

15 A I do understand

16 MR PHILLIPS Your Honor, I'm going to
17 object to his style of the questions he's asking
18 He's badgering the witness I'd like him to back
19 off just a little bit

20 THE COURT Just ask the questions

21 MR GROSSMAN I'm sorry, Your Honor
22 It's just my normal act

23 Q Was that listed on your tax return as your
24 place of employment in April of 2006?

25 A No

Transcript of Municipal Court

1 Q It wasn't?

2 A I was paid cash

3 Q Really? That's interesting

4 MR PHILLIPS Your Honor, I have an
5 objection to the comments It wasn't, really,
6 that's interesting That's objectionable

7 MR GROSSMAN I'm sorry, Your Honor
8 I apologize It's a bad habit

9 THE COURT Don't comment on his
10 testimony Just ask him questions and let him
11 answer Let him answer

12 Q You didn't put it on your tax returns?

13 MR PHILLIPS Your Honor, he just
14 answered that question

15 Q Is that legal to not put that on there?

16 MR PHILLIPS I object to that
17 question He's not a witness to question legality

18 THE COURT He said he didn't put it on
19 his tax returns I don't know if he can answer it
20 whether he had to list carpentry or not

21 Q Why didn't you put it on your tax returns?

22 A Because I was paid cash

23 MR PHILLIPS I object to the noises

24 MR GROSSMAN I apologize, Your Honor

25 THE COURT Mr Phillips, wait a

Transcript of Municipal Court

1 minute Wait a minute

2 MR PHILLIPS I'm sorry Yes, Your
3 Honor

4 THE COURT I understand your problems
5 with the comments If we had a jury here, I think
6 those comments may have some sort of impact, and it
7 certainly would be possible a jury might be
8 influenced by a hmm or a really or whatever But I
9 can assure you I've been doing this for 24 years
10 It's not going to influence me a bit So you don't
11 have to get up and down and say I object to the
12 comments because I'm not paying a bit of attention
13 to them anyway

14 MR PHILLIPS Your Honor, I --

15 THE COURT You understand what I'm
16 saying?

17 MR PHILLIPS I do understand

18 THE COURT Because that's the purpose
19 of the objection is because it may have some
20 influential impact on whoever's going to decide
21 this matter I'm going to decide this matter so I
22 can assure you it's not influencing me I thought
23 I'd save you the time

24 MR PHILLIPS I have no question about
25 your ability to not be influenced by that, but I

Transcript of Municipal Court

1 don't want my witness to be influenced by that

2 THE COURT I understand that I'm
3 telling Mr Grossman not to comment on his
4 testimony but to just go ahead and ask him
5 questions

6 Q Do you know why Mr Chimento would pay you
7 in cash?

8 A No

9 Q Now, you were charged that night with
10 operating a gambling house Is that not correct?
11 Operating a gaming house? Is that not correct?

12 A I believe, sir

13 Q In general sessions court?

14 MR GROSSMAN Steve, you have that?
15 Your Honor, obviously they've opened the door to
16 this testimony by having this gentleman testify I
17 think it's perfectly appropriate

18 Q Did you plead guilty to those charges of
19 operating a gaming house, Mr Stallings?

20 A I don't know what I pled to, but I pled
21 guilty to some charges

22 Q You don't know what you pled guilty to?

23 A No

24 Q Did you have an attorney?

25 A Yes

Transcript of Municipal Court

1 Q He didn't advise you as to what you were
2 pleading guilty to?

3 MR PHILLIPS Of course, he did

4 A I don't remember is what I'm telling you I
5 had multiple charges I don't remember which ones
6 I pleaded to

7 Q What were you charged?

8 MR PHILLIPS Your Honor, that is
9 completely irrelevant

10 MR GROSSMAN Oh, it's totally
11 relevant, Your Honor

12 MR PHILLIPS It is absolutely not
13 relevant The charges he was charged with then --

14 MR GROSSMAN As to why he was charged
15 with, Your Honor, just give me an opportunity to
16 speak towards why This gentleman -- what they're
17 trying to say is that this place was not a gaming
18 house, which, of course, the most ridiculous part
19 of that argument is the fact that the resident of
20 the house has pled guilty to those charges

21 Now, I agree Had they not brought him in
22 to talk about his conduct that night and the type
23 of house that he had, I don't know if I could have
24 brought that into evidence There is no question
25 now though because they've spoken to him, I am

Transcript of Municipal Court

1 going to place into evidence his sentencing sheet
2 for his conviction of operating a gaming house
3 All I asked him was if he knew what he was
4 convicted of, if he has an attorney

5 THE COURT Show him to see if it
6 refreshes his memory of what he pled guilty to

7 MR PHILLIPS Hold on a second,
8 please My objection is you asked him what he was
9 charged with, all of the charges The charges that
10 he did not plead guilty to are in no way relevant
11 and are highly prejudicial What he plead guilty
12 to, I'm not going to object

13 MR GROSSMAN Oh, I'm just concerning
14 gambling I don't want -- I don't want to -- I
15 certainly see your point

16 THE COURT Just show that to me and
17 see if it refreshes his memory

18 THE WITNESS Your Honor, I still don't
19 see it on here, the charge

20 THE COURT Give it to me

21 MR GROSSMAN I'll point it out

22 THE COURT Where it says, in
23 disposition, there's a big capitol to, T-O That's
24 what you pled to See it right there on the top of
25 the page?

Transcript of Municipal Court

1 THE WITNESS Operating a gaming house

2 Yes, sir, I do

3 THE COURT Okay

4 A Yes I pled guilty to this charge

5 THE COURT Hand me that You want
6 this as an exhibit

7 MR GROSSMAN Yes, Your Honor Well,
8 actually I put it into evidence, Your Honor I
9 have a certified court copy, Your Honor, of his
10 sentencing sheet It was already marked as an
11 exhibit, and I'd like to put it in as evidence at
12 this time as -- I believe that would be Exhibit 4

13 THE COURT State's Exhibit 4 is a
14 court of general sessions, and it gives case
15 numbers at the top It says that Nathan Stallings
16 pleads guilty to operating a gaming house, and it
17 gives the sections of the codes And it's signed
18 by the presiding judge, and it was assigned \$747
19 And that's in the record

20 (State's Exhibit No 4 was marked for
21 identification)

22 A And I would also like to state that I stated
23 wrong when I said that the sergeant was a liar It
24 could have just been an accident in paperwork So
25 I don't want to say he was lying I don't want to

Transcript of Municipal Court

1 call him that I don't know him personally

2 Q Well, I appreciate that That's nice of you
3 to say that Were you operating a gaming house?

4 A No

5 Q Well, why'd you plead guilty to the charge?

6 A Because my attorney advised me that I was
7 offered a deal And if I take it, that charge --
8 all of these other charges would be dropped
9 including the charge of my fiance who was just
10 accepted into med school, and that would affect her
11 future education

12 Q So you pled guilty, but now you're saying
13 you were not guilty of the charge even though you
14 pled guilty?

15 A I'm just telling you why I pled guilty

16 Q That's fine One other question The five
17 defendants that are sitting here today and charged,
18 you saw the video that we played of your residence
19 that we took that night?

20 A (Nodded)

21 Q Were they seated at the tables?

22 A At the time of the video?

23 Q Yeah Were they there that night? Were the
24 five defendants who are seated here today --

25 A I don't remember the night of that video,

Transcript of Municipal Court

1 and I did not see face for face, verbatim every one
2 of these guys on the video

3 Q Were they all at your house that night?

4 A Of the video? I don't know the night of the
5 video

6 Q April 12th --

7 A That was not the night of the video Oh,
8 you mean the video when we were arrested? There's
9 two different videos out

10 Q There are I'm not trying to confuse you

11 A I was confused I want you to be clear that
12 I was confused

13 Q The night that you were arrested, were these
14 five defendants in your house playing poker?

15 A Yes

16 Q And that game was with cards?

17 A Yes

18 Q And they were wagering money on that game?

19 A Yes

20 Q And you have pled guilty to operating a
21 gaming house for that night in question?

22 A Yes

23 MR GROSSMAN That's all I got

24 MR PHILLIPS Just one clarification,

25 Your Honor

Transcript of Municipal Court

1 REDIRECT-EXAMINATION

2 BY MR PHILLIPS

3 Q The 50 cents that was taken as a rake, just
4 to be clear, is that the same 50 cents that would
5 go to pay for food and drink?

6 A Yes

7 THE COURT Anything further? Anything
8 further? You can step down

9 THE WITNESS Thank you, Your Honor

10 THE COURT You know what? I was going
11 to break at 12 30 or 1 00 How many witnesses do
12 you intend to call? Do you have any idea?

13 MR PHILLIPS Probably two more of
14 these fact witnesses and then two experts

15 THE COURT So the possibility of four
16 witnesses?

17 MR PHILLIPS Right

18 THE COURT This is the perfect time
19 for me to do it We're going to break for lunch
20 Be back here at 1 10 We will start testimony at
21 1 10

22 (A recess was taken)

23 THE COURT Are you ready to proceed?

24 MR PHILLIPS Yes, Your Honor

25 THE COURT Let's go

Transcript of Municipal Court

1 MR PHILLIPS The State would like to
2 recall Nate Stallings to the stand, please The
3 State Not the State I'm with the defense Nate
4 Stallings, please

5 MR GROSSMAN Your Honor, does he have
6 the right to recall Mr Stallings? He didn't
7 reserve the right to recall him He concluded his
8 testimony

9 THE COURT Well, I'm going to get to
10 that Have a seat, Mr Stallings

11 THE WITNESS Yes, sir

12 THE COURT What is the purpose of this
13 recall?

14 MR PHILLIPS It was information that
15 we received over lunch that directly relates to the
16 issue that he was cross-examined on, and I would
17 like the opportunity to address the issue And the
18 -- if it weren't for this information, then we
19 wouldn't need to recall him It's one -- it's two
20 questions

21 THE COURT Does the information -- and
22 I don't want to know what it is Does the
23 information relate to Texas Hold'em or the charge
24 to play Texas Hold'em?

25 MR PHILLIPS It relates to this

Transcript of Municipal Court

1 witness's and the officer's veracity

2 THE COURT I don't think we can recall
3 him for that If it had to do with Texas Hold'em
4 or something that was newly discovered evidence --
5 because I'm ruling on Texas Hold'em That's what
6 I'm ruling on And to be frank with you, whether
7 he did or did not do anything else, I don't care
8 It's immaterial to me It's not relevant to my
9 determination of this case So for any other
10 reason to call him, I'm not going to let you bring
11 him back Do we understand each other?

12 MR PHILLIPS Absolutely

13 THE COURT So unless you're going to
14 bring him back to some fact of buying, selling, or
15 dealing with Texas Hold'em, I'm not putting him
16 back on the stand

17 MR PHILLIPS I don't need him then

18 THE COURT Okay Sit down

19 THE WITNESS Thank you, Your Honor

20 THE COURT Next witness

21 MR PHILLIPS Jeremy Brestel

22 THE COURT Put your left hand on the
23 Bible for me and raise your right

24

25

Transcript of Municipal Court

1 JEREMY R BRESTEL,
2 having been first duly sworn, was examined and
3 testified as follows

4
5 THE COURT Have a seat and give us
6 your full name, please, sir

7 THE WITNESS Jeremy Ross Brestel

8 THE COURT Jeremy Ross what?

9 THE WITNESS Brestel

10 THE COURT Brestel?

11 THE WITNESS Yeah

12 THE COURT Go ahead

13

14 DIRECT EXAMINATION

15 BY MR PHILLIPS

16 Q Why don't you go ahead and spell your name
17 for the court reporter so that she can write it?

18 A B-r-e-s-t-e-l

19 Q If you can, you tend to speak kind of low
20 Try to project so at least the Judge, most
21 important person to hear you, and the court
22 reporter

23 THE COURT Yeah Speak up so that
24 everybody can hear you As best you can

25 THE WITNESS Okay

Transcript of Municipal Court

1 Q Jeremy, were you playing in the game on
2 August 12th that got busted?

3 THE COURT April 12th

4 Q Excuse me April 12th that got busted?

5 A Yes

6 Q And had you played in the game before?

7 A Yes

8 Q Were you familiar with the game?

9 A Yes

10 Q Were you familiar with Mr Stallings?

11 A Yes

12 Q Approximately how many people would play in
13 the game?

14 A Depending on the night, I mean, sometimes it
15 would be just one table of 10 people Sometimes
16 it'd be 20 people

17 Q What was the buy-in for the game?

18 A \$20 max buy-in

19 Q \$25 (sic) max buy-in? Meaning that is the
20 most you can buy in for?

21 A Yes

22 Q But you could buy in for less if you wanted
23 to?

24 A Yes

25 Q And what were the blinds?

Transcript of Municipal Court

1 A 25 cents and 50 cents

2 Q And are you familiar with how much the house
3 raked?

4 A Yes

5 Q How much did it rake?

6 A 50 cents for most hands I believe, and then
7 sometimes they wouldn't even take one

8 Q In what instances would they not take one?

9 A Once he had his pizza and the food and stuff
10 that he provided for the game, then they wouldn't
11 take a rake anymore

12 Q Would they take a rake if there was -- if
13 the blinds -- if only the blinds were -- if
14 everybody else folded, it was a \$1 50 pot?

15 A No If there was even like a \$2 pot, they
16 wouldn't take one just because the amount was so
17 small

18 Q Is there any instance in which there would
19 ever have been a \$2 rake?

20 A I don't believe so

21 Q And why not?

22 A I don't ever remember seeing it, but, I
23 mean, that was always what was -- the common
24 knowledge was always that it was -- Nate was taking
25 50 cents a hand

Transcript of Municipal Court

1 Q Would you have played in a game, a 25, 50
2 cent game that had a \$2 rake?

3 A No

4 Q Why not?

5 A The amount of money and the amount of
6 buy-in, it would eat up all the cash on the table
7 So you'd basically just be giving your money to
8 Nate to sit at the table throughout the night I
9 mean, in two hours you'd be broke The whole table
10 would be broke

11 Q Just from the rake?

12 A Right

13 MR PHILLIPS I might shorten this up
14 a lot if you give me a second

15 THE COURT Do that

16 Q How long have you played Texas Hold'em, Nate
17 -- Jeremy?

18 A Semi-seriously, and by that, I mean,
19 concentrating on it, trying to -- it becoming a
20 passion probably in five years I would say

21 Q When you first started playing, were you a
22 winner or a loser?

23 A I would say a loser most of the time

24 Q And over the course of the time, did you get
25 better?

Transcript of Municipal Court

1 A Yes

2 Q How did you get better?

3 A Just by playing, experience I read a lot
4 of books, playing online, watching it on TV,
5 studying it, really, really focusing on how to
6 improve

7 Q So do you believe that there are skills in
8 the game that would -- involved in the game that
9 would allow you to learn about them and study them
10 and work on them?

11 A Oh, absolutely

12 Q And did you try to do that?

13 A Yes

14 Q Have you had success with it?

15 A Yes

16 MR PHILLIPS Your Honor, that's all
17 the questions I have

18 THE COURT Mr Grossman

19 MR GROSSMAN I just have a few
20 questions for you, Mr Brestel

21

22 CROSS-EXAMINATION

23 BY MR GROSSMAN

24 Q How did you come to play in this particular
25 game?

Transcript of Municipal Court

1 A I was invited by Nate

2 Q Oh, so you're a friend of Mr Stallings?

3 A Oh, yeah

4 Q Now, what was the maximum that you could
5 gamble each hand?

6 A What was a maximum amount you could gamble
7 on each hand? Whatever chips you had in front of
8 you Just know when to hold 'em

9 Q Meaning that you could buy as many chips as
10 you wanted to gamble?

11 A No \$20 worth, but if you won like -- say
12 if you won \$20 from somebody else and you had 40 in
13 front of you, you could gamble 40 in front of you

14 Q But how many times could you buy in? I
15 think Mr Stallings said you could buy in more than
16 once, couldn't you?

17 A Well, yes

18 Q So that means you could gamble -- you could
19 buy in how many times? It would be an unlimited
20 amount of money you could put up, isn't it?

21 A Yeah One at a time

22 Q One at a time, right? So you could lose a
23 substantial amount of money in this game if you
24 wanted to gamble that much, correct?

25 A If you really wanted to

Transcript of Municipal Court

1 Q Just because you didn't lose -- how much
2 money was the money you lost in a night?

3 A Maybe \$100 tops

4 Q How much is the most you ever won?

5 A Maybe -- I mean, \$100 was a great night
6 winning I can't say -- I don't know Maybe 100,
7 120

8 Q \$100, \$120 How many nights of that did you
9 play?

10 A Twice a week

11 Q For how long?

12 A I don't know A month or so I think I
13 played there maybe two months

14 Q Did you ever play Texas Hold'em before you
15 started playing with Nate?

16 A Yes

17 Q How long did you play before?

18 A What do you mean how long?

19 Q How long have you been playing Texas Hold'em
20 total?

21 A Probably two years before I started playing
22 with Nate

23 Q Where did you play those games?

24 A In Atlanta where I lived

25 Q Since this incident, have you continued to

Transcript of Municipal Court

1 play Texas Hold'em?

2 A Yes I've played since

3 Q Where?

4 MR PHILLIPS Objection, Your Honor

5 THE COURT I'll rule you don't have to
6 say where it is because it is a violation of law
7 You don't have the right to divulge somebody else's
8 breach of the law

9 Q Were you friends with every single person
10 that was playing that night?

11 A No Not every single person

12 Q Did you know everyone that was there?

13 A I would say I knew most of them to some
14 fashion I mean, I wasn't best friends with them
15 or anything

16 Q Did a lot of them you'd never spoken to
17 though other than in the context of the poker game?

18 A Right

19 Q Are you aware of any qualifications that
20 anybody needed to have to get into the game?

21 A You knew somebody in the game You were a
22 friend of a friend, that type of deal I know
23 that's how a lot of people were brought in They
24 knew somebody who already played

25 Q Do you know about this internet site that

Transcript of Municipal Court

1 Mr Stallings ran that people could come and become
2 involved in a game through the internet site?

3 A Yes I think it's a meet-up site They got
4 them for --

5 Q But he uses it for poker, does he not? To
6 have people play -- to have people come over and
7 play poker?

8 A Yes

9 Q Now, as far as what Mr -- Mr Stallings ran
10 the game, right?

11 A Yes

12 Q He's the one that profited from the game,
13 right?

14 MR PHILLIPS Objection, Your Honor

15 THE COURT Well, he can answer whether
16 he thinks he profited from the game That's not --

17 MR GROSSMAN I think --

18 THE COURT Go ahead You can answer
19 that question

20 Q I think --

21 A Like I said, I don't know if he profited or
22 not I don't believe he did I think he was --

23 Q You don't have any --

24 A To my knowledge, it was -- the money paid by
25 the game was to pay for the fun provided to the

Transcript of Municipal Court

1 players, the food

2 Q But you have no direct knowledge that that's
3 the case And he could have used those profits for
4 other things, correct?

5 A If he made a profit

6 Q And he could have -- well, you just said you
7 don't know if he did make a profit

8 A Correct You just said he made a profit

9 Q If he did make a profit, he could use those
10 profits for other things, couldn't he?

11 A I suppose so

12 Q Are you aware that he had a job at that time
13 in 2006?

14 A Yeah I did know that he worked with Bob --

15 Q Really?

16 A -- in some capacity

17 Q Really, really? What capacity?

18 A I never asked I really didn't --

19 Q How close friends are you with Mr
20 Stallings?

21 A I've known him for -- I mean, I'd known him
22 for several months before I started playing like I
23 said

24 Q There's no way for you to tell how much he
25 profited from those games, correct? Other than

Transcript of Municipal Court

1 what he told you, you have no direct knowledge,
2 correct?

3 A Correct

4 MR GROSSMAN That's all I have

5

6 REDIRECT EXAMINATION

7 BY MR PHILLIPS

8 Q You saw the rake when it happened, didn't
9 you?

10 A Right, yeah

11 Q And was the rake ever more than 50 cents?

12 A No

13 MR PHILLIPS That's all

14 THE COURT You can step down By the
15 way, if these witnesses are under subpoena, and I
16 don't know that they are or they aren't, if nobody
17 has any objection, the Court will release the
18 witnesses, and they can leave the courtroom and go
19 home unless somebody wants the right to reserve
20 them and bring them back

21 MR PHILLIPS No objection, Your
22 Honor

23 THE COURT For those of you who have
24 testified, if you are under subpoena, if you desire
25 to leave the courtroom or desire to go home, you're

Transcript of Municipal Court

1 free to do so You're also welcome to stay I
2 mean, I'm not running you out, but I just want you
3 to know your requirement of being here as far as
4 the Court is concerned under subpoena has been
5 served It's over Let's go

6 MR PHILLIPS Your Honor, the defense
7 calls Mike Sexton

8 THE COURT Place your left hand on the
9 Bible for me and raise your right

10

11 MICHAEL R SEXTON,
12 having been first duly sworn, was examined and
13 testified as follows

14

15 THE COURT State your name for the
16 record, please, sir

17 THE WITNESS Michael Richard Sexton

18 THE COURT By the way, before you
19 start, I just realized when I turned my hip, I
20 violated my own rule I didn't take off my cell
21 phone, and I don't like cell phones in the
22 courtroom And then I hustled in here, but when I
23 turned my hip I felt it

24 (Off-the-record discussion)

25 THE COURT Let's go I'm sorry to

Transcript of Municipal Court

1 hold you up

2 MR PHILLIPS No problem

3

4 DIRECT EXAMINATION

5 BY MR PHILLIPS

6 Q Mr Sexton, can you tell me where you live?

7 A I live in Las Vegas, Nevada

8 Q And what is it that you do?

9 A I'm a commentator on the World Poker Tour
10 and a long time professional poker player

11 Q How long have you been a professional poker
12 player?

13 A Over 30 years

14 Q Could you tell the Court when you started
15 and where you started and how you got involved?

16 A I started playing full-time back in 19 --
17 late 1977 when I lived in Fayetteville, North
18 Carolina and just went to home games there and
19 started playing there And, you know, that's how I
20 made a living for about eight years in North
21 Carolina, and then one year I went out to the World
22 Series of Poker I always wanted to try and do
23 that

24 I was an avid Little League coach back in
25 those days, and I coached for about six years So

Transcript of Municipal Court

1 little league season was -- you practiced in April,
2 and the season was in May And that's when the
3 World Series of Poker was back in those days, and
4 you could only play in one event every other day at
5 the World Series at that time

6 So I decided to take a week's vacation, went
7 out and played in the main event -- or not the main
8 event but in several events, three events at the
9 World Series of Poker, made two final tables And
10 it was at that time that I said, if I'm going to
11 play poker for a living and want to play these big
12 time tournaments, I need to move to Las Vegas I
13 did so in January of '85, and I've been there ever
14 since

15 Q What were you doing in North Carolina?

16 A Well, I joined the Army to be a paratrooper
17 and got stationed at the 82nd Airborne Division in
18 Fort Bragg, North Carolina And when I got out of
19 the Service, I was offered an opportunity to work
20 as a sales rep for the military bases in North and
21 South Carolina, and I did that for about
22 three-and-a-half years And I got a divorce after
23 maybe three years, maybe too much poker But I
24 ended up deciding to quit the job and just play
25 poker for a living because I loved to play, and I

Transcript of Municipal Court

1 was good at the game

2 Q And what year was it that you moved to Las
3 Vegas?

4 A I moved to Vegas in January of 1985

5 Q In those 30 years that you have called
6 yourself a professional poker player, have you also
7 called yourself a professional poker player to the
8 IRS?

9 A Yes, completely

10 Q And have you filed returns for all those
11 years?

12 A I have filed returns for all those years

13 Q And did you post incomes for all those
14 years?

15 A I posted incomes for all those years

16 Q As you started into the game of Texas
17 Hold'em, did you start off by being a winner?

18 A I did Actually I started playing poker
19 when I was 13 years old When I got to college is
20 where I really learned I was much better than the
21 average guy playing cards, any kind of card game
22 I had a knack for cards

23 And so that's when I really knew that I
24 could do well at playing cards and playing poker,
25 for example And when I played in the home games,

Transcript of Municipal Court

1 I was very successful in them and really loved to
2 play poker so that's what I decided to do And I
3 was single again, and I thought, you know, if I get
4 broke, I can always go back and get another job
5 And for the next 20-something years, I never had a
6 paycheck I literally played poker every day for a
7 living

8 Q And did you improve in those 20 years?

9 A Well, I hope so Poker's a never-ending
10 learning experience You can always continue to
11 learn more about poker, and even once you think you
12 know everything about the game, you can certainly
13 learn more about the opponents that you're playing
14 against because poker's a people game, and knowing
15 your style, the play of your opponents, and their
16 tendencies is definitely going to help you as a
17 player So you can always learn as a poker player
18 so I hope I'm still learning even today

19 Q Is there something that you have brought
20 with you today that may assist you in the court in
21 demonstrating the game of poker?

22 A Yes We brought some examples of tendencies
23 that emphasize of the skill aspects of poker

24 MR PHILLIPS I would like to
25 introduce what we've previously talked about as

Transcript of Municipal Court

1 Defense Exhibit, I guess, 2

2 THE COURT Defense Exhibit 2

3 (Defense Exhibit No 2 was marked for
4 identification)

5 Q Go ahead and I guess finish taking us a
6 little bit through your career You played --
7 started playing in Vegas, and then what happened
8 after that?

