

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Beaufort County,

Plaintiff/Respondent,

vs.

Adams Outdoor Advertising Limited
Partnership and Bo Hodges,

Defendants/Appellants.

IN THE COURT OF COMMON PLEAS

Case No. 2021-CP-07-01507

ORDER ON APPEAL

RECEIVED

May 20 2022

SC Court of Appeals

This matter is before the Court on appeal by Defendants/Appellants Adams Outdoor Advertising Limited Partnership and Bo Hodges (collectively, “Appellants”) of a magistrate court verdict dated July 23, 2021 (the “Verdict”). The Verdict found Appellants guilty of two (2) criminal violations of Beaufort County Community Development Code (“CDC”) Section 5.6.50.E., and on August 13, 2021, the magistrate issued a Notice of Sentence imposing a fine of \$1,087.50 for each offense.

Appellants timely filed a Notice of Appeal on August 20, 2021, and the Court conducted a remote hearing via video conference on October 27, 2021 and a subsequent hearing via teleconference on November 24, 2021. Jeffrey S. Tibbals and Evan P. Williams appeared for Appellants during both hearings, and Scott D. Bergthold, Brittany Ward, and Thomas J. Keaveny, II were present for Plaintiff/Respondent Beaufort County (“Respondent” or the “County”). Having heard the arguments of counsel and reviewed the briefs filed with the Court, as well as the magistrate’s return and record from the proceedings below, the Court finds reversible error in the

Verdict. For the grounds and reasons set forth herein, the Verdict is reversed, and the sentence imposed by the magistrate on August 13, 2021 (the “Notice of Sentence”) is vacated.¹

STANDARD OF REVIEW

In deciding an appeal of a verdict from magistrate court in a criminal case, the Circuit Court’s standard of review is an error of law standard. ““In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception.”” *State v. Williams*, 417 S.C. 209, 218, 789 S.E.2d 582, 587 (Ct. App. 2016) (quoting *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001)). In these matters the appellate court “is bound by the trial court’s factual findings unless they are clearly erroneous.” *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (internal citation omitted).

RULES OF CONSTRUCTION

The underlying case involved the magistrate’s application of penal laws in the CDC which specifically set forth the circumstances under which a person may be held criminally liable for a violation of land use regulations, along with the required process and degree of penalties. Specifically, Sections 9.4.40 and 9.4.50 of the CDC govern the manner in which offenders may be criminally punished for noncompliance with the CDC. As such, this case arises from criminal proceedings initiated by the County to punish Appellants for alleged CDC violations. Therefore,

¹ This reversal on technical grounds should not be construed as a vindication or approval of Appellant company’s alleged actions in reconstructing the billboards.

this Court is bound to strictly construe the penal ordinances found in CDC Sections 9.4.40 and 9.4.50.

The principle is well established that penal statutes are strictly construed, and one who seeks to recover a penalty for the failure on the part of the defendant to discharge some duty imposed by law, must bring his case clearly within the language and meaning of the statute awarding the penalty. Such laws are to be expounded strictly against the offender and liberally in his favor.

Rorrer v. P.J. Club, Inc., 347 S.C. 560, 566, 556 S.E.2d 726, 730 (Ct. App. 2001) (quoting *S.C.*

Dep't of Revenue v. Collins Entm't Corp., 340 S.C. 77, 79, 530 S.E.2d 635, 636 (2000)).

The South Carolina Attorney General has summarized the rules of statutory interpretation generally, and specifically penal laws, in this state as follows:

In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. *Southern Ry. Co. v. S.C. State Hwy. Dept.*, 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. *Hay v. S.C. Tax Comm.*, 273 S.C. 269, 255 S.E.2d 837 (1979). The ***statute's words must be given their plain and ordinary meaning*** without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). Further, penal statutes must be strictly construed against the State. *Commercial Credit Corp. v. Webb*, 245 S.C. 53, 138 S.E.2d 647 (1964). In a previous opinion, this Office has opined that ***the rules of strict construction apply to statutes involving criminal procedure*** as well. See Atty. Gen. Op. 94-61, (October 18, 1994)

County Code Enforcement Officer use of the State Uniform Traffic Ticket under authority of S.C.

