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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

**RECORD ON APPEAL**

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*Attorneys for the Respondent*

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STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	14 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	Shellfish Ticket 22603
State of South Carolina	)	
	)	
vs.	)	<b>ORDER FINDING</b>
	)	<b>DEFENDANT GUILTY</b>
Daniel Glenn Hieronymus,	)	
	)	
Defendant.	)	

This matter is before the Court by way of shellfish ticket 22603 issued on December 18, 2015. A bench trial was held on March 15, 2016 before the undersigned. The State was represented by Officer Tara M. Donahue. The Defendant was present and represented by Nancy Bloodgood.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The applicable law in this case is SC Code §§ 44-1-140 and 44-1-150 as well as SC Code of Regulations 61-47. SC Code 44-1-140 gives the SC Department of Health and Environmental Control (DHEC) the authority to "make, adopt, promulgate and enforce reasonable rules and regulations" pertaining to the "safety and sanitation in the harvesting, storing, processing, handling, and transportation" of shellfish. See SC Code 44-1-140(5). As a result, DHEC promulgated R.61-47. The current version of these regulations became effective on June 26, 2015.

Furthermore, a person who "after notice violates, disobeys, omits, or neglects to comply with a regulation of [DHEC] made pursuant to Section 44-1-140, is guilty of a misdemeanor." See SC Code 44-1-150(A).<sup>1</sup>

Officer Donahue along with other shellfish officers from DHEC entered and inspected OV Associates / St. Jude Farms (St. Jude) on December 18, 2015. St. Jude

<sup>1</sup> The statute defines notice as actual or constructive notice. SC Code 44-1-150(D). I find that the Defendant had constructive notice of the regulations given the years he indicated he's been harvesting shellfish and managing shellfish processing facilities, as well as the fact the regulations must be complied with prior to being issued a shellfish harvesting permit from DHEC. (Defendant stated that he has been in the harvesting business "his whole life".) The regulations are also readily accessible online through DHEC's website and through the SC Legislature's website.

is a processor/certified shipper<sup>2</sup> of shellfish located at or near Bennett's Point in Colleton County. Mr. Hieronymus, the Defendant, is the manager of the facility.

The facts are not in dispute. DHEC entered St. Jude's facility on December 18, 2015, to perform a routine inspection. While DHEC was inspecting a cooler that contained bagged clams, DHEC noticed the sales tags on the bags had listed two different harvest areas.<sup>3</sup> When one of the DHEC shellfish officers questioned Mr. Hieronymus why clams harvested from two different areas were in the same bin, the Defendant stated that the tags were incorrect and that they all came from the same harvesting area, S-140. The tags noted harvesting areas of both S-140 (a public harvesting area) and C-137 (a commercial harvesting area leased by St. Jude). The bags of clams were tagged with tags that St. Jude could use as both harvest tags and sales tags depending on the box checked; however these tags were being used as sales tags as noted by box checked "SALE" on the back.

The Defendant argues that he cannot be found guilty of a misdemeanor because the "process that's in place" to catch these mistakes was not yet completed. Defendant also argues he is not guilty of violating §44-1-150 / R.61-47 because even though the sales tags were incorrect, the "clams were not yet put into commerce." These legal arguments are without merit. Statute §44-1-150 is clear. Anyone who "neglects to comply" with the regulation is guilty of a misdemeanor. Arguing that the entire process has to be complete is akin to arguing that one cannot be arrested for burglary when caught in the act of robbing a victim's home simply because the burglar has not finished with the act of burglarizing.

R.61-47 makes it clear what is required of a shellfish sales tag. R61-47.C.2(d)(1) states when at "the facilities of a certified shipper...shellstock shall be tagged in accordance with the provisions of ...C.2.(d)(2) at all times." (emphasis added.) The tag requirements are set forth in the next section. Besides the sales tags having to be a certain size the regulations require "identification of the harvest


<sup>2</sup> See R61-47(A)(2)(g) and (A)(2)(qq)

<sup>3</sup> Defendant testified at the hearing that shellfish harvested from two different areas cannot be stored together in the same area due to cross contamination. See also R61-47(D)(8)

location as is practicable including [DHEC's] designation of the growing area..." See R.61-47.C.2.(d)(2)(d)(6). The plain language of R61-47.C.2(d)(1) notes that the clams do not have to be offered or distributed for sale before a violation occurs. While the clams are at the certified shipper, in this case St. Jude, the "clams shall be tagged in accordance" with the regulations. There is no gray area. The clams must be tagged accordingly. I find the clams were not tagged in accordance with the regulations for having the wrong harvest area listed and the Defendant admitted the sales tags were incorrect. I find therefore, the Defendant is guilty of a misdemeanor pursuant to SC Code 44-1-150 & R61-47.

IT IS SO ORDERED!

---



J. Reaves McLeod  
Presiding Magistrate Judge

Apr. 12, 2016  
Walterboro, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

)  
) IN THE COURT OF COMMON PLEAS  
) FOR THE 14<sup>TH</sup> JUDICIAL CIRCUIT  
) 2016-CP-15-0626

State of South Carolina,

vs,

Daniel Glen Hieronymus,

Appellant.

ORDER

2016 JUL 13 AM 8:54  
TAMMIE A. D. BRANT  
COLLETON COUNTY  
COMMON PLEAS

This matter came before the court on May 30, 2016 on an appeal from an order dated April 12, 2016, from a bench trial held before the Honorable J. Reaves McLeod in Magistrate's Court. Appellant was represented by Nancy Bloodgood, Esquire, and the State was represented by Assistant Attorney General Ashley A. McMahan.

At the hearing, the State argued that Appellant's case should be dismissed because the Notice of Appeal was not filed within the proscribed time limits, and this Court, therefore, did not have jurisdiction. Counsel for the State argued that this is a criminal matter and because the Magistrate's order specifically found the Appellant guilty of a misdemeanor pursuant to S.C. Code 44-1-150 and S.C. Code of Regulations 61-47, Appellant had ten (10) days with which to file the Notice of Appeal from this conviction. S.C. Code Ann. § 18-3-30.

#1  
PAB

South Carolina Code 18-3-10 *et seq.* sets forth the manner for appealing a conviction from Magistrate's Court. S.C. Code 18-3-30 specifically states "the Appellant, within ten days after sentence, shall file a Notice of Appeal with the Clerk of Court..." S.C. Code Ann. 18-3-30. Furthermore, the Rules of Civil Procedure that allows service of a Notice of Appeal within 30 days of judgment does not apply to an appeal from a criminal conviction in Magistrate's Court.

Page 1 of 2

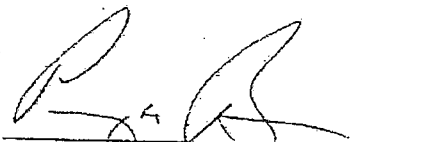
See State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (2001), *overruled on other grounds by State v. Oxner*, 391 S.C. 132, 705 S.E.2d 51 (2011). See also USAA Prop. & Cas. Ins. Co. v. Clegg, 377S.C. 643, 651, 661 S.E.2d 791, 795 (2008), (“[t]he requirement of service of the Notice of Appeal is jurisdictional, i.e. if a party misses the deadline, the appellate courts lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”)

The conviction against Appellant was entered on April 12, 2016, as noted by the judge’s signature on the order and the order finding Appellant guilty was served on the parties on that same date. See Honorable Reaves McLeod Order dated April 12, 2016. On May 20, 2016, Appellant filed a Notice of Appeal with the Colleton County Clerk of Court. See Appellant’s Notice of Appeal. The Notice of Appeal in this case was filed with the Clerk of Court almost three weeks beyond the deadline.

Therefore, based on the foregoing, this Court finds that Appellant’s appeal must be dismissed for failing to file the Notice of Appeal within the proscribed time limits.

IT IS SO ORDERED!

#2

  
The Honorable Perry M. Buckner, III  
Presiding Judge  
Fourteenth Judicial Circuit

July 7, 2016  
Walterboro, South Carolina.

# The South Carolina Court of Appeals

The State, Respondent,

v.

Daniel Glen Hieronymus, Appellant.

Appellate Case No. 2016-001624

The Honorable Perry M. Buckner, III  
Colleton County  
Trial Court Case No. 2016CPI500626

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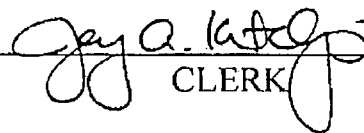
## ORDER

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The request for an extension to serve and file a return to the respondent's motion to dismiss is granted and extended until September 8, 2016. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 ([www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01)), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY

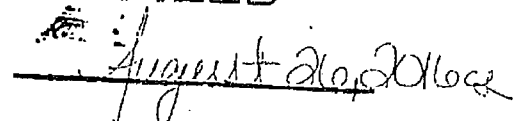
  
CLERK

Columbia, South Carolina

cc:

Nancy Bloodgood, Esquire  
Nicole Thomas Wetherton, Esquire

FILED

  
August 26, 2016

# The South Carolina Court of Appeals

The State, Respondent,

v.