9 A Well, I've been a long-time player for over
10 20 years I was finally invited back in the mid
11 '90s to become a writer for Card Player Magazine
12 because I'd won a big tournament in Las Vegas, and
13 the owner of the magazine said, would you write a
14 column about this? I did so, and her name was
15 Linda Johnson She was so happy with it that she
16 said, I'd like you to become a full-time writer for
17 me So I started writing the column, I did so for
18 over 10 years, called Inside Professional Poker
19 where I'd comment on hands or situations or
20 anything in the poker-related world And I did
21 that and then wrote for a number of other
22 publications

23 I've also been an instructor at seminars and
24 boot camps and various things as well as I offered
25 a best-selling poker book that made the New York

Transcript of Municipal Court

1 Times best-seller book called Shuffle Up and Deal
2 And then I got opportunities to work as a
3 consultant in the poker world, and for a couple
4 businesses, I did that And then I was offered the
5 opportunity to become a commentator on the World
6 Poker Tour, and we're now in our seventh season

7 Q And do you -- in addition to commentating
8 for the World Poker Tour, do you still also play
9 poker?

10 A I play once in a while when I get a chance
11 I still like playing the big-time tournaments And
12 I do play in some games every once in a while when
13 the opportunity presents itself But I now have a
14 six-month-old child so I don't get a chance to play
15 as much as I might like to, but when the
16 opportunity presents itself, I do enjoy playing

17 Q Tell us about some of your successes in
18 terms of your tournament play

19 A Well, I've won numerous major tournaments
20 over the course of my career, including the World
21 Series of Poker bracelet I won back-to-back big
22 titles at the Four Queens Championship back in the
23 '90s I was the first player to win the \$10,000
24 buy-in tournament at Foxwoods at the World Poker
25 Finals I was the first American player ever to

Transcript of Municipal Court

1 win the European Poker Championship in 2000 In
2 2006 I won the 2006 Tournament of Champions at the
3 World Series of Poker, and \$1 million first prize
4 in that event too

5 Q What did you do with that \$1 million first
6 prize money?

7 A Well, I gave 500,000 of it to five
8 charities

9 Q And did you -- I'm sorry What year was
10 that?

11 A 2006

12 Q So that's just two years ago Three, almost
13 three years ago

14 MR PHILLIPS Your Honor, at this time
15 I would like to present Mr Sexton as an expert on
16 the game of poker and specifically the game of
17 Texas Hold'em

18 THE COURT Any questions as to his
19 qualifications? I accept him as an expert in poker
20 and particularly Texas Hold'em Go ahead

21 MR PHILLIPS Thank you

22 Q How is the game played?

23 A Well, we have a demonstration here that
24 shows you how the game of Texas Hold'em is played
25 I believe if we want to, it'd be simpler to show

Transcript of Municipal Court

1 this

2 (The DVD was played back for the
3 Court)

4 MR PHILLIPS That's all for now if we
5 could -- I just wanted to tell you there's going to
6 be a few times back and forth I apologize for
7 that, but right now we won't need it for the
8 moment

9 Q In general, how is the outcome of a hand of
10 Texas Hold'em determined?

11 A Well, there are two ways a player can win a
12 pot The first way is someone can bet and everyone
13 folds their hand, and that person takes down the
14 pot That happens in more than 70 percent of the
15 hands that are dealt incidentally playing No Limit
16 Hold'em Most of the time, the cards never go to a
17 showdown The pot is won way prior to that

18 The other way you can win is the betting
19 goes throughout the course of the hand And if
20 there's two or more players in the pot, at the end
21 of the hand, they turn their cards face up, and the
22 best hand wins the pot

23 Q What do you believe the result of Texas
24 Hold'em in terms of -- looking at it in chance and
25 skill, what do you believe determines the result?

Transcript of Municipal Court

1 A Well, when you talk about chance and skill
2 in poker, chance, I think all of us would agree,
3 are the cards that you get in the randomness that
4 they're dealt out there The skilled elements of
5 poker are the elements that the player has total
6 control of, and he has total control of the
7 betting, the calling, and the folding So when you
8 talk about skilled elements of poker, it's the
9 actions that the player has total control of, which
10 are his options of betting, calling, or folding
11 when it's his turn to act

12 Q Could we put that -- could we name that
13 decision making?

14 A Decision making is very good I mean, in
15 poker you're constantly faced with decisions as to
16 what to do, and certainly as we say, the object of
17 poker is to make correct decisions That's the
18 object of the game If you make enough correct
19 decisions, you're going to be a winning player If
20 you make poor decisions, you're going to be a
21 losing player It's really that simple

22 Q Is that something that you can improve, or
23 is that something -- if you just don't have a good
24 mind for numbers, you can't play poker, or if you
25 do, you can? Can the average person learn how to

Transcript of Municipal Court

1 play poker and improve at it?

2 A Oh, there's no question about it In fact,
3 I personally believe anyone who wants to become a
4 winning poker player can do so And I say that
5 because there's enough data, over 800 books on
6 poker now There's poker simulations You can
7 watch the World Poker Tour or other poker shows and
8 become a better player You can do analysis of
9 hand situations with someone whose game that you
10 respect There's many ways to become a winning
11 poker player now, and anybody that applies
12 themselves and wants to work at the game to become
13 a winning player can do so I firmly believe that

14 Q I believe that we have an example next maybe
15 of a hand that is an example of a poor decision

16 A Well, when we talk about playing poker, the
17 difference between the real successful players and
18 the amateur or novice-type players I believe is
19 that the amateurs play too many pots, and they call
20 their money off too much And they make too hasty
21 of decisions An example we're going to see here
22 is an amateur player who made it to the final table
23 of the World Poker Tour, quite an achievement
24 He's up against a top pro in this hand, and he
25 makes a mistake that cost him a lot of chips And

Transcript of Municipal Court

1 we'll be happy to look at this Go ahead

2 MR PHILLIPS I think maybe we can do
3 this with the lights on If not --

4 THE COURT Mr Grossman, can you see
5 this with the lights on?

6 MR GROSSMAN Yeah

7 THE COURT That's fine I just want
8 to make sure he can see Okay

9 (The DVD was played back for the
10 Court)

11 Q In a little slower manner, analyze what
12 happened there

13 A Well, what happened is a player made a
14 straight on the river There was a possible flush
15 out there He made a bet The guy went over the
16 top, all in as we say, meaning he bet all his
17 chips, and without even thinking about what this
18 guy might have, he just called him because he made
19 the hand he was drawing in He should have
20 recognized, what could this guy possibly be raising
21 with here? In this situation for all his money, he
22 should have seen the possible flush and perhaps --
23 I mean, I think any top player would have got away
24 from that hand It cost him a lot of chips

25 Q By any top player, you're meaning a more

Transcript of Municipal Court

1 skilled player?

2 A Correct

3 Q You submitted an affidavit to the Court that
4 identifies some of the skills that one employs in
5 playing poker, and I wonder if we could talk about
6 those

7 MR PHILLIPS Is the fact that it's
8 been filed with the Court, is it part of the
9 record, or do I need to --

10 THE COURT The affidavit that's been
11 filed with the Court is part of the record It
12 doesn't mean that Mr Grossman can't cross-examine
13 him on it

14 MR PHILLIPS Absolutely

15 THE COURT But it's part of the record
16 because it's been filed

17 MR PHILLIPS Thank you

18 Q The first skill that you have identified is
19 putting your opponent on a hand Explain that

20 A Well, in Hold'em poker everybody gets two
21 down cards Now, obviously if you play poker
22 against someone whose down cards were face up and
23 you could see them, even the most novice player in
24 the world could beat the greatest player in the
25 world if he could see that person's cards

Transcript of Municipal Court

1 So one of the skills in poker, I believe
2 probably the top skill in poker, is to try to be
3 able to identify your opponents' two put-down
4 cards, and you do that by a computation of betting
5 action, the style of this player, what's happened
6 previous when it's got to him So in other words,
7 you try to determine what two cards he has facing
8 down, and the more skilled players do this than the
9 less skilled players

10 Essentially when you're playing poker, you
11 watch all the action Even if you're not in the
12 pot, it doesn't matter You can get better at this
13 skill by just trying to guess and figure out what
14 these guys' cards are based on the betting action
15 and their style of play, their body language, et
16 cetera They may have some tales to them as we
17 say, which are -- might indicate the weak and
18 strength, the weakness of their hand There's so
19 many factors that go into poker other than two
20 cards, and certainly putting an opponent on hand,
21 trying to figure out what he's got is a premium
22 skill that the better players have that the average
23 players don't

24 Q Doesn't Doyle Brunson have something he says
25 about that?

Transcript of Municipal Court

1 A Well, Doyle Brunson, for those that don't
2 know, is a two-time world champion, the godfather
3 of poker, and he's wrote books on poker called
4 Super System, which is a premier book in the poker
5 world But he really believes he can beat a No
6 Limit Hold'em game without ever looking at his
7 cards, where the cards don't matter He plays the
8 people, the position, and he believes that by
9 betting at the pot, that you can win hands, and it
10 doesn't matter what your cards are

11 This is what we call, you know, being able
12 to put your opponent on a hand, reading his
13 tendencies and style of play, and applying the
14 skill of betting and poker, which is a premium
15 skill in poker And certainly people that play
16 poker understand the fact that by betting you can
17 win a pot two different ways You can run
18 everybody out of the pot and take down the pot, you
19 know, or you can win the pot if somebody calls you
20 in a showdown situation Whereas if you call
21 somebody, meaning they've bet in front of you and
22 now you've called them, you only have one way you
23 can win a pot You must have the best hand

24 So therefore, just in terms of simple math,
25 you know, most good players can instantly recognize

Transcript of Municipal Court

1 that betting gives you a two-to-one advantage over
2 calling when it comes to playing poker That's why
3 most all the great poker players are very
4 aggressive-style players They understand the
5 advantage you have when it comes to betting

6 Q I believe that kind of gets us to your
7 second point of your skill when you said knowing
8 when to bet and how much to bet Do you have
9 anything you would like to add to what you just
10 said?

11 A Well, yeah As I said, the game is all
12 about betting I mean, you have a purpose every
13 time you're betting Sometimes you want to run the
14 opponent out of the pot so you might make a little
15 bigger bet Sometimes you might have the best hand
16 possible at that moment and you want the guy to
17 call you so you make a smaller bet We have value
18 bets

19 There's a lot of different reasons that you
20 can bet Many skill factors go into betting, but
21 certainly betting is what the game is all about
22 And the more skillful players know when to bet and,
23 just as important, when not to bet and when to get
24 away from a hand

25 Q The third element you have is math

Transcript of Municipal Court

1 knowledge How is math knowledge important in
2 poker?

3 A Well, math knowledge is important in poker
4 because you need to understand when you have the
5 best of it, so to speak In other words, when you
6 can put your money in the pot, when you have a
7 probable expectation to make money, and certainly
8 knowing the pot odds, for example, and the math
9 computations is an asset in poker And if you want
10 I'd be happy to give you an example

11 Q Give us an example of this situation Of
12 the situation of if you're holding the same cards
13 in two different situations and the bet that comes
14 out is the same bet and how your knowledge of
15 probability and math would change your decision on
16 whether -- what your actions should be at that
17 point

18 A Let's assume, for example -- I don't know
19 whether you know how to play poker or not, but
20 assume the four cards on the board are an ace, a
21 nine, a six, and a deuce of all different suits
22 So at this particular moment, the best hand would
23 be three aces Now, suppose you're holding a
24 seven/eight in your hand Now, you know in your
25 mind that if you catch a 10, you're going to make a

Transcript of Municipal Court

1 straight If you catch a five, you're going to
2 make it a straight In either one of those
3 situations, you'll have the best hand possible
4 where nobody can beat you

5 So let's assume going to the river card,
6 your opponent bets you \$200 Now is where you put
7 your math odds and your computations to work if
8 you're a skilled man in poker And the first thing
9 you have to understand is, okay, what are the odds
10 of me making my straight and winning this hand?

11 Now, we know there's 52 cards in the deck
12 You have two cards, you're looking at four cards on
13 the board, and your opponent's got two cards that
14 you assume is like ace, king or ace, queen or
15 something So that's 44 cards that are missing
16 You know that you have eight cards that you can win
17 the pot with Any of four 10s, any of four fives
18 So you have eight cards That means your opponent
19 has 36 cards he can win the pot with So
20 therefore, you divide eight into 36, and you
21 understand that you're a four-and-a-half to one
22 underdog to win this pot So you know that because
23 of your math knowledge and your skill in poker,
24 you're a four-and-a-half to one underdog to win
25 this pot

Transcript of Municipal Court

1 Now, the guy that bets you \$200 Now, what
2 you do is look at the size of the pot Let's
3 assume there's \$1,000 in the pot Now, you add
4 that guy's \$200, and now you see there's \$1,200 in
5 the pot It cost you 200 to make the call
6 Therefore, you're getting six to one odds on your
7 money Now, you know you're only a four-and-a-half
8 to one underdog to win this pot Therefore, the
9 correct decision, the right play for you is to call
10 in this situation because you're getting a better
11 price than you're supposed to get to win this pot

12 Now, let's assume on the other hand, the guy
13 bets \$200 on the river, and there's only \$400 in
14 the pot Now, the total is \$600 Therefore,
15 you're getting three to one odds Pot odds is what
16 we like that call it Now, you know you're a
17 four-and-a-half to one odds to win this pot, yet
18 you're only getting three to one odds on your
19 money So now the correct decision is to take the
20 seven/eight and throw it away and not make the call
21 because you're not getting the right price

22 So here you have the same hand, the same
23 draw The difference is as far as correct
24 decisions in poker go, in one situation you're
25 supposed to call On the other situation, you're

Transcript of Municipal Court

1 supposed to throw the hand away And when we talk
2 about math knowledge and pot odds and skillful
3 play, these are some of the factors that come into
4 play for the more skillful players, and this is
5 what you need to do if you want to be successful at
6 poker

7 Q Now, you're throwing around some pretty big
8 numbers, hundreds of dollars and thousands of
9 dollars Now, what if you're playing in a 25, 50
10 cent game? Do the same principles apply?

11 A 100 percent Same principles apply You
12 just calculate it down, the amount it costs you to
13 play versus the amount that's in the pot I just
14 use that for an example, but any amount of money
15 would do it It doesn't matter what the stakes
16 are

17 Q And also knowing the math knowledge, you
18 don't have to wait till you get to the turn of the
19 river I mean, your math -- tell me about what you
20 need to know about the strength of starting hands?

21 A Well, certainly when you play poker, when
22 you're first starting out, you should play premium
23 hands as we say, two aces, two kings, ace/king
24 suited As you become a more experienced player
25 and you're confident what to do on the flop, on the

Transcript of Municipal Court

1 turn, on the river, for example, you can widen your
2 starting horizon of hands, expand your play because
3 you're going to be comfortable in knowing when to
4 throw your hand away on the flop and when you
5 should play a pot And this comes with experience,
6 it comes with skill, and it comes when you improve
7 in the game And certainly all players improve in
8 the game when you're first starting out to play

9 Q The fourth element you've listed is folding
10 Would you like to say anything more about folding?

11 A Well, folding is when you throw your hand
12 away and you don't invest any money in the pot
13 And very simply in poker, money saved is money
14 earned And, you know, for many players folding is
15 the best play possible on many occasions and one
16 that -- you might not make money in that pot, but
17 you're saving money from not losing it by playing a
18 poor hand So folding is definitely a very
19 skillful aspect of poker

20 Q What about bluffing?

21 A Well, bluffing is a very key aspect
22 especially playing No Limit Hold'em, what we call
23 big bet poker where you can make a big bet out of a
24 pot and run somebody out You know, one thing you
25 have to understand about poker, it's not about the

Transcript of Municipal Court

1 cards That's a small aspect of winning at poker
2 The truth is there's so many more skillful elements
3 of poker, bluffing being one of them, meaning you
4 win pots without having the best cards In fact, I
5 think when I brought some examples of showing
6 guys -- now, these are people playing at a World
7 Poker Tour final table They are playing for a
8 million-and-a-half-dollar first place prize so you
9 know they're very serious and intent on trying to
10 win, and yet they have the moxie and the skill to
11 bluff their money without any cards and intend to
12 win this million-and-a-half-dollar first place
13 prize So if you want to see some examples of
14 bluffing, we've got several

15 (The DVD was played back for the
16 Court)

17 A There's a perfect example that you don't
18 have to have the best cards to win when you're
19 playing poker But to make that play takes a lot
20 of skill to bet your money like that, but he
21 analyzed the situation perfectly He understood
22 Kenna raised the pot Once the middle guy didn't
23 raise and come over the top, he knew he wasn't that
24 strong so it's the perfect time to move all in
25 right there If you can get by the first guy,

Transcript of Municipal Court

1 you're most always going to get by the second guy

2 So it was a very good play

3 MR PHILLIPS And let's go ahead and

4 watch the other two

5 (The DVD was played back for the

6 Court)

7 A So, again, it's a situation, the best hand
8 didn't win the pot, but the guy making the skillful
9 play of betting won the pot

10 MR PHILLIPS That pot dealt with

11 pocket threes against pocket nines, and the pocket

12 threes won I believe this next hand regarding a

13 bluff involves the exact same hand of pocket threes

14 but with a different outcome

15 (The DVD was played back for the

16 Court)

17 A Now, there's a case of an amateur playing --

18 outplaying a former world champion in poker in

19 Scotty Wynn because he had the skill elements to do

20 it He had the action to fire up that pot and

21 bluff at it So it just shows you, you don't have

22 to be a top pro to be a good poker player

23 Amateurs are good poker players too, but they're

24 more skillful He's more skillful than the average

25 bear or he couldn't have made that bet So you got

Transcript of Municipal Court

1 to chalk it up to him

2 Q Would you agree that not only do you not
3 have to be a top pro to be competitive sometimes,
4 but you don't have to catch -- catching cards is
5 also not predominant?

6 A Well, it always helps obviously, but
7 certainly it's not a predominant factor when it
8 comes to winning at poker There's so many skill
9 elements in poker, and, you know, I just believe
10 that a player that applies all the skills to poker,
11 and there are many of them, will become winning
12 poker players, no question about it

13 Q You mentioned some percentages a little
14 while ago I think you said either 70 or more than
15 70 percent of the hands never go to showdown So
16 the players don't know what each other has as they
17 hold cards, correct?

18 A Correct

19 Q What happens with the remaining 25 or 30
20 percent?

21 A Well, they'll go -- when we talk about a
22 hand not going to showdown and people win the pot
23 early because of their skillful betting, we're
24 talking about somebody raising the pot, for
25 example As soon as they get their first two

Transcript of Municipal Court

1 cards, everybody might fold And most of the time,
2 over 70 percent of the time in poker, that's what
3 happens when you're playing No Limit Hold'em
4 Players win pots without -- whether they have the
5 best hand or not, you never know because it doesn't
6 go to a showdown

7 When we talk about a showdown, if poker were
8 strictly a chance game and strictly a luck game,
9 then obviously everybody would get their two cards
10 They'd turn the five cards up in the center There
11 would be no betting whatsoever Nobody would fold
12 And you'd turn up your cards, and the best hand
13 would win the pot That would be luck It would
14 be all chance, but it's not the way the game is
15 played

16 Once you incorporate betting into the mix,
17 everything changes The dynamics change in poker
18 And certainly the more skilled players understand
19 the power of betting, when to bet, when not to bet,
20 and it gives them an edge But in truth over 70
21 percent of the time, which is a lot, very
22 predominant factor I think when it comes to playing
23 poker, the hands don't go to a showdown The pot
24 is won before anybody shows any cards

25 Q The sixth skill you identify is changing

Transcript of Municipal Court

1 gears What do you mean by that?

2 A Well, when we talk about changing gears in
3 poker, predictable players are very easy to beat,
4 especially by the more skilled players So what
5 you want to do in poker is sort of change gears,
6 and by that we mean, if you've been playing real
7 aggressive, you want to tone it back down and start
8 playing tight for a while But on the other hand,
9 if you've been playing very tight at the table and
10 your image by the other players is you're a very
11 rock solid, tight player where you're not going to
12 come into a pot unless you have aces or kings, then
13 maybe it's time for you to step it up a notch and
14 play more aggressive, raise some pots, pick up some
15 blinds and antes

16 So we talk about changing gears and
17 camouflaging the strength of your hand, and these
18 type of things, it will definitely make you a
19 better poker player You don't want to be a
20 predictable poker player You don't want to be
21 easy to read by your opponents because in truth the
22 more skilled players will just pick you off like a
23 lion looks at a limping gazelle It'd just be the
24 same

25 Q I believe we have one example of that

Transcript of Municipal Court

1 A We have an example of one of the great poker
2 players in the world, Daniel Negreanu, who actually
3 slow plays a pair of aces

4 (The DVD was played back for the
5 Court)

6 A Daniel's hand's the next one after this, but
7 this is a fun hand to watch This is another
8 example of a bluff with tremendous instincts shown
9 by the other player Watch

10 MR PHILLIPS Chuck, would you pause
11 it right there, please?

12 Q Explain what those percentages on the side
13 mean

14 A Those percentages on the side meant that if
15 the cards were dealt out with no betting, that
16 would be the percentage each of those players would
17 have a chance to win that pot It's just so the
18 public will understand if there was no betting who
19 would be the favorite to win the pot That's all
20 that is

21 Q And as a player, should you know what your
22 percentage is?

23 A Well, you always try to make the best guess
24 possible as to what your percentage is by putting
25 your opponent on the hand, skill number one that we

Transcript of Municipal Court

1 talked about earlier And certainly if you're good
2 at that skill and you can put your opponent on a
3 hand, then obviously you should know the
4 percentages of your opportunity to win the pot

5 (The DVD was played back for the
6 Court)

7 A So that's a very powerful play by Kenna
8 James He bluffed three times in a row When
9 you're playing for a million-and-a-half-dollar
10 first place prize, it's really a strong poker play

11 MR PHILLIPS Now, we'll go to the one
12 we thought we were seeing is the changing gears
13 We only got two more so we're almost done

14 (The DVD was played back for the
15 Court)

16 (Off-the-record discussion)

17 Q Now, what is the poker world 's general
18 opinion of Daniel Negreanu?

19 A Well, certainly Daniel's one of the great
20 players in the world, no question about it He's
21 the all-time money leader in the history of the
22 World Poker Tour He's won World Series of Poker
23 bracelets He's been the best all around player at
24 the World Series of Poker So he ranks up there
25 with the best in the world

Transcript of Municipal Court

1 Q I'm doing this, -- putting this out there
2 because you won't do it yourself Have you ever
3 had an occasion to play him heads up?

4 A Well, I have actually He's the guy that I
5 played heads up for the 2006 World Series of Poker
6 Tournament of Champions And we actually played
7 heads up for about seven-and-a-half hours, and I
8 was fortunate to come out on top

9 Q The next element that you have listed as a
10 skill is patience and discipline

11 A Well, I list it as a skill because I believe
12 the biggest mistake that amateur players make is
13 they play too many hands, and they call their money
14 off too much The more skillful players have more
15 patience and discipline, which is what you need to
16 become successful at poker Besides paying
17 attention all the time as to every single thing
18 that's going on, you need to exert patience and
19 discipline If you're not getting good cards, you
20 don't want to force the action so to speak You
21 need to demonstrate that to be successful in the
22 long run

23 Q We got three elements and one clip The
24 eighth element is self-control

25 A Well, when I talk about self-control, I'm

Transcript of Municipal Court

1 talking about, if you play poker, it doesn't matter
2 how good you are or how bad you are At some point
3 you're going to take what we call bad beats In
4 other words, you're going to have all your money in
5 there when you're a big probable favorite to win
6 the pot, then your opponent's going to get lucky
7 and outdraw you and win the pot

8 Now, when this happens it's very important
9 to maintain self-control, as we call it, as I call
10 it anyway, because you don't want to go on tilt or
11 steam, in other words In other words, because you
12 took a bad beat there you don't want to just fire
13 your chips in the next pot trying to get your money
14 back right away You've got to maintain your cool

15 I mean, one thing you have to remember as a
16 poker player, you know, you can't control the
17 chance or the luck element, but you can control how
18 you react to it And certainly the more skilled
19 players maintain their cool and composure better
20 than the average do

21 Q You're kind of putting a couple of those
22 together, changing gears, patience and discipline,
23 self-control Let's look at the last clip It's
24 another Daniel Negreanu clip, and see how those may
25 have been applied here

Transcript of Municipal Court

1 A This is a fun hand

2 (The DVD was played back for the
3 Court)

4 Q Explain that hand to us

5 A Well, you saw that hand, and, you know, the
6 amateur decided to bluff his last million dollars
7 in that spot, and it just took a lot of heart for
8 Daniel to make that call You know, I think many
9 people, most of them would have laid that down, but
10 I really think he realizes that there was over a
11 couple million dollars in the pot And had EBJ had
12 a hand to start with, he's not going to fool around
13 with two opponents in that pot He's going to bet
14 right on the flop because he only had \$1 million
15 left

16 So there was so much money out there I think
17 he would have bet had he had anything You just
18 can't give your opponent any chance when Daniel's
19 facing to make a jack to make a straight and the
20 other guy's facing to catch a nine to make a full
21 house, for example

22 So I believe Daniel -- even though he was
23 saying, I think he got three queens He knew he
24 didn't have three queens, or he would have bet on
25 the flop I just think he picked him off Once he

Transcript of Municipal Court

1 talked to him, once he asked him how many chips he
2 had, once he looked at his poker face, I think he
3 could read the guy that he didn't have anything,
4 and he made the call

5 Q The ninth element of skill that you mention
6 is playing position Now, why is position on the
7 table important?

8 A Well, when we talk about position -- in real
9 estate they talk about location, location,
10 location In poker we talk about position,
11 position, position Position is where you're
12 sitting in relation to the blinds and the butt
13 When you're back on the back and you're on the
14 butt, and that's the most stable position that you
15 can be in because you get to act last after
16 everybody already makes a decision

17 And acting last -- in other words, you get
18 to gather the information of what they're doing,
19 whether they're checking or betting or whatever
20 they're doing before you have a chance to act
21 It's a big advantage For example, if you were in
22 first position, under the gun as we call it, you
23 picked up a pair of 10s, it's a pretty good hand
24 You're going to invest money in this pot

25 Now, suppose the guy behind you raises the

Transcript of Municipal Court

1 pot, and then the guy behind him raises the pot,
2 and then the guy behind him goes all in Well, now
3 when it gets back to you, you know that your two
4 10s are not good So you've lost some money in
5 this pot If you had that same pair of 10s back on
6 the button and this guy raises and this guy raises
7 and this guy now goes all in, you can now take your
8 two 10s and throw them away because you know
9 they're no good

10 So on one case you've lost money with two
11 10s When you're in a favorable position, you save
12 money with the two 10s So as you can see, acting
13 last behind your opponent, having the advantage to
14 see what they do first before you have to make a
15 decision as to what to do, it's favorable, and you
16 have to learn how to take advantage and play
17 positions properly

18 When you're in early position, normally
19 you're supposed to have a stronger starting hand
20 because you don't know what anybody has As
21 players fold and fold and fold and fold, however,
22 if you're back toward the button, you don't need
23 that strong of hand because all you got to do is
24 get by the two blind hands instead of seven or
25 eight other players So position is a very

Transcript of Municipal Court

1 important aspect of being successful at poker, and
2 playing position correctly is definitely a skill in
3 poker

4 Q The last skill that you mention is just
5 continuing study and increasing your skills by
6 reading the large body of literature that's
7 available

8 A Well, I put that in there because I truly
9 believe that everybody that wants to become a
10 winning poker player can do so I like to relate
11 poker to golf in a lot of different situations, and
12 most golfers don't want to go to the range and beat
13 balls for hours They don't want to practice out
14 of the sand pit for hours They don't want to
15 practice their putting for hours, and most poker
16 players are in that same category They don't want
17 to go out and read books They don't want to do
18 analysis They don't want to study and analyze
19 hands All they want to do is go to a poker table,
20 find an empty seat, and hopefully get lucky and
21 win

22 But in truth poker is not like/unlike
23 anything else in the world Those that prepare to
24 win do better than those that don't, and I believe
25 those that take time to study and learn the game

Transcript of Municipal Court

1 better and always continue to educate themselves
2 and improve are going to be successful players

3 Q All the other -- you only listed 10 skills
4 I believe it's your position that there are many
5 more, is that correct?