Code Section 4-9-145, S.C. Atty. Gen. Op. 20-121, (October 10, 2000) (emphasis added)).

APPLICABLE CDC SECTIONS

The relevant provisions of the CDC, Sections 9.4.40 and 9.4.50, are set forth below verbatim.

9.4.40 - Notice of Violation

When the Code Enforcement Department finds and determines a violation of this Development Code exists, the Code Enforcement Department shall notify, in writing, the person violating the Code. Such notification shall serve as a warning notice of a violation. It shall be delivered via U.S. Mail or hand delivered to the last known address of to the

owner and or any person occupying the land or structure where the violation occurs. The notice shall state the following:

- A. The address and legal description of the land, structure, or sign that is in violation of this Development Code;
- B. The nature of the violation, the provisions of this Development Code being violated, and the necessary action to remove or abate the violation;
- C. The date by which the violation should be removed or abated; and
- D. The penalty for failing to remove or abate the violation, stating that if the nuisance recurs, a notice to appear in the appropriate court in Beaufort County will be issued without further notice.

9.4.50 - Failure to Correct Violation

- A. If the person(s) to whom a warning notice has been given in accordance with Section 9.4.40 (Notice of Violation), fails to remove or abate the violation in the time specified in the notice and severe conditions exist that affect health, welfare, or safety, or cause severe environmental degradation, the County through the Code Enforcement Department may lawfully enter upon the land where the violation remains unabated to remove or abate the violation, at the expense of the person(s) responsible for creating or maintaining the violation(s).
- B. Under all other circumstances, if the person(s) to whom a warning notice has been given in accordance with Section 9.4.40 (Notice of Violation), fails to remove or abate the violation in the time specified in the notice, the Code Enforcement Department shall fill out and sign, as the complainant, a Uniform Summons Ticket in the appropriate court of Beaufort County. The Uniform Summons Ticket shall include the following:
 - 1. Name of the owner of the land subject to the violation, any occupants, and any other person(s) responsible for the violation(s);
 - 2. The address or legal description of the land on which the violation is occurring;
 - 3. The nature of the violation;
 - 4. The provision(s) of this Development Code being violated;
 - 5. The date on which the case will be on the court docket for hearing; and
 - 6. Any other information deemed pertinent by the Code Enforcement Department.

- C. The original copy of the Uniform Summons Ticket shall be forwarded to the appropriate court of Beaufort County for inclusion on the court's docket for the date indicated on the notice.
- D. The Uniform Summons Ticket shall be provided to the owner or any person occupying the land or structure in violation of this Development Code. The notice shall be delivered by certified mail to the owner or any person occupying the land where the violation is occurring. In addition, the Code Enforcement Department shall fill out and sign the Uniform Summons Ticket as the complainant and deliver the original plus one copy to the Clerk of the Court. The Clerk shall verify or insert the date the case is set for hearing before the court. The Clerk shall mail a copy of the Uniform Summons Ticket, by certified mail, to all person(s) named in the Uniform Summons Ticket, at their last known address.

THE MAGISTRATE'S VERDICT

The Verdict found Appellants guilty of two (2) violations of Beaufort County's Community Development Code (the "CDC"). Specifically, the magistrate convicted Appellants of violations of Section 5.6.50.E. of the CDC for performing work on off-premises signs without County approval. The County cited Appellants for the alleged violations by issuing two Uniform Summons Tickets (Nos. 2434 and 2436) on April 12, 2021. *See* Plaintiff's Trial Ex. 6 at 4.

