

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Mark Hayes, Circuit Court Judge

Case No.: 2013-002751
Indictment # 2012-GS-42-04849

The State of South Carolina,

Respondent,

v.

Marc Hubbard,

Appellant,

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REPLY OF APPELLANT

Appellant files this return in reply to respondent's Motion to Dismiss Appeal. Appellant filed his appealed *pro se*. Appellant contends that the issue of territorial jurisdiction is such a fundamental right that an appeal is warranted on the facts of this case. Respondent urges this court to dismiss this appeal so that appellant can be put to trial. Appellant urges this court to grant the appeal to determine whether appellant can be put to trial.

Appellant was charged with Securities Fraud in violation of S.C. Code Ann. §§ 35-1-501 and 35-1-508(a)(1). The facts as lodged within the indictment vaguely detail any criminal conduct by Appellant. The indictment does, however, appear to reference a series of contract and promissory notes that Appellant executed on behalf of Sports Dimensions, Inc. ("SDI"). These

agreements were signed with or in favor Paul Ventresca, as owner of RGV Builder, LLC (“RGV”) and PR Investments, “on or between January 16, 2008 and September 11, 2008.” The indictment specifically alleged that Appellant “took over \$20,000 from Paul Ventresca for the alleged purpose of promoting an Alicia Keyes [sic] concert.”

Appellant moved for a dismissal of the charges, arguing the court, and ultimately, the State lacked jurisdiction to prosecute any alleged criminal actions against Appellant. In Appellant's motion, Appellant argued there was a lack of subject matter jurisdiction, specifically extra-territorial, to try him on the charges of securities fraud. Appellant argued the State lacked extra-territorial jurisdiction due to the fact that the actions of Appellant - the signing of the promissory agreements - took place within the State of Florida, as opposed to South Carolina.

A hearing on Appellant's Motion to Dismiss was heard by the Court on December 6, 2013. During the hearing the trial court was “unsure” as to what the standard of review should be used to rule on the motion. As a result of the confusion of which standard of review to apply to the motion, the Court applied the standard of the “light most favorable to the non-moving party. (December 6, 2013 - Hearing Tr. pg. 19 n 1-4.) In applying this standard, the Court ultimately denied the motion in an order dated December 11, 2013. Appellant files this timely appeal.

In this instant action, Appellant has been charged with violation of S.C. Code Ann. §§ 35-1-501 and 35-1-508(a) (2005), where it is alleged that Appellant entered into a series of promissory notes and agreements in connection with the promotion of a concert. The alleged agreements, which both parties, for the purpose of the hearing, stipulated were securities under South Carolina law, where entered into on or between January 16, 2008, by Appellant and a Mr. Paul Ventresca who controlled the entity PR Investments. (12/6/13-Hearing Transcripts pg. 18.) The State alleges that the Appellant “took over \$20,000” from Ventresca in connection with the

promotion of a concert involving Alicia Keys concert.

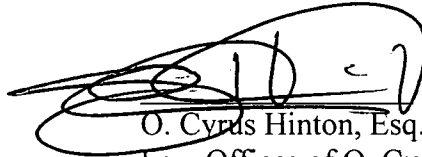
Appellant first acknowledges the current state of the law, which states that there are no criminal appeals until *after* a sentence has been imposed upon the defendant. *State v Miller*, 289 S.C. 426, 346 S.E.2d 705 (1986) (We adhere to our view that under S.C. Code Ann. § 14-3-330 (1976) a criminal may not appeal until after sentence has been imposed.) However, S.C. Code Ann. § 14-3-330(1976) provides several exceptions to this rule.

CONCLUSION

The State lacks the necessary jurisdiction to charge Appellant pursuant to S.C. Code Ann. § 35-1-501 (2005), due to the lack of actions within the State. Appellant, therefore, asks this court to permit his appeal.

Dated: March 4, 2014

Respectfully submitted,



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March 4, 2014

The Honorable Jenny Abbott Kitchens
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211


RE: **State v. Marc Hubbard, 2013-002751**

Dear Ms. Kitchens:

Enclosed you will find the Appellant's Return to the State's Motion to Dismiss the Appeal.

Should you have any questions or concerns, please do not hesitate to contact me at the numbers listed above.

Thank you,
O. Cyrus Hinton, P.A.



O. Cyrus Hinton, Esq

OCH:psh
Cc: Heather S. Weiss

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