6 A Oh, there are definitely many more skills in
7 poker Certainly it's far more than about playing
8 the two cards you get because as I said, most of
9 the time, it doesn't come down to a showdown or
10 even show the cards as to who wins the pot, but the
11 many aspects of poker, implied odds, knowing your
12 opponents, et cetera, et cetera, it's a very
13 complex game

14 Q How would you respond to the following
15 critical question? No matter how skillful a player
16 is, in the end it's the cards who determines who
17 wins anyway

18 A Well, I disagree with that because as I've
19 said, most of the time the pots are won before the
20 cards are ever shown So I would disagree with
21 that theory that -- because primarily most of the
22 time, it doesn't come down to the cards, and it
23 really doesn't even matter if the guy's got good
24 cards or bad cards By using the skill elements of
25 poker -- the skill elements are the actions that a

Transcript of Municipal Court

1 player can take He controls all the actions, the
2 betting, the folding, the calling, and so,
3 therefore, he determines -- many times it's all
4 about the betting and the skillful play of who's
5 maneuvering around that wins the pot It's not the
6 cards

7 Q One other statement that has been made is
8 that no amount of skill that you possess can change
9 a deuce to an ace So how is it a game of skill?

10 A Well, it's true You can't change an ace
11 from a deuce But you can recognize that the more
12 skillful players will win more money when they
13 catch an ace, and they'll lose less money when they
14 catch a deuce And all of those things add up in
15 the long run of being a successful player So
16 certainly taking advantage and winning the maximum
17 when you play a pot as opposed to losing the
18 minimum, when you played with a deuce, for example,
19 if you played with it, all those are factors when
20 becoming a winning, successful poker player And
21 the more skillful players do those things better
22 than the less skilled

23 Q I believe you said for the first seven or
24 eight years of your poker-playing career, you
25 played it in home games, is that correct?

Transcript of Municipal Court

1 A That is correct

2 Q Do some home games have rakes and some not?

3 A Most home games that I played in had a rake
4 in those days, but some don't Some are just
5 friendly guys that all have a hobby of playing
6 poker They may rotate around to each other's
7 house once every other week or something like that,
8 or there may not be a rake But every home game
9 I've ever played in, they always take out enough to
10 pay for the refreshments or the beer, whoever's
11 hosting the game

12 Q In your experience, is it -- doing the math
13 of a 25 cent, 50 cent blind game with a \$20 maximum
14 buy-in, is it plausible to take out 50 cents from
15 the pot as a rake to cover the expenses?

16 A It's very plausible

17 Q Is it plausible to take out \$2 as a rake and
18 keep the game going?

19 A It would not continue to go because the
20 money would dry up in just a couple hours' time if
21 you were raking that much money out of the pot in
22 such a small game

23 Q Mr Sexton, do you have an opinion as an
24 expert in poker as to whether or not the
25 predominant skill or the predominant factor in

Transcript of Municipal Court

1 poker is skill or chance?

2 A There's no question in my mind that skill
3 predominates over chance when it comes to playing
4 poker Absolutely no question

5 MR PHILLIPS I have nothing further,
6 Your Honor

7 THE COURT Mr Grossman

8 MR GROSSMAN I just have a few
9 questions

10

11 CROSS-EXAMINATION

12 BY MR GROSSMAN

13 Q Most things contain elements of skill and
14 chance, don't they?

15 A Pardon?

16 Q Most things contain elements of skill and
17 chance?

18 A Yes

19 Q You're saying today that a skill is where
20 you sit at the table Is that one of the skills,
21 position?

22 A I'm saying playing position is a skill

23 Q Playing position

24 A Correct

25 Q And you're saying that knowing when to fold

Transcript of Municipal Court

1 is a skill? Knowing how to read the other players
2 is a skill?

3 A Yes, sir

4 Q But there's also luck in the hands you're
5 dealt, right?

6 A Cards are definitely a factor I mean, if
7 the best hand won every time, there would be no
8 game of poker

9 Q So you say

10 A Chance is an element of poker, but it's not
11 the predominant factor

12 Q I'm an amateur I don't know anything about
13 poker, but there's a chance even somebody as
14 unskilled as I to beat you in poker, correct? A
15 chance It might be a very minuscule chance

16 A Yeah You might beat me in one hand, maybe
17 even in one session, but if we played every day for
18 a week, every day for a month, you know, I think
19 you would have a million to one chance to beat me

20 Q I would agree, but there still would be a
21 chance because anybody can play poker, a smart
22 person --

23 A Right

24 Q -- a dumb person, a good person, a bad
25 person It doesn't make any difference

Transcript of Municipal Court

1 A That's the beauty of the game

2 Q Anybody can play Well, let me ask you a
3 question If two people are of equal skill like
4 you and this gentleman, whatever his name is,
5 that's supposed to be such a great player -- and
6 I'm sure he is I'm not trying to belittle him or
7 you I'm sure you're fine I'm sure you are a
8 great player, no question If you're of equal
9 skill, then what's the deciding factor? Wouldn't
10 that be luck?

11 A Well, first of all, I would say that you're
12 never going to find two players of equal skill I
13 mean, they may be close in skill, but some are
14 going to be better at some aspects of the game
15 Some will be better at other aspects Finding
16 players of equal skill I think would be very
17 difficult to do

18 Q Just a couple of other questions Can you
19 say that definitively that it's more skill than
20 chance, or it's just your opinion basically that
21 you feel there's more things in poker that skill
22 accounts for than chance in terms of the overall
23 game?

24 A Well, in my opinion it is definitive I
25 don't think there's any question about it

Transcript of Municipal Court

1 Otherwise, how could I have been successful for 30
2 years in the world without ever having a losing
3 year? I mean, for me, over time for sure, it's
4 definitely skill, and even in one hand I believe
5 skill predominates over luck when it comes to
6 playing poker

7 Q You said you played in these home games in
8 terms of a rake You have no knowledge of what the
9 rake was in this game, correct? You have no direct
10 knowledge of this game at all

11 A I don't

12 Q Correct

13 A Just what I've heard today

14 Q You have no direct knowledge that there was
15 a 50 cent blind -- 50 cent taking on a hand or a \$2
16 taking on a hand, correct?

17 A Well, I've heard the witnesses They've all
18 testified --

19 Q Correct

20 A -- the rake is a 50 cent max So I think
21 that's what you have to go on

22 Q But you of course heard the officer testify
23 to the contrary?

24 A In all sincerity I believe he was mistaken

25 Q But you have no way of knowing?

Transcript of Municipal Court

1 A Right

2 Q Obviously poker means a great deal to you
3 You feel it's important More important than say
4 monopoly or any other pastime?

5 A I would say

6 Q Why?

7 A Why? First of all, that's the way I make a
8 living

9 Q I know More important to you, but why is
10 it more important generally?

11 A Because I believe it's America's pastime I
12 believe millions of people like to play poker I
13 was brought here by the Poker Players Alliance
14 They're a group that's an organization that fights
15 for the rights of poker players, and they believe
16 that players should have the right to play poker in
17 their home if that's what they want to do

18 Q And --

19 MR PHILLIPS Let him continue to
20 answer, please, before you interrupt

21 Q The National Poker Alliance?

22 A Poker Players Alliance

23 Q Poker Players Alliance So they feel that
24 they're fighting for the rights of poker players
25 They feel that's important?

Transcript of Municipal Court

1 A Correct

2 Q And why? They feel that poker's rights are
3 being denied?

4 A Yes When poker players can't play home
5 poker games without criminal -- getting
6 criminalization, that that's a wrong, that they're
7 doing wrong They have over 1 million members
8 nationwide, over 8,000 members here in South
9 Carolina

10 Q So you would admit that most poker players
11 understand that playing a home game like this is
12 considered criminal?

13 A No I disagree completely I think most
14 players would say it's not criminal

15 Q You might have misunderstood my question

16 A Okay

17 Q You don't believe it should be criminal, but
18 they understand that the State views it as
19 criminal?

20 MR PHILLIPS Your Honor, he can't
21 testify as to what anybody else thinks

22 THE COURT Well, I don't think he can
23 answer what the state law is He can say what the
24 impression of the players who are members of the
25 National Poker Alliance believe

Transcript of Municipal Court

1 Q Is that their impression that most of the
2 state view it as being criminal?

3 A What is that? No I would say most poker
4 players do not view it as criminal

5 Q Poker players don't, but do most, including
6 you, was it your understanding -- and I assume
7 that's why you're here today It's your
8 understanding that the State deems the
9 activities -- the State, not you, but the State
10 deems the activities that these gentlemen were
11 doing was criminal?

12 A It's my understanding that the law in South
13 Carolina reads that if chance is predominant, then
14 it's gambling If skill is predominant, then it's
15 not gambling We're here to testify that skill is
16 predominant, therefore, the charges should be
17 dismissed

18 Q Well, if that were the case, what would
19 there be a need for a National Poker Alliance?

20 A Because there are states that have laws, you
21 know, and various laws, and poker players are
22 getting busted in raids And we feel it's wrong
23 and it shouldn't happen

24 Q So that's happening all over the country
25 that poker players are being --

Transcript of Municipal Court

1 A Not a lot, but it does happen, yes

2 Q So it's your feeling that this was, again, a
3 50 cent game or whatever, but then under your
4 reading of it and what the Poker Players Alliance
5 -- I keep messing that up Let's just say, for
6 instance, this game was a higher stakes game, which
7 we allege that it was If it was \$5,000 a hand, if
8 there were \$100,000 pots, do you still think that
9 that should be allowed in residential
10 neighborhoods?

11 A I absolutely do if it's a friendly poker
12 game

13 Q \$1 million a hand?

14 A Stakes make no difference

15 Q No difference?

16 A People should have the right to play poker
17 in their own home if that's what they want to do

18 Q Sure Without regulation And anyone you
19 want to admit in, there should be absolutely no
20 regulation on it?

21 A I didn't say that I didn't say if I was
22 playing in a game or I was hosting a game, I
23 wouldn't know who was coming to the game

24 Q Oh, so you would know who was coming to the
25 game, unlike Mr Stallings, who didn't know

Transcript of Municipal Court

1 everybody at the poker game?

2 A Look, in many poker games across the
3 country, a friend brings in a stranger into a poker
4 game very frequent

5 Q But Mr Stallings brought in many strangers
6 because he didn't know half the people that were at
7 the game, and even the few he could name, he only
8 knew by one name Does that not strike you as a
9 little odd as being a group of friends?

10 A Well, it would on one hand If he moved to
11 town three months ago and he's just getting to know
12 people, and, you know, he couldn't know them that
13 well if he had only been in town for three months

14 Q Well, he didn't know them at all Several
15 of them he said he didn't even speak to before the
16 game So how could that be considered a friendly
17 game amongst friends?

18 A Well, it's a common passion that all those
19 people have They all enjoy playing poker So
20 it's a gathering place where they could play

21 Q Just like, say, I like to gamble I've done
22 many times in Atlantic City I go in to gamble in
23 the casino in Atlantic City, and I share that
24 passion with all of the individuals, be they nice
25 people or be they nuts, that are gambling in the

Transcript of Municipal Court

1 casino, correct?

2 A Okay

3 Q Are you being paid to testify here by
4 anybody?

5 A I'm being paid a fee

6 Q How much? What are you looking at the judge
7 for? How much?

8 A \$5,000

9 THE COURT And that's paid by the
10 National Poker Players Alliance?

11 THE WITNESS That's who's paying for
12 me to be here

13 Q One other question I'm just curious
14 These friendly poker players and so forth in just a
15 small game amongst friends, if that were the case,
16 why would the National Poker Alliance be involved
17 in this at all?

18 A Because in their minds people should have
19 the right to play poker in their home without
20 criminalization These guys are trying to be
21 criminalized We're down here to try to get them
22 off

23 Q Even if it's a for-profit game for any
24 amount of money?

25 MR GOLDSTEIN Your Honor, I apologize

Transcript of Municipal Court

1 for interrupting If I could, I just need to ask
2 one indulgence Of course, Mr Phillips has been
3 called away in an emergency

4 THE COURT Yeah His wife has called
5 him to an emergency

6 MR GOLDSTEIN Right And so I --
7 that's why I apologize for interrupting I have
8 stepped in My name is Tom Goldstein I
9 apologize We could do one of two things, Your
10 Honor We could just stop Obviously you can't --

11 MR GROSSMAN I'm wrapping up

12 MR GOLDSTEIN No, no I understand,
13 but I just -- with the Court's indulgence, then I
14 would step in for him

15 THE COURT I'll let you step in --

16 MR GOLDSTEIN And I'll, of course --

17 THE COURT -- to keep it moving

18 MR GOLDSTEIN Exactly And I'll

19 recognize the court reporter The only reason I
20 mention it now is that I just want to mention, the
21 expert doesn't represent the Poker Players

22 Alliance He's been asked to speculate a lot about
23 what their intent is I don't mean to interfere
24 with the questioning, but before we go on too long,
25 he doesn't represent them

Transcript of Municipal Court

1 THE COURT He was hired by them

2 MR GOLDSTEIN As an expert

3 THE COURT As an expert in poker I
4 understand

5 BY MR GROSSMAN

6 Q And they paid you \$5,000 I assume they
7 paid your expenses to get here and so forth and
8 everything

9 A Right

10 Q So just to end this because I'm just getting
11 it You want -- the Poker Alliance wants it to be
12 just similar to the way it is in, say, Atlantic
13 City, Las Vegas casinos? You could start up that
14 type of a Texas Hold'em operation just like that?

15 A Absolutely not

16 Q What's the difference?

17 A They're fighting for rights of players to be
18 able to play in the privacy of their own home in
19 friendly poker games They're not fighting for
20 casinos here in Charleston or Myrtle Beach or
21 anywhere else in South Carolina

22 Q Okay

23 A That's a different issue They understand
24 that the people of that state, that's in the
25 jurisdiction They're allowed to vote on that

Transcript of Municipal Court

1 Q But what they're fighting for is a -- if
2 there's a Texas Hold'em game in a casino in
3 Atlantic City or Vegas of any amount of money, you
4 believe that should be allowed in a residential
5 community where the individual who runs the
6 residence can profit from it?

7 A I believe everything is relative If you
8 went to Beverly Hills, for example, you'll have
9 higher stakes games than you may have in most
10 cities in the country

11 Q Beverly Hills would be higher stakes than
12 Mount Pleasant?

13 A Correct

14 MR GROSSMAN That's all I have

15 MR GOLDSTEIN If I might, Your Honor,
16 just a few things

17 THE COURT Sure Go ahead

18

19 REDIRECT-EXAMINATION

20 BY MR GOLDSTEIN

21 Q Sir, you said you were paid \$5,000 to come
22 and testify today, and you testified that you had
23 won \$1 million in a poker tournament Is it your
24 stance that \$5,000 would affect your testimony at
25 all?

Transcript of Municipal Court

1 A It wouldn't affect my testimony at all In
2 fact, I'm doing it for the love of the game, quite
3 honestly, more than the fee

4 Q Sure You've just described the difference
5 between a home game and a casino Are there
6 also -- are you familiar with card rooms?

7 A Very familiar

8 Q And what's a card room?

9 A A card room is a casino that poker is a
10 dominant game and they have some Asian poker games
11 as well In Los Angeles they have casino card
12 rooms where there are several hundred poker tables
13 there going on at once

14 Q Right And you're -- the questions that
15 were asked to you seem to go to the idea whether it
16 necessarily followed that if people could play in
17 their homes, you would have to have a card room or
18 a casino Is it common to draw a distinction
19 between those two? Between a home game or somebody
20 just hosted a game in a card room or a casino?

21 A Yeah I think it is I think that people
22 have the right to play poker in their own homes if
23 that's the way they want to do it I know it
24 happens in every city across the country every day
25 of the week including Mount Pleasant And I've

Transcript of Municipal Court

1 never been in this city before, but I'd like to
2 think you can find a poker game every day somewhere
3 in this town, in Charleston, in Atlanta, in
4 Greenville, South Carolina, and everywhere else
5 It's the nation's pastime People like to play
6 They should have the right to play in their own
7 home

8 Q You were asked as well about whether the
9 Poker Players Alliance is sort of actively
10 litigating poker, -- these kinds of laws and
11 whether it was commonly recognized that poker in
12 home games were illegal Are you familiar with
13 recent courts' decisions on that question from the
14 states of Pennsylvania and Colorado?

15 A I am familiar that they made positive
16 rulings

17 Q And to what effect so far as you know?

18 A To the effect that poker is more a game of
19 skill than a game of chance That's the way they
20 made these rulings in those two states

21 Q With what consequence?

22 A I'm not sure Like what do you mean?

23 Q Well, were those criminal charges?

24 A I believe they were

25 MR GOLDSTEIN Nothing further, Your

Transcript of Municipal Court

1 Honor

2 THE COURT Anything further? Mr
3 Sexton, you can step down We're going to wait
4 before we call the next witness on Mr Phillips I
5 don't feel comfortable starting because his wife
6 just called about some family emergency without him
7 being present So we're going to take a 10-minute
8 break, and hopefully Mr Phillips can resolve the
9 emergency

10 (A recess was taken)

11 THE COURT Mr Phillips

12 MR PHILLIPS Thank you, Your Honor
13 At this time I would like to make a short motion
14 out of an abundance of precaution When I left the
15 courtroom, you kindly allowed Mr Goldstein to take
16 over Mr Goldstein is a member of the Virginia
17 bar

18 MR GOLDSTEIN Maryland

19 MR PHILLIPS Excuse me Maryland and
20 DC bar He's argued cases in front of the US
21 Supreme Court on a regular basis Me vouching for
22 him is kind of crazy because I would love to have
23 him vouch for me He's an excellent attorney, and
24 if you would so kindly admit him pro hac vice for
25 this trial, I would appreciate it

Transcript of Municipal Court

1 THE COURT Well, he's admitted pro hac
2 vice for participation in the trial

3 MR PHILLIPS Thank you, Your Honor
4 The defense calls Dr Robert Hannum

5 THE COURT Raise your right hand and
6 place your left hand on the Bible

7

8 ROBERT HANNUM,
9 having been first duly sworn, was examined and
10 testified as follows

11

12 THE COURT State your name for the
13 record, please, sir

14 THE WITNESS Robert Hannum,
15 H-a-n-n-u-m

16

17 DIRECT EXAMINATION

18 BY MR PHILLIPS

19 Q Professor Hannum, where is it you live?

20 A I live in the Denver, Colorado area

21 Q Where do you work?

22 A The University of Denver

23 Q Would you please tell the Court your
24 educational background?

25 A I have a bachelor's degree in mathematics

Transcript of Municipal Court

1 from the University of Dayton, and I have a
2 master's and PhD in statistics from Florida State
3 University

4 Q What year did you get your PhD from Florida
5 State?

6 A 1979

7 Q And where did you go to work after you got
8 your PhD?

9 A University of Denver

10 Q So you have been at the University of Denver
11 for -- this is your 30th year?

12 A This is my 30th year aside from a one-year
13 leave of absence where I taught at Temple
14 University

15 Q Always doing the same type work?

16 A In statistics and probability, yes

17 Q Obviously the work within statistics and
18 probability I'm sure change, but within statistics
19 and probability?

20 A Yes, sir

21 Q Thank you What are some of your
22 publications that you have been instrumental in
23 publishing?

24 A I have a book in its second edition called
25 Practical Casino Math I have a number of papers

Transcript of Municipal Court

1 related to gaming math and have done such things as
2 studies on randomness of shuffles and mathematics
3 of European roulette and two full-blown studies on
4 poker, specifically poker, and the role of skill
5 and a smaller paper on skill and chance in games
6 generally

7 Q Didn't you also contribute to a law review
8 article regarding poker?

9 A Yes One of my full-blown studies, as I
10 called it, was published in a law review

11 MR PHILLIPS Your Honor, at this time
12 I would like to admit Dr -- Professor Hannum as an
13 expert in the field of statistics regarding game
14 theory and also specifically regarding poker

15 THE COURT Any questions, Mr
16 Grossman?

17 MR GROSSMAN No

18 THE COURT We'll accept him as an
19 expert in statistics and probability in regard to
20 gaming

21 Q Professor Hannum, have you personally --
22 well, you've already answered that You've
23 personally done a couple of studies regarding
24 probability and mathematics regarding poker, is
25 that correct?

Transcript of Municipal Court

1 A Correct

2 Q Would you please explain as I believe one of
3 them was, and if I'm saying this incorrectly,
4 please obviously -- the one I want to hear about is
5 the one that is haphazard or randomness versus a
6 skill that is employed in a bot or a computer where
7 they play each other Is that -- correct that --
8 first of all, make that in correct terms, and then
9 tell us what it showed

10 A I wouldn't call this a -- the only
11 correction I would make is I would not say this
12 involved bots, but the analysis looked at what
13 would happen if you pitted a player that was
14 skilled in the sense that they could employ a
15 strategy against a player for whom you removed the
16 ability to -- well, for whom you removed any kind
17 of skill That is to say they -- this player made
18 their decisions in terms of raising or calling or
19 folding haphazardly to use your word

20 Q And what was the result of that study?

21 A The player employing the strategy
22 defeated -- will defeat The mathematics can be
23 shown The player making the haphazard -- or the
24 decisions haphazardly, almost 97 percent of the
25 hands

Transcript of Municipal Court

1 Q Given that result from your study, did that
2 lead you to any conclusions about poker as it
3 relates to skill or chance?

4 A Certainly My conclusion is skill is a
5 predominant factor in the game of poker

6 Q Tell us about the second study that you did

7 A The second study involved -- this one did
8 involve bots, if you will, where I looked at
9 full-table games with a mix -- under a variety of
10 scenarios with a mix of players who were highly
11 skilled and players who were not so skilled As I
12 said, under a variety of scenarios, and the results
13 showed that the highly skilled players convincingly
14 defeat the players with little to no skill

15 Q And how many levels of skill, if you will,
16 did you use with the bots? From the no skill to
17 the most highly skilled and there were some in
18 between?

19 A There were really only -- it was different
20 combinations of scenarios with players that were
21 highly skilled at the same skill level versus
22 players that were low skilled at the same skill
23 level

24 Q What was the result of that study?

25 A Players with a -- with the high skill level

Transcript of Municipal Court

1 convincingly defeated the players with the low
2 skill levels

3 Q So this would -- the lower player, if we'll
4 call him a player for now, graduated from a
5 haphazard or a random action to actually employing
6 a skill but just not employing a skill as highly as
7 some of the others, is that correct?

8 A I think that's fair

9 Q And what was the conclusion that you made
10 from looking at the results of that data?

11 A A similar conclusion That skill is a
12 predominant factor in poker

13 Q Are you familiar with studies in gaming
14 theory? And let's focus on the poker I know
15 you've probably read hundreds, but are you familiar
16 with gaming theory studies that have been done
17 related to the game of poker?