The Verdict reflects Appellants' argument, raised pursuant to CDC Sections 9.4.40 and 9.4.50, that "the County failed to comply with ordinance provisions requiring that a warning notice of the violation be given by the codes (sic) enforcement department in writing by mail or hand delivery." Verdict at 2. Regarding this contention, the magistrate found noncompliance with the CDC by the County, but disagreed with Appellants as to the import of this finding. The Verdict states, in relevant part:

- "The County's failure to adhere to the formal notice requirements were harmless errors on its part." Verdict at 4.

- “The summonses did not comply with the provisions of Section 9.4.50 B of the Community Development Code in that they failed to give the address or legal description on which the violation was occurring.” *Id.*

Although the magistrate did not specifically cite to CDC Section 9.4.40 in the Verdict, it is clear from the record that Appellants raised this specific issue and code section to the magistrate. *See* July 14, 2021 Trial Transcript (“Trial Tr.”), included in Return, at 86:5 – 87:18, 176:16 – 177:3. At trial, the County produced no evidence that a Notice of Violation, as defined and used in Sections 9.4.40 and 9.4.50 of the CDC, was issued to Appellants. However, a witness on behalf of the County testified that a Notice of Violation, as defined in Sections 9.4.40 and 9.4.50, was a predicate to issuing a Uniform Summons Ticket. *See* Trial Tr., at 87:13 – 88:14.

In accordance with governing law, this Court must accept the magistrate’s uncontroverted factual findings that: (1) the County failed to issue a Notice of Violation to Appellants in conformity with CDC Section 9.4.40; and (2) the County failed to comply with the requirements for the issuance of a Uniform Summons Ticket in conformity with CDC Section 9.4.50.

The Verdict concluded, as a matter of law, that the County’s failure in this matter to adhere to the CDC’s requirements as to Notices of Violations and Uniform Summons Tickets were harmless errors. *See* Verdict at 4. In so ruling, the magistrate determined that certain email communications between the parties constituted actual notice of the alleged violation(s), and in essence cured the deficiencies of the County’s process and its noncompliance with its own penal laws set forth in the CDC. *Id.*

THE APPEAL

Appellants’ Notice of Appeal sets forth forty-nine (49) grounds for their appeal, largely based upon application, construction, and interpretation of provisions of the CDC and South

Carolina Code of Regulations. This Order addresses a limited number of grounds, relating to the lack of a Notice of Violation and deficiencies in the Uniform Summons Tickets pursuant to CDC Sections 9.4.40 and 9.4.50. *See* Notice of Appeal, ¶¶ 6, 17-21, 24, 26-28, 30, 38, and 44.

DECISION ON APPEAL

I. The Verdict Contains an Error of Law by Failing to Hold the County to Strict Compliance with CDC’s Notice of Violation Requirements.

The Court finds that the magistrate erred in its construction and reading of, and by failing to give proper weight to, CDC Section 9.4.40. In fact, the Verdict omitted any explicit reference to this section. Section 9.4.40, entitled “Notice of Violation,” reads, in pertinent part:

When the Code Enforcement Department finds and determines a violation of this Development Code exists, **the Code Enforcement Department shall notify, in writing, the person violating the Code. Such notification shall serve as a warning notice of a violation.** It shall be delivered via U.S. Mail or hand delivered to the last known address of to the owner and or any person occupying the land or structure where the violation occurs.

Id. (emphasis added) (included in the record as part of Defendants’ Trial Exhibit 3 (“DX-3”)). The section also details certain information that must be included in a Notice of Violation:

A. The address and legal description of the land, structure, or sign that is in violation of this Development Code; B. The nature of the violation, the provisions of this Development Code being violated, and the necessary action to remove or abate the violation; C. The date by which the violation should be removed or abated; and D. The penalty for failing to remove or abate the violation, **stating that if the nuisance recurs, a notice to appear in the appropriate court in Beaufort County will be issued without further notice.**

CDC Sec. 9.4.40.A.-D. (DX-3) (emphasis added).

