

**RECEIVED**

**Jun 28 2024**

**SC Court of Appeals**

**In The Matter Of:**  
*Ben Hays v.*  
*State of South Carolina*

---

*WEBEX Videoconference Hearing*  
*March 26, 2024*

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1  
2 STATE OF SOUTH CAROLINA  
3 COUNTY OF BEAUFORT  
4  
5  
6 BEN HAYS, )  
7 Plaintiff, )  
8 vs. )  
9 STATE OF SOUTH CAROLINA, )  
10 Defendant. )  
11 -----  
12  
13  
14  
15  
16 WEBEX VIDEOCONFERENCE HEARING  
17 BEFORE: HON. MARVIN H. DUKES III  
18 MASTER-IN-EQUITY  
19 DATE: Tuesday, March 26, 2024  
20 LOCATION: WEBEX VIDEOCONFERENCE  
21 TRANSCRIBED BY: Janice D. Hayward, RMR  
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1 (The recording begins:)  
2 THE COURT: -- Hays versus State of  
3 South Carolina. This is an appeal of magistrate's  
4 court -- from a jury trial conviction in the  
5 magistrate's court, a trespass after notice charge.  
6 Matter was referred to me for  
7 the appeal by way of order of reference filed  
8 February 22nd, 2024. And I'm happy to hear from  
9 you, sir.  
10 MR. HAMMETT: Thank you, your Honor.  
11 THE COURT: And you can sit or stand,  
12 however you're comfortable.  
13 MR. HAMMETT: Thank you, your Honor.  
14 I filed an appellate brief to provide the Court a  
15 very brief summary of the facts as laid out in that  
16 brief.  
17 My client was convicted by a  
18 jury of violating a trespass notice notwithstanding  
19 the fact that the code section provides an excuse.  
20 And it is our position that he had a valid excuse to  
21 be at the premises on the day he was arrested.  
22 My client had gone to offices  
23 and his purpose of being at those offices was to  
24 have his golf cart inspected because if the golf  
25 cart was not inspected, he would be ticketed and

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1 fined for violating regulation of Fripp Island.  
2 And he was asked to leave. He  
3 left. That evening he emailed one of the office  
4 staff members, the chief, and he informed the chief  
5 that he would be returning the next day for the  
6 purposes of having his golf cart inspected.  
7 He actually came the next day to  
8 the offices. The golf cart inspection was  
9 completed. And he was then arrested.  
10 So that is the entire record.  
11 Our request to this Court is that the conviction be  
12 overturned either because it was err by the trial  
13 Court to not grant my client's motion for a directed  
14 verdict, or in the alternative, it was not legally  
15 possible for a jury to find that the state had  
16 proven beyond a reasonable doubt that my client had  
17 violated the trespass notice without justification.  
18 In the alternative, your Honor,  
19 the appellate brief notes that the record in this  
20 case does not include a transcript which is normally  
21 part of the record. It's confined to simply the  
22 magistrate's return and five stipulations as set  
23 forth in my brief.  
24 The reason for that is the  
25 transcript could not be produced because the record

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1 was corrupted, the actual recording of the trial.  
2           And if for some reason the Court  
3 is not inclined to simply reverse the conviction,  
4 then, in the alternative, my client's request would  
5 be for a new trial especially if the state intends  
6 to argue things that were established at the trial  
7 that there is no record of.  
8           Because my understanding is that  
9 all of our argument is simply summary of the  
10 evidence, it's not evidence in and of itself.  
11           So in this case the record is  
12 very finite. It confirms that my client was  
13 provided notice not to return, he had to return or  
14 face civil and criminal penalty and liability.  
15           When he did return for the  
16 purposes of a golf cart inspection required by Fripp  
17 Island regulation, his golf cart was inspected and  
18 then he was arrested in the parking lot of the  
19 offices sitting in his golf cart. Thank you, your  
20 Honor.  
21           THE COURT: Let me ask you just a  
22 couple of quick questions. So this boils down to  
23 good excuse, whether he had a good excuse or not.  
24           MR. HAMMETT: Yes, your Honor.  
25           THE COURT: And that was argued, I