Daniel Glen Hieronymus, Appellant.

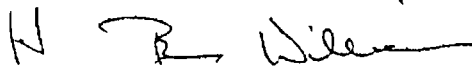
Appellate Case No. 2016-001624

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## ORDER

---

Because Appellant timely served the Court of Appeals notice of appeal, Respondent's motion to dismiss is denied.



---

FOR THE COURT

Columbia, South Carolina

**FILED**

cc:

Nancy Bloodgood, Esquire

Nicole Thomas Wetherton, Esquire

November 4, 2016

STATE OF SOUTH CAROLINA )

COUNTY OF COLLETON )

State of South Carolina )

Plaintiff(s) )

vs. )

Daniel Glenn Hieronymus )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-15- 626

Submitted By: Nancy Bloodgood  
Address: Bloodgood & Sanders, LLC  
895 Island Park Drive, Suite 202  
Charleston, SC 29492

SC Bar #: 6459  
Telephone #: 843-972-0313  
Fax #: 843-377-8997  
Other:  
E-mail: nbloodgood@bloodgoodsanders.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |   |
|--|--|---|---|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199) _____</li> </ul>  | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20 <u>-NI-</u></li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299) _____</li> </ul>   | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Libel (380)</li> <li><input type="checkbox"/> Other (399) _____</li> </ul>   | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499) _____</li> </ul>   |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599) _____</li> </ul>   | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899) _____</li> </ul> | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799) _____</li> </ul> | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input checked="" type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999) _____</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699) _____</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Permanent Restraining Order (680)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Pre-Suit Discovery (670)</li> </ul> |  |   |   |

Submitting Party Signature: Nancy Bloodgood

Date: May 17, 2016

(originally filed 5-11-16)

PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS  
2016 MAY 20 PM 2:15

8 Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 State of South Carolina )  
 )  
 )  
 )  
 vs. )  
 )  
 Daniel Glenn Hieronymus )  
 )  
 )

IN THE COURT OF COMMON PLEAS  
 16-CP-15-626  
 NOTICE OF APPEAL  
 22603  
 TICKET NUMBER

The Appellant, Daniel Glenn Hieronymus, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Colleton.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 16<sup>th</sup> day of April, 2016.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

1. The ticket is invalid on its face as it does not state with specificity what part of 33 page Regulation (61-41) was allegedly violated.
2. The ticket is invalid on its face as it does not state with specificity what section of S.C. Code Section 44-1-150 is being invoked, specifically subsection (A) or subsection (B) which are significantly different.
3. There was no testimony at trial as to which section of S.C. Code Section 44-1-150 was being invoked by Respondent.
4. The ticket is invalid as the appropriate defendant in this case is the employer, not any employee, under the theory of respondeat superior so the ticket was made out to the wrong party.
5. The ticket is invalid as criminal charges require intent and there was no evidence of intent by the Appellant employee to violate the law.
6. The Order is invalid as it is based on a law S.C. Code Section 44-1-140 that provides for both criminal and civil penalties for violation of any regulation and is, therefore, unconstitutional.

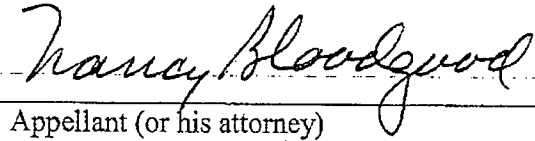
PATRICIA C. GRANT  
 COLLETON COUNTY  
 COMMON PLEAS  
 2016 MAY 20 PM 2:46

7. The ticket was given to Appellant who is an employee of St. Jude Farms during the "handling" phase of the processing and there is no language in the "handling" section of Regulation 61-41 C.2 pertaining to tagging requirements.

8. There was no evidence presented at the magistrate hearing of any intent to transport or sell the clams at issue by Appellant before the processing at Appellants processing facility was completed and in fact, as Appellant is merely an employee, he could have no such intent as he was not the decision maker regarding the transportation and sale of the product at issue and was only authorized to follow a pre-existing tagging process.

9. The ticket is invalid as Appellant's employer has processes in place to catch and fix mistakes before any shell stock goes to the market place and Respondent's enforcement action interfered with Appellant's employer's internal business processes by wrongfully assuming Appellant's employer would intentionally fail to correct mistakes before sending the clams to the market place.

Dated: May 11, 2016

  
Appellant (or his attorney)

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	14 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	Shellfish Ticket 22603
State of South Carolina	)	
	)	
vs.	)	<b>ORDER FINDING</b>
	)	<b>DEFENDANT GUILTY</b>
Daniel Glenn Hieronymus,	)	
	)	
Defendant.	)	

This matter is before the Court by way of shellfish ticket 22603 issued on December 18, 2015. A bench trial was held on March 15, 2016 before the undersigned. The State was represented by Officer Tara M. Donahue. The Defendant was present and represented by Nancy Bloodgood.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The applicable law in this case is SC Code §§ 44-1-140 and 44-1-150 as well as SC Code of Regulations 61-47. SC Code 44-1-140 gives the SC Department of Health and Environmental Control (DHEC) the authority to "make, adopt, promulgate and enforce reasonable rules and regulations" pertaining to the "safety and sanitation in the harvesting, storing, processing, handling, and transportation" of shellfish. See SC Code 44-1-140(5). As a result, DHEC promulgated R.61-47. The current version of these regulations became effective on June 26, 2015.

Furthermore, a person who "after notice violates, disobeys, omits, or neglects to comply with a regulation of [DHEC] made pursuant to Section 44-1-140, is guilty of a misdemeanor." See SC Code 44-1-150(A).<sup>1</sup>

Officer Donahue along with other shellfish officers from DHEC entered and inspected OV Associates / St. Jude Farms (St. Jude) on December 18, 2015. St. Jude

<sup>1</sup> The statute defines notice as actual or constructive notice. SC Code 44-1-150(D). I find that the Defendant had constructive notice of the regulations given the years he indicated he's been harvesting shellfish and managing shellfish processing facilities, as well as the fact the regulations must be complied with prior to being issued a shellfish harvesting permit from DHEC. (Defendant stated that he has been in the harvesting business "his whole life".) The regulations are also readily accessible online through DHEC's website and through the SC Legislature's website.

is a processor/certified shipper<sup>2</sup> of shellfish located at or near Bennett's Point in Colleton County. Mr. Hieronymus, the Defendant, is the manager of the facility.

The facts are not in dispute. DHEC entered St. Jude's facility on December 18, 2015, to perform a routine inspection. While DHEC was inspecting a cooler that contained bagged clams, DHEC noticed the sales tags on the bags had listed two different harvest areas.<sup>3</sup> When one of the DHEC shellfish officers questioned Mr. Hieronymus why clams harvested from two different areas were in the same bin, the Defendant stated that the tags were incorrect and that they all came from the same harvesting area, S-140. The tags noted harvesting areas of both S-140 (a public harvesting area) and C-137 (a commercial harvesting area leased by St. Jude). The bags of clams were tagged with tags that St. Jude could use as both harvest tags and sales tags depending on the box checked; however these tags were being used as sales tags as noted by box checked "SALE" on the back.

~~The Defendant argues that he cannot be found guilty of a misdemeanor because the "process that's in place" to catch these mistakes was not yet completed. Defendant also argues he is not guilty of violating §44-1-150 / R.61-47 because even though the sales tags were incorrect, the "clams were not yet put into commerce." These legal arguments are without merit. Statute §44-1-150 is clear. Anyone who "neglects to comply" with the regulation is guilty of a misdemeanor. Arguing that the entire process has to be complete is akin to arguing that one cannot be arrested for burglary when caught in the act of robbing a victim's home simply because the burglar has not finished with the act of burglarizing.~~

R.61-47 makes it clear what is required of a shellfish sales tag. R61-47.C.2(d)(1) states when at "the facilities of a certified shipper...shellstock shall be tagged in accordance with the provisions of ...C.2.(d)(2) at all times." (emphasis added.) The tag requirements are set forth in the next section. Besides the sales tags having to be a certain size the regulations require "identification of the harvest

---

<sup>2</sup> See R61-47(A)(2)(g) and (A)(2)(qq)

<sup>3</sup> Defendant testified at the hearing that shellfish harvested from two different areas cannot be stored together in the same area due to cross contamination. See also R61-47(I)(8).

location as is practicable including [DHEC's] designation of the growing area..." See R.61-47.C.2.(d)(2)(d)(6). The plain language of R61-47.C.2(d)(1) notes that the clams do not have to be offered or distributed for sale before a violation occurs. While the clams are at the certified shipper, in this case St. Jude, the "clams shall be tagged in accordance" with the regulations. There is no gray area. The clams must be tagged accordingly. I find the clams were not tagged in accordance with the regulations for having the wrong harvest area listed and the Defendant admitted the sales tags were incorrect. I find therefore, the Defendant is guilty of a misdemeanor pursuant to SC Code 44-1-150 & R61-47.