The magistrate erred by finding Appellants’ guilty in the absence of evidence that the County issued a Notice of Violation in conformity with CDC Section 9.4.40 to either of the Appellants. The record contains no finding or evidence that the County delivered any warning notice of alleged CDC violation to Appellants by U.S. Mail or hand delivery, as required by the CDC. Additionally, the record shows no communication or notice to Appellants that contained

the requisite information of a Notice of Violation mandated by Section 9.4.40. In fact, the County witness who was the issuing officer of the Uniform Summons Tickets in this case testified that she did not know whether a Notice of Violation had been issued. *See* Trial Tr., at 87:13-18. There is no evidence to disturb the magistrate’s finding of noncompliance by the County in this case with respect to the Notice of Violation requirements.

Moreover, interpreting the CDC by giving its words their plain and ordinary meaning, a Notice of Violation is a condition precedent to the County’s issuance of a Uniform Summons Ticket. If “severe conditions exist that affect health, welfare, or safety, or cause severe environmental degradation” do not exist,² Section 9.4.50 states that the County may issue a Uniform Summons Ticket “**if the person(s) to whom a warning notice has been given in accordance with Section 9.4.40** (Notice of Violation), fails to remove or abate the violation in the time specified in the notice[.]” CDC Sec. 9.4.50.B. (DX-3) (emphasis added). The County admitted that CDC Section 9.4.50, entitled “Failure to Correct Violation,” governs the issuance of such citations. *See* Trial Tr., at 87:19-23.

The failure of the County to follow its own process and procedures for criminal violations of the CDC is no mere technical flaw. The County’s land use regulations set forth in the CDC are far-reaching and complex. Therefore, a person accused of a violation, and subject to criminal penalties such as fines and jail imprisonment, has the right to receive a warning notice and be informed of exactly what conduct is proscribed by the CDC. And, just as importantly, the County drafted its code of ordinances to provide for such a warning.

“Criminal ordinances are, of course, to be strictly construed and a defendant has a right to know just wherein he is charged with the commission of a crime[.]” *Town of Sullivan’s Island*

² There is no evidence in the record to support that severe conditions that affected health, welfare or safety, or caused severe environmental degradation were present in this case, as contemplated by CDC Section 9.4.50.A.

v. Murray, Op No. 5856 (S.C. Ct. App. filed Sept. 1, 2021) (Adv. Sh. No. 30 at 120) (quoting *Town of Conway v. Lee*, 209 S.C. 11, 18, 38 S.E.2d 914, 917 (1946)). “No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.” *Id.* at 122 (quoting *Bouie v. City of Columbia*, 378 U.S. 347, 351 (1964) (internal citation omitted)). CDC Sections 9.4.40 and 9.4.50 are designed to provide the information and notice necessary to comport with due process for violations of the CDC. These protections cannot be swept under the rug when inconvenient to the County or where the accused party or his business is out of favor. South Carolina law clearly and unequivocally directs that such penal laws be strictly construed.

The County argues, in direct contravention of the plain and mandatory language in Section 9.4.50, that it was not required to provide any Notice of Violation prior to issuing the Uniform Summons Tickets in this case. The County points to two sections of the CDC, Sections 9.1.10 and 9.5.40, to attempt to excuse its noncompliance on the Notice of Violation. *See* County’s Opposition Brief, filed Nov. 8, 2021, at 9-12. The County relies upon Section 9.1.10’s statement that the “provisions of this Article are intended to encourage the voluntary correction of violations, where possible.” CDC Sec. 9.1.10. However, a simple policy statement encouraging voluntary correction does not obviate or diminish the enforcement procedure requirements of Sections 9.4.40 and 9.4.50.