18 A Yes, of course One of the elements of my
19 job as a researcher is to keep current with the
20 literature in my area, and so I've seen -- I mean,
21 I've done a comprehensive review of studies that
22 have been done relating to the question of skill in
23 poker in particularly

24 Q Could you pick out, if you would, two of
25 those studies and explain to the Court the results?

Transcript of Municipal Court

1 First of all, let me ask you this In reviewing
2 them, did you determine that the methods that they
3 used were generally accepted scientific and
4 mathematic methods in the community?

5 A Yes, yes

6 Q And let me go back a step Has your work
7 been subject to peer review?

8 A Yes

9 Q And with what result?

10 A Well, the article we mentioned earlier was
11 published in a law review I have a more recent
12 article that was just wrapped up and is currently
13 under review in one of the major gaming journals

14 Q Now, I'll get back to the first question I
15 asked I apologize Could you please relate to
16 the Court the methodology and the results of one or
17 two of these studies that you have studied from
18 other people?

19 A Sure One recent study looked at top poker
20 players, that is to say players who finished in the
21 top -- I believe it was the last, the final two
22 tables of top tournaments over a six-year period in
23 2001 to 2006, involved almost 900 players, and the
24 conclusion of those authors was that the --
25 basically what they did was establish a correlation

Transcript of Municipal Court

1 between finishes, or one might say past finishes,
2 in the final two tables and future success

3 They also looked at professional data from
4 professional golfers and concluded that the skill
5 differences among poker players is similar to the
6 skill differences among the top professional
7 golfers And the reason that's important is
8 because golf is I think generally viewed as a game
9 of predominantly skill

10 Q And is that an opinion of the scientific and
11 mathematic community that golf is considered to be
12 a game of skill?

13 A I cannot imagine that it's not

14 Q And if I may rephrase what I believe you
15 said and then I'll ask you in a question to see if
16 I'm correct, did this study basically show that
17 past performance could be a predictor of future
18 success?

19 A Yes That would be a fair characterization

20 Q And what would the outcome be if these -- if
21 they analyzed the data on poker players, and it was
22 predominantly a game of chance? What would you
23 expect to find?

24 A Well, if there were no skills, to take it to
25 an extreme, at all, then you wouldn't be able to

Transcript of Municipal Court

1 predict future success based on past finishes

2 Q What about some skill but predominantly
3 chance?

4 A It probably still couldn't I mean, you
5 need a certain level of skill, or skill needs to be
6 a dominant enough factor in order to be able to
7 predict future success from past finishes

8 Q And in this particular study, that there was
9 a very close correlation between past finish and
10 future success among poker players and among
11 golfers?

12 A One might say a statistically significant
13 correlation

14 THE COURT Can I interrupt a minute?

15 MR PHILLIPS Yes, Your Honor

16 THE COURT Who did this study that
17 correlated the golf and the poker player?

18 THE WITNESS First author's name is
19 Croson, C-r-o-s-o-n I don't recall the secondary
20 author, but it's in the affidavit

21 Q Is that the primary study you would like to
22 talk, or is there another one you would like to
23 tell the Court about?

24 A Well, I mean, there's several Another one
25 looked at -- compared groups of individuals, two

Transcript of Municipal Court

1 groups One was given lessons in poker strategy,
2 and the other group wasn't And they compared the
3 performance of the two groups, and, again, they --
4 I'm paraphrasing, but I believe their conclusion
5 was essentially that poker is unequivocally a game
6 of skill because the group that was taught strategy
7 improved and did better performancewise against the
8 group that was not given any instructions or
9 lessons in strategy

10 Q Professor, there was one study -- or I guess
11 a conclusion that you came to that I found
12 interesting because it was, look at this issue from
13 the opposite way, and that is, could you
14 intentionally lose? How is the fact whether or not
15 you could intentionally lose mathematically or
16 statistically important to this issue?

17 A It's important and relevant because a game
18 with no skill -- and I think the best example is
19 roulette because at least mathematically it's easy,
20 but it's also a game of pure chance And so the
21 point is with a game like that, if you're making
22 decisions haphazardly or randomly or however you'd
23 like to phrase it, no strategy can be employed in a
24 game like that to change the long-run success rate
25 You need a game with skill in order to

Transcript of Municipal Court

1 employ a strategy to change the long-run success
2 rate and perhaps the obverse of that -- to your
3 point is you can't play roulette in such a way as
4 to lose faster or intentionally play badly It
5 just can't happen In something like poker, you
6 can do that

7 Q Would the same be true of a slot machine?

8 A Same would be true of a slot machine You
9 can't lose -- you can't play badly or intentionally
10 lose faster

11 Q But you can employ a strategy of poker where
12 you intentionally lose all your money?

13 A Yes

14 Q Let's talk if we will for just a moment
15 about poker, because it's played in a casino, and
16 compare it with every other casino game, and tell
17 this Court the distinction you would find, if any,
18 between poker and other casino games

19 A The major difference between -- maybe I'll
20 call it card room poker, Texas Hold'em as opposed
21 to say games like Caribbean Stud Poker, Let It Ride
22 Poker, those table games that are more or less
23 along the lines of a blackjack-type in the sense
24 that I'm describing now Poker is a game where you
25 are playing against the other players Other games

Transcript of Municipal Court

1 such as blackjack, the Caribbean Stud, the let it
2 ride, roulette, we can throw in there, slots,
3 you're playing against the house There's a fixed
4 advantage on those games, and you're up against
5 them

6 In card room poker, you're playing against
7 the other players, and if you're a better player,
8 if you're more skilled, then you can win at card
9 room poker

10 Q If you play -- you can employ skills at some
11 of those other games, can you not?

12 A Yes Some of those games involve some
13 element of skill

14 Q But over time can you change the outcome of
15 the house advantage as an average player employing
16 skills?

17 A In what games?

18 Q Slots?

19 A You can't change anything in slots

20 Q And then roulette would be the same?

21 A Can't change anything in roulette

22 Q Blackjack?

23 A You can reduce the house edge -- or the
24 house advantage at blackjack depends on your level
25 of skill So if you're an average player, the

Transcript of Municipal Court

1 house advantage might be one-and-a-half percent
2 If you play basic strategy, you know when to -- you
3 know the best move for hitting or standing or
4 doubling down or whatnot And this will vary
5 slightly on how many decks are involved or the
6 specific rules of the game you're playing, but an
7 average might be a half of a percent under optimal
8 basic strategy in blackjack

9 Q So that means if you play to the highest
10 skill level possible, over time you're still going
11 to lose?

12 A In blackjack if you count cards --

13 Q Let's take counting cards out of the
14 equation because in most places it's illegal to
15 count cards If you employ this basic strategy
16 that you're talking about, an optimum play that you
17 talked about, if you employ basic strategy and
18 optimum play, over time who's going to win? You or
19 the house?

20 A The house

21 Q Over time, what is your opinion about who's
22 going to win in poker, a lesser skilled player or a
23 more skilled player?

24 A No The most skilled player will win at
25 card room poker over time

Transcript of Municipal Court

1 Q Are you familiar with a recent study that
2 was done that analyzed 103 million poker hands?

3 A Yes, sir

4 Q Tell the Court about the outcome of that
5 study

6 A That particular study examined, as you said,
7 103 million hands of poker, different kinds of
8 Texas Hold'em, limit/no-limit, different limits,
9 around the gamut The authors based on that study
10 estimate that 76 percent of all hands in Texas
11 Hold'em are resolved before they get to showdown,
12 and of the remaining 24 percent that do go to
13 showdown, about 50 percent of those are not won by
14 the -- what would be the best hand at the table

15 Q What do you mean by what would be the best
16 hand at the table?

17 A That is to say, if you look at all the --
18 let's say there were 10 players at the table Some
19 of them might have folded before you get to the
20 showdown, but when you get to the showdown, if you
21 then looked at, well, who had the best hole cards
22 to make the best hand, only half of the 24 percent
23 that go to showdown are won by the player holding
24 the best hand

25 Q And what was the first percentage? Was that

Transcript of Municipal Court

1 70 -- what percent?

2 A That was 76 percent

3 Q Would I be correct in stating that in 88
4 percent of the hands that are played in poker, at
5 least by this 103-million-hand study, that skill
6 was the determining factor in 88 percent of them?

7 A That's fair

8 Q Professor Hannum, have you -- having having
9 (sic) done the research, both yourself and in
10 studying other people's research -- and I believe
11 that your term may have been a comprehensive look
12 at other studies In your comprehensive look at
13 other studies, have you ever found any scientific
14 study out there that exists that would state poker
15 is predominantly a game of chance?

16 A No I've not seen one

17 Q And in your professional expert opinion, is
18 there a predominant factor in the game of poker?

19 A Well, yeah

20 Q What?

21 A I believe -- my opinion is skill is the
22 predominant factor in poker

23 Q And in your studies, would you -- do you
24 have an opinion as to whether or not there is a
25 consensus among the scientific community on that

Transcript of Municipal Court

1 issue?

2 A I believe the consensus is in agreement with
3 my opinion that skill is the predominant factor in
4 poker

5 MR PHILLIPS Your Honor, I have
6 nothing further for this witness

7 THE COURT Mr Grossman

8

9 CROSS-EXAMINATION

10 BY MR GROSSMAN

11 Q It's Dr Hannum? ✓

12 A Hannum

13 Q Where are you employed, sir?

14 A The University of Denver

15 Q University of Denver How long have you
16 been employed there?

17 A This is my 30th year

18 Q Is that I guess pretty much the only job
19 you've held since I guess getting your degree in
20 mathematics or whatever you had gotten it in?

21 A In terms of full-time employment, I've been
22 faculty at University of Denver or that one year I
23 mentioned I spent at Temple University

24 Q You teach mathematics to students at school?

25 A I teach mathematics, statistics, yes

Transcript of Municipal Court

1 Q And I guess all professors do -- I guess do
2 research to keep their tenure and that kind of
3 stuff, write books and all that kind of stuff?

4 A Generally the tenure track faculty are
5 expected to do that in most universities

6 Q And your main focus is doing research on
7 mathematical equations with poker?

8 A Gaming mathematics I think would be a better
9 characterization Poker would be one of the things
10 that I've examined

11 Q What other games?

12 A Roulette I've done that study on the
13 mathematics of the European version of roulette
14 I've looked at the mathematics of baccarat I've
15 done studies on the value of dead chips, and when I
16 say value, I'm talking about the effective house
17 advantage when dead chips are used in the game

18 Q So for 30 years you have spent your entire
19 adult life as a professor studying whether poker
20 and these other games are chance or skill?

21 A Actually, no

22 Q What else have you done?

23 A The focus on gaming mathematics is in the
24 last decade-and-a-half Prior to that I was doing
25 more theoretical statistics and mathematics

Transcript of Municipal Court

1 Q You talked about these scientific studies
2 How many other scientists are studying whether
3 poker -- and are being paid by American
4 universities to teach our children that are
5 studying whether poker is skill or chance?

6 A I couldn't give you a number

7 Q An approximation You said that apparently
8 the general consensus among these brilliant
9 scientists was that it was skill rather than
10 chance, these Albert Einsteins and these --

11 MR PHILLIPS Your Honor, I object to
12 this question

13 MR GROSSMAN I apologize I do go a
14 little too far

15 Q How many would you approximate are doing
16 this wonderful work?

17 A I can only tell you about the groups that
18 might be associated with the studies I've seen
19 published I can't speak to who are working on it
20 that haven't published anything yet or --

21 Q Are we getting to a number here? How many?

22 A I don't -- I can't give you a number I
23 mean, it could be 50, could be 100, it could be
24 500

25 Q Now, you say you set the skill levels on

Transcript of Municipal Court

1 these studies, correct?

2 A In the simulations you can program in how
3 the players -- basically their betting strategies,
4 and in the other strategy, it really wasn't a
5 matter of studying the skill levels

6 Q You heard Mr Sexton, the poker expert I
7 asked him a question I said to him if there were
8 two players of equal skill playing against one
9 another, then what would be the deciding factor, it
10 would then be luck His answer to me was, well,
11 there could never be two players with the exact
12 same skills Point taken But in your studies you
13 can make two players with the exact same skills,
14 can't you?

15 A You can make bots with the exact same
16 skills, yes

17 Q Then what would be the deciding factor?

18 A With two players or more with exactly the
19 same skills, any differences you might see would be
20 due to statistical sampling variability

21 Q In other words -- I'm not very bright --
22 statistically sampling ability, that would --
23 another word for that would be luck, wouldn't it?

24 A But that's not what the term --

25 Q That's not what I asked you Would that be

Transcript of Municipal Court

1 luck? Yes or no?

2 MR PHILLIPS Your Honor --

3 MR GROSSMAN I'm sorry

4 Q Yes or no?

5 A If luck is the same thing as chance, yes

6 Q Yes It is the same thing as chance

7 MR PHILLIPS Your Honor, I don't

8 think he's testifying here

9 MR GROSSMAN I'm sorry, Your Honor

10 MR PHILLIPS I don't think he is,

11 Your Honor It keeps happening over and over

12 MR GROSSMAN I'm sorry, Your Honor

13 Q Now, do you know anything about the gambling
14 that was going on in this particular game other
15 than what you've heard here today?

16 A Not other than what I've heard here today

17 Q Who is paying you to be here today? Are you
18 receiving a fee, sir?

19 A Yes, sir

20 Q Who is that from?

21 A Poker Players Alliance

22 Q The Poker Players Alliance Have you ever
23 received payment from them before?

24 A Yes, sir

25 Q Are you a member of the Poker Players

Transcript of Municipal Court

1 Alliance?

2 A No, sir

3 Q In what other instances have you received
4 money from them before?

5 A I've received money from them for some of
6 the research I've done and to testify in that case
7 in Colorado

8 Q And how much money in total in your career
9 have you received from the Poker Players Alliance?

10 A Roughly \$30,000

11 MR GROSSMAN That's it

12 THE COURT Anything further?

13 MR PHILLIPS Yes, Your Honor

14

15 REDIRECT EXAMINATION

16 BY MR PHILLIPS

17 Q Isn't it common for professors to have their
18 research sponsored by somebody?

19 A Yes

20 Q And by sponsoring I mean paying you money to
21 do the research

22 A They tend to get research grants or
23 institutions, entities to pay them money for doing
24 research, yes

25 Q And the case that you were involved in in

Transcript of Municipal Court

1 Colorado was another -- was that a poker case?

2 A Yes, it was

3 Q And were you admitted as an expert witness
4 there?

5 A Yes, I was

6 Q And have you ever been an expert witness in
7 any other cases?

8 A Yes, I was

9 Q How many?

10 A A case in Wisconsin a few years ago where I
11 testified on behalf of the State of Wisconsin, and
12 similarly in Connecticut I testified for the
13 prosecution in that case as well

14 Q So this is your fourth expert testimony?

15 A Yes, sir

16 Q There have been two for the State and two
17 for the defense?

18 A Yes, sir

19 Q And getting to Mr Grossman's golf analogy
20 If the top two golfers played each other in the
21 world -- or two top golfers in the world played
22 each other, would skill be a factor -- be the
23 determining factor in the outcome of that game?

24 A In my opinion, yes

25 Q Can't a golfer get lucky with a gust of

Transcript of Municipal Court

1 wind?

2 A There's chance in virtually everything, yes

3 Q So let's talk about -- instead of one
4 isolated instance, let's talk about the nature --

5 MR GROSSMAN Isn't he going beyond --
6 objection, Your Honor Isn't he going a little bit
7 beyond redirect here?

8 MR PHILLIPS It's exactly what he
9 asked him on cross-examination

10 MR GROSSMAN I don't think it was

11 MR PHILLIPS I just have two more
12 questions

13 THE COURT Wait a minute Let me look
14 at something here, please

15 MR GROSSMAN I don't think I made any
16 reference to golf He mentioned a golf analogy,
17 Your Honor I can tell you I didn't mention golf

18 MR CHIMENTO Yes, you did

19 THE COURT No You just asked him
20 what statistical studies he's done, and he
21 mentioned roulette, poker, baccarat, statistical
22 gaming, and I don't know if golf was part of
23 statistical gaming, but golf specifically wasn't
24 there

25 MR PHILLIPS Your Honor, if we can

Transcript of Municipal Court

1 have -- if that's an issue, we can have the court
2 reporter read it back because he asked a scenario
3 about the two top golfers in the world

4 MR GROSSMAN I said two top -- I said
5 two poker players of the same skill, not golfers

6 MR PHILLIPS You didn't say golfers?

7 THE COURT No He said two skilled
8 poker players of robots of equal skill because you
9 can program them to be of equal skill because Mr
10 Sexton said you're not going to find two human
11 beings of equal skill

12 MR PHILLIPS Then I won't ask him
13 about golf if that's what you'd like me to do No
14 problem then

15 THE COURT No I mean, I think that's
16 beyond redirect There's no sense in going where
17 we haven't gone on direct or on cross

18 BY MR PHILLIPS

19 Q Then my final question to you is, Mr
20 Hannum, without isolating the game of poker to a
21 single hand or a single tournament or a single
22 heads-up match between the two top poker players in
23 the world, let's look at the essence of the game or
24 the nature of the game Is the essence or the
25 nature of the game determined predominantly by

Transcript of Municipal Court

1 skill or by chance?

2 A My opinion is that the game of poker is
3 inherently a game of skill, and just like many
4 other, if not all games of skill, when the skill
5 levels are close or equal, it masks the fact that
6 skill is determinative of the outcome in the sense
7 that if you remove the skill of one of the players,
8 they'll lose

9 MR PHILLIPS Thank you

10 THE COURT Anything further?

11 MR GROSSMAN Nothing further, Your
12 Honor

13 THE COURT. Thank you, Doctor, you can
14 step down Anything further?

15 MR PHILLIPS Nothing from the
16 defense, Your Honor

17 THE COURT Anything in rebuttal?

18 MR GROSSMAN No

19 THE COURT Ladies and gentlemen, we
20 have reached the end of this testimony in this
21 case I'm going to recess for 10 minutes to give
22 both lawyers an opportunity to go over whatever
23 testimony notes they have or don't have or whatever
24 they got or don't have, and then we'll let them put
25 final arguments in the record If you don't need

Transcript of Municipal Court

1 10 minutes, that's fine, but if you want 10
2 minutes, I'm going to give it to you Mr
3 Grossman?

4 MR GROSSMAN I'll take 10 minutes

5 MR PHILLIPS I'd also either now or
6 then like to renew my motions

7 THE COURT Well, I'm going to let you
8 do that too, but I just want to allow a break to
9 allow you to line up everything for final
10 arguments

11 (A recess was taken)

12 THE COURT Mr Grossman, as a man of
13 prosecution and since the defense has put up a
14 defense, you have the option of opening and
15 rebutting, or you can just close, whichever you
16 choose to do

17 MR GROSSMAN I'm just going to close,
18 Your Honor

19 THE COURT Just going to close That
20 being the case, you're up, Mr Phillips

21 MR PHILLIPS Thank you, Your Honor
22 May I -- I would ask the Court's permission because
23 there's been an amicus brief filed on behalf of the
24 PPA The PPA has been brought up here, and the
25 PPA's lawyer is here Could I give up three or

Transcript of Municipal Court

1 four minutes of my time for him to say a word to
2 the Court?

3 THE COURT Do you have any objection
4 to that, Mr Grossman? I mean, I don't have any
5 objection, but I will defer it to the prosecution
6 whether they want to have an objection or not

7 MR GROSSMAN Meaning that he just
8 wants to speak in the stead of Mr Phillips?

9 MR PHILLIPS To take three or four
10 minutes of my time

11 MR GROSSMAN Obviously if he's
12 licensed to practice law in the state Are you
13 talking about the gentleman who was admitted in
14 earlier today?

15 MR PHILLIPS Yeah

16 MR GROSSMAN No I don't have any
17 objection

18 THE COURT Good enough Now,
19 remember, I don't want you to speak 30 minutes

20 MR PHILLIPS We won't

21 THE COURT Go ahead I mean, we're
22 giving him some minutes, but we don't want -- you
23 know what I'm saying?

24 MR PHILLIPS I understand Thank
25 you, Your Honor

Transcript of Municipal Court

1 THE COURT Go ahead

2 MR PHILLIPS Your Honor, in our --
3 first of all, let me make my -- renew my motions
4 for directed verdict, and I will -- I don't have
5 anything else to add other than the fact, now that
6 we've presented the case, if the standard is what
7 we believe it should be, there is no evidence that
8 this -- presented by the prosecution that this game
9 of Texas Hold'em is predominantly a game of chance
10 And, therefore, I would make a motion that the
11 verdict be directed in the defendants' favor

12 THE COURT I'm going to deny your
13 motion I'm going to tell you why The State of
14 South Carolina has a statute, and it says that any
15 person that gambles on cards or bets on cards is
16 subject to be considered unlawfully gaming

17 Now, your position and the position that was
18 taken by the defense is that nobody denies the
19 betting, nobody denies the playing of the cards
20 The question is, this type of card game that was
21 being played, is it outside the scope of this
22 statute that covers the playing of cards as opposed
23 to blackjack or something else that people will say
24 statistically is definitely chance and within the
25 purview of the statute

Transcript of Municipal Court

1 Mr Grossman's argument's going to be, and
2 I'm confident it's going to be, he doesn't care
3 whether it's predominantly chance He doesn't care
4 whether it's predominantly skill, doesn't make any
5 difference If you are gambling in his view, in
6 other words, you're betting on cards, which is the
7 wording of the statute, cards, then in that event
8 you have violated the statute

9 What the Court has to determine is whether
10 or not the Court will accept the definition given
11 by Justice Burnett and Justice Toal in the
12 descending of Kingman of Collins as being the
13 standard And frankly, I'm not going to read it
14 I'm going to read the statistic over again I'm
15 going to read the beats over again But if I don't
16 accept that definition, if I just accept the
17 wording of the statute, then and now, again, I'm
18 going to rule with the State of South Carolina Do
19 you follow me?

20 If, however, I decide that the standard
21 should be as to whether or not Texas Hold'em is a
22 game of skill and is therefore outside the purview
23 of a game of chance or outside the purview of this
24 gambling statute, then, of course, I'm going to
25 find the defendants not guilty Do you understand

Transcript of Municipal Court

1 that?

2 MR PHILLIPS I do I have a question
3 regarding your first rule Are you saying that as
4 a matter of law, that the place the defendants were
5 playing were in a house of gaming?

6 THE COURT What I'm saying is if I
7 accept the definition that the State -- I'm sure
8 he's going to argue this He hasn't argued yet
9 But if I accept the definition that there is no
10 betting on games Period In other words, if you
11 bet, you wager, you have violated this statute,
12 then it's a house gaming Okay?

13 MR PHILLIPS Where is that in the
14 statute?

15 THE COURT Well, frankly, it says in
16 any kitchen, stable, house used as a place of
17 gaming So if I determine that a person who bets
18 on cards is gaming, if that's my determination,
19 then that is a house of gaming Okay?

20 MR PHILLIPS Okay

21 THE COURT Now, if I determine -- and
22 I'm going to study Collins and go over this again
23 If I determine that Texas Hold'em is a game of
24 skill, and, therefore, not intended to be within
25 the gaming law, then, of course, it's not a house

Transcript of Municipal Court

1 of gaming They bet, and we know they've bet, but
2 they haven't bet in violation of the statute Do
3 you follow me?

4 MR PHILLIPS Yes, I do, Your Honor

5 THE COURT So to answer your question
6 directly, if I determine that you can't bet on
7 cards, I don't care under what circumstances, then
8 that's a house of gaming Period If I don't
9 determine that, then, of course, I resolve it in
10 favor of the defendants Do you follow that? And
11 I've got 23 pages of notes I'm going to read before
12 I write an order, but I'm going to write an order
13 on my interpretation of the facts, of the
14 testimony, and of the law And from there you can
15 carry it where you want to carry it

16 But in the denial of your motion, I'm
17 denying it because I haven't reached that decision
18 And if I had reached that decision, I would deny it
19 and rule in favor of the State Or if I would deny
20 it and rule in your favor But since I'm going to
21 read 23 pages of notes to make sure I'm right --
22 since I'm the jury and the judge

23 If I were only the guy up here sitting here
24 for the matter of the law, it'd be one thing, but I
25 got to interpret the facts too And since I've got

Transcript of Municipal Court

1 to now take these statistical analysis and these
2 facts and see where I place them in the purview of
3 this statute, I'm not going to do it in a 20-minute
4 period But I will give you a written order, but
5 that's why the motion is being denied Do you
6 understand?

7 MR PHILLIPS I do

8 THE COURT And if you have any
9 questions about it, you can ask me now

10 MR PHILLIPS You're not preventing us
11 from arguing that even if you don't accept the
12 standard that we think you should accept, that it's
13 still not a house of gambling

14 THE COURT Of course You can argue
15 whatever I'm just telling you my perspective on
16 the facts as I see them from the overview as
17 opposed to my particular study of my 23 pages of
18 notes

19 MR PHILLIPS One other matter of
20 housekeeping, and that is, we made a motion several
21 months ago for the statute -- for the case to be
22 dismissed on the basis of unconstitutionality I
23 would just like to renew that motion at this point

24 THE COURT Well, I can tell you I'm
25 not going to define it unconstitutional Period

Transcript of Municipal Court

1 I mean, you can take that to the bank I mean,
2 that's a ruling That's not coming later That's
3 now The State of South Carolina has looked at
4 this statute in 10 different cases They have not
5 specifically defined gaming in 10 different cases,
6 but they have specifically cited this statute in 10
7 different cases, and if it's good enough for the
8 supreme court to look at it and not find it vague,
9 ambiguous, et cetera, Larry Duffy isn't going to
10 Do you understand that?