IT IS SO ORDERED!

---



J. Reaves McLeod  
Presiding Magistrate Judge

Apr. 12, 2016  
Walterboro, South Carolina

Phone #: [REDACTED]

No. 22603



South Carolina  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
OFFICIAL SUMMONS & ARREST REPORT

STATE OF SOUTH CAROLINA  
VERSES

NAME Daniel Sean Hieronymus

ADDRESS [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE

TRIAL OFFICER Magistrate

ADDRESS 407 B Klein St, Natchemero SC 29488

ON February 16th, 20 16 AT 10:00 A.M

COURT APPEARANCE REQUIRED -  YES  NO

CHARGE Improper Shellstock ID (22 Bags)

CODE SEC. & REG. No. 2-61-47 DATE 12/18, 20 15

AT OR NEAR Bennet's point, St. Jades Farm

DATE BAIL RECEIVED	BY ENV. CONTROL OFFICER	DOLLARS
<u>NA</u> 20	<u>T.M. Donahue</u>	<u>\$ 470.00</u>

COUNTY JUDGE <input type="checkbox"/> MAGISTRATE <input checked="" type="checkbox"/> RECORDER-MAYOR <input type="checkbox"/> FEDERAL JUDGE <input type="checkbox"/> MIL. COURT <input type="checkbox"/> STATE COURT <input type="checkbox"/>		AMOUNT OF FINE
DISPOSITION NOT GUILTY <input type="checkbox"/> FORFEITED BAIL <input type="checkbox"/> TRIED IN ABSENCE <input type="checkbox"/> NOLLE PROSSED <input type="checkbox"/> SENT TO HIGHER CT. <input type="checkbox"/> TURNED TO MIL. <input type="checkbox"/> GUILTY <input type="checkbox"/> CHANGE OF VENUE <input type="checkbox"/>		AMOUNT SUSP.
DESCRIPTION OF ACCUSED RACE SEX BIRTHDAY HT. HAIR WT. EYES <u>W M 11/22/74 6'0 13 195 G</u>		VEHICLE LICENSE# STATE <u>NIA NIA</u>
SENTENCE OF COURT JAIL SUSP. CONT. TO.		MAKE OF VEH. YEAR <u>NIA NIA</u>
CERTIFIED CORRECT JUDGE DATE		TYPE <input type="checkbox"/> AUTO <input type="checkbox"/> TRUCK DRIVER'S LICENSE # STATE <u>103742797 SC</u>
TRIAL OFFICER		CDR CODE #

Guilty  
 Fine due  
 \$ 470.00

To Be Signed  
 OFF 4-19-16  
 at 10:00am.

PRESENT THIS SUMMONS TO [REDACTED] SHOWN ABOVE. BE SURE THAT YOU UNDERSTAND FROM THE ENVIRONMENTAL CONTROL OFFICER THE EXACT TIME AND PLACE OF THE TRIAL

STATE OF SOUTH CAROLINA )

COUNTY OF COLLETON )

State of South Carolina )

vs. )

Daniel Glenn Hieronymus )

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2016 I served a copy of the Notice of Appeal to the following:

Patricia Grant  
Colleton County Clerk of Court  
101 Hampton Street, P.O. Box 620  
Walterboro, SC 29488

VIA FEDERAL EXPRESS

Ashley A. McMahan, Esquire  
Assistant Attorney General  
C/O SC Dept. Of Health & Env. Control  
2600 Bull Street  
Columbia, SC 29201

Pam White  
Colleton County Magistrate Court  
40 Klein Street  
Walterboro, SC 29488

2016 MAY 20 PM 2:46  
PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS

VIA FIRST CLASS MAIL

by placing a copy of said documents in the United States mail with sufficient postage thereon.

*Nancy Bloodgood*

Nancy Bloodgood

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )

IN THE MAGISTRATE'S COURT

The State, )  
 )  
-v- )  
 )  
Daniel Glenn Hieronymus )  
Defendant(s) )

MAGISTRATE'S RETURN

Tickets # 22603  
Offense: Improper Shellstock ID (22 Bags)

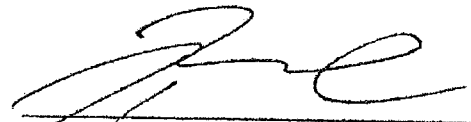
The Defendant was charged with Improper Shellstock ID (22 Bags). The State and Defendants was present along with attorney Nancy Bloodgood. Evidence was presented that the Defendant has mislabeled bagged clams (22) bags as from being from a different collection area as was tagged. This evidence was not disputed. Defendant claims the violation would have been corrected when the shellfish would have been ultimately sold, thus the ticket was premature in being written and prosecuted. Defendant testified this was done by mistake and would have been corrected at sale. Questions presented to the court were the ripeness of the ticket and the intent of the Defendant. Both parties were asked to submit written orders and did so.

The Defendant was found guilty of the violation of improper shell stock ID (22bags). The violation occurred in Colleton County on December 18, 2015. The Defendant was fined \$470.00. The written order was signed April 12, 2016 and is submitted to the Circuit Court with this return.

No further motions were held or heard.

12<sup>th</sup> day of May, 2016.

Respectfully Submitted,



John Reaves McLeod  
Colleton County Magistrate Court  
Walterboro, South Carolina

8

80499

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626

RECEIVED  
AUG 04 2016  
SC Court of Appeals



Daniel Glen Hieronymus,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

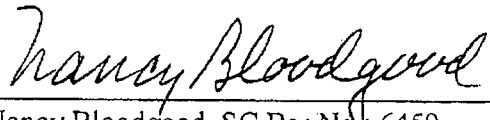
Nancy Bloodgood, Esq., SC Bar No. 6459  
**Bloodgood & Sanders, LLC**  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
Telephone: (843) 972-0313  
Facsimile: (843) 377-8997  
Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)

*Attorneys for the Appellant*

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS: \_\_\_\_\_

Daniel Glen Hieronymus hereby appeals the Order of the Honorable Perry M. Buckner, III, attached hereto as Exhibit A, dated July 7, 2016 and filed with the Colleton County Clerk of Court on July 13, 2016.

BLOODGOOD & SANDERS, LLC



Nancy Bloodgood, SC Bar No: 6459  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
Telephone: (843) 972-0313  
Facsimile: (843) 377-8997  
Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)

*Attorneys for Appellant*

Charleston, South Carolina

Date: 8-2-16

**Other Counsel of Record:**

Nicole Wetherton, Esquire  
Assistant Attorney General  
C/O SC Dept. Of Health & Env. Control  
2600 Bull Street  
Columbia, SC 29201  
*Attorneys for the Respondent*



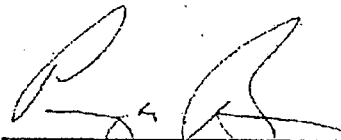
See State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (2001), *overruled on other grounds by State v. Oxner*, 391 S.C. 132, 705 S.E.2d 51 (2011). See also USAA Prop. & Cas. Ins. Co. v. Clegg, 377S.C. 643, 651, 661 S.E.2d 791, 795 (2008), (“[t]he requirement of service of the Notice of Appeal is jurisdictional, i.e. if a party misses the deadline, the appellate courts lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”)

The conviction against Appellant was entered on April 12, 2016, as noted by the judge’s signature on the order and the order finding Appellant guilty was served on the parties on that same date. See Honorable Reaves McLeod Order dated April 12, 2016. On May 20, 2016, Appellant filed a Notice of Appeal with the Colleton County Clerk of Court. See Appellant’s Notice of Appeal. The Notice of Appeal in this case was filed with the Clerk of Court almost three weeks beyond the deadline.

Therefore, based on the foregoing, this Court finds that Appellant’s appeal must be dismissed for failing to file the Notice of Appeal within the proscribed time limits.

IT IS SO ORDERED!

#2

  
The Honorable Perry M. Buckner, III  
Presiding Judge  
Fourteenth Judicial Circuit

July 7, 2016  
Walterboro, South Carolina.

