



State of South Carolina
The Circuit Court of the Seventh Judicial Circuit

J. MARK HAYES, II
JUDGE

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FAX MEMORANDUM/COVER SHEET

TO: Oshun Cyrus Hinton
ATTN:
FAX #: 803-753-9671
FROM: Judge Mark Hayes
RE: *Order Denying Pre-trial Motion to Dismiss - 2012-GS-42-04849*
DATE: December 11, 2013

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DEC 31 2013
SC Court of Appeals

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DEC 31 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 The State of South Carolina,)
)
 v.)
)
 Marc Hubbard)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2012-GS-42-04849

ORDER DENYING PRE-TRIAL MOTION TO DISMISS

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This matter came before the court on the defendant's motion to dismiss the indictment asserting the issue of a lack of territorial jurisdiction to prosecute the defendant for the crime alleged in the indictment.

The present motion is novel to this court and from the research presented it, is relatively novel to the state courts of South Carolina. In 2005 the South Carolina Supreme Court in *State v. Dudley* stated that "although territorial jurisdiction is not a component of subject matter jurisdiction,... it is a fundamental issue that may be raised by a party or by the court at any point in the proceeding.... The exercise of extraterritorial jurisdiction implicates the State's sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent.... While a defendant need not be physically present in the State in order to commit a criminal offense here, the State's extraterritorial jurisdiction extends only to those who have performed acts 'intended to produce and producing detrimental effects within' our boundaries."


However, the state and defense do not agree on the standard of review the court should apply to the present motion. This court applies a standard of review which will view

the evidence in a light most favorable to the non-moving party (here the State). In so doing, the present motion is denied.

The only information about the facts and the underlying charge against the defendant which this court has are those presented by the parties. Since the only evidence presented were documents, the court had no manner to judge the veracity of the positions asserted about the facts. Thus, the inferences from the documents were also reviewed in a light most favorable to the non-moving party.

Thus, at this time, this court cannot rule, as a matter of law, that the indictment must be dismissed based upon an assertion that the State is exercising extraterritorial jurisdiction.

Therefore, the motion is denied.



 J. Mark Hayes, II
 Circuit Court Judge

December 11, 2013
 Spartanburg, South Carolina

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