11 MR PHILLIPS Yes, Your Honor

12 THE COURT Then you can argue Let's
13 go

14 MR PHILLIPS Thank you Your Honor,
15 you brought up a definition in our first motion for
16 a directed verdict, again, in the State's case of
17 gambling And I have a case I would like for you
18 to consider, and there is probably a whole lot of
19 cases that have cited to it over the years, but
20 Johnson versus Finney The cite is 218 F 2nd 303
21 it's a US Court of Appeals case in the Fifth
22 Circuit, and I would like to just read a paragraph
23 from that case, which I believe is --

24 THE COURT What's the date of that
25 case?

Transcript of Municipal Court

1 MR PHILLIPS 1955 A paragraph of
2 that case I think is directly on point here And
3 it's relating the lottery and the gambling issue
4 because while I think we will agree that all
5 lotteries are gambling, not all gambling are
6 lotteries, and there is a relationship there

7 The Court says, although there are statutes
8 specifically determining the word lottery in the
9 general sense, it refers to a gambling game or
10 device wherein one gives up something of value for
11 the chance of obtaining a prize in money or
12 property of value, which I believe is pretty close

13 THE COURT That's what I quoted from

14 MR PHILLIPS Exactly And the
15 elements they say -- the essential elements are
16 chance, consideration, and a prize With respect
17 to the element of chance, the authorities are in
18 general agreement that if such element is present
19 and predominates in the determination of the
20 winner, the fact that players may exercise varying
21 degrees of skill is immaterial, and the game is a
22 lottery

23 So, again, in this particular case -- I
24 actually don't even know which game or scheme that
25 they were analyzing -- they found that it was a

Transcript of Municipal Court

1 lottery, but the important thing is they took the
2 exact language that you cited to and applied the
3 elements of prize, chance, and consideration and
4 further applied the dominant factor test to the
5 specific element of chance

6 I will only refer to our testimony today
7 because you've already indicated what your ruling
8 would be if you found that to be the test -- I
9 mean, no need to argue against myself -- was
10 overwhelming, and I don't believe that there can be
11 any question in the Court's mind or anybody else's
12 mind with the testimony that was presented today
13 that was uncontradicted that poker, Texas Hold'em
14 is predominantly a game of skill I'll leave it at
15 that

16 THE COURT By the way, just to answer
17 your question directly, I have determined in my own
18 mind Texas Hold'em is a game of skill, but that
19 doesn't mean that I won't consider it wagering and
20 gambling Do you follow me?

21 MR PHILLIPS Yes, sir

22 THE COURT But I accept the fact that
23 there is no uncontradicted testimony that 77
24 percent of the people who are skilled fold their
25 hands Period So what I'm trying to tell you I

Transcript of Municipal Court

1 guess in some words is don't -- you don't have to
2 believe that I've not accepted it as a game of
3 skill That doesn't mean it's outside the purview
4 of the statute though

5 MR PHILLIPS I understand, Your
6 Honor Now looking at the statute as the house of
7 gaming, and if we don't apply this test, we have an
8 interesting dilemma I believe in terms of words
9 that are supposed to mean something in a statute
10 If it is true that the -- for these prohibited
11 places that if you're playing in a kitchen, an
12 outhouse, and all those listed, I won't list them
13 all, but if you are playing any game with cards or
14 dice in those areas, that you're not guilty unless
15 there is gambling going on Which it doesn't say
16 that, but that is the way that this Court and law
17 enforcement has interpreted it

18 That means if you assume gambling or you
19 assume betting, then when you attach used for a
20 house as a place of gaming must mean something
21 Otherwise, you would just say house and put a comma
22 at the end of it So if it's a house used for a
23 place of gaming, we must determine what used for a
24 place of gaming means And that's why we rely on
25 some of the common definitions of a house used for

Transcript of Municipal Court

1 a place of gaming, and one of those being, it has
2 to be a public place Otherwise, it is not a house
3 used as a place of gaming

4 And when it talks about the keeper of the
5 game, the keeper of the game is such a higher
6 penalty in the statute than is the player It
7 implies or certainly gives the feeling that this
8 keeper is much like a proprietor This is a person
9 that is running this game on a regular basis as a
10 way to make his living as the State would try to
11 say that Nate Stallings was doing

12 So I believe it is more than just playing
13 cards and more than just betting on cards If it's
14 a house used for a place of gaming, we have to
15 attach some meaning to that phrase, and I believe
16 that the meaning is that it is a business It is a
17 public place where somebody is a keeper of that
18 public place

19 Now, the testimony regarding that, Your
20 Honor, is contradictory The officer testified
21 that Mr Stallings was taking a \$2 rake per hand
22 Now, the testimony from the defendants, all of them
23 that testified, was that the rake was 50 cents per
24 hand, and the testimony from Mr Sexton, as the
25 expert who has played in these games for 30 years,

Transcript of Municipal Court

1 was that a \$2 rake per hand would kill the game
2 It's impossible to have a \$2 rake per hand on a 25
3 cent, 50 cent, \$20 buy-in game

4 The house would simply break all the players
5 at the table within a matter of a short amount of
6 time Not to say that Officer Hembree is lying in
7 any respect, and I appreciate our witness
8 retracting that It's a mistake of some sort It
9 doesn't make any sense otherwise And, Your Honor,
10 this is probably -- according to the evidence, if
11 all the chips are accounted for except for what's
12 in here, and that is what the rake, if you will,
13 is The testimony --

14 THE COURT By the way, you're
15 referring to Defendant's Exhibit Number 1

16 MR PHILLIPS Yes I'm sorry, Your
17 Honor

18 THE COURT Go ahead

19 MR PHILLIPS Now, the testimony is
20 that was simply to cover the food and drink And
21 that is the testimony of everybody that testified,
22 and there is no evidence to the contrary And it
23 makes sense if you do the math on the 50 cent rake,
24 then that will come close to about covering it
25 And the homeowner testified sometimes it did,

Transcript of Municipal Court

1 sometimes it didn't, and when it didn't sometimes
2 the winner would chip in another \$5 to try to cover
3 it

4 So this -- if you accept my premise that the
5 house was used for a place of gaming means
6 something, that he was not doing this for a profit
7 He was not doing this as a business And I would
8 suggest to His Honor that there is no evidence by
9 the State or anybody else that he was doing this
10 more than two nights a week In fact, our own
11 admission is it grew to two nights a week because
12 of another game that shut down If he is doing
13 this as a business, Your Honor, I'm sure going to
14 be doing it a whole lot more than two nights a
15 week, and I'm going to be taking a whole lot more
16 than a 50 cent rake Otherwise, he would not be
17 able to live or exist So this was, despite what
18 the State would like to characterize it as, a
19 friendly game

20 Now, did everybody know each other
21 intimately at the tables? No Apparently not
22 Did they know each other on a first-name basis?
23 Seems like they did But, again, my question to
24 that is, so what So what if they were total
25 strangers So what if they were all related to

Transcript of Municipal Court

1 each other That should not matter to this
2 analyzation at all

3 They simply love the game of poker They
4 like to play poker Many people, millions of
5 people like to play poker There are poker games
6 going on in every city of the state, every state of
7 the union, and most of them are friendly games
8 And when I -- I will define my definition of
9 friendly as the house not making a profit

10 It doesn't matter the stakes If people
11 want to bet 50 cents or want to bet \$500 or \$5,000,
12 if the house isn't making a profit, those people
13 should be allowed to do basically what they want to
14 with their money People don't wince a second or
15 don't even bat an eye at somebody paying a \$50,000
16 membership at a golf club and all the expenses that
17 are associated with that Why shouldn't people
18 that love to play the game of poker get together
19 and be able to play even if it cost them? And even
20 at least in poker, you have the chance to get your
21 money back that you don't in a golf club

22 The other characterization I guess of the
23 house used for a place for gaming is that it was
24 somehow illegal by its nature And just because
25 they were there, just because they were playing

Transcript of Municipal Court

1 poker or any other game for money, then it's per se
2 illegal and, therefore, unlawful I don't find
3 that in the statute, Your Honor I do not find a
4 per se rule that says you cannot -- or if you play
5 in a house, it automatically makes it a house of
6 gaming And we did do some research on that, and
7 it was a very futile search

8 THE COURT You're not alone I've
9 searched too

10 MR PHILLIPS Okay And so the only
11 thing that we have to fall back on are the
12 definitions that we found, and under those
13 definitions, what they were playing is not a house
14 of gaming Of course, Your Honor, we would prefer
15 that you adopt the sitting opinion rule in Johnson
16 versus Collins and find that the dominant factor
17 test applies In which case there should be no
18 doubt to the outcome Thank you

19 THE COURT You're welcome Yes, sir

20 MR GOLDSTEIN Thank you, Your Honor
21 I appreciate the Court's indulgence, and I
22 appreciate the prosecution's indulgence The
23 reason that we're here is because this is a
24 question that the Court is facing that courts
25 around the country are facing South Carolina has

Transcript of Municipal Court

1 its statute, but it's a common provision Not
2 house of gaming, but everybody agrees that gaming
3 means gambling And states have anti-gambling
4 laws, and states are struggling in cases of
5 scientific studies and expert testimony to figure
6 out where it is that we're going to draw the line

7 And I think my friend from the prosecution
8 when he stands up, the first thing he's going to
9 have to say is whether he rejects the attorney
10 general's view of the statute because as we explain
11 in our amicus brief on page 7, the attorney general
12 has, quote, consistently stated that the test of
13 whether a particular game is a game of chance or
14 skill is governed by the so-called predominance
15 test And that's the attorney general's opinion of
16 January 22, 2004, which cites in turn three other
17 attorney general opinions And so that's what the
18 highest law enforcement officer has done in terms
19 of doing his best job to interpret the statute, and
20 that goes back to 1978

21 So that's the footing that we come to The
22 state supreme court hasn't told us -- and I'm from
23 South Carolina I grew up here mostly -- hasn't
24 told us exactly what it means, but we do have that
25 guidance from someone who's charged with enforcing

Transcript of Municipal Court

1 it And I take it that the prosecution's position
2 is going to have to be that it rejects that view,
3 that it rejects the idea of the predominance test
4 And in rejecting that it's going to have to reject
5 really the nationwide view on what gambling is

6 We've cited a bunch of cases to the Court
7 from a variety of different states that say, look,
8 we have these antigambling statutes, and in
9 figuring out what they are, we have to figure out
10 what role chance plays because there's chance in
11 everything Professional golf, you get a good
12 bounce or a bad bounce Professional football,
13 whether or not somebody happens to catch it on the
14 tips of their fingers There's a lot of chance in
15 everything in life

16 There's skill in almost everything too In
17 blackjack the professor explained that you can make
18 a one or two percent difference in blackjack So
19 we got to draw a line, and we have to figure out
20 how much chance is enough And the consensus
21 around the country is we're going to say whether
22 chance predominates Which was more? 51 percent,
23 49 percent? It's the best we can do

24 And then we look at the actual evidence as
25 courts have done And when courts have confronted

Transcript of Municipal Court

1 that question, we have -- some cases we're involved
2 in, some aren't These are cases like your own in
3 a magistrate's court where courts conscientiously
4 take a look at the evidence, but we've cited to the
5 Court, for example, cases just in the past two
6 weeks in Pennsylvania and in Colorado where courts
7 have confronted the exact question They have
8 looked at the same kind of evidence that the Court
9 has and said, look, I'm trying to do my best I've
10 got an antigambling statute

11 If the legislature wants to say Texas
12 Hold'em is illegal, I'm not saying it's
13 unconstitutional for them to do that in any way,
14 shape, or form I'm trying to interpret the
15 legislature's job That's what judges do every
16 day I look Everyone says it's predominance, and
17 I look at the actual evidence

18 In Colorado we have a jury, and in
19 Pennsylvania we have a judge And they say,
20 applying what everybody agrees is the right
21 standard, there's chance in everything in life, the
22 predominance test Then Texas Hold'em, this
23 particular game, I got one question in front of me
24 I've got evidence in front of me, then it's a game
25 of skill, not of chance Not to say there's not

Transcript of Municipal Court

1 some chance in it, but it's predominantly a game of
2 skill And I think we heard similar testimony
3 today

4 So the question I think will be, taking that
5 as a given, is there a parade of horrors that the
6 prosecution will be able to advance that says,
7 look, whatever you might think about any particular
8 game, if a group of college friends were to get
9 together, there's no way to draw that line because
10 what the defense is actually doing here, it's the
11 camel's nose in the tandem What they want to be
12 doing is opening casinos in Mount Pleasant And
13 just like courts in Pennsylvania and Colorado have
14 seen through that, it's perfectly clear from the
15 testimony and from common sense and logic that one
16 doesn't equate with the other because we are
17 talking about here a record that was established on
18 what kind of game is before the Court Not to say
19 what another case might present that would produce
20 a different result, but what we have here is a
21 group of people

22 There was some money The only money that
23 wasn't involved, just going between the players who
24 happened to win this game of skill, went to pay for
25 pizza and beer, not for somebody to make a profit

Transcript of Municipal Court

1 from And what would happen in a different
2 situation, if you have an actual keeper of the
3 game, as my friend said, that might produce a
4 different result? One could see much more
5 logically the State having an interest in
6 regulating someone who was Perhaps because they
7 might cheat or any other reason in the world, take
8 just as a common sense matter a much more severe
9 interest in regulating that But just a group of
10 people around playing cards like what has to be 20
11 percent of the country has done, what Barack Obama,
12 the President of the United States has done, what
13 repeated supreme court justices have done, what
14 huge numbers of members of congress have done If
15 that was the intent of the South Carolina
16 legislature to make illegal, it would be highly
17 unusual

18 And so I think, with all due respect to the
19 prosecution, which I think came to this case in
20 this investigation thinking it was much more than
21 it really was, that it was a case where somebody
22 was making a bunch of money on it It just isn't
23 that case, and we have a record about what actually
24 happened here I take the prosecution's concern
25 about another case in a different situation that

Transcript of Municipal Court

1 involves different facts, and we come out
2 potentially differently under the law And it
3 wouldn't be a result that we support that would say
4 that you could open a card room in Mount Pleasant

5 We're talking about here a group of people
6 that come together, and they play a game of skill
7 the way they might play duplicate bridge against
8 each other That's a game of cards, and you could
9 play it in the house You could play golf out on a
10 public golf course and bet on the outcome of it,
11 and that would be a game of skill

12 The legislature hasn't said every time you
13 are going to wager, we want it to be a crime
14 Instead it has the limited statute that says, these
15 are the things we're concerned about, and it is
16 focused on the element of chance And so our only
17 point, Your Honor, is that this is a particular
18 case involving a particular set of facts, a statute
19 that the attorney general has interpreted to say
20 that the question is whether skill is predominant
21 That's a question of fact that the Court has heard
22 evidence on, and the prosecution has the
23 opportunity to introduce evidence on It chose not
24 to And we think the evidence produces the only
25 logical result that this is a game of skill, not

Transcript of Municipal Court

1 chance And that's the question the statute asks
2 Thank you very much

3 THE COURT You're welcome Yes, sir,
4 Mr Grossman

5 MR GROSSMAN Your Honor, I'm going to
6 start at the podium I know -- I like to move
7 around sometimes, and I know that can be a problem
8 And I'm going to try to remain in one place if I
9 can You know, Your Honor, I've heard that every
10 good lie has a little bit of truth in it, and
11 that's kind of how I would sum up the defense's
12 arguments Allow me to collect my thoughts just
13 for a second

14 These five gentlemen are charged with
15 unlawful games and betting, which is 16-19-40 The
16 evidence that the Town introduced today I think is
17 very clear Now, the first issue that I want to
18 get to is the skill or chance argument What's
19 happened today is this National Poker's Alliance
20 apparently is funding these defendants and is
21 representing these defendants in order to somehow
22 change our gambling laws here in the State of South
23 Carolina The case that we have is a prime example
24 of why we have those laws

25 Now, under section 16-19-40, the law states

Transcript of Municipal Court

1 that it's a crime for any person to play at a house
2 used as a house of gaming at any game, any game of
3 cards or dice It doesn't say anything about skill
4 or chance or anything at all It says any game of
5 cards or dice

6 Now, there can be no doubt that the
7 defendants were in a house used for gaming and were
8 playing a game which uses cards and gambling money
9 on that game In fact, Your Honor, I heard the
10 testimony of Mr Brestel who said that, in fact, he
11 was gambling, and the others were gambling as well
12 We heard testimony from Mr Stallings that there
13 was gambling going on in that house, and, in fact,
14 they were using cards So there's no question that
15 the game fits that definition It's any game with
16 cards or dice Whether poker such as this is a
17 game of skill or chance is totally irrelevant to
18 the proceeding today

19 Now, Mr Phillips was quoted in a newspaper
20 recently, although they've mentioned other cases
21 today, that no judge has actually let the argument
22 be heard whether skill or chance is a predominant
23 factor Well, there's a reason for that Because
24 it has no relevance to these types of cases This
25 case and the crime these defendants committed is

Transcript of Municipal Court

1 the exact scenario that our lawmakers foresaw when
2 they enacted the statute

3 Now, again, the little bit of a lie -- or I
4 should say a little bit of the truth wrapped up in
5 a lie A group of friends getting together for
6 their weekly poker game is not what we have here,
7 not at all That's a complete lie, a complete
8 fabrication We know that from Mr Stallings'
9 testimony He didn't even know some of the players
10 that were at that game, didn't even know them, and
11 it wasn't like he knew a lot of them The names I
12 asked him to give of the 18 or so that aren't here
13 today, he gave me one-name answers, sometimes
14 initials of people, and I think that was only five
15 or six names that he could even name like that
16 The others, he didn't know them at all

17 He admitted, again, that there was gaming
18 going on in the house and that he was profiting
19 Now, of course, he says that he was profiting by
20 only paying for the chips and the food and the beer
21 and so forth That's not what he told the officer
22 that night The officer's testimony was that he
23 said that was his job That was his employment

24 They're saying it was only a 50 cent rake
25 The officer's testimony that he was taking \$2 off

Transcript of Municipal Court

1 of every hand And as the officer, as the way he
2 testified, a lot of times defendants do tend to lie
3 when they're caught in a situation like that I
4 think, Your Honor, should probably also take note
5 that we know Mr Stallings is somewhat of a liar
6 That was proven on the witness stand I asked him,
7 of course, had he told the IRS about him working
8 for Mr Chimento, did he note that?

9 MR PHILLIPS Your Honor --

10 MR GROSSMAN Don't you think this
11 goes directly as to whether it was a house of
12 gaming?

13 MR PHILLIPS I don't think it's
14 proper for him to call witnesses liars in his --

15 THE COURT You can say that he didn't
16 report income, but --

17 MR GROSSMAN Let's put it this way
18 I think his honesty and integrity come as a serious
19 question when asked whether or not he reported --
20 and, again, this goes directly to whether this was
21 a house of gaming Was this his job? Did he
22 benefit from the money earned in that house? What
23 does he say? He says, I didn't have a job That's
24 what he tells Officer Hembree that night This is
25 what I do for a living

Transcript of Municipal Court

1 That was the officer's testimony Your
2 Honor has heard that testimony It's in the
3 record It's evidence And then, of course, we
4 ask him, well, what was your job? Well, who does
5 he work for? Oh, that's something we can easily
6 verify Robert Chimento Robert Chimento, who
7 we've heard a lot about Mr Chimento So, again,
8 I don't think that's a very credible source, and
9 apparently according to Mr Stallings, Mr Chimento
10 didn't put in the fact that Mr Stallings was
11 working for him in his tax returns, another
12 interesting little fact

13 Now, again, the lie The lie is that the
14 Town of Mount Pleasant has somehow gone into a
15 smalltime poker game amongst friends and broken up
16 that game The Town of Mount Pleasant is not
17 interested, never has been interested in
18 investigating or breaking up small poker games
19 amongst friends Lots of people play poker I
20 think presidents have played poker Great people
21 have played poker Of course, bad people play
22 poker too All kinds of people play poker This
23 is the problem with the National Poker's Alliance
24 That's why our law's in place, Your Honor

25 This law can be likened to a very similar

Transcript of Municipal Court

1 law, our laws against prostitution, and let me
2 finish before everybody jumps up here and objects
3 Why? It's operating a bawdy house, a house of
4 prostitution Why do we have a law like that?
5 Well, let's think about the way the law is written
6 and the way this law is written If you have a
7 house of prostitution, somebody has to run that
8 house of prostitution If people go to the house
9 of prostitution, you can arrest the individual who
10 runs the house of prostitution for running such a
11 house if they ran it in a residential neighborhood
12 or wherever You can also arrest the people who
13 came and used the house of prostitution

14 Now, if one prostitute lives in a house and
15 took a John back to that house, could you say that
16 that was a house of prostitution? It would be a
17 stretch It would be difficult You might have a
18 prostitute engaging in prostitution You might
19 have somebody who solicited prostitution, but was
20 it a house of prostitution? Maybe not

21 Sometimes judges have to take from the facts
22 at hand a common sense definition of what's going
23 on Now, what do we have in this house? Now,
24 again, if you had a house where you had 50
25 prostitutes living in a house and an individual

Transcript of Municipal Court

1 residing in that house and there were 50 Johns
2 caught in that house at once, it would be a fair
3 assessment to say that that was a house of
4 prostitution

5 So what do we have in this case? What
6 evidence did we present to show that this was a
7 gaming house? We know that there was gaming going
8 on there because Mr Brestel admitted it Your
9 Honor has the video of these individuals
10 participating in the gaming In the 10 second of
11 video that we have, they're around the tables
12 We've met that burden

13 So how do we say it's a house of gaming?
14 What evidence do we have? Well, apparently Mr
15 Stallings doesn't have a job That's what he told
16 the officer, and they have no proof that he had a
17 job because I asked him if he filed that on his tax
18 return So he has no income He told the officer
19 this is how I make my money It's undisputed
20 whether or not he was using that money for food and
21 chips as he says, that he was making money So
22 even if he was using it for food and chips, we
23 still reach that standard

24 The game was advertised on the internet
25 According to Mr Stallings, there wasn't anything

Transcript of Municipal Court

1 that could exclude anybody from coming into the
2 game That's like a business It wasn't as if he
3 said, well, the only people that can come into this
4 game are people who reside in a certain part of
5 town or are friends with Mr Brestel They're the
6 only people that can come in, just friends of Mr
7 Brestel No

8 Anybody that hooked onto the internet and
9 said, I want to come over and play, according to
10 him, there were no excluding factors I said,
11 could a pedophile come over and play? There was no
12 way to exclude a pedophile or an armed robber
13 There was no way to exclude an armed robber And
14 why is that important? That's the whole point of
15 the statute Do we want a business -- of course,
16 they're operating a business without a license
17 also, which is another crime Do we want a
18 business like that operating in a residential
19 community with 20 something cars, this numbers of
20 people?

21 And I think the other thing that you need to
22 keep a focus on also, Your Honor, again, is how
23 much money was in the house Now, Mr Stallings
24 says, well, it was just -- we're just paying for
25 food and chips Well, 24 people, there's almost

Transcript of Municipal Court

1 \$6,000 found in that house, according to the
2 testimony of the officer and the receipts admitted
3 in Almost \$6,000 That seems a lot of money to
4 be having in your house and not in the bank

5 That's just a lot of money, Your Honor, out there

6 Two tables, furniture pretty sparse, the
7 individuals -- the five individuals today, they're
8 not even gambling together Apparently they're
9 supposedly friends, but it was a testimony of the
10 officer that they were in different rooms while the
11 gambling was going on Again, a \$20 buy-in, which
12 is admitted again by Mr Stallings in addition to
13 him saying 50 cents or whatever the rake was The
14 officer said it's \$2 People actually parking
15 according to Officer Hembree's testimony at the CVS
16 parking lot That's how many people were actually
17 parking to get into this game They couldn't even
18 all park at the residence That seems a little
19 more than a friendly poker game amongst friends

20 Now, Your Honor, sometimes I guess as a
21 prosecutor, you feel like you're arguing a point,
22 and it's a point that appears so obvious you don't
23 even want to argue it I think it's clear that
24 this was more than a poker game amongst friends I
25 think we've proven that, and that gets to the

Transcript of Municipal Court

1 importance of Your Honor's ruling

2 They're making this skill versus chance
3 argument for a reason That's why they paid \$5,000
4 to Mr Sexton That's why the professor came in
5 here to tell us about all of these wonderful
6 studies they've done on poker as skill versus
7 chance because they want to make it so we can't
8 enforce our laws This has always been the law

9 Do we want in the Town of Mount Pleasant or
10 does any law-abiding, sane citizen want it to be
11 legal for anybody to just set up a game and gamble
12 on that game in a residential community or in
13 public or anywhere else without any statutory
14 regulation by the State? This isn't about the
15 Town's personal beliefs The Town of Mount
16 Pleasant has some close-minded attitude towards
17 gambling different than Beverly hills or wherever

18 I don't know of any state that allows
19 gambling in residential communities unregulated
20 Those are specifically put in places like Atlantic
21 City and Las Vegas for a reason, for a reason
22 Because anybody can go in there, because it does
23 attract negative elements, because it can be a
24 problem It doesn't mean it always will It
25 doesn't mean that these guys aren't nice guys It

Transcript of Municipal Court

1 just means it can be a problem

2 Now, the police are there to enforce our
3 laws They did a good job enforcing our laws back
4 in 2006 This was obviously a for-profit
5 operation Again, \$6,000, over 20 people, two
6 rooms being used, the people not knowing each
7 other, the testimony of both witnesses that were
8 there, Mr Stallings and Mr Brestel I don't see
9 how Your Honor can find in any way, form, or
10 fashion that this wasn't a house of gaming

11 And I'm going to close here, Your Honor
12 The proper way to change laws is to lobby the
13 legislature and have them change it It is not to
14 come into the town and break the laws, go to trial,
15 and say the laws are wrong, and therefore, they
16 should be invalid That is not the proper way
17 These gentlemen are guilty as sin I think that's
18 clear for everyone that sat in this trial and
19 viewed it today

20 Your Honor, if you find them not guilty,
21 basically what you're saying is this type of
22 conduct, illicit, for-profit gaming operations can
23 go on in the Town of Mount Pleasant and that the
24 judges of the Town of Mount Pleasant are not going
25 to let our laws be interpreted the way the

Transcript of Municipal Court

1 legislature wanted them to be interpreted If the
2 legislature wants to change them, then the Town of
3 Mount Pleasant will adjust accordingly That's
4 what we have to do, but it is not for this Court to
5 decide that decision with all due respect to Your
6 Honor

7 I believe if you look at all of the evidence
8 that we presented today, Your Honor, there's no
9 doubt that all five defendants are guilty of
10 gambling I trust and hope that you will look at
11 all the evidence and understand how important your
12 decision is to the Town and find them guilty as
13 charged I thank you very much for your time

14 THE COURT Thank you, sir

15 MR PHILLIPS Your Honor, may I offer
16 one thing? No argument, but I did not offer this
17 in the case because of His Honor's ruling that it
18 would not be considered And I obviously do
19 believe that, but because it's such a central part
20 to the prosecutor's argument, I would like to
21 proffer -- not into evidence, not for you to
22 consider -- but proffer what I was going to put
23 into evidence regarding Nate Stalling's employment
24 And just for the record

25 MR GROSSMAN I object, Your Honor

Transcript of Municipal Court

1 His testimony is over with He has already
 2 testified to what he testified to, and he is done
 3 THE COURT Mr Phillips, I don't know
 4 under the rules of civil procedure or criminal
 5 procedure how when direct testimony of an
 6 individual has been concluded and his
 7 cross-examination has been concluded that I can go
 8 back and kind of reopen that testimony
 9 procedurally Do you follow me?