RECEIVED  
AUG 08 2016

**Carter, Elizabeth A.**

---

**From:** Amanda Kramer <akramer@bloodgoodsanders.com>  
**Sent:** Monday, August 08, 2016 9:47 AM  
**To:** Carter, Elizabeth A.  
**Cc:** nwetherton@scag.gov  
**Subject:** State v. Hieronymus  
**Attachments:** Hieronymous Order0001.pdf

Ms. Carter,

Attached please find a copy of the Order which was accidently left out of the Notice of Appeal. Please let me know if you need anything else.

Thank you for your help.

Amanda

Amanda Kramer  
Assistant to Nancy Bloodgood  
and Lucy C. Sanders  
Bloodgood & Sanders, LLC  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
office: 843-972-0313  
fax: 843-377-8997  
[akramer@bloodgoodsanders.com](mailto:akramer@bloodgoodsanders.com)

**Please note our new firm name and update your files to reflect the new email address and fax number listed above. Our address and telephone numbers have not changed.**

Confidentiality Statement: The information in this message is intended for the above named individual or entity, and may contain confidential material protected by attorney/client privilege or attorney work product. Any dissemination, retransmission or action taken in reliance upon this information, by anyone other than the intended recipient is prohibited. If you received this communication in error, please notify the sender and delete the material.

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AUG 08 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626

Daniel Glen Hieronymus,

Appellant,

v.

State of South Carolina,

Respondent.

**PROOF OF SERVICE FOR THE NOTICE OF APPEAL**

Nancy Bloodgood, Esq., SC Bar No. 6459  
**Bloodgood & Sanders, LLC**  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
Telephone: (843) 972-0313  
Facsimile: (843)377-8997  
Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)

*Attorneys for the Appellant*

**RECEIVED**  
AUG 04 2016  
SC Court of Appeals

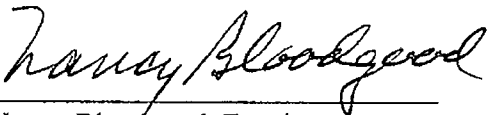
I hereby certify that on August 2, 2016 I served a copy of the Notice of Appeal to the  
\_\_\_\_\_

following:

Nicole Wetherton, Esquire  
Assistant Attorney General  
C/O SC Dept. Of Health & Env. Control  
2600 Bull Street  
Columbia, SC 29201  
*Attorneys for the Respondent*

Patricia Grant  
Colleton County Clerk of Court  
101 Hampton Street, P.O. Box 620  
Walterboro, SC 29488

by placing a copy of said documents in the United States mail with sufficient postage thereon.

  
\_\_\_\_\_  
Nancy Bloodgood, Esquire

Charleston, South Carolina

Date: 8-2-16

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of General Sessions

The Honorable Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2016-001624

**RECEIVED**

AUG 17 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

Daniel Glen Hieronymus,

APPELLANT.

**MOTION TO DISMISS APPEAL FOR  
LACK OF JURISDICTION**

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

On December 18, 2015, Daniel Glen Hieronymus (hereinafter "Appellant"), was served with Shellfish Ticket 22603. On March 15, 2016, Appellant exercised his right to a bench trial before the Honorable J. Reaves McLeod at the Colleton County Magistrate. Officer Tara M. Donahue of the Department of Health and Environmental Control (DHEC) represented the State and Nancy Bloodgood, Esquire, represented Appellant. On April 12, 2016, the court issued an order finding Appellant guilty and served the order on the parties that day.

On May 20, 2016, Appellant filed an untimely Notice of Appeal with the Colleton County Clerk of Court.<sup>1</sup> On June 30, 2016, the Honorable Perry M. Buckner, III, held a motion hearing in Colleton County. On July 7, 2016, Judge Bucker issued an order dismissing Appellant's appeal for being untimely filed. The Colleton County Clerk of Court filed the order on July 13, 2016.

On August 4, 2016, Appellant filed a Notice of Appeal in this Honorable Court. This motion to dismiss now follows.

## II.

South Carolina Code 18-3-10 et seq. sets forth the manner for appealing a conviction from Magistrate's Court. SC Code 18-3-30 specifically states "the Appellant, within ten days after sentence, shall file a Notice of Appeal with the Clerk of Court..." (emphasis added). Furthermore, it is well-settled that the Rules of Civil Procedure that allows service of a Notice of Appeal within 30 days of judgment does not apply to an appeal from a criminal conviction in Magistrate's Court. See *State v. Brown*, 344 S.C. 302 (2001), overruled on other grounds by *State v. Oxner*, 391 S.C. 132 (2011). See also *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642 (2015) (holding that an e-mail from the Court with an attachment containing an order constitutes written entry and receipt of the decision for purposes of appeal); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008), ("[t]he requirement of service of the Notice of Appeal is jurisdictional, i.e. if a party misses the deadline, the appellate courts lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.")

In Appellant's case, there was not a proper notice of appeal within ten days after the conviction to the lower appellate court. As stated previously, the conviction was entered on April

---

<sup>1</sup> The underlying matter is a criminal matter. The order specifically found Appellant guilty of a misdemeanor pursuant to SC Code 44-1-150 and SC Code of Regulations 61-47. Further, the underlying matter is classified as a case type "criminal" on the public index.

12, 2016. On May 20, 2016, Appellant filed a Notice of Appeal with the Colleton County Clerk of Court. The Notice of Appeal in this case was filed in the Clerk of Court 28 days beyond the deadline.

### III.

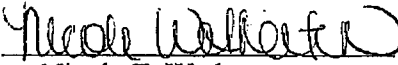
Since no proper notice of appeal was served and filed within ten days of Appellant's conviction, the lower appellate court had no jurisdiction over Appellant's case and had to dismiss his appeal for lack of jurisdiction. See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a **jurisdictional requirement**, and the time for service may not be extended by this Court."); Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 24 S.E.2d 416, 418 (Ct. App. 1999) (in a civil case, pointing out that Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of jurisdiction "and results in dismissal of the appeal"); see also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State."). Since the lower appellate court did not have jurisdiction to hear Appellant's claims, this Honorable Court also lacks appellate jurisdiction.

**WHEREFORE**, the State respectfully requests that this Court dismiss Appellant's appeal for lack of appellate jurisdiction.

Respectfully submitted,

ALAN WILSON  
Attorney General

NICOLE T. WETHERTON  
Assistant Attorney General

BY: 

Nicole T. Wetherton  
S.C. Bar #100500

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 898-1251

---

**ATTORNEYS FOR RESPONDENT**

August 17, 2016

STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

AUG 17 2016

SC Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of General Sessions

The Honorable Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2016-001624

THE STATE OF SOUTH CAROLINA,  
RESPONDENT,

v.

Daniel Glen Hieronymus,  
APPELLANT.

**PROOF OF SERVICE**

I, Angela Bennett certify that I have served the within Motion to Dismiss on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Nancy Bloodgood, Esquire  
895 Island Park Drive, Suite 202  
Charleston, SC 29492

I further certify that all parties required by Rule to be served have been served. This 17<sup>th</sup> day of August, 2016.



ANGELA BENNETT  
Administrative Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED  
AUG 25 2016  
SC Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

---

**MOTION FOR EXTENSION OF TIME TO FILE RETURN TO RESPONDENT'S  
MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION  
PURSUANT TO SCACR RULES 240 AND 263**

---

Appellant filed a Notice of Appeal in this Honorable Court on August 4, 2016. On August 17, 2016, Respondent filed a Motion to Dismiss the Appeal. The Clerk of this Honorable Court acknowledged receipt of Respondent's Motion and issued a letter on August 19, 2016 directing Appellant to file a Return to the Motion within ten (10) days from the date of the letter, making Appellant's Return due on or before Monday, August 29, 2016. Appellant's Counsel received this letter (as well as Respondent's Motion) on August 22, 2016.

Appellant respectfully requests that this Honorable Court extend Appellant's time to file its Return to Respondent's Motion until September 8, 2016. Appellant requests this ten (10) day extension on the following grounds: (1) Appellant's Counsel received Respondent's Motion on Monday, August 22, 2016 and is Lead Counsel in a three day arbitration taking place August 24-26, 2016; (2) Appellant has not previously requested an extension in this case and; (3) the requested extension is for a reasonable amount of time and is not interposed for delay. Appellant's Counsel has contacted Respondent's Counsel and Respondent's Counsel does not object to the relief requested in this Motion.