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1 assume, before the jury?  
2           MR. HAMMETT: Yes, your Honor.  
3           THE COURT: And I guess I ask because  
4 good excuse, whether an excuse is good or not, seems  
5 like a factual finding, a subjective factual finding  
6 as opposed to an objective finding. Do you agree  
7 with that, or --  
8           MR. HAMMETT: I would agree that the  
9 finding of good excuse is a factual finding.  
10           THE COURT: And the reason I ask is,  
11 of course, this was jury trial, so the jury came  
12 back with a factual finding in theory based on  
13 everything, I think you're telling me, that whatever  
14 this excuse was did not rise to the level of good,  
15 that it fell somewhere short of good excuse is, I  
16 guess, the way I'm thinking about this.  
17           If you've got a jury trying to  
18 determine whether or not he had a good excuse and  
19 they found him guilty, they were aware, of course,  
20 of the statute requiring a good excuse to find him  
21 not guilty, then, good, which is an inherently  
22 subjective word, I mean, who knows what good is,  
23 it's anywhere in the spectrum, but the jury  
24 collective came up with the decision, I think, from  
25 a factual basis that his excuse was not simply good

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1 enough to rise to the level of good as it defined --  
2 or contained, rather, in the statute.  
3           MR. HAMMETT: I would agree with the  
4 Court's recitation but I would suggest that it's  
5 half the inquiry I'm focusing on. Because the  
6 statute says a person without legal cause or a good  
7 excuse.  
8           I think the jury gets to  
9 determine good excuse. I think the Court gets to  
10 determine legal cause.  
11           THE COURT: But his legal cause, as I  
12 understand from what I read -- 'cause I read this  
13 before y'all came in, and your argument -- the legal  
14 cause is -- which you're right, I think that's not a  
15 factual finding, I think that's for the Court to  
16 determine -- was that he needed to get his golf cart  
17 inspected.  
18           MR. HAMMETT: Well, the way I would  
19 say it, your Honor, is Fripp Island required him to  
20 or face civil penalty and even larger unknown civil  
21 liability if he didn't.  
22           The civil penalty would be the  
23 fines that Fripp Island was imposing for not having  
24 the golf cart inspected and the larger civil  
25 liability would be one of his renting tenants who

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1 had a lease contract that allowed them use of a golf  
2 cart had actually been the person to receive the  
3 ticket for the golf cart not being inspected.  
4           So you got the issue of the  
5 tickets from Fripp Island plus you've got my client  
6 could be sued by somebody that he contractually  
7 stated, I will give you a house on Fripp Island that  
8 you can rent and use of a golf cart, and that he was  
9 not able to provide that because of these  
10 uninspected golf carts.  
11           THE COURT: It was at a legal office.  
12 Interesting.  
13           MR. HAMMETT: That was my  
14 interpretation.  
15           THE COURT: For my record. Okay.  
16 All right.  
17           Well, I'm happy to hear from the  
18 state.  
19           MR. KIEL: Thank you. Judge, may it  
20 please the Court.  
21           THE COURT: Yes, sir.  
22           MR. KIEL: Obviously, I tried the  
23 case. And may I ask, are the body-worn cameras that  
24 were introduced into evidence, are they part of the  
25 record?