10 MR PHILLIPS I do, and I believe you
 11 can procedurally It has happened in Circuit Court
 12 on more than one occasion that I've been involved
 13 in

14 THE COURT Well, what you -- what I
 15 think you're telling me, and you can correct me if
 16 I'm in error, is that you have been given
 17 information that you just learned today that would
 18 have an impact on the testimony of I gather Mr
 19 Stallings, I assume Mr Stallings, that could not
 20 have been gathered reasonably before trial

21 MR PHILLIPS It wasn't discovered or
 22 found before trial because we did not know of --
 23 that it would be a central part to the State's
 24 case So we deemed it to be irrelevant, but --

25 THE COURT No But my point being,

Transcript of Municipal Court

1 and this is the rule of criminal procedure that I
2 know this state and the federal court follows
3 That if something could have been reasonably
4 determined and found out prior to the close of that
5 person's testimony and it was not reasonably
6 searched for nor determined, it's too late to cry
7 wolf and say, I'm going to put it in because it's
8 not coming in And that's the criminal procedure I
9 know from 42 years of doing this I'm not saying
10 it's good, bad, or indifferent, but that is the
11 procedure that's followed So I'm not going to let
12 it in on even a proffer Do you understand why?

13 MR PHILLIPS I do understand why

14 THE COURT Good enough Anything
15 further?

16 MR PHILLIPS Nothing for the defense

17 THE COURT I'm going to cut you off
18 If you can tell me by reasonable search and
19 reasonable question you could not have learned
20 that, then I'll listen to you But I think if it
21 could have been reasonably determined, then it's
22 out of my scope

23 MR PHILLIPS I, again, will state
24 that I saw no reason to search for it because I
25 think it's completely irrelevant as --

Transcript of Municipal Court

1 THE COURT You didn't search, and then
2 it came up

3 MR PHILLIPS -- as His Honor did, but
4 once it came out on cross-examination, that's when
5 we searched and found

6 THE COURT Well, that's too late to
7 search

8 MR GROSSMAN Your Honor, just so you
9 know, I don't know if you're going to go back into
10 chambers Other than the form saying that Mr
11 Stallings had pled guilty to the gaming charge
12 previous, I don't know if Your Honor physically
13 wants us to do anything with the evidence

14 THE COURT Well, I told Ms Kirvin
15 Would you go get Ms Kirvin for me? I told Ms
16 Kirvin if she could reasonably store all these
17 materials in the clerk of court safe and not cause
18 her a problem, I'm going to store it If, however,
19 she says, I don't have room for it, I'm going to
20 relinquish all this evidence back to the evidence
21 locker of the police department

22 MR GROSSMAN That's what we want to
23 do

24 THE COURT But I'm going to leave that
25 within the purview of Ms Kirvin, not me Yes,

Transcript of Municipal Court

1 sir

2 MR GROSSMAN The only thing that we
3 would have go, Your Honor, just so Your Honor
4 knows, has to go back to evidence, just the
5 paperwork, the warrant affidavit that I believe he
6 put in and the sentencing sheet on Mr Stallings
7 for him pleading guilty to the gaming charge would
8 have to stay with the Court because they can't put
9 it into evidence if it's not evidence to begin
10 with It's just court evidence

11 THE COURT That's right Thank you
12 So I'm going to have her tell me Anything
13 further?

14 MR PHILLIPS Just a question I did
15 not -- I looked at everything on top of the table,
16 and, of course, we talked earlier and had no
17 objection There are some boxes under the table,
18 and I didn't know if that's part of the evidence or
19 not

20 MR GROSSMAN Well, it was stuff the
21 evidence was stored in There was a -- I mean,
22 there was a --

23 MR PHILLIPS May I just look at it?

24 THE COURT Sure

25 MR GROSSMAN Just a knapsack, and

Transcript of Municipal Court

1 that's it That's the only thing There's nothing
2 in it

3 MR PHILLIPS No problem, Your Honor

4 THE COURT Ms Kirvin

5 MS Kirvin Yes, sir

6 THE COURT In front of this Court is
7 the information and materials that were introduced
8 in this case

9 MS Kirvin Okay

10 THE COURT I want to know if it's
11 reasonable for the clerk of court to store all this
12 without creating a problem for the clerk of court
13 Can you take this and keep it and not overrun your
14 office and cause complications in your safe? I
15 mean, is it good enough that you can handle that?

16 MS Kirvin I believe if we put it in
17 a box, Your Honor, we can get it in the safe, yes,
18 sir

19 THE COURT That's all I needed to
20 know It's going to the clerk of court Anything
21 further?

22 MR PHILLIPS Just a purely selfish
23 question, Your Honor Do you have an estimated
24 time on when you might rule?

25 THE COURT Yeah I'm going to issue

Transcript of Municipal Court

1 an order I'm going to write an order, and it will
2 be issued by Thursday of next week I got a
3 federal court hearing on Tuesday that I'm going to
4 get ready for, and I'm going to do that Wednesday
5 I'm going to write this order Thursday you'll
6 have it Everybody will have it

7 MR PHILLIPS Thank you, Your Honor

8 THE COURT And I'll go back over my 23
9 pages of notes Is there anything further from the
10 plaintiff -- or no From the State or the defense?

11 MR PHILLIPS Nothing for the defense,
12 Your Honor

13 (The hearing was concluded at
14 4 17 p m)

Transcript of Municipal Court

REPORTER'S CERTIFICATE

I, SARAH ELLIS, Court Reporter and Notary Public
in and for the State of South Carolina at Large, do
hereby certify that I correctly reported the
within-entitled matter and that the foregoing is a
full, true and correct transcription of my
shorthand notes of the testimony and/or other oral
proceedings had in the said matter

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof

Witness my hand, I have hereunto affixed my
official seal this 1st day of March, 2009, at
Charleston, Charleston County, South Carolina

Sarah Ellis

My commission expires

NOVEMBER 5, 2017

1 STATE OF SOUTH CAROLINA

MT PLEASANT MUNICIPAL COURT

2 COUNTY OF CHARLESTON

3) Case No 98045DB
4) Case No 98035DB
5) Case No 98040DB
6 TOWN OF MOUNT PLEASANT,) Case No 98050DB
7) Case No 98043DB
8 vs) TRANSCRIPT OF RECORD
9)

7 ROBERT L CHIMENTO)

8 JEREMY BRISTEL)

9 MICHAEL WILLIAMSON

10 SCOTT RICHARDS

11 JOHN T WILLIS

12
13 TRANSCRIPT OF RECORD of proceedings heard in the Municipal Court for
14 the Town of Mount Pleasant, South Carolina, on August 22, 2008 at its
15 facilities at 100 Ann Edwards Lane, in Mount Pleasant, South Carolina

16 PRESIDING was the HONORABLE J Lawrence Duffy, Jr Judge of the
17 Municipal Court

18 APPEARING for the Town of Mount Pleasant was TOWN PROSECUTOR Ira
19 Grossman and CORPORAL Justin Hembree

20 APPEARING for the DEFENSE was ATTORNEY Jeffrey A Phillips

21
22
23 Dated this 8th Day of September, 2008

24 
25 Helana Frierson
100 Ann Edwards Lane
Mt Pleasant, SC 29464

1 COURT Good morning My name is Lawrence Duffy, and I will be
2 presiding judge for this the Municipal Court for the Town of Mount Pleasant
3 The Municipal Court for the Town of Mount Pleasant is a court of criminal
4 jurisdiction Since it is a court of criminal jurisdiction, you as citizens
5 of this state and country have certain rights and privileges afforded to you
6 by the Constitution of the United States as well as by the Constitution of
7 the State of South Carolina Rather than bring you up one at a time and
8 explain those rights and privileges to you, I'm going to explain them to you
9 now as a group I want you to understand fully that while I'm explaining
10 them to you as a group, they none-the-less apply to each and every one of you
11 individually

12 First of all, you have the right to remain silent You don't have to
13 prove anything in this court of law It is the sole responsibility of the
14 State of South Carolina and the Town of Mount Pleasant to prove any offense
15 lodged against you beyond a reasonable doubt

16 You have the right to question or cross-examine any and all individuals
17 who offer any testimony against you

18 You have the right to summon witnesses to testify on your behalf If
19 there are individuals you believe have important information to your defense
20 and they will not freely or voluntarily come forward, if you supply us with
21 their names and their addresses we will subpoena them into court and you can
22 obtain from them at that time whatever information you believe to be
23 important to your defense

24 You must remember that while you have the right to remain silent,
25 anything you do say can be used against you

1 You have the right to an attorney If you have not had the opportunity
2 to consult with or retain the services of council, this court will give you
3 that opportunity

4 You have the right to a trial by jury I sit here as a bench trial
5 judge hearing cases You have the right to have your case heard by a jury of
6 your peers to make a determination of the outcome of that case

7 If for any family reasons, personal reasons or health reasons you do
8 not believe you can go forward with your case today, I'll be glad to listen
9 to whatever those family reasons, personal reasons, or health reasons may be
10 If I agree that they are significant, I'll continue that case until another
11 time

12 (Calls Cases)

13 COURT We are here on a motion to dismiss in a matter of the Town of
14 Mount Pleasant versus Mr Robert L Chimento, Scott Richards, Michael
15 Williamson, Jeremy Bristel and John T Willis The motion was filed with
16 this court, it appears Wednesday afternoon of this week, and was filed by
17 Jeffrey Phillips of the South Carolina Bar on behalf of the defendants Go
18 ahead Mr Phillips

19 MR PHILLIPS Thank you Your Honor As a point of clarification, I
20 believe the motion was filed several months ago, but the memorandum was filed
21 this Wednesday, of last week I just want to make sure that there were no
22 time

23 COURT No, I wouldn't have called time on you anyway

24 MR PHILLIPS Okay Your Honor I believe that the general facts of
25 the case aren't much in dispute There may be a couple of things that we

1 would maybe need to elicit testimony on But basically there was a poker
2 game that went on in the Town of Mount Pleasant and I think that
3 approximately 16-20 people played in it There was a \$20 00 buy in It was
4 a poker tournament While they were playing, they were there probably an
5 hour, hour and a half into the game when the police broke into the game in a
6 drug raid style, guns drawn, basically scaring everybody, hand cuffed them,
7 took the money that was on the table plus what was in their pockets, plus
8 money in drawers in the house, and some of the money was in the car, and
9 cited everybody under the statute of South Carolina, 16-19-0040 We are here
10 today Your Honor to ask that you dismiss the charges following that statute
11 for several reasons, and I would kind of like to go in reverse order I
12 don't think it will matter just to get the constitutional stuff together at
13 the end

14 First would be subject matter jurisdiction There is a statement in
15 the memorandum that in order for something to be illegal under some statutes,
16 for instance the cruise to nowhere gambling statute required that there be a
17 stipulated place that the gambling was illegal The drug statute said that
18 you possess with intent to distribute drugs within a ½ mile of the school,
19 that is a specific place, and in those particular statutes, the cases were
20 dismissed, because one there was an allegation of drug distribution within a
21 ½ mile of a daycare center, and they said that the daycare center was not a
22 school or an elementary school as was written in the statute In the
23 Stardancer case they said that the vessel boat or ship was not fined by the
24 statute since it was not in a prohibited place to engage in this activity,
25 and that the case was dismissed against those defendants as well

1 In this case Your Honor, the statute reads that the person plays at, and
2 then it lists a lists of places, taverns, inns, store for the retailing of
3 spirits or liquors, or in any house used as a place of gaming, barn, kitchen,
4 stable, or other outhouse, street, highway, or open place Those are
5 specific assigned lists of places The only place that I know of that the
6 prosecution could fit this particular location into would be house used as a
7 place of gaming This was the residence of Nathaniel Stallings, this is
8 where he lived, and that was what he primarily did at this residence A
9 house used as a place of gaming is not defined in the statute, so it's really
10 difficult to know what that means

11 I didn't find any case law to define house used as a gaming place, and
12 in fact, I didn't find any cases in the 206 years it's been in existence I
13 did an internet search as indicated in my memorandum, and tried to find
14 anywhere that identified house, a gaming house or house of gaming, and the
15 first three pops that I hit under Google all had identical definitions It
16 stated 'a public building in which a variety of games of chance can be
17 played' Obviously this was not a public building, and we could argue
18 whether poker is a game of chance, or predominantly a game of chance or not
19 but at a later date if we have to But um, I would argue that because the
20 players were not playing in a prohibited location that the state lacked
21 subject matter jurisdiction over the location and be dismissed

22 As to the Constitutional arguments Your Honor, there are basically two
23 headings I guess of constitutional arguments One is the doctrine, which
24 has actually two problems I think that under either one the statute should
25 fail And the second one is the due process clause Under the doctrine, a

1 person who reads the statute should have sufficient notice on what is
2 proscribed or prohibited activity The South Carolina Law says that you must
3 give a person of ordinary intelligence a reasonable opportunity to know what
4 is prohibited so he may act accordingly And then the second problem is to
5 law enforcement on the day of this doctrine and have explicit standards to
6 apply for those that apply the law

7 In reading this statute at first glance, I'll admit I have a, I guess,
8 19 years of education and it took multiple, multiple, multiple readings for
9 me to make much sense out of this And primarily, it is because it lists a
10 lot of things that we in the 20th century, 21st century aren't familiar with
11 For instance, it says that you can't play any games with cards or dice and
12 again, that if you just take that at its face this is barely untenable
13 considering all the games with cards or dice that we have around Then it
14 talks about how you can't play at any gaming table commonly called A, B, C,
15 or E, O I don't know what that is, and I still don't know what that is A
16 roley-poley table rouge et noir, I don't know what that is A faro bank, I
17 don't know what those are But it does list the prohibited games that we
18 just talked about, any games with cards or dice under A, any gaming table B,
19 and then those games C, D, And E, F, and G And then it has an exception,
20 and it does list some games you can play that do have dice Such as,
21 backgammon, it says that you can play billiards, bowls, chess, draughts, or
22 whist, but there is no betting on those games So evidently it appears the
23 statute is saying these games are going to be legal all the time, and these
24 games are only illegal if you bet, and that is the best I can do with it
25 So, Your Honor, I believe that first of all I believe that ordinary citizens,

1 if they were to read the statute, are not going to be able to tell what is
2 prohibited and what is not prohibited And also, I believe that ordinary law
3 enforcement agents that read the statute wouldn't know what to prosecute and
4 what not to prosecute, and I believe that as recently as this past year, the
5 sheriff of Charleston was in an interview saying that he didn't know what it
6 was that he was supposed to do with this statute So I believe that
7 considering the high prevalence not only of poker both in Charleston and
8 Greenville and Columbia, all over the state, all over the Nation, I mean, you
9 can't turn on the TV without seeing information about a poker game, that it's
10 popularity would lend that people would want to play it Good retailers
11 encourage this as well They sell poker, what they would call paraphernalia,
12 the chips, the cards, the tables, the table tops, the dealer buttons,
13 everything that you would need to play in a game They sell software with
14 timers to keep track of the time in a tournament These items that were used
15 at this game, such as the chips and the cards, were confiscated by the police
16 as contraband Your Honor if this was contraband, then they should be
17 cleaning out the storage shelves of Sears, Penny's, Walmart, Walgreen's,
18 Eckerd's and every other store that sells them That is why that result
19 would be untenable

20 Either, my argument I guess on the one hand would be that there is no
21 way that anybody reading it wouldn't know what they could and couldn't do,
22 and the law enforcement wouldn't know what they should and should prosecute
23 for On the other hand, if you were to read this statute, and decide that
24 isn't vague, that it's clear, and it says that you can't play any game with
25 cards or dice period, which is what it says Then, that Your Honor, violates

1 due process, because there could be no legitimate state interest in
2 prohibiting all games with cards or dice That is as I said in my brief
3 would be breathtaking overdrawn To say that you can't play Monopoly,
4 Parcheeze, Yahtzee, all of those are games, would simply not serve any state
5 interest whatsoever So, you have the two problems of the constitutional
6 argument, you have the due process clause, and you have the argument of
7 whether or not there is subject matter jurisdiction, and under any one of
8 those Your Honor, I believe that the case should be dismissed

9 COURT Mr Grossman

10 MR GROSSMAN Your Honor thank you, I appreciate that Mr Phillips
11 Um, Your Honor, I'm going to take on his arguments in the way he put them
12 into motion because that is the way that I compare it We should go through
13 the vagueness of the constitution Your Honor first

14 Your Honor, the statute is old, but that doesn't mean that it's not
15 clear I mean, it's perfectly clear You can't gamble in public, and if you
16 gamble in the privacy of your own home, it can't be a gaming house The
17 Statute in the untenable legislature is perfectly clear There is no
18 organized for profit gambling in your house or otherwise The big farce that
19 this case has become is because the standard message it seems to be escaping
20 is that if your friends get together in the privacy of your residential home
21 to play poker or whatever, is illegal That is not true And that is not
22 what the statute says If you read it, it says it has to be a house of
23 gaming, a gaming house What would be the commonsense definition of that? I
24 think that what we encountered, what the police encountered that evening
25 certainly was a gaming house A few friends getting together to play

1 Monopoly, go-fish, Mah Jong, or whatever, is perfectly legal in the privacy
2 of your own home as long as it's not in a gaming house

3 Now, Chapter 16-19-0040 if you'll note, is entitled gambling and
4 lotteries It's not referring to poker, or Mah Jong or Go-Fish, or whatever
5 illegal It's gambling and lotteries Now the Town of Mount Pleasant has
6 never charged anyone under this statute, and I don't know of any other police
7 department in this state that has ever charged anyone under this statute for
8 playing a friendly game of poker or anything else amongst a group of friends
9 in a private residence So obviously, the supposed vagueness that he's
10 talking about, since this statute has been in existence since the early
11 1800's, obviously isn't causing a problem You can't say, that since that
12 hasn't occurred that there is any arbitrary or discriminatory enforcement of
13 this particular statute This was an organized for profit business run by
14 the resident of the house It was advertised, he advertised for players on
15 the Internet, it had a \$20 00 buy-in to play, the house made a profit on
16 every hand Up to 24 people were playing in two separate rooms, and when the
17 host of the game was asked what his occupation was, he stated, "This is it
18 I've been out of work for a month " Now, that is the vagueness argument Your
19 Mr Honor

20 The due process argument, he asked about, or brings up the rational
21 standard, and basically the question is, is the statute rationally related to
22 a legitimate governmental interest? I don't believe that there isn't any
23 doubt that there is Keeping the general public in your neighborhoods both
24 peaceful and safe is a legitimate governmental interest It is a
25 governmental interest to keep a gaming house or a casino out of a residential

1 neighborhood, I think you won't find many people in the Town of Mount
2 Pleasant wanting an organized business, gambling, casino, or any other kind
3 of business next door to them I certainly think that is a governmental
4 interest Residential neighborhoods aren't planned or zoned for the number
5 of cars or people these games attract Other legalities inherently flow from
6 illegal gambling operations including of course another crime, operating a
7 business without a license I also wonder if the individuals involved in
8 this, including the one running the operation and the one playing in it
9 reported their earnings to the IRS? That would also be fascinating Often
10 times, in situations, you're going to get what you got in this situation,
11 which is people like Mr Willis and Mr Chimento who have been convicted
12 felons actually participating in illegal operations like this They are
13 convicted criminals and felons And that for some reason has gone unnoticed
14 in that, but Mr Chimento is a

15 MR PHILLIPS Your Honor, I would object to this line of argument
16 I've let it go sort of as far as I can but, that is completely irrelevant

17 COURT I'm not giving that any consideration in my determination I
18 can tell you that

19 MR GROSSMAN Once again Your Honor, keeping an organized gambling
20 operation operating in a residential neighborhood is certainly within strong
21 governmental interest

22 Now, as to the subject matter jurisdiction, whether or not this was a
23 house of gaming, I'm going to call Corporal Justin Hembree to the stand just
24 for a few moments to give a basic rundown of what they found when they went
25 to 1405 Lincoln Street

1 CORPORAL HEMBREE (gets sworn in)

2 MR GROSSMAN Officer Hembree, what is your rank with the Mt Pleasant
3 Police Department?

4 CORPORAL HEMBREE I'm a Corporal for the Mt Pleasant Police
5 Department

6 MR GROSSMAN And, did you at some point in April of 2006 begin an
7 investigation into an organized gambling operation that was operating out of
8 1405 Lincoln Street?

9 CORPORAL HEMBREE Yes sir

10 MR GROSSMAN OK And, at that time, at some point was a raid or some
11 type of police action initiated on 1405 Lincoln Street because of that
12 gambling operation?

13 CORPORAL HEMBREE Yes sir, it was a combination of that investigation
14

15 MR GROSSMAN Okay, and what exactly did you find when you entered
16 into that residence?

17 CORPORAL HEMBREE Upon entering the residence I noticed multiple
18 people, a large number of people in excess of approximately 20 around two
19 large tables, with multiple poker chip containers, multiple decks of cards,
20 folks stationed with money on the table and in front of them with poker chips
21 and cards and things like that I could tell by the demeanor of the behavior
22 of the people inside the house that a lot of them didn't know each other
23 There were three pit bulls that charged at the officers at the initial
24 entrance to the front door of the residence I immediately made contact with
25 the host of the gambling operation which was Mr Nathan Stallings He was

1 advised of his Miranda, confirmed and confessed to the fact that he was
2 hosting an illegal gambling operation The casino style set up was in the
3 interior of the house, however, when you walked up to the front door of the
4 house, it looks like a common residence When you walk into the front door
5 of this house, it does look like a casino to me Two large and professional
6 laid out tables plus chips and cards with people who didn't know each other
7 gambling for money If you've ever walked into a casino you would see the
8 same type thing

9 He said that he would advertise the game on the Internet, folks would
10 put in for it, and he would pick who would come to the house A lot of times
11 he wouldn't know the people who would come to the house because the game was
12 so large There was a large number of cars outside the residence and parked
13 in the CVS parking lot behind the residence, which obviously attracted a lot
14 of attention as well We did conduct a search of the residence pursuant to
15 the search warrant and located an excess of I believe \$5800 approximately
16 received This all occurred in the Town of Mount Pleasant in the State of
17 South Carolina That's all I have sir

18 COURT Any questions?

19 MR PHILLIPS You said that this house was set up in a casino style
20 Have you ever been in a casino?

21 CORPORAL HEMBREE Yes sir

22 MR PHILLIPS Was there any slot machines in this house?

23 CORPORAL HEMBREE No sir

24 MR PHILLIPS Were there any black jack tables?

1 CORPORAL HEMBREE I wouldn't know a black jack table if I was sitting
2 in front of it

3 MR PHILLIPS But you've been in a casino?

4 CORPORAL HEMBREE Yes sir

5 MR PHILLIPS You know there is a black jack table in a casino

6 CORPORAL HEMBREE I'm sure there is

7 MR PHILLIPS Have you ever seen a roulette wheel?

8 CORPORAL HEMBREE Yes I have

9 MR PHILLIPS Was there one there?

10 CORPORAL HEMBREE No sir

11 MR PHILLIPS Was there a craps table?

12 CORPORAL HEMBREE I'm not sure what that looks like

13 MR PHILLIPS Um, were there any games other than two poker tables?

14 CORPORAL HEMBREE Well, I'd answer that like this When I had been in
15 a casino, it was a lawful operating casino

16 MR PHILLIPS (lots of talking over one another) Answer my
17 question Was there anything other than the two poker tables there?