*Nancy Bloodgood / signed with express permission by King Sanders*

Nancy Bloodgood, Esquire  
**Bloodgood & Sanders, LLC**  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
(843) 972-0313

*Attorneys for Appellant*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

AUG 25 2016

SC Court of Appeals

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

---

**MEMORANDUM IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO  
FILE RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL FOR  
LACK OF JURISDICTION PURSUANT TO SCACR RULES 240 AND 263**

---

This Memorandum is filed pursuant to SCACR 240(c) which requires that motions filed in an appellate court shall include a memorandum with citation of authorities in support of the motion. Appellant respectfully requests that the deadline to file its Return to Respondent's Motion to Dismiss Appeal be extended to September 8, 2016. SCACR 263(b) prescribes that any justice of an appellate court may extend the time for performing any act under the Appellate Court Rules, with the exception of the time for serving a notice of appeal. Pursuant to SCACR 263(b), the decision to extend a prescribed time for performing an act is discretionary as the Rule uses the word "may."

Appellant's request for an extension is supported by good cause, specifically that Appellant's Return is currently due on Monday, August 29, 2016, but Appellant's Counsel received the Motion on August 22, 2016 and is involved in a three day arbitration beginning August 24, 2016. Respondent's Counsel does not object to Appellant's request for an extension. Appellant respectfully requests that this Court grant its request for an extension and order that Appellant's time to file a Return to Respondent's Motion to Dismiss be extended to September 8, 2016.

*Nancy Bloodgood / signed w/express  
permission by Kary Sanders*

Nancy Bloodgood, Esquire  
**Bloodgood & Sanders, LLC**  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
(843) 972-0313

*Attorneys for Appellant*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

**RECEIVED**

AUG 25 2016

SC Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

---

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

---

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

---

**PROOF OF SERVICE FOR APPELLANT'S MOTION FOR EXTENSION OF  
TIME TO FILE RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL  
FOR LACK OF JURISDICTION**

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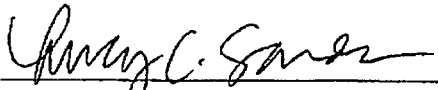
Nancy Bloodgood, Esq., SC Bar No. 6459  
**Bloodgood & Sanders, LLC**  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
Telephone: (843) 972-0313  
Facsimile: (843) 377-8997  
Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)

*Attorneys for the Appellant*

I hereby certify that on August 23, 2016 I served a copy of the Motion for Extension of Time (and Supporting Memorandum) to the following:

Nicole Wetherton, Esquire  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
*Attorneys for the Respondent*

by placing a copy of said documents in the United States mail with sufficient postage thereon.

  
\_\_\_\_\_  
Lucy C. Sanders

Charleston, South Carolina

Date: 8/23/16

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

**RECEIVED**

SEP 12 2016

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

---

**RETURN TO RESPONDENT'S MOTION TO DISMISS**

---

Nancy Bloodgood, Esq., SC Bar No. 6459  
**BLOODGOOD & SANDERS, L.L.C.**  
895 Island Park Drive, Suite 202  
Charleston, SC 29492  
Telephone: (843) 972-0313  
Facsimile: (843) 377-8997  
Email: nbloodgood@bloodgoodsanders.com

*Attorneys for the Appellant*

## INTRODUCTION

This matter comes before the Court as a result of an appeal of a Magistrate decision regarding a DHEC ticket filed against Appellant Hieronymus on May 11, 2016. On June 30, 2016 Circuit Court Judge Perry M. Buckner denied the appeal. Appellant filed a Notice of Appeal in this Court on August 2, 2016. Respondent filed a Motion to Dismiss on August 17, 2016. Appellant filed a Motion for Extension of Time to file a Return. The Motion was granted and extended Appellant's time to file a Return until September 8, 2016.

## ARGUMENT

Respondent has moved to dismiss this appeal as it contends that the underlying action is criminal in nature, rather than civil, so the criminal statute of limitations should apply to Appellant's appeal to the Circuit Court. However, the issue of whether the underlying proceeding is criminal or civil is the very issue on appeal and which statute of limitations applies depends on the Court's decision regarding that issue.

St. Jude Farms is a business that harvests, transports and sells oysters and clams in Colleton County. Appellant Hieronymus is the manager of St. Jude Farms. On December 18, 2015, DHEC officer T.M. Donahue issued an Official Summons & Arrest Report (hereafter "ticket") to Daniel Glenn Hieronymus, for "improper shell stock ID (22 bags)" pursuant to Regulation 61-47.

S.C. Code § 44-1-15 provides for both civil and criminal penalties for violations of DHEC Regulations. Section (A) of S.C. Code § 44-1-15 states, "Except as provided in Section 44-1-151, a *person who after notice* violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Health and Environmental

Control, made by the department pursuant to Section 44-1-140, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.” (emphasis added) Section (B) of S.C. Code § 44-1-150 states, “A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 44-1-140 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.” There is no indication on the face of the ticket at issue as to whether section (A) or (B) of S.C. Code §44-1-150 is being pursued and the circumstances surrounding the issuance of the ticket indicate the ticket was issued under section (B).

At the Magistrate hearing, Mr. Hieronymus testified he did not know a mistake had been made labeling the clam bag until he noticed the mistake while he was with DHEC Officials during an inspection at St. Jude Farms. At the Magistrate hearing, DHEC agreed that Appellant Hieronymus was not the person who violated the DHEC Regulation 61-42. Officer Donahue testified, “one of [Mr. Hieronymus’] workers who does the tags doesn’t speak English well .... miswrote some of the tags.” (Ex. A, Transcript, pp. 6, 14)

It is elementary that criminal penalties cannot be imposed against a person whom Respondent knows and, in this case, has admitted did not commit the alleged crime. The Supreme Court acknowledges criminal charges must be brought against a person the prosecutor believes has committed a crime. See, e.g., *State v. Inman*, 395 S.C. 539, 562, 720 S.E.2d 31, 44 (S.C. 2011) citing *State v. Needs*, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998).

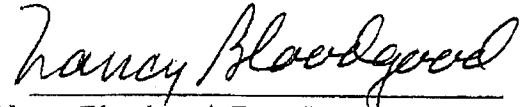
Here, it is undisputed that Appellant Hieronymus was not the person who violated the DHEC regulations by mislabeling the clams. Nevertheless, Respondent contends it brought criminal charges against Mr. Hieronymus rather than assessing a civil fine against him in his capacity as a representative of the business. Criminal penalties available under S.C. Code § 44-1-150 (A) must be assessed against the person who actually committed the violation. As Respondent admits Mr. Hieronymus is not the person who mislabeled the clam tags, it is Appellant's position that Mr. Hieronymus is the wrong person against whom the assessment of criminal charges should be brought and he cannot be guilty of a misdemeanor.

The statute that was allegedly violated provides for both criminal and civil penalties for the violations of the same regulations, evidently leaving the choice to Respondent. However, Respondent cannot attempt to dismiss an appeal on the basis that a criminal statute of limitations has run when the gist of Appellant's appeal is Respondent cannot maintain a criminal proceeding against Mr. Hieronymus. Using Respondent's rationale, Appellant can similarly argue that as it believes Respondent's actions were civil in nature, the civil statute of limitations must apply. In fact, the issue of which statute of limitations should apply is entirely dependent on the outcome of the appeal. Dismissing the case at this stage would *defacto* result in the Court deciding in favor of one party over the other and an adjudication on the merits.

Defendant respectfully requests the State's Motion to Dismiss be denied so the Court can consider the case on its merits as the State's action of attempting to bring criminal charges against persons who have not acted in a criminal manner has serious ramifications for other private citizens besides this Defendant.

**CONCLUSION**

For the reasons stated herein, Appellant respectfully requests that this Court deny the Motion to Dismiss and allow Appellant to proceed with this appeal.



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*Attorneys for the Appellant*

# Exhibit A

STATE OF SOUTH CAROLINA ) IN THE FOURTEENTH  
MAGISTRATE'S COURT ) JUDICIAL CIRCUIT

State of South Carolina, )  
 ) SHELLFISH TICKET  
 ) 22603  
v. )  
 )  
Daniel Glenn Hieronymus, )  
 )  
Defendant. )

\*\*\*\*\*

TRANSCRIPT OF RECORDED HEARING

TRANSCRIBED BY: MARY ANN RIDENOUR, RPR, CLR  
Registered Professional Reporter,  
Certified LiveNote Reporter  
and Notary Public

POST OFFICE BOX 21784  
CHARLESTON, SC 29413-1784

1 And then another ground where they can collect clams,  
2 it's a culture ground, 137. . So, basically, the  
3 State -- State owns S-140, then St. Jude Farms pays a  
4 fee to the State for -- allowing them to pick on C-137.

5 THE COURT: Okay.

6 OFFICER DONAHUE: So I asked Mr. Hieronymus  
7 why he had two different areas tagged in the same bin?  
8 He explained that one of his workers who does the tags  
9 doesn't speak English well and miswrote some of the  
10 tags. So they should have been all S-140. He said he  
11 was certain they were all from S-140, it was just a  
12 mistake that some had the C-137. So we tried to work  
13 with him and see if he could prove -- provide some sort  
14 of proof that -- or documentation that they all came  
15 from S-140. And he was unable to do so.