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1 THE COURT: There's a USB flash  
2 drive. Actually probably -- yeah, body camera,  
3 there's a DVD.  
4 MR. KIEL: And, your Honor, the  
5 reason I ask is on that body-worn camera you will  
6 see that this defendant's wife was called by this  
7 defendant after he was arrested and asked to come to  
8 the location.  
9 And it was argued extensively on  
10 both sides whether or not -- that was the sole issue  
11 of the case, always the sole issue of the case,  
12 whether or not he had the legal cause or good excuse  
13 to come to that location.  
14 He had been told by Fripp Island  
15 Security multiple times that his behavior was  
16 unwarranted. I think defense put in some emails and  
17 they put in some communication from Fripp Island as  
18 evidence.  
19 And their argument was and  
20 always was that he had to go up there with the golf  
21 cart. I think the evidence in the case was he had  
22 multiple golf carts and he could have given those to  
23 his clients as well. Also, he had a wife who was  
24 available to come up there.  
25 Furthermore, there's evidence in

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1 the case that Fripp Island Security had gone above  
2 and beyond to say, we will come to your house, if  
3 needed. You can actually come here, you just need  
4 to make the appointment because your behavior  
5 warranted doing that.  
6 That was a point of contention  
7 and opposing exhibits made clear to the jury from  
8 both sides that that was the single factual question  
9 that they had, to be honest with you. And I think  
10 they did that.  
11 The Judge, at the directed  
12 verdict on the motion, she took that under  
13 advisement. She heard both arguments.  
14 I argued that it was an element  
15 that I had to prove that the legal cause and the  
16 good excuse element you have to prove. The  
17 legislature put that in the statute twice for a  
18 reason: To draw our attention to it.  
19 And I argued it was a fact that  
20 I had to prove that he didn't have the right to be  
21 there. And I think we did that. We argued that he  
22 had three or four warnings not to come.  
23 The sheriff's office had been  
24 out there the day before and actually refused to  
25 arrest him on that day when he was told to leave and

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1 wouldn't leave.  
2 They put him on official  
3 trespass notice from the sheriff's office, then he  
4 came back the next morning.  
5 As to the one fact that he came  
6 after being told to come, that was true, that was  
7 part of the record, but nobody responded to him.  
8 He came before anybody had a  
9 chance to respond to him so he just showed up  
10 unannounced, so that was the issue and that was  
11 always the single issue.  
12 I equated the legal excuse --  
13 legal problem, good excuse as to what we all learned  
14 in law school, you're going down a mountain and it  
15 gets, you know, snowy and you're trapped in a  
16 building, you have a right to be there so you're  
17 not -- you know, necessity was the issue. And I  
18 think that was the argument I made.  
19 That is different from somebody  
20 who needs to break into a house because they need  
21 shelter and food. I think that's what the  
22 legislature intended when they put that in the  
23 statute.  
24 I thought that the facts of this  
25 case were substantial that the defendant himself

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1 being a lawyer -- and that was noted by the trial  
2 judge -- that he would have understood the law and  
3 he did on those body cameras tell our deputies that  
4 he understood what he did and what he did was wrong  
5 and that he should have done it differently. He  
6 admitted to that. That is in the record.  
7 Your Honor, as you know -- and  
8 I'll just quickly do this. The directed verdicts,  
9 you know, that we're arguing about, the standard is  
10 not a de novo review, as you know. It's whether the  
11 (audio interruption) err of law or not.  
12 I do believe that the defense  
13 counsel at trial did preserve this several times.  
14 And it's not the weight of the evidence, your Honor,  
15 it's just the existence of it.  
16 I think the record is complete  
17 with the existence that he was told not come  
18 multiple times and that he had other options.  
19 And there was no actual legal  
20 cause for him that day or a good excuse for him that  
21 day to come to that particular premises which he was  
22 told him not to come to.  
23 And, your Honor, this should be  
24 denied. And there's more than one inference that  
25 the evidence -- and that's exactly what happened at

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1 trial. The judge sat here, heard the argument on  
2 the directed verdict, and then the jury heard the  
3 exact same arguments (audio interruption) directed  
4 verdict as a factual argument and they deliberated  
5 on that.