The latter ordinance the County cites to, CDC Section 9.5.40, provides that remedies for violations of the CDC may be cumulative and “may be exercised in any order.” County’s Nov. 8, 2021 Memorandum at 9, 12 (quoting CDC Sec. 9.5.40). The fact that the County may exercise remedies in any order does not change the procedural requirements which enable pursuit of one of those specific remedies, criminal penalties. Sections 9.4.40 and 9.4.50 specify the enforcement

procedure necessary to pursue prosecution – the County must first issue a warning notice and then a citation ticket in order to prosecute for a conviction and remedy.³ The distinction is key, as the County’s election of remedies argument refers to the remedies set forth in CDC Division 9.5, entitled “Remedies and Penalties.” *See* DX-3 at 5. Sections 9.4.40 and 9.4.50 are contained within Division 9.4, entitled “Enforcement Generally[.]” *See id.* at 3. The issuance of a citation is not a remedy. The remedy of fines or imprisonment, contemplated in Section 9.5.10, may only be levied by a court if the County is successful in its prosecution – after it properly issues a Warning Notice and Uniform Summons Ticket in accordance with Sections 9.4.40 and 9.4.50. *See* DX-3 at 3-5.

Moreover, even if the clear language at issue could be stretched or contorted to find an ambiguity as to whether the Notice of Violation requirement is an “alternative” remedy that may be ignored, the law requires such an ambiguity to be resolved in favor of the Appellants.

In conclusion, because Sections 9.4.40 and 9.4.50 are penal ordinances which must be strictly construed, the magistrate erred in finding that certain email communications between the parties overrode or eliminated the requirements of the CDC. The Verdict must be reversed because there is no evidence that the County issued a Notice of Violation, a prerequisite to a Uniform Summons Ticket, and a requirement for criminal prosecution of an alleged violation of the CDC.

II. The Verdict Contains an Error of Law by Failing to Hold the County to Strict Compliance as to the Issuance of the Uniform Ordinance Summonses.

In addition to the failure to provide a Notice of Violation, the summonses issued by the County were also facially deficient. There are six criteria required to be included in citation, and in this instance, the County supplied no or insufficient information for half. The County failed to

³ If the recipient of a Notice of Violation issued under Section 9.4.40 does not remove or abate a violation in the time specified, the County’s Code Enforcement Department may fill out and sign, as the complainant, a Uniform Summons Ticket. *See* CDC Secs. 9.4.40, 9.4.50.B. The County must then provide the signed ticket to the Clerk of the appropriate Beaufort County court for inclusion on the court’s docket, and the Clerk then sends a copy of said Uniform Summons Ticket, by certified mail, to all persons named in the ticket. *See* CDC Secs. 9.4.50.C.-D. (DX-3 at 3-4).

(1) identify the owner of the land upon which the alleged violation took place; (2) list the address where the alleged violation took place with any specificity; and (3) the nature of the violation. The magistrate found that the “Summonses did not comply with the provisions of Section 9.4.50B[.]” There is no evidence in the record to disturb this finding.

Additionally, to constitute a chargeable offense, a violation of the CDC is not governed by strict liability. A violation must be preceded by a warning notice, and the **alleged violator must “fail[] to remove or abate the violation** in the time specified in the notice” in order to be formally charged with any violation. CDC Sec. 9.4.50.B. (DX-3 at 4) (emphasis added). In this case, the County failed to provide a Notice of Violation; thus, Appellants could not be charged with violations of the CDC.

The Verdict found that the County did not strictly comply with the requirements of Section 9.4.50 of the CDC. The magistrate erred in finding this error harmless in the context of strict construction of a penal statute. Therefore, the Court finds that the Verdict is reversed on the ground that the County failed to properly issue the Uniform Summons Tickets to Appellants.

The Court declines to rule on, or does not find merit in, Appellants’ other grounds for appeal not specifically addressed herein.

CONCLUSION

For the above grounds and reasons, the Verdict and Notice of Sentence are hereby REVERSED. The Court finds that Appellants are not guilty of the charged violations, and the sentencing imposed by the magistrate is vacated.

IT IS SO ORDERED.

[SIGNATURE FOLLOWS]



Beaufort Common Pleas

Case Caption: Adams Outdoor Advertising Limited Partnership , plaintiff, et al VS
Beaufort County
Case Number: 2021CP0701507
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069