16 We have a -- there's a receiving log. And,  
17 basically, it's a requirement in DHEC's HACCP plan that  
18 they fill out the receiving log within a reasonable  
19 amount of time. So, basically, when of those clams  
20 come off the water, they need to put in the receiving  
21 log what area they came from, the time, the date, stuff  
22 like that. So that way, if we have -- if somebody gets  
23 sick -- we've already had illnesses this -- just this  
24 year, two illnesses of people getting sick. We can go  
25 back. If they say, Okay, we got them from St. Jude

1 different --

2 OFFICER DONAHUE: -- he went to the receiving  
3 log --

4 THE COURT: That's a different story. Okay.

5 OFFICER DONAHUE: Okay. So went to the  
6 receiving log to, like, try to verify that he was right  
7 about them being all from S-140. So the receiving log  
8 was really --

9 THE COURT: Okay. So the -- the guy who  
10 couldn't speak English mislabeled them, is what --

11 OFFICER DONAHUE: Correct.

12 THE COURT: -- Mr. Hieronymus told you?

13 OFFICER DONAHUE: Yes.

14 THE COURT: So they all should have been from  
15 S-140?

16 OFFICER DONAHUE: Yes, Your Honor.

17 THE COURT: I got you. Okay.

18 OFFICER DONAHUE: Yeah.

19 THE COURT: Okay. All right. Now I get it.  
20 Now I understand. Okay. Got you. Anything else?

21 OFFICER DONAHUE: Do you guys --

22 THE COURT: Well, I'll ask them later.

23 OFFICER DONAHUE: Okay.

24 THE COURT: So --

25 OFFICER DONAHUE: No. No, Your Honor.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

SEP 12 2016  
SC Court of Appeals

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

**PROOF OF SERVICE FOR APPELLANT'S RETURN TO RESPONDENT'S  
MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION**


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*Attorneys for the Appellant*

I hereby certify that on September 8, 2016 I served a copy of the Return to Respondent's Motion to Dismiss to the following:

Nicole Wetherton, Esquire  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
*Attorneys for the Respondent*

by placing a copy of said documents in the United States mail with sufficient postage thereon.

  
Amanda Kramer

Charleston, South Carolina

Date: 9/8/16

STATE OF SOUTH CAROLINA ) IN THE FOURTEENTH  
MAGISTRATE'S COURT ) JUDICIAL CIRCUIT

State of South Carolina, )  
 ) SHELLFISH TICKET  
 ) 22603  
v. )  
 )  
Daniel Glenn Hieronymus, )  
 )  
Defendant. )  
\*\*\*\*\*

TRANSCRIPT OF RECORDED HEARING

TRANSCRIBED BY: MARY ANN RIDENOUR, RPR, CLR  
Registered Professional Reporter,  
Certified LiveNote Reporter  
and Notary Public

POST OFFICE BOX 21784  
CHARLESTON, SC 29413-1784

A P P E A R A N C E S

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REPRESENTING THE DEFENDANT:

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I N D E X

Officer Pressley Sworn.....15  
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INDEX OF EXHIBITS

(No exhibits were offered or marked.)

1 (The recording commenced.)

2 THE COURT: This is the State versus Daniel  
3 Glenn Hieronymus, Ticket Number 22603, charge of  
4 improper shell stock ID. I'm -- we're going to -- all  
5 the parties are here. You are?

6 MS. BLOODGOOD: I'm Nancy Bloodgood with the  
7 Foster Law Firm in Charleston.

8 THE COURT: Oh, I'm sorry, Ms. Bloodgood.

9 MS. BLOODGOOD: That's okay. I have a card.  
10 May I approach?

11 THE COURT: Yes, ma'am.

12 MS. BLOODGOOD: I represent St. Jude, and  
13 Mr. Hieronymus is an employee of St. Jude.

14 THE COURT: All right. Do you want to -- do  
15 you have any motions or anything prior to me starting?

16 MS. BLOODGOOD: No, Your Honor. But I -- I  
17 do have the law, which I'd like to do an opening on  
18 that, if I could. I don't know if you want me to tell  
19 you what I know or if you want to put him on the stand.  
20 How do you --

21 THE COURT: Well, I'm going to get to him in  
22 a second.

23 MS. BLOODGOOD: Okay.

24 THE COURT: So I'm going to let her put forth  
25 whatever case she wants --

1 MS. BLOODGOOD: Okay.

2 THE COURT: -- to put forth, and then you can  
3 go forward with whatever case -- whatever case you want  
4 to put forth.

5 MS. BLOODGOOD: Okay.

6 THE COURT: Sound good?

7 MS. BLOODGOOD: That's good. Thank you.

8 THE COURT: All right, stand up. I swore you  
9 in. What's your full name?

10 OFFICER DONAHUE: Tara Donahue.

11 THE COURT: All right, Ms. Donahue. Go right  
12 ahead.

13 OFFICER DONAHUE: All right. So on December  
14 18, 2015, at the St. Jude Farms facility in Colleton  
15 County, South Carolina, myself, Officer Pressley and  
16 Officer Marshall were performing a routine, standard  
17 inspection on St. Jude Farms. While we were doing the  
18 inspection, we went in to inspect the cooler. And I  
19 noticed in the far left corner that there was a bin, so  
20 I went over to look at it. And there was some bags of  
21 clams in there. And I noticed that the bags of clams  
22 had two different tags on them. Some were marked with  
23 S-140 and the others were marked C-137.

24 THE COURT: What does that mean?

25 OFFICER DONAHUE: So that's State Ground 140.

1 And then another ground where they can collect clams,  
2 it's a culture ground, 137. So, basically, the  
3 State -- State owns S-140, then St. Jude Farms pays a  
4 fee to the State for -- allowing them to pick on C-137.

5 THE COURT: Okay.

6 OFFICER DONAHUE: So I asked Mr. Hieronymus  
7 why he had two different areas tagged in the same bin?  
8 He explained that one of his workers who does the tags  
9 doesn't speak English well and miswrote some of the  
10 tags. So they should have been all S-140. He said he  
11 was certain they were all from S-140, it was just a  
12 mistake that some had the C-137. So we tried to work  
13 with him and see if he could prove -- provide some sort  
14 of proof that -- or documentation that they all came  
15 from S-140. And he was unable to do so.

16 We have a -- there's a receiving log. And,  
17 basically, it's a requirement in DHEC's HACCP plan that  
18 they fill out the receiving log within a reasonable  
19 amount of time. So, basically, when of those clams  
20 come off the water, they need to put in the receiving  
21 log what area they came from, the time, the date, stuff  
22 like that. So that way, if we have -- if somebody gets  
23 sick -- we've already had illnesses this -- just this  
24 year, two illnesses of people getting sick. We can go  
25 back. If they say, Okay, we got them from St. Jude

1 Farms, you go to St. Jude Farms, look up the day they  
2 were picked. We see it's on that ground. Okay, well,  
3 let's check the water quality of that ground, see if  
4 maybe that's why they got sick from it. But they  
5 hadn't done that. And we -- they were picked on the  
6 12th. We went to do the inspection on the 18th, so six  
7 days that they hadn't filled in that receiving log. So  
8 we had no proof to know whether they all came from the  
9 same area.

10 We had to confiscate 22 bags, and then I issued  
11 him a citation for improper shell stock because the  
12 tags weren't right.

13 THE COURT: So the main purpose of the tags  
14 are for safety and health issues?

15 OFFICER DONAHUE: Yes. It helps us track.

16 THE COURT: So it doesn't matter to y'all  
17 whether they were an S or a C tag, they just need to be  
18 properly tagged?

19 OFFICER DONAHUE: Yeah. I mean, it still  
20 matters to us, because some grounds are closed because  
21 of water quality. So it still does matter.

22 THE COURT: Well, okay.

23 OFFICER DONAHUE: But, yeah.

24 THE COURT: Well, I mean, in terms of he  
25 shouldn't have picked them from there, or whatever the

1 case may be, but --

2 OFFICER DONAHUE: Right.

3 THE COURT: -- in terms of the S or the C,  
4 you're not worried about whether he has the ability to  
5 pull them from S-140 or C-137? That's not --

6 OFFICER DONAHUE: Right.

7 THE COURT: You're not worried about that?

8 OFFICER DONAHUE: We just want to know, make  
9 sure they all came from the same area.

10 THE COURT: Yeah. Right. And the violation  
11 itself is -- is what?

12 OFFICER DONAHUE: So it's improper shell  
13 stock ID. So, basically, they didn't write the right  
14 information on the tag. So that's what the violation  
15 is for.