6 Reversal is only proper in this  
7 case when there's no evidence to support the ruling  
8 below. That's from Steinke -- I get that one wrong  
9 every time, Judge -- but Steinke versus South  
10 Carolina Department of Labor, 336 S.C. 373. That's  
11 only when it's unsupported by the evidence.

12 I understand there was a  
13 corruption of something in this case, your Honor,  
14 but I will tell you that the evidence -- you have  
15 the body-worn camera and you have the magistrate  
16 return which is accurate, her return is accurate to  
17 what happened that day and the witnesses that were  
18 called, your Honor.

19 That defendant put in evidence  
20 in this case state everything -- their burden -- I  
21 believe we did -- to prove that he had absolutely no  
22 legal cause or good excuse to come back to that  
23 particular premises.

24 It was actually noted that he  
25 could -- and through testimony that he could go

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1 anywhere on Fripp Island other than there and  
2 without permission.

3 So, your Honor, I don't think we  
4 have a brief on this but I would stand on our  
5 arguments.

6 THE COURT: Any follow-up thoughts?  
7 MR. HAMMETT: The biggest issue in my  
8 opinion, your Honor, with this case is the record  
9 actually will not reflect much of what the state's  
10 counsel has argued.

11 I was not there at the trial. I  
12 have no idea if that was actually presented to the  
13 trial. But when I was filing this appeal and  
14 reviewing the record, once I became informed of the  
15 fact that we couldn't get a transcript and we  
16 couldn't get a complete record, I did reach out to  
17 the state and I said, I need to know that there are  
18 five stipulations that we can agree to and the last  
19 one is there's no mechanism for the defendant's golf  
20 cart to be inspected other than to transport it to  
21 the offices.

22 So all of the argument that his  
23 wife could have done it or that people from the  
24 offices could have gone to his home to inspect it,  
25 that is in direct contradiction of the stipulations

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1 that I understood were acceptable.

2 Because when I understood that  
3 stipulations were acceptable, I was having to  
4 proceed with the appeal because the record is  
5 finite. If those stipulations had not been  
6 acceptable, instead of moving forward with the  
7 appeal today, I would have simply motioned the Court  
8 for a new trial because we didn't have a complete  
9 record.

10 THE COURT: Were the stipulations  
11 filed? I'm looking for them.

12 MR. HAMMETT: They're actually in my  
13 brief, your Honor. Before I filed it I emailed the  
14 state's counsel to verify if these were acceptable.

15 MS. LEMPESIS: Notice to me, Your  
16 Honor -- 'cause at that time I was the only one  
17 listed as being on the -- representing the state.

18 MR. HAMMETT: Specifically, page 5,  
19 your Honor, paragraph A, is where I listed them out.

20 MS. LEMPESIS: And I had agreed to  
21 the stipulations prior to realizing that Mr. Kiel  
22 actually handled this case and actually from now is  
23 going to be handling all the appeals that come from  
24 the Beaufort County Sheriff's Office Magistrate's  
25 Court.

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1 MR. KIEL: Just to speak to that  
2 stipulation or not, and I understand that, I think  
3 the record is ripe with the evidence.

4 There is evidence that the  
5 defense actually put in that there was communication  
6 between the defendant and Fripp Island about when he  
7 could and could not come, your Honor.

8 And I know that the return  
9 speaks to that too, especially the evidence and the  
10 first two witnesses that were called, I believe.

11 THE COURT: Stipulation E is what I'm  
12 thinking of, the mechanism for defendant's golf  
13 carts to be inspected other than to transport it to  
14 the offices.

15 First of all, that doesn't talk  
16 about does he have to be here? Can anyone else do  
17 it? I mean, golf cart's got to be there, granted,  
18 stipulated.

19 But, I mean, what y'all told me  
20 is -- nobody's told me that he has to actually be  
21 there. They're just looking at the golf cart, not  
22 him, I assume.

23 MR. HAMMETT: So I would fall back on  
24 who has the burden of proof there? It's the state.  
25 They would have to prove.