18 CORPORAL HEMBREE You've asked me the question and what I'm answering
19 is this I don't know what a black jack table looks like, I don't know what
20 a Craps table looks like I have seen a roulette wheel But the casinos
21 that I went into, I saw poker tables And that is what I saw in this house
22 And they were set up in a similar fashion with the same quantity of people as
23 the lawful casino that I went to in Nevada

24 MR PHILLIPS To paraphrase your answer that there was nothing other
25 than two poker tables?

1 CORPORAL HEMBREE There were two poker tables

2 MR PHILLIPS There was nothing else?

3 CORPORAL HEMBREE A large number of people with multiple chips,

4 multiple decks of cards, and lots of money

5 MR PHILLIPS Nothing else that would indicate that there was any

6 other kind of gaming going on other than poker?

7 CORPORAL HEMBREE Other than the illegal poker game, yes sir

8 MR PHILLIPS You said the people didn't know each other, did you

9 question each of them as to who knew who else in the room?

10 CORPORAL HEMBREE Due to the large number of people that we referred

11 to in the report, there was a small amount of officers working other people,

12 it wasn't possible for me to interview each person as to whom they knew in

13 the room But, I could tell by the behavior, say this person was on this end

14 of the table, didn't know this person on the other end of the table, they

15 referred to him as sir, ma'am, excuse me, things like that They obviously

16 didn't know each other

17 MR PHILLIPS Could that be courtesy rather than not knowing each

18 other?

19 CORPORAL HEMBREE Based on my observations, it was not knowing each

20 other Also, Mr Stallings admitted that he didn't know a lot of the folks

21 that showed up for the games

22 MR PHILLIPS Are you familiar with the term 'good hand' sir?

23 CORPORAL HEMBREE Yes sir

24 MR PHILLIPS Would that indicate that you don't know the person if

25 you're saying that to somebody?

1 CORPORAL HEMBREE I don't believe it indicates that you don't know
2 that person, but in this particular situation, it appeared that they didn't
3 know each other a lot of the folks

4 MR PHILLIPS And does the advertisement, as you listed, did it list
5 any fee to enter this gaming house that you talked about?

6 CORPORAL HEMBREE I don't recall specifically

7 MR PHILLIPS Would that be of any importance if it did?

8 CORPORAL HEMBREE Well, Mr Stallings, who has plead guilty

9 MR PHILLIPS Again, answer my question, would it be important?

10 MR GROSSMAN Please let him answer it

11 MR PHILLIPS I am and then he can explain it, but he's not doing it

12 MR GROSSMAN You're not giving him the chance to do either

13 MR PHILLIPS Would it be important to you if it were in the charge?

14 CORPORAL HEMBREE Would you restate the question?

15 MR PHILLIPS I asked you if there was a fee to enter to play in this
16 game other than the entry fee, the fee to come into the house?

17 CORPORAL HEMBREE That's right Mr Stallings, who subsequently has
18 plead guilty to his charges of operating unlawful gaming, um, he said that he
19 made \$2 00 per hand in the house, and a \$20 00 buy in fee

20 MR PHILLIPS Have you done the math officer? If it's a \$20 00 buy
21 in tournament, can you explain the difference between a tournament and a cash
22 game?

23 CORPORAL HEMBREE No sir Under the law, my interpretation is that it
24 is all illegal, I think, it if is for money

1 MR PHILLIPS Would it surprise you to know that there is never any
2 rake for a tournament game?

3 MR GROSSMAN Objection I don't think that's relevant

4 MR PHILLIPS He testified that there is a rake

5 CORPORAL HEMBREE I'm not sure what a rake means Explain it to me

6 MR PHILLIPS You said he took \$2 00 from the pot

7 CORPORAL HEMBREE No I stated that he took \$2 00 from each hand He
8 made approximately \$2 00 on each hand

9 MR PHILLIPS Would it surprise you to learn that if you did that in
10 a tournament game that there would be no money to pay out in the end

11 CORPORAL HEMBREE That's your argument, I'm not sure

12 MR PHILLIPS That's a fact

13 CORPORAL HEMBREE I don't gamble Sorry, I don't know what you're
14 talking about

15 MR PHILLIPS So, you don't understand the game or how it works

16 CORPORAL HEMBREE I understand what's illegal and what constitutes a
17 violation of South Carolina Law and we presented that here today

18 MR PHILLIPS Okay, would you please look at the law that you are
19 enforcing under statute 16-19-0040

20 MR GROSSMAN Your Honor, he's not a lawyer

21 MR PHILLIPS He's not a lawyer, but he can look at it He just said
22 that he was You know what the title of this statute is?

23 MR GROSSMAN Your Honor, I'm going to object one more time He's
24 asking legal questions

1 COURT That's right, he's a police officer And he said he knew what
2 the law was, and let's just see upon what he bases his knowledge of the law
3 It may not be verbatim of the statute But, he has a right to ask him what
4 he knows it from Go ahead

5 MR PHILLIPS Thank you Your Honor The title of the statute again
6 is what?

7 CORPORAL HEMBREE Unlawful games and betting As far as it pertains
8 to the people that were charged with gambling

9 MR PHILLIPS I'm sorry what?

10 CORPORAL HEMBREE as far as pertaining to people who were charged with
11 gambling, it's under Unlawful Games and Betting

12 MR PHILLIPS It says unlawful games, and betting Does that
13 indicate that there are unlawful games and that there is betting? That they
14 are two different violations?

15 MR GROSSMAN Again, he's asking legal questions, Your Honor I'm
16 going to have to object It's not for this officer to debate the law, it's
17 for the lawyers and the judge to do, not the police officer I just think it
18 is completely wrong

19 MR PHILLIPS Your Honor if I may respond to that, that's exactly why
20 we're here We're arguing that this statute is so vague that this law
21 enforcement doesn't know what they should and shouldn't enforce That is why
22 I asked the question

23 MR GROSSMAN whether or not they did enforce it correctly,

24 MR PHILLIPS (talking over each other) He chose to
25

1 COURT Well the point of it is, he said that he knew it was against
2 the law, on what basis did he know that it was against the law is the
3 question that you are trying to find Now whether it is from the statute or
4 whether it is from a warrant or whether it is from what experience has
5 brought him or what I don't know, but the point of it is, is that he said he
6 knew that this was against the law He has a right to be asked, how did he
7 know it was against the law This particular statute, the fact that he may
8 or may not be familiar with this wording of the statute, whether unlawful
9 games are different from betting, he's not going to know that That's going
10 to be up to a judge to interpret That's a judicial rule, that's my rule
11 The legislature sets the crime, and the legislature sets the punishment I
12 make the interpretation, so it's not his determination as to what is against
13 the law and what is not against the law They can bring me a set of facts
14 and I can issue a warrant saying that there is a reasonable cause to believe
15 a law may be broken and they can investigate it on that basis It is not up
16 to him to make that interpretation So let's not spend a lot of time on this
17 since I laid that out

18 MR PHILLIPS With specific regard to what the judge just said, did
19 you get a warrant to issue tickets?

20 CORPORAL HEMBREE We issued citations

21 MR PHILLIPS So, you issued the citation based on this statute?

22 CORPORAL HEMBREE Yes sir

23 MR PHILLIPS So now, if you issued the citations based on your
24 understanding of the statute, what part of the statute did they violate?

25 CORPORAL HEMBREE They were gambling for money

1 MR PHILLIPS How
2 MR GROSSMAN He's answering the question Please let him do that
3 MR PHILLIPS Okay
4 CORPORAL HEMBREE They were gambling for money, in a poker game, a
5 high stakes Texas Hold 'em game in a house that was being run as a casino, as
6 a house of gaming
7 MR PHILLIPS What activity?
8 COURT It's just been answered
9 MR PHILLIPS It has not been answered' I'm asking
10 MR GROSSMAN He just said, they were playing poker in a house of
11 gaming He was asked and answered
12 MR PHILLIPS What is the statute, where, that playing poker is
13 illegal?
14 MR GROSSMAN He's again doing the same thing Your Honor
15 COURT I don't think that he's going to be able to go for that
16 interpretation Let's just move this thing along You were being shown
17 money on the table and people betting right?
18 CORPORAL HEMBREE In a casino style, yes sir
19 COURT I mean, that's why you were there?
20 CORPORAL HEMBREE Yes sir
21 COURT And, the man told you it was a \$20 00 buy in and that he had
22 advertised for the game on the internet, that's why you were there
23 CORPORAL HEMBREE And he makes \$2 00 on each hand
24 COURT Well, what ever he makes, but that's why you looked
25 CORPORAL HEMBREE Yes sir

1 COURT Let's move forward with this thing We could spend a whole day
2 with who interprets what okay Number one, is everybody finished with their
3 arguments?

4 MR GROSSMAN Your Honor, I have just a few more things and then I'm
5 done Your Honor, just finishing up on subject matter jurisdiction, again
6 which the testimony could be taken, most of it has been stipulated that the
7 game was advertised on the internet, there was a \$20 00 buy in to play, the
8 house makes a profit on every hand, 24 people were playing in two separate
9 rooms, the officer testified that he didn't believe some of the people knew
10 each other He also testified that Mr Stallings, Your Honor, who was
11 running the game, admitted that some of the people didn't know each other
12 I'd also like to move into evidence Your Honor, here is a certified court
13 copy of Mr Stallings who was running the house has already plead guilty to
14 running a house of gaming

15 COURT I will accept it for the point of which it was taken He plead
16 guilty, but it doesn't make the statute constitutional or unconstitutional
17 (talking over one another)

18 MR GROSSMAN But basically Your Honor, those are the things that
19 obviously Officer Hembree obviously had even stated when he gave testimony
20 that he was using the word 'casino" and "house of gaming" interchangeably
21 He said it was a house of gaming There was poker obviously money changing
22 hands, and that is why the charges were made Your Honor, obviously you know
23 just to finish up, this is obviously a pretty serious situation If Your
24 Honor ruled and dismissed these cases that would mean that anybody in the
25 Town of Mount Pleasant can set up any type of casino gambling poker operation

1 they saw fit right in a residential neighborhood and that certainly would not
2 be what the intent of the statute is

3 I think the intent of the statute is clear, that we're trying to avoid
4 that type of situation and the type of situations that flow from that We
5 certainly ask that you not dismiss this case There is no question that
6 these gentlemen were obviously gambling in a house of gaming And, the
7 proper way to change a law, I might add, is not to break the law, and then go
8 before the trial judge and ask him to rule on the Constitution It is
9 obviously to lobby the legislature and change the law in that matter,
10 although I don't believe it needs to be changed

11 COURT Anything you want to say Mr Phillips, before I make my
12 determination

13 MR PHILLIPS Yes sir, if I may

14 COURT Go right ahead

15 MR PHILLIPS Thank you Your Honor Um, most of what Mr Grossman
16 has just said is completely irrelevant It doesn't matter to the statute or
17 to the law if these people knew each other or not It doesn't matter if they
18 parked wrong outside It doesn't matter if this house looked like a casino,
19 it doesn't matter if they were betting in fact It doesn't matter what game
20 that they were playing We are here simply to challenge the statute, and
21 this is the only vehicle we have to challenge the statute

22 If you read the statute Your Honor, there is nothing about what Mr
23 Grossman said that violates the statute other than they were playing at a
24 game with cards or dice Now, if that is illegal in South Carolina, they are
25 guilty, but there is nothing in here about anything else There are other

1 laws that the state has that they can go under to deter this type of
2 activity Worrying about the safety, the zoning laws, there are business
3 license laws, there are community restrictions as far as who can do what in
4 their own community or deed restrictions There are many ways that you can
5 curtail whatever activity or what ever concerns that the State has In 1802
6 Your Honor, those were not concerns, and he cannot, I can't believe that he
7 would even argue that this was the intent of the legislature in 1802 They
8 didn't have cars in 1802 In 1802 the intent of the legislature was to do
9 exactly what the statute says and prohibit any games with cards or dice, and
10 that Your Honor is what we say is unconstitutional Thank you

11 MR GROSSMAN Your Honor, just one further thing, as follow up to
12 that Again, what they violated was that they were in a house that was a
13 house of gaming Note there is a distinction in the law, so I guess if you
14 are in a house, and it is not a house of gaming, and you're playing poker,
15 there is no problem So, I don't understand where he is finding the vague
16 quality of the statute Again, a house of gaming How would a normal person
17 describe a house of gaming is? How about the \$20 00 buy-in? How about the
18 people don't know each other? How about a situation where the house takes a
19 rake? That's a house of gaming The farce that is being perpetrated on the
20 court here is that somehow these were friends just getting together

21 You know, it's funny the press has made a big deal about the fact that
22 one of the people in here was a 78-year-old woman She is friends with Mr
23 Chimento? I take it they were going to go down to the beach the next day?
24 It's a farce!

1 COURT All right, I've heard enough argument, and I don't think any
2 more talk or any more arguments is going to clarify the statute or facts any
3 clearer than it sits on its base And, I'm going to accept the facts as they
4 are

5 Mr Stallings had a poker tournament He had a buy in on the poker
6 tournament He advertised on the Internet for the poker tournament The
7 judiciary's function is to interpret the meaning of the statute That is my
8 rule Penal laws are to be strictly construed There are principles that
9 power of punishment is vested in the legislature and not the judicial
10 branches of government Now were citing Brown vs State For instance, the
11 purpose of the legislature is that through the legislature is to determine
12 what a crime is and to ordain that punishment Words must be given their
13 plain and their ordinary meaning without resort to any subtle or forced
14 construction to expand that statute That is cited in State v Blackmon in
15 1991 case Now, the thing, that my research has indicated to me about this
16 particular statute is this A 16-19-0040 is listed in title 16 which is
17 called crimes and offenses This particular statute is cited under title 16
18 chapter 19, which is cited 'gambling and lotteries' Now, you take the plain
19 meaning of those words, and you'll realize that Yahtzee, Monopoly, Parcheeze,
20 and the rest of it wasn't around in 1802, but they were around in 1976 when
21 this legislature revisited the statute and put out the revised code In 1995,
22 the legislature revisited the statute and classified it a class C misdemeanor
23 so they had to look at it again In 1999, the legislature not only looked at
24 the statute, it amended this particular statute and added paragraph G, which
25 did not take place and did not become a part of the statute until 1999 So

1 we could talk about the statute being passed in 1802 In fact, it has been
2 revisited by the legislature 1, 2, 3, 4 times since 1976 So it has been
3 revisited by a legislature who determines the crimes who determines the
4 punishments, not just in 1802, they amended this as late as 1999 That is
5 where section G has come from

6 Now, the State of South Carolina Supreme Court of course, is the course
7 of ultimate determination in this State And that State Supreme Court has
8 cited this particular statute 16-19-0040, nine times On nine occasions,
9 going to Stardancer Casino vs Stewart, to Johnson vs Collins Entertainment,
10 to Martin vs Charles Condon, all the way down to State vs Ford Video Slot
11 Machines which varied in time from 1981 to 2001, our Supreme Court has
12 visited this statute And, they have visited it to interpret it, to see what
13 meaning and in no time, in those nine decisions, and in no time in that 20
14 year period did they have a problem with vagueness, did they have a problem
15 with anything dealing with the statute that would indicate that they had a
16 problem with enforcement And, basically, the South Carolina Constitution
17 does not prohibit gambling

18 Gambling per se' is not prohibited by our constitution with the
19 exception of South Carolina Constitution article 17 section 8 says it is
20 unlawful for a public official to engage in gambling or betting on games of
21 chance Other than that, any other prohibition has to come from the
22 legislature and the statute itself since the Constitution does not
23 specifically deal with it And, it only makes sense to take the common
24 language of this statute, and where it says, 'if any person shall play at' and
25 we go down to "any house used as a place of gambling" and that is what this

1 was used for, and basically when you got down to section G it talks about for
2 gaming purposes, billiards, bowls, backgammon, chess, draughts and whist
3 When the original , but however, they point out that there were days when
4 that would be illegal

5 So the point is that betting on these games of chance, whether it be
6 billiards, dice, cards, chess, if you're betting on them, gambling in that
7 fashion, by this statute, at least as far as it is construed in plain language
8 is illegal So, the court finds that this statute is clear enough for the
9 Supreme Court, it has been clear enough for business by the legislature, and
10 it is certainly clear enough for me not to dismiss it There is the record,
11 you can go from it Good luck to all of you

12 -----End of Transcript-----

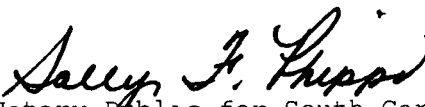
1 STATE OF SOUTH CAROLINA)

2
3
4 SALLY F PHIPPS, Notary Public for the State of South Carolina, does
5 hereby certify that the foregoing transcript was prepared by Helana Frierson
6 to the best of her ability from records of the Municipal Court of the Town of
7 Mount Pleasant, South Carolina, having been heard on August 22, 2008

8 FURTHER, I certify that she is neither kin nor counsel to any party to
9 this action, nor does she have any interest in the same

10 This 8th Day of September, 2008

11
12 Sally F Phipps

13 
14 Notary Public for South Carolina

15 Commission expires 4/28/2015
16
17
18
19
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21
22
23
24
25

09-CP-10-1551

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE CIRCUIT COURT
FOR THE COUNTY OF CHARLESTON
TICKET No (s) 98045DB,
98050DB, 98040 DB, 98035DB, 98043DB

Robert L Chimento, Scott Richards,
Michael Williamson, Jeremy Bristel,
and John T Willis,

Appellants,

vs

Town of Mount Pleasant,

Respondent

NOTICE OF INTENT

TO APPEAL

FILED

MAR 13 2009
2009

JULIE J ARMSTRONG
CLERK, C.P. & G.S.

RECEIVED

2009 FEB 26 PM 10 26

MOUNT PLEASANT
MUNICIPAL COURT

Notice is hereby given that Robert L Chimento, Scott Richards, Michael Williamson, Jeremy Brestel and John Taylor Willis, Defendants in the above named case hereby appeals to the Court of Common Pleas for the 9th Judicial Circuit from the final order of the Honorable J Lawrence Duffy, Jr , Charleston County Municipal Court, Mount Pleasant, South Carolina, entered in this action on the 19TH day of February, 2009 on the following grounds

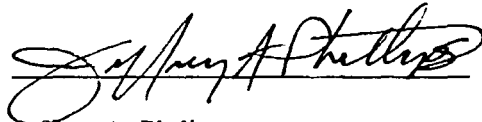
- 1) That the Magistrate Court erred in holding that playing Texas Hold-Em violates S C Code § 16 19-40
- 2) More particularly, that the Magistrate Court erred in not holding that "gaming" under Section 16-19-40 is not defined as a game in which chance predominates over skill (the "dominant factor test")
- 3) That the Magistrate Court, in concluding that the Court did not have sufficient guidance to determine whether or not South Carolina law adopts the dominant factor test, erred by not holding that the prosecution failed to prove its case beyond a reasonable doubt

- 4) That the Magistrate Court erred in failing to find the defendants not guilty on the ground that the residence at which this game of Texas Hold-Em was played was not a “house used as a place of gaming” under Section 16-19-40
- 5) That the Magistrate Court erred by not holding that, given the ambiguity the Court found in Section 16 19-40, both in the insufficient guidance in determining the definition of “gambling” and in the insufficient guidance in determining the definition of “house used as a place of gaming”, the rules of statutory construction mandate that penal statutes must be strictly construed against the State, and any ambiguities must be resolved in favor of the defendants }
- 6) That given the ambiguity found by the Magistrate Court, the Court erred in not holding that Section 16-19-40 is unconstitutionally vague on its face and as applied to these facts, and that the defendants were not sufficiently put on notice of the supposed illegality of their conduct as required by South Carolina law
- 7) That the Magistrate Court erred in not holding that the statute is violative of the Due Process Clause of the Fourteenth Amendment in that banning “any games with cards or dice ’, the statute is so overbroad as to not be rationally related to any legitimate governmental interest
- 8) That the statute is violative of the Due Process Clause of the Fourteenth Amendment in that banning “any games with cards or dice”, law enforcement actions are necessarily arbitrary and capricious and not based on any standard found within the statute, but rather based on their own predilections on what should and should not be illegal

- 8) That the Magistrate Court erred in not granting the Defendant's Motion to Dismiss on the grounds that that the Court lacks subject matter jurisdiction because the statute in question only prohibits the "playing games with cards or dice" in very specific locations, and by playing in a "residence" the defendants were not playing in a statutorily prohibited location, and as such the case should be dismissed for lack of subject matter jurisdiction
- 9) That the Magistrate Court erred in not granting the defendants' motion for a directed verdict, both at the close of the State's case and at the close of the defendants' case, on the foregoing grounds
- 10) On such other grounds as may become apparent when the Defendants have the opportunity to review the written transcript of this case

WHEREFORE, Appellants ask that the Findings of Fact and Order be reversed, and that Appellants be adjudged not guilty of S C Code Ann 16-19-40

Respectfully submitted,



Jeffrey A Phillips
Attorney for Defendants
S C Bar # 66518
1425 Augusta Street
Greenville, South Carolina 29605
(864) 223-7373

February 26, 2009
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
ROBERT L CHIMENTO, SCOTT)
RICHARDS, MICHAEL WILLIAMSON,))
JEREMY BRISTOL, AND JOHN)
AND JOHN WILLIS)
Appellants,)
Vs)
TOWN OF MOUNT PLEASANT,)
Respondent)

09-CP 10-1551
IN THE CIRCUIT COURT FOR THE
THE COUNTY OF CHARLESTON

TICKET NO(S) 98405 DB
98050 DB
98035 DB
98043 DB

RETURN TO NOTICE
INTENT OF APPEAL

2009 MAR 26 PM 4 26
JULIE CLARK
CLERK OF COURT

FILED

This matter was tried in the Municipal Court for the Town of Mt Pleasant on February 13 2009 This Court filed a Finding of Facts and Order on February 19, 2009 Rather than report and rehash the Finds and law stated in that Order, The Court incorporates said Order herein in the Return as if repeated verbatim and is attached as Exhibit "A" Further responding to the Notice of Intent and Appeal the Court states that

(1) SC CODE § 16-19 40 Prohibits playing Texas Hold em as described in Exhibit ' A

(2) There is neither a statute nor a Supreme Court case that states that SC adopts a dominate factor test

(3) The predominant factor test has never been officially adopted or accepted by this States in any shape or form

(4) This residence was a house of gaming which advertises and attracted participants over the internet

(5) The Statute is very explicit and no exception thereto has been set forth in either statutory or case law

(6) See # (5) set forth above

(7) The Supreme Court of SC has reviewed and cited this statute many times and it did not see fit to find that this statute violated the Due Process Clause of the Fourteenth Amendment

(8) See # (7) set forth above as well as Exhibit ' A' attached hereto

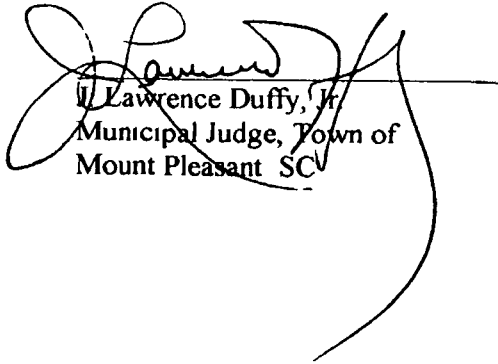
a This residence was a place of gaming See attached Exhibit

(9) State did not err in not granting Defendant's Motion for a directed verdict

(10) Requires no response

Therefore the appeal for the defendant should be dismissed

Respectfully Submitted



Lawrence Duffy, Jr.
Municipal Judge, Town of
Mount Pleasant SC

March 23, 2009

Form S 438
REV 10-88

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET #267.50

CITY OR COUNTY OF _____ VERSUS
FIRST NAME _____ MIDDLE NAME _____ LAST NAME _____

ROBERT LOUIS Rhimento
STREET AND NO _____ CITY _____ STATE _____

1146 ISLAND VIEW DR MOUNTAIN VIEW
STATE LICENSED _____ DRIVER'S LICENSE NO _____ DRI LIC CLASS _____

SL 003671035 D

VEH LIC NO _____ STATE _____ MAKE OF VEH _____ YEAR _____ COMM VEH _____ AUTO _____ TRUCK _____ COMB _____
HAZ MT _____ MOPED _____ MTRCYCL _____ OTHER _____

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER _____ STREET AND NO _____
DATE OF TRIAL _____ TIME OF TRIAL _____ CITY _____ STATE _____ ZIP CODE _____

5/30/06 1:00 PM PLEASANT SI 294104

VIOLATION COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO

CAMPBELL PERSONS PACE 16-11-10
OWNER OF VEHICLE _____ DATE OF ARREST _____

ADDRESS OF OWNER _____ DATE OF VIOLATION _____

4/12/2006

BAIL DEPOSITED _____ NAME OF ARRESTING OFFICER _____ RANK _____

DESCRIPTION OF ACCUSED _____ COUNTY _____ NUMBER _____

DATE REC'D _____ BY _____ BADGE _____ DISTRICT _____

20

CASE BEFORE _____ MAGISTRATE _____ MUN COURT _____
CIRCUIT COURT _____ FAMIL COURT _____ FEDERAL COURT _____

NAME OF TRIAL OFFICER _____ TIME OF VIOLATION _____ WEATHER _____
IF DIFFERENT FROM ABOVE _____

DEFENDANT DID NOT APPEAR _____ APPEARED _____
DISPOSITION _____

FORFEITED BOND _____ PLED NOLO CONTENDERE _____
TRIAL BY _____ TRIAL OFFICER _____ JURY _____

VERDICT OF _____ GUILTY _____ DATE OF TRIAL IF ANY _____
TRIAL IF ANY _____ NOT GUILTY _____

JAIL _____ SUSPENSE _____ FINE _____ AM COLLECTED _____ SUSPENDED _____

COMMITTED TO _____ Arrest as Result of _____
DATE _____

CERTIFIED CORRECT _____ DATE _____

2/18/09 98045 DB

DRIVER'S RECORD COPY

CERTIFIED & TRUE COPY

Mari B. Isaac
CLERK 3-25-09

LINEN 3007

DOCKET NO

DRIVER'S RECORD COPY

Mare Blaac
CLERK 3-25 09

DRIVER S RECORD COPY

98035 DB

Form S 438
REV 10 88

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

267 50

CITY OR COUNTY OF mt Pleasant VERSUS
FIRST NAME Scott MIDDLE NAME Rich LAST NAME co's