16 THE COURT: And the -- the facts of the  
17 violation, they were in the same bin?

18 OFFICER DONAHUE: Yeah. So they were all  
19 in -- exactly, like, one bin. And they were -- I mean,  
20 I'm not sure how many tags were S-140. Probably, like,  
21 four, I think. Then, there was 22 with 137. They were  
22 all piled in on top of each other.

23 THE COURT: We're talking about already in  
24 the sack?

25 OFFICER DONAHUE: Yeah. They had the sale

1 tag on them. I can show you the tag, if you want to  
2 see it.

3 THE COURT: Okay. And, understand, this is  
4 the first time I've heard --

5 OFFICER DONAHUE: Oh, yeah.

6 THE COURT: -- anything like this.

7 OFFICER DONAHUE: Right. Right.

8 THE COURT: I've got to ask questions --

9 OFFICER DONAHUE: Yeah. Yeah.

10 THE COURT: -- to understand what you're  
11 talking about.

12 OFFICER DONAHUE: Yeah. Yeah. Yeah, so  
13 they -- they come in with a harvest tag.

14 THE COURT: Right.

15 OFFICER DONAHUE: And then they fill out a  
16 sales tag and they put it on the bag, so that when they  
17 go deliver, there's a sales tag on it, so --

18 THE COURT: The harvest tag is the thing  
19 that's the S-140 --

20 OFFICER DONAHUE: Right.

21 THE COURT: -- or the C-137?

22 OFFICER DONAHUE: I can show you one, get a  
23 better idea, if I can approach?

24 THE COURT: Show Ms. Goodblood [sic] first.

25 OFFICER DONAHUE: Sure.

1 (Inaudible.)

2 THE COURT: And that's fine. Thank you. And  
3 they have their own tags, so --

4 OFFICER DONAHUE: Yep. It's required.

5 THE COURT: Does the State provide these  
6 to them?

7 OFFICER DONAHUE: They have to purchase them.  
8 But we have requirements that they have to have on  
9 those tags.

10 THE COURT: So it says, Harvest location  
11 C-137. Okay. Now, I -- the fact that -- and I guess  
12 what you're telling me is that the fact that he didn't  
13 have them logged in his book is the reason you believe  
14 that they're mislabeled?

15 OFFICER DONAHUE: Yeah. I mean, we had no  
16 proof. Yeah. Right.

17 THE COURT: I understand that.

18 OFFICER DONAHUE: Exactly. Yeah. Yeah.

19 THE COURT: Okay. So other than -- you  
20 would -- you would look at the book, okay, and then you  
21 would try to compare that with what they have in  
22 storage or whatever --

23 OFFICER DONAHUE: Right. Right.

24 THE COURT: -- the case is? And then you'd  
25 make your determination from that?

1 OFFICER DONAHUE: Yes.

2 THE COURT: Okay. All right. And you're  
3 telling me they have a reasonable amount of time. And  
4 Ms. Bloodgood's going to give me the law, I think she  
5 told me. The standard, the law, what y'all go by, is  
6 they have -- they have a reasonable amount of time to  
7 put it down in the book as to where this group of  
8 oysters came from?

9 OFFICER DONAHUE: Right. But in their HACCP  
10 plan that they sign and date --

11 THE COURT: What -- what is that? A what  
12 plan?

13 OFFICER DONAHUE: So the HACCP plan is  
14 basically -- I'll -- I can show you both what it looks  
15 like. Pretty much, DHEC requires. It's basically a  
16 plan, like, that takes --

17 THE COURT: I understand. I don't know what  
18 acronyms are.

19 OFFICER DONAHUE: Okay. Hazard Analysis  
20 Critical Control Point Plan.

21 THE COURT: Okay.

22 OFFICER DONAHUE: So, basically, it pretty  
23 much lays out all the requirements on how to handle  
24 product.

25 THE COURT: Which are what?

1           OFFICER DONAHUE: I mean, I can try to --  
2 probably show it, a little easier. It's a little  
3 complex, but...

4           THE COURT: This is your case. You can tell  
5 me whatever you need to.

6           OFFICER DONAHUE: Okay.

7           THE COURT: But understand --

8           OFFICER DONAHUE: Right.

9           THE COURT: -- I'm the one who has to  
10 understand --

11          OFFICER DONAHUE: Right. Okay.

12          THE COURT: -- this stuff to be able to make  
13 a decision.

14          OFFICER DONAHUE: All right. So, basically,  
15 on this plan they have the section, Receiving. And  
16 it -- it basically lays out what to do when they get --  
17 when they get product in from the water. So it says,  
18 basically, that they need to visually check the product  
19 when it comes in, the harvest tag, and date and time,  
20 and then frequency each time product received by the  
21 manager, which is Danny, or Mr. Hieronymus. And the  
22 records, it needs to be put in the receiving log. So  
23 it's basically saying that each time the product comes  
24 in off the water, it needs to go right into the  
25 receiving log.

1 THE COURT: Okay.

2 OFFICER DONAHUE: Did you want that?

3 MS. BLOODGOOD: Yes, please.

4 THE COURT: And they have to sign and date  
5 the --

6 THE COURT: And, Ms. Bloodgood, I've got a  
7 copying machine here, if you want to make a copy of it.

8 MS. BLOODGOOD: Okay, Your Honor. I can do  
9 that after the hearing.

10 THE COURT: Okay. Yes, ma'am.

11 MS. BLOODGOOD: Thank you.

12 THE COURT: So, again, your -- the violation  
13 is the fact that they did not have these 22 bags in  
14 a -- in a receiving log?

15 OFFICER DONAHUE: Well, no. The violation is  
16 that they -- they mislabeled the tags. The receiving  
17 log just further proves that we can't trace it back.  
18 Like, the receiving log would be, like --

19 THE COURT: How did they mislabel it, then?

20 OFFICER DONAHUE: They wrote -- so they  
21 should have all been written with S-140.

22 THE COURT: How do I know that?

23 OFFICER DONAHUE: Well, that's what  
24 Mr. Hieronymus admitted to us. So, then --

25 THE COURT: Okay. Well, that's a

1 different --

2 OFFICER DONAHUE: -- he went to the receiving  
3 log --

4 THE COURT: That's a different story. Okay.

5 OFFICER DONAHUE: Okay. So went to the  
6 receiving log to, like, try to verify that he was right  
7 about them being all from S-140. So the receiving log  
8 was really --

9 THE COURT: Okay. So the -- the guy who  
10 couldn't speak English mislabeled them, is what --

11 OFFICER DONAHUE: Correct.

12 THE COURT: -- Mr. Hieronymus told you?

13 OFFICER DONAHUE: Yes.

14 THE COURT: So they all should have been from  
15 S-140?

16 OFFICER DONAHUE: Yes, Your Honor.

17 THE COURT: I got you. Okay.

18 OFFICER DONAHUE: Yeah.

19 THE COURT: Okay. All right. Now I get it.  
20 Now I understand. Okay. Got you. Anything else?

21 OFFICER DONAHUE: Do you guys --

22 THE COURT: Well, I'll ask them later.

23 OFFICER DONAHUE: Okay.

24 THE COURT: So --

25 OFFICER DONAHUE: No. No, Your Honor.

1 THE COURT: Ms. Bloodgood, do you have any  
2 questions for her?

3 MS. BLOODGOOD: No, I don't.

4 THE COURT: Okay. Thank you very much.

5 Do you have any further witnesses that you would  
6 like to present?

7 OFFICER DONAHUE: Yeah. I would like to  
8 present Officer Pressley and Officer --

9 THE COURT: Mr. Pressley. Officer Pressley.  
10 Who is Mr. Pressley?

11 OFFICER PRESSLEY: Sir.

12 THE COURT: Raise your right hand, please.  
13 Do you swear to tell the truth, the whole truth, and  
14 nothing but the truth, so help you God?

15 OFFICER PRESSLEY: Yes, Your Honor.

16 THE COURT: All right. Go ahead and have  
17 him tell me what you want me to tell him.

18 OFFICER PRESSLEY: So I was -- I was at the  
19 inspection with her, also. He stated that he realized  
20 that there was a mistake that was made, they all should  
21 have been 140. They all were written 137. Comes back  
22 to traceability. We have somebody with an illness, we  
23 come back and see 137. Okay, so we go back --

24 THE COURT: I understand that.

25 OFFICER PRESSLEY: Okay.

1 THE COURT: So -- okay. So got you.

2 Anything else from him?

3 OFFICER DONAHUE: No, Your Honor.

4 THE COURT: All right. Thank you, Officer  
5 Pressley.

6 Who else?

7 OFFICER DONAHUE: Officer Moody.

8 THE COURT: Raise your right hand. Do you  
9 swear to tell the truth, the whole truth, and nothing  
10 but the truth, so help you God?