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1 And I've gone through the  
2 record, I can't find any reference in the return or  
3 any exhibit where the state established that  
4 somebody else could transport the golf cart.  
5 Now, maybe that happened at  
6 trial, but it's clearly not part of the record,  
7 unless somebody can point out how I missed it.  
8 THE COURT: And it might be on the  
9 body-worn camera that's an Exhibit -- I usually do  
10 one on it. Here it is.  
11 You marked it --  
12 MR. HAMMETT: I have your note. I  
13 wasn't involved in this thing until a month and a  
14 half ago. I finished the appeal about two weeks  
15 ago.  
16 THE COURT: How long is it?  
17 MR. KIEL: I don't remember, your  
18 Honor.  
19 There was discussion at some  
20 point if his wife actually does want to show up on  
21 this one. I know that that was argued to the jury.  
22 THE COURT: They put a staple right  
23 where it's going to ruin -- (inaudible) scratches.  
24 (Conversation between the judge and  
25 secretary, and discussion off the record.)

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1 THE COURT: Defendant entered into  
2 the record that it speaks of the balance that he had  
3 to clear up. So the communications were, it looks  
4 like, an hour and forty minutes, give or take,  
5 before he came up there.  
6 And so I don't know whether --  
7 you know, he got this email that gets him up there  
8 but I know that it was sent. So y'all have all seen  
9 this. I can't seem to make that screen work today  
10 anyway. So I'm watching it just go back and forth.  
11 MR. HAMMETT: This isn't a part of  
12 the record, but if (audio interruption) and he  
13 provided the proof that it was taken care of and  
14 they gave him a document showing he had no  
15 balance --  
16 THE COURT: Right.  
17 MR. HAMMETT: -- but that's not part  
18 of the records.  
19 (Pause, and discussion off the record.)  
20 THE COURT: How many golf carts does  
21 he have?  
22 MR. KIEL: I think it's like 20.  
23 MR. HAMMETT: Oh, 20?  
24 MR. KIEL: I can't remember exactly,  
25 Judge. It's a lot, but...

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1 MR. HAMMETT: Oh, okay. I'll go with  
2 this answer. I think that helps.  
3 MR. KIEL: It's more than one, I can  
4 assure you of that.  
5 MR. HAMMETT: 'Cause, you know, I  
6 could probably get my wife to go get one golf cart.  
7 She'd want to kill me if I said go get 20.  
8 MR. KIEL: That came out in trial. I  
9 don't remember how many.  
10 (Pause.)  
11 THE COURT: You might want to  
12 negotiate a cart as part of your fee.  
13 MR. HAMMETT: You know, I used to  
14 have a golf cart on Daniel Island. (Inaudible.)  
15 (Pause.)  
16 THE COURT: Certainly was  
17 cooperative.  
18 MR. HAMMETT: Yes.  
19 (Pause.)  
20 THE COURT: Was there anything else  
21 or (inaudible) use the transport?  
22 MR. KIEL: No, your Honor, he was a  
23 lawyer and things like that.  
24 THE COURT: Okay.  
25 You guys have anything else or

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1 is that it?  
2 MR. HAMMETT: I don't believe it's  
3 necessary, your Honor. But if I could make two more  
4 points before -- unless there's further discussion  
5 and argument.  
6 THE COURT: Okay. Yeah. Go ahead.  
7 MR. HAMMETT: So I could have missed  
8 it, I didn't hear anything in that record  
9 establishing that his wife could have brought the  
10 golf carts in lieu of him.  
11 And I would further like to  
12 point out that the email that my client sent  
13 June 27th, 2023 at 8:36 AM -- which is in the  
14 record, provides Chief Gonzales notice that he's  
15 coming today to have his golf cart registered.  
16 And Chief Gonzales emails back  
17 within an hour and does not state, no, you have to  
18 have an appointment. His entire communication is,  
19 as I mentioned to you yesterday, you have an  
20 outstanding balance on your POA account that you  
21 need to clear up before security can register the  
22 golf carts.  
23 And my client cleared that up  
24 that morning before he was arrested. He actually  
25 didn't have a balance and he got a confirmation that