STREET AND NO 2116 Sherl Lane CITY mt Pleasant STATE SC

STATE LICENSED SC DRIVER'S LICENSE NO 100 542 650 ORI LIC CLASS 5

VEH LIC NO SC STATE SC MAKE OF VEH 1989 YEAR 1989 COMM VEH HAZ MT AUTO MOPED TRUCK MTRCYCL COMB OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER D. J. H. Ann Ed. C's Ln STREET AND NO 116 Ann Ed. C's Ln

DATE OF TRIAL 5/30/2006 TIME OF TRIAL 9:30 CITY mt Pleasant STATE SC ZIP CODE 29464

VIOLATION COURT APPEARANCE REQUIRED YES NO 16-17-40 VIOLATION SECTION NO 16-17-40

OWNER OF VEHICLE James Book DATE OF ARREST 4/12/2006

ADDRESS OF OWNER 4/12/2006 DATE OF VIOLATION 4/12/2006

BAIL DEPOSITED C/S NAME OF ARRESTING OFFICER Hawkins RANK Det

DESCRIPTION OF ACCUSED W/M 8'10" 174 lbs 01/12/80 COUNTY CL S NUMBER 6

DATE BAIL REC'D 20 BY 2206 BADGE 2206 DISTRICT 6

CASE BEFORE MAGISTRATE ☐ MUN COUR ☒ FAM COURT ☐ FEDERAL COURT ☐

CIRCUIT COURT ☐ NAME OF TRIAL OFFICER 10/15 PM 2 Det WEATHER Det

DEFENDANT DID NOT APPEAR ☐ APPEARED ☒ DISTANCE IN FEET FROM INTERSECTION OF CL S

DISPOSITION CL S FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐

TRIAL BY TRIAL OFFICER ☒ JURY ☐

VERDICT OF TRIAL IF ANY GUILTY ☒ NOT GUILTY ☐ DATE OF TRIAL IF ANY 12/18/89

JAIL 267.50 FINE 267.50 W COLLECTED 267.50 SPE OED 267.50

COMMITTED TO W 30 day Arrest as Result of Accident No

CERTIFIED CORRECT W 30 day DATE 2/18/89

DRIVERS RECORD COPY 98050 DB

CERTIFIED & TRUE COPY

Mari Bissac
CLERK 3-25-09

James Book

DOCKET NO

Form S-438
REV 10 88

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

126790

CITY OR COUNTY OF <u>MT PLEASANT</u>		VERSUS	
FIRST NAME <u>MICHAEL W</u>	MIDDLE NAME <u>williamson</u>	LAST NAME	
STREET AND NO <u>704 WILLIAMSON DR MT PLEASANT SC 29554</u>		CITY <u>MT PLEASANT</u> STATE <u>SC</u>	
STATE LICENSED <u>SC</u>	DRIVER'S LICENSE NO <u>003671855</u>	DRIVER'S CLASS <u>D</u>	
VEH LIC NO	STATE	MAKE OF VEH	YEAR
		COMM VEH	AUTO
		HAZ MT	MOPED
		MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER <u>DET 1</u>		STREET AND NO <u>100 ANNEDWAKE DS LN</u>	
DATE OF TRIAL <u>5/2/06</u>	TIME OF TRIAL <u>0030</u>	CITY <u>MT PLEASANT</u>	STATE <u>SC</u>
VIOLATION <u>GAMBLING (PERSON PARK)</u>		VIOLATION SECTION NO <u>14-19-40</u>	
OWNER OF VEHICLE		DATE OF ARREST <u>4/12/06</u>	
ADDRESS OF OWNER		DATE OF VIOLATION <u>04/12/06</u>	

BAIL DEPOSITED <u>C/S</u>	NAME OF ARRESTING OFFICER <u>HEMLOCK</u>	RANK <u>DET</u>
DESCRIPTION OF ACCUSED <u>W/M 7'4" 61 55 05 200 BP</u>		COUNTY <u>CHARLES</u>
DATE BAIL REC'D <u>20</u>	BY	DISTRICT <u>6</u>

CASE BEFORE	MAGISTRATE ☐	JUN COURT ☐
CIRCUIT COURT ☐	FAMILY COURT ☐	FEDERAL COURT ☐
NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE		
DEFENDANT DID NOT APPEAR ☐	APPEARED ☒	
DISPOSITION GUILTY ☐		
FORFEITED BOND ☐		
PLED NOLO CONTENDERE ☐		
TRIAL BY	TRIAL OFFICER ☒	JURY ☐
VERDICT OF TRIAL IF ANY	GUILTY ☒	NOT GUILTY ☐
DATE OF TRIAL IF ANY <u>12/13/09</u>		
MILES <u>267.00</u>		
HWY NO <u>MP</u>		
CITY <u>MT PLEASANT</u>		
OFFENSE CODE <u>94</u>		
B A LEVEL <u>98040 DB</u>		

DATE OF TRIAL <u>12/13/09</u>	TIME OF TRIAL <u>12:15 PM</u>	WEATHER <u>DARK</u>
DISTANCE IN FEET FROM INTERSECTION <u>GLANCO</u>		
AND <u>MCANTS</u>		
MILES <u>267.00</u>		
HWY NO <u>MP</u>		
CITY <u>MT PLEASANT</u>		
OFFENSE CODE <u>94</u>		
B A LEVEL <u>98040 DB</u>		

COMMITTED TO <u>3-24</u>	Arrest as Result of Accident <u>NO</u>
CERTIFIED CORRECT <u>3-25-09</u>	DATE <u>2/18/06</u>
DRIVER'S RECORD COPY	

CERTIFIED & TRUE COPY

Mari B. Isaac
CLERK 3-25-09

LWEN BOOK

DOCKET NO

Form S 438
REV 10-88

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET #267.50

CITY OR COUNTY OF MT PLEASANT VERSUS
FIRST NAME JOHN MIDDLE NAME TAYLOR LAST NAME WILLIS

STREET AND NO 1415 OAKLANDING RD CITY MT PLEASANT STATE SC

STATE LICENSED SL DRIVER'S LICENSE NO 007873842 ORI LIC CLASS D

VEH LIC NO — STATE — MAKE OF VEH — YEAR — COMM VEH — AUTO — TRUCK — COMB —
HAZ MT — MOPED — MTRCYCL — OTHER —

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER DUTY STREET AND NO 100 ANN EDWARDS LN

DATE OF TRIAL 05/20/2009 TIME OF TRIAL 0930 CITY MT PLEASANT STATE SC ZIP CODE 29551

VIOLATION GAMBLING PERSON PARTIC COURT APPEARANCE REQUIRED YES — NO — VIOLATION SECTION NO 16-19-40

OWNER OF VEHICLE — DATE OF ARREST 04/12/06

ADDRESS OF OWNER — DATE OF VIOLATION 04/12/06

BAIL DEPOSITED C/S NAME OF ARRESTING OFFICER HEMBREE RANK DET

DESCRIPTION OF ACCUSED W/M 3'10 1/2" 160 LB NOB COUNTY CHAR NUMBER 2206

DATE BAIL RECD — BY — BADGE 2206 DISTRICT 6

CASE BEFORE MAGISTRATE ☐ MUN COURT ☐ CIRCUIT COURT ☐ FAM L COURT ☐ FEDERAL COURT ☒

NAME OF TRIAL OFFICER — IF DIFFERENT FROM ABOVE — TIME OF VIOLATION 2:15 AM ☐ PM ☒ WEATHER DRY

DEFENDANT DID NOT APPEAR ☐ APPEARED ☒ DISTANCE IN FEET FROM INTERSECTION —

DISPOSITION GUilty FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐

TRIAL BY TRIAL OFFICER ☒ JURY ☐ AND MILITANTS

VERDICT OF TRIAL IF ANY GUilty DATE OF TRIAL IF ANY 12/18/09 MILES — N — E — S — W —

JAIL — SUSP NC — FINE 267.50 M COL EC ED — M SUSP DEO — HWY NO — CITY MP

COMMITTED TO — Arrest as Result of Accident NO OFFENSE CODE 94 B A LEVEL —

CERTIFIED CORRECT — DATE 2/18/09 98043 DB

DRIVER'S RECORD COPY

CERTIFIED & TRUE COPY

Marie Blasec
CLERK 3-25-09

LINEN BOOK

Linen's ticket

DOCKET NO

CASE # 2006-P-04035

- 1 Black canvas bag (Wine Spectator) containing 2 poker chip carousels, chips, 4 decks of cards, table/seat markers, countdown timer/stop watch

Numbered Brown Paper Bags

- 44262 – Mark Widener – Poker chips and Playing cards
- 44266 – John T Willis – 2 Playing cards and Poker chips
- 44268 – Amelia Cheseborough – Misc Poker chips and Playing cards
- 44270 – Michael Williamson – Poker chips and Playing cards
- 44272 – Sean Britton – Misc Poker chips and Playing cards
- 44274 – Alvin Johnston – Misc Poker chips and Playing cards
- 44275 – Sara Horinbein – Playing Cards and Poker chips
- 44277 – Jeremy Brestel – Playing cards and Poker chips
- 44278 – Ryan Leach – Misc Poker chips and Playing cards
- 44279 – Scott Richards – Misc Poker chips and Playing cards
- 44281 – Jessee Ebnew – Poker chips and Playing cards
- 44283 - Robert Chimento – Misc Poker chips
- 44286 – Eddie Wilson – Playing cards and Poker chips
- 44290 – Adam Deas – Poker chips and Playing cards
- 44292 – Joshua Oleen – Misc Poker chips and Playing cards
- 44294 – James Browning – Poker chips ad Playing cards
- 44295 – Nathan Stallings – Aluminum Case with chips
- 44298 – Nathan Stallings – Playing cards and Poker chips
- 44299 – Misc Poker chips, playing cards, Sony HI #8 video cassette (State's Exhibit #3)
 - State s Exhibit #2 – DVD SC Trial
 - State's Exhibit #1 – Mini-disk DVD video x 4, Disc 2
- Court Exhibit #1, Copy of arrest warrant and affidavit for Nathan Stallings, dated 5/1/06, charge of Operating Gambling Establishment
- State s Exhibit #4 GSC sentencing sheet for Nathan Stallings

09-1551

TRANSCRIPT FOR THIS CASE

IS ATTACHED

UNDER SEPARATE COVER

* Transcript w/ CP
file cabinet.

09-CP-10-1551

Copy

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Robert L. Chimento, Scott Richards,
Michael Williamson, Jeremy Bristel,
and John T. Willis,

Appellants,

vs

Town of Mount Pleasant,

Respondent

IN THE CIRCUIT COURT
FOR THE COUNTY OF CHARLESTON
TICKET No (s) 98045DB,
98050DB, 98040 DB, 98035DB, 98043DB

NOTICE OF INTENT

TO APPEAL

RECEIVED
MOUNT PLEASANT
JUDICIAL COURT

2009 FEB 26 PM 10 26

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2009 MAR 13 PM 3 26

FILED

Notice is hereby given that Robert L. Chimento, Scott Richards, Michael Williamson, Jeremy Bristel, and John Taylor Willis, Defendants in the above named case, hereby appeals to the Court of Common Pleas for the 9th Judicial Circuit from the final order of the Honorable J. Lawrence Duffy, Jr., Charleston County Municipal Court, Mount Pleasant, South Carolina, entered in this action on the 19th day of February, 2009 on the following grounds

RECEIVED
MOUNT PLEASANT
JUDICIAL COURT
2009 MAR 13 PM 12 44

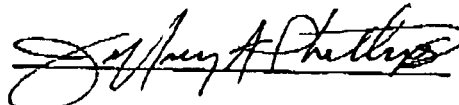
- 1) That the Magistrate Court erred in holding that playing Texas Hold-Em violates S.C. Code § 16-19-40
- 2) More particularly, that the Magistrate Court erred in not holding that "gaming" under Section 16-19-40 is not defined as a game in which chance predominates over skill (the "dominant factor test")
- 3) That the Magistrate Court, in concluding that the Court did not have sufficient guidance to determine whether or not South Carolina law adopts the dominant factor test, erred by not holding that the prosecution failed to prove its case beyond a reasonable doubt

- 4) That the Magistrate Court erred in failing to find the defendants not guilty on the ground that the residence at which this game of Texas Hold-Em was played was not a "house used as a place of gaming" under Section 16-19-40
- 5) That the Magistrate Court erred by not holding that, given the ambiguity the Court found in Section 16-19-40 both in the insufficient guidance in determining the definition of "gambling" and in the insufficient guidance in determining the definition of "house used as a place of gaming", the rules of statutory construction mandate that penal statutes must be strictly construed against the State and any ambiguities must be resolved in favor of the defendants
- 6) That given the ambiguity found by the Magistrate Court, the Court erred in not holding that Section 16-19-40 is unconstitutionally vague on its face and as applied to these facts, and that the defendants were not sufficiently put on notice of the supposed illegality of their conduct as required by South Carolina law
- 7) That the Magistrate Court erred in not holding that the statute is violative of the Due Process Clause of the Fourteenth Amendment in that banning "any games with cards or dice" the statute is so overbroad as to not be rationally related to any legitimate governmental interest
- 8) That the statute is violative of the Due Process Clause of the Fourteenth Amendment in that banning "any games with cards or dice" law enforcement actions are necessarily arbitrary and capricious and not based on any standard found within the statute, but rather based on their own predilections on what should and should not be illegal

- 8) That the Magistrate Court erred in not granting the Defendant s Motion to Dismiss on the grounds that that the Court lacks subject matter jurisdiction because the statute in question only prohibits the 'playing games with cards or dice ' in very specific locations, and by playing in a "residence' the defendants were not playing in a statutorily prohibited location, and as such the case should be dismissed for lack of subject matter jurisdiction
- 9) That the Magistrate Court erred in not granting the defendants' motion for a directed verdict, both at the close of the State s case and at the close of the defendants case, on the foregoing grounds
- 10) On such other grounds as may become apparent when the Defendants have the opportunity to review the written transcript of this case

WHEREFORE, Appellants ask that the Findings of Fact and Order be reversed, and that Appellants be adjudged not guilty of S C Code Ann. 16-19-40

Respectfully submitted,



Jeffrey A Phillips
Attorney for Defendants
S C Bar # 66518
1425 Augusta Street
Greenville, South Carolina 29605
(864) 223-7373

February 26, 2009
Greenville South Carolina

Municipal Judges

David L. Michel
Thomas H. Hesse
Tanya G. Staubes
Jack Sinclair
J. Lawrence Duffy, Jr.

TOWN OF MOUNT PLEASANT



Sally F. Phipps
Court Administrator

Municipal Court

100 Ann Edwards Lane
PO Box 457
Mount Pleasant, S.C. 29465
843-884-6796 • Fax 843-856-2514

Ms. Bonnie Campbell
Charleston County Clerk of Court
100 Broad Street Suite 106
Charleston SC 29401

RE Notice of Intent To Appeal for Robert L. Chimento, Scott Richards, Michael Williamson, Jeremy Bristol and John T. Willis

Dear Ms. Campbell

For your records, I am enclosing the Notice of Intent to Appeal filed by Attorney Jeffrey A. Phillips which we discussed earlier today. The Return to Notice of Appeal, copy of the transcript and all other documentation will be forwarded to you as soon as it is made available to this Court.

If you should have any questions regarding this appeal, please contact this office.

Sincerely Yours

TOWN OF MOUNT PLEASANT

LeVica B. Kirvin
Court Administrator

LBK/mbi

Municipal Judges

David L. Michel
Thomas H. Hesse
Anyia G. Staubes
Jack Sinclair
J. Lawrence Duffy, Jr.



Sally F. Phipps
Court Administrator

Municipal Court
100 Ann Edwards Lane
P.O. Box 457
Mount Pleasant, S.C. 29465
843 884 6796 • Fax 843-856-2514

March 25, 2009

Bonnie Campbell
Clerk of Court
100 Broad Street
Suite 106
Charleston, SC 29401

RE Appeal for Robert Louis Chimento Ticket Number 98045DB
Jeremy R. Brestel, Ticket Number 98035DB
Scott Richards Ticket Number 98050DB
Michael W. Williamson, Ticket Number 98040DB
John Taylor Willis Ticket Number 98043DB

Dear Ms. Campbell

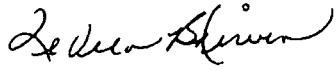
Enclosed is an appeal for Robert Louis Chimento, Jeremy R. Brestel, Scott Richards, Michael W. Williamson and John Taylor Willis, which we are required to file through your office. Please date stamp the first copy of the Return to Notice of Appeal, prepared by Judge J. Lawrence Duffy and return it to the Mount Pleasant Municipal Court. I assume that since the Intent to Appeal was previously forwarded to your office and assigned the number 09-CP-10 1551, that this number will follow this case through the appeal process.

Please note that per our conversation, this Court is providing a list of the evidence rather than providing the actual evidence collected at this time. It can certainly be provided should the enclosed list not be sufficient when the case is heard.

If you should have any questions regarding this appeal, please contact this office

Sincerely Yours,

TOWN OF MOUNT PLEASANT

A handwritten signature in cursive script, appearing to read "LeVica B Kirvin".

LeVica B Kirvin
Court Administrator

LBK/mbi
Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonSTATE VSNathan Stallings

AKA _____

Race W Sex M Age 28DOB 11 09-1978 SS# _____Address LENCOE STREETMT PLEASANT, SC 29464DL# D5742261 SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2006GS1074932A/W# K144401Date of Offense 2006 04-12S C Code § 16-19-0040 0100 0150CDR Code # 0755

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO Operating a Gaming Housein violation of § 16-19-0040 0100, 0150 of the S C Code of Laws, bearing CDR Code # 0755☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury _____ (Defendant initial)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST

Solicitor KniskernDefendant Nathan StallingsAttorney for Defendant Paul R. JournalWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 300.00, provided that upon the service of _____ days/months/years and/or payment of \$ 300.00, plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____☐ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code § 7-25-135

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard, ☐ Waived ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient _____

*Fine

\$ 300.00

§ 14-1-206 (Assessments 107.5 %)

\$ 322.50

§ 14-1-211(A)(1) (Conv Surcharge)

\$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100 \$ _____

§ 56-5-2995 (DUI Assessment)

\$12 \$ _____

§ 35-13 (Public Def/Prob)

\$500 \$ _____

§ 73-3, 1B TP (Law Enforce Funding)

\$25 \$ 25.00

§ 33-7, 1B TP (Drug Court Surcharge)

\$100 \$ _____

§ 50-21-114(BUI Breath Test Fee)

\$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea \$ _____

3% to County (if paid in installments)

\$ _____

TOTAL

\$ 747.50

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd in equal, consecutive weekly/monthly pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel § 35-13 TP Requires \$500 be paid to Clerk during probation

ATTEST A TRUE COPY

JULIE J ARMSTRONG

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code

Sentence Date

Court Reporter

DEPUTY CLERK

SCCA/217 (9/2006)

WARRANT AFFIDAVIT

WARRANT NUMBER
OCA NUMBER 2006-P 04035

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
TOWN OF MOUNT PLEASANT

Personally appeared before me the affiant DET JUSTIN HEMBREE who being duly sworn deposes and says that defendant

NATHAN DANIEL STALLINGS

did within this county and state on or about April 12, 2006 violate the criminal laws of the State of South Carolina or ordinances of the Town of Mount Pleasant in the following particulars

OPERATING A GAMBLING ESTABLISHMENT

16-19-40

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

In that on April 12 2006, at approximately 22 15 hours, while at 1405 Glencoe Street which is located in the Town of Mount Pleasant County of Charleston, State of South Carolina the defendant, Nathan Daniel Stallings (DOB 11/09/78), did violate section 16-19-40 of the South Carolina Code of Laws namely Operating a Gambling Establishment

In that on the above date and time, the officers of the Mount Pleasant Police Department did execute a lawful search warrant at 1405 Glencoe Street That upon entering the residence detectives did make contact with the defendant, and 17 other subjects that were all actively involved in a "Texas Hold Em" poker game, with the use of U S Currency for betting and winnings That the defendant is the lawful lease holder of the residence, and that the defendant advised Det Hembree and Det Christmas (post-Miranda) that he solely hosted the illegal gambling, and that he earned proceeds from the illegal games Furthermore, the defendant advised Det Hembree that the illegal games were prearranged by the defendant through a website that he owns and operates called "Charleston Poker Meetups com" and that all of his illegal games required a minimum "buy in" of \$20 in U S Currency

That within the residence detectives located indicia of the operation of a gambling establishment to include, three separate tables designed for gambling, cards, and poker chips That a quantity of U S Currency was removed from the defendant's right pant pocket, that he claimed to be the bank, or winnings of an illegal game that he was hosting at the time that the search warrant was executed

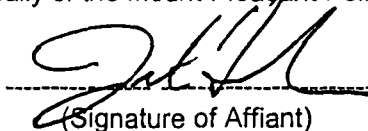
That the defendant further advised Det Hembree and Sgt Kenneally that he used the illegal proceeds from the illegal gambling to provide food and alcohol to its participants That through the duration of the search warrant six additional subjects entered the residence and admitted intentions of gambling for currency at the residence

All of the above is against the law, peace and dignity of the State of South Carolina and is believed to be true based on the investigation of Det Hembree, Det Linen, Det Christmas Det Knox Pfc Blackburn Pfc Fowler and Sgt Kenneally of the Mount Pleasant Police Department

Sworn to and Subscribed before me

This day of May 1, 06


(Signature of Judge)


(Signature of Affiant)

100 Ann Edwards Ln
Mt Pleasant, SC 29464

(843)884-4176

ARREST WARRANT

K- 144401

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

THE STATE

against

NATHAN DANIEL STALLINGS

GLENCOE STREET

EASANT, SC 29464

Race W Height 6'04 Weight 180SC DL # 05742261DOB 11-9-1978 Agency ORI#Rating Agency MPPD

Rating Officer

OPERATING A GAMBLING

ESTABLISHMENT Use Code

Finance Sec 16-19-40Affiant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality ofThe accused
was arrested and brought before me to be
according to law

Signature of Judge

(LS)

RETURN

of this arrest warrant was delivered to

Signature of Constable/Law Enforcement Officer

WARRANT TO

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
CHARLESTON

AFFIDAVIT

Form Approved by
SC Attorney General
April 21 2003
SCCA 618Personally appeared before me the affiant DETECTIVE HEMBREE who
being duly sworn deposes and says that defendant NATHAN DANIEL STALLINGS
did within this county and state on 4-12-06 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)
in the following particulars

DESCRIPTION OF OFFENSE

OPERATING A GAMBLING ESTABLISHMENT

16-19-40

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
CHARLESTON

Affiant's Address

DETECTIVE HEMBREE

100 ANN EDWARDS/MT PLEASANT, SC 29464

Affiant's Telephone

843-884-4176

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that
on 4-12-06 defendant NATHAN DANIEL STALLINGS
did violate the criminal laws of the State of South Carolina (or ordinance of☒ County/ ☐ Municipality of CHARLESTON) as set forth below

DESCRIPTION OF OFFENSE

OPERATING A GAMBLING ESTABLISHMENT

16-19-40

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me)

on 5-1-06)

Signature of Issuing Judge (LS)

Judge Code 5566 (SHS/JMH)

Judge's Address

1189 IRON BRIDGE RD., SUITE 300

MT PLEASANT, SC 29466

Judge's Telephone

843-856-1205

Issuing Court:

☐ Magistrate ☒☐ Municipal☐ Court

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R Markley Dennis, Jr , Circuit Court Judge

C A No 2009-CP-10-001551

Robert L Chimento, Scott Richards, Michael Williamson,
Jeremy Brestel, and John T Willis

Respondents,

v

Town of Mount Pleasant

Appellant

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material



HENRY D MCMASTER

Attorney General

JOHN W MCINTOSH

Chief Deputy Attorney General

ROBERT D COOK

Deputy Attorney General

C HAVIRD JONES, JR

Senior Assistant Attorney General

MARY FRANCES JOWERS

Assistant Attorney General

P O Box 11549

Columbia, S C 29211

(803) 734-3680

Attorneys for Appellant

March 24, 2010

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 13 2010

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC SUPREME COURT

The Honorable R Markley Dennis, Jr , Circuit Court Judge

C A No 2009-CP-10-001551

Robert L Chimento, Scott Richards, Michael Williamson,
Jeremy Brestel, and John T Willis

Respondents,

v

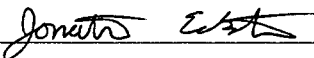
Town of Mount Pleasant

Appellant

Proof of Service

I, Jonathan Eckstrom, certify that I have served the Record on Appeal upon
Respondents by depositing a copy of it in the United States Mail, postage prepaid, on
April 13, 2010, addressed to the following

William Wilkins, Esquire
Nexsen Pruet, LLC
P O Drawer 10648
Greenville, S C 29603



April 13, 2010