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1 his balance was zero.  
 2           And then Chief Gonzales says,  
 3 your guest may appeal the ticket to the appeals  
 4 committee. Have a wonderful day, sir. If I can be  
 5 of any further assistance, let me know.  
 6           And I think that's important  
 7 because I think it was either argued at trial or in  
 8 the state's argument that he sent an email stating  
 9 he was coming before anybody could respond. So  
 10 Chief Gonzales clearly got that communication and  
 11 responded.  
 12           And I would also direct the  
 13 Court's attention to the trespass notice itself  
 14 because it specifically states, middle of the  
 15 document, any person without legal cause or good  
 16 excuse enters the dwelling house, place of business,  
 17 or premises of another person having been warned not  
 18 to do so, or any person who having entered the  
 19 dwelling house, place of business, or premises of  
 20 another person without having been warned, fails and  
 21 refuses without good cause or excuse to leave  
 22 immediately upon being ordered or requested to do so  
 23 by the person in possession or his agent -- and then  
 24 it goes on. So...  
 25           THE COURT: That's a two-point,

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1 right? The first one was the trespass notice and  
 2 the second one -- I can't remember which one. One  
 3 of them is if you tell somebody to leave and they  
 4 don't leave, they're guilty.  
 5           The second one is if you give  
 6 them the notice, then they show up, in theory  
 7 they're guilty, right?  
 8           MR. HAMMETT: And that's exactly my  
 9 point. This isn't a case where he was told, leave  
 10 and don't ever come back. This is a case where he  
 11 was told, leave and don't ever come back unless you  
 12 let us know in advance you're coming and you have an  
 13 appointment.  
 14           So that leaves some gray area.  
 15 'Cause my client clearly interpreted his obligation  
 16 was to let the state -- sorry, let the offices and  
 17 staff know that he was coming. And their  
 18 interpretation was, we must specifically tell you  
 19 your appointment is at 9:00, you can be here from  
 20 9:00 to 9:30.  
 21           THE COURT: That's what I'm saying  
 22 about the factual issues. Because those are -- you  
 23 know, can be certainly findings of fact, you know,  
 24 what was reasonable, I believe, you know, they're  
 25 not, again, objective or subjective. But I

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1 understand what you're saying.  
 2           MR. HAMMETT: Thank you, your Honor.  
 3           THE COURT: Anything else?  
 4           MR. KIEL: Nothing, your Honor. Just  
 5 in short response, those are jury questions. That's  
 6 why it was sent to the jury. That was the decision  
 7 that the jury had to make whether or not he had  
 8 permission to be there, whether or not he had the  
 9 right to be there at the time he did, and they  
 10 answered in the negative.  
 11           THE COURT: Let me finish this thing  
 12 up. Then I'll get back with you guys.  
 13           (The recording ended.)  
 14           ---oOo---

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1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF DORCHESTER     )           CERTIFICATE  
 3           I, Janice D. Hayward, Registered Merit  
 4 Reporter and Notary Public, certify that I  
 5 did transcribe the foregoing WebEx hearing, and that  
 6 the transcript is an accurate record of the  
 7 proceedings to the best of my ability.  
 8           I further certify that I am not of  
 9 counsel or kin to any of the parties in this cause  
 10 of action, nor am I interested in any manner in  
 11 its outcome.  
 12           IN WITNESS WHEREOF I have hereunto set  
 13 my hand and seal this the 24th day of May 2024.  
 14  
 15  
 16  
 17           \_\_\_\_\_  
 18 Janice D. Hayward, RMR  
 19 Notary Public, South Carolina  
 20 My Comm. Expires 10-13-32  
 21  
 22  
 23  
 24  
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