11 OFFICER MOODY: I do, Your Honor.

12 THE COURT: What was your last name?

13 OFFICER MOODY: Moody.

14 THE COURT: Moody, I'm sorry. Okay. All  
15 right. Go ahead, sir.

16 OFFICER MOODY: I really don't have anything  
17 further to offer. I think just really what I'd like  
18 for you to take into consideration, that it's the  
19 seriousness, you know, of the traceability of this  
20 product.

21 THE COURT: Well, yeah, I got you. I  
22 understand that. So --

23 OFFICER MOODY: But as far as the case, I  
24 think Officer Donahue and Officer Pressley have --

25 THE COURT: Okay. Got it. Anything else?

1 Did you want to ask them --

2 MS. BLOODGOOD: Yes --

3 THE COURT: -- some questions?

4 MS. BLOODGOOD: -- please.

5 THE COURT: Okay. Go ahead. I'm sorry.

6 I -- I jumped ahead of you. I apologize.

7 CROSS-EXAMINATION OF OFFICER PRESSLEY BY MS. BLOODGOOD:

8 Q. Mr. Pressley, you said that the traceability  
9 is an issue, correct?

10 THE COURT: Ms. Donahue, you can sit down.

11 BY MS. BLOODGOOD:

12 Q. Is the traceability a concern?

13 **A. Yes, ma'am.**

14 Q. And I understand that, for safety and health  
15 purposes, that you want to do that. But that only  
16 comes into play if the oysters are sold, correct?

17 **A. Yes, ma'am.**

18 Q. There's no traceability issue until the  
19 oysters are in the marketplace and somebody eats them  
20 and gets sick, right?

21 **A. It can come into play, say, like, another  
22 facility, somebody else happened to pick on their  
23 lease, and they got sick from that facility, we can go  
24 back and see what other facilities have oysters from  
25 that particular ground. So to say B&B right beside**

1     **them, they pick from the same ground, they have an**  
2     **issue, we have to do a recall. We have to go back to**  
3     **St. Jude's, because they pick on the same ground, and**  
4     **issue a recall for their product, as well.**

5           Q.     But only if that product has been sold,  
6     right?

7           **A.     (Inaudible) another facility sells it.**

8           Q.     If it leaves their premises, if it leaves  
9     their shipping premises, then you would have -- you  
10    could have a traceability issue, correct?

11          **A.     As far as their facility, St. Jude's?**

12          Q.     Yes.

13          **A.     It still comes back to if another facility**  
14    **sells from the same area.**

15          Q.     Right.

16          **A.     So we'll trace it back to everybody that**  
17    **picks in the same area.**

18          Q.     Right.

19          **A.     (Inaudible) recall for everybody --**

20          Q.     Right.

21          **A.     -- that picks in the facility.**

22          Q.     Right. But the oyster -- the clams that  
23    you're interested in are the clams when they come out  
24    of the refrigerator and somebody's eating them or  
25    selling them or using them, right?

1           **A.    Yes, ma'am.**

2           Q.    And that can't happen in the refrigeration  
3 unit, right?

4           **A.    I'm kind of confused what your question is.**

5           Q.    Well, I understand that you don't -- if  
6 somebody gets sick from eating a clam that they had  
7 purchased --

8           **A.    Uh-huh.**

9           Q.    -- that you want to find out where the clam  
10 came from, to see if there's a problem in the ground.

11          **A.    Yes, ma'am.**

12          Q.    But if the clam never comes out of the  
13 refrigerator and is never sold, and nobody ever eats  
14 it, then, you don't have a concern, a safety and health  
15 concern, about traceability with disease or sickness,  
16 correct?

17          **A.    (Inaudible) facility selling. It could be  
18 the same contaminated clams as the facility --**

19          Q.    Once they're sold?

20          **A.    Yes, ma'am.**

21          Q.    Okay. Thank you.

22                THE COURT: Anything else?

23                MS. BLOODGOOD: No, Your Honor.

24                THE COURT: Okay. All right.

25                Any more questions or any more --

1 OFFICER DONAHUE: Could I follow-up on  
2 that?

3 THE COURT: Pardon?

4 OFFICER DONAHUE: Could I follow-up on --

5 THE COURT: Sure.

6 OFFICER DONAHUE: -- what she said?

7 THE COURT: You can follow-up on that.

8 OFFICER DONAHUE: Although traceability is an  
9 issue with that, it doesn't really have anything to do  
10 completely with the -- the whole ticket is based on --

11 THE COURT: I know --

12 OFFICER DONAHUE: -- the improper tag.

13 But --

14 THE COURT: I know what the ticket is.

15 OFFICER DONAHUE: -- the thing is, the sales  
16 tag. So even if they had no intention of selling them,  
17 they had a sales tag on it. So those regulations, we  
18 need to assume that they were going to sell them,  
19 regardless. So, you know...

20 THE COURT: I got you. Okay. Thank you.

21 All right.

22 This guy behind you wants to say something. Do  
23 you want to put him on the stand, as well?

24 OFFICER DONAHUE: Yes, Your Honor.

25 THE COURT: All right. Please stand up.

1 Raise your right hand. Do you swear to tell the truth,  
2 the whole truth, and nothing but the truth, so help you  
3 God?

4 OFFICER REED: Yes, I do.

5 THE COURT: What's your name?

6 OFFICER REED: Ryan Reed. Officer Reed.

7 THE COURT: Reed?

8 OFFICER REED: R-e-e-d, yeah.

9 THE COURT: All right, Mr. Reed. Go right  
10 ahead. Officer Reed.

11 OFFICER REED: Going back to traceability.  
12 It starts from the minute they leave the shellfish  
13 bank. So where they pick the oysters from, or the  
14 clams from, that's when we start the traceability. So  
15 it doesn't start at the facility; it starts from when  
16 they leave the actual natural resource area.

17 THE COURT: Okay. All right. Thank you.

18 Ms. Bloodgood, any follow-up?

19 MS. BLOODGOOD: No, Your Honor.

20 THE COURT: You want to ask him anything?

21 Okay. All right.

22 Officer -- is it -- I call y'all officer or  
23 do y'all have ranks?

24 OFFICER REED: It's officer.

25 THE COURT: Okay. Officer Donahue, anything

1 else from you?

2 OFFICER DONAHUE: No, Your Honor.

3 THE COURT: Okay. Okay, Ms. Bloodgood.

4 MS. BLOODGOOD: Thank you, Your Honor.

5 As a -- as a preliminary matter, I have three  
6 copies of Regulation 61-47. Can I hand one up?

7 THE COURT: Yes, ma'am. Thank you.

8 MS. BLOODGOOD: For the record. The -- as a  
9 preliminary matter, the ticket is facially invalid and  
10 overly broad on its face. The only allegation on the  
11 ticket is that this 33-page regulation of DHEC has been  
12 violated by improper ID. But, in fact, improper ID is  
13 found in several places in this law. It's in  
14 harvesting, it's in handling, it's in transportation,  
15 it's at the marketplace, it's with shucked shellfish,  
16 it's with shucked shellfish transportation, and it's  
17 with shipping facilities. So it's unclear what of  
18 these 43 pages was actually violated. However, knowing  
19 the circumstances, I assume -- and if you would go to  
20 page ten, that the claims that DHEC has, has to do with  
21 the harvesting, handling and transportation of the  
22 shellfish. Because, as Officer Donahue said, after the  
23 clams were harvested and they had the harvest tag put  
24 on them that you saw, there was a clerical error made.  
25 They were actually -- and -- and I'll have

1 Mr. Hieronymus testify to this. The book was actually  
2 correct. The book shows they all came from 140. But  
3 somebody did make a clerical mistake. We do admit to  
4 that. And the harvest tag said 137, when it should  
5 have said 140, for some of the bags that were in the  
6 cooler, okay?

7 Interestingly, on -- the regs say on page 11 that  
8 when you identify shellfish during harvest you have to  
9 have an harvest identification tag. And it has to say  
10 the date and the time. But also, if you look under  
11 subsection E, that harvest tag cannot be altered in any  
12 manner. And that makes sense, because when it comes  
13 in, that's only the first step. The second step is the  
14 sales tag.

15 If you turn the page, there's a requirement in the  
16 regs that when you're handling this, within two hours  
17 they have to go into a mechanical refrigerator, which  
18 was done in this case.

19 There is no -- interestingly, there is no  
20 provision under the handling section that the -- that  
21 the product be tagged or that it have -- that the tag  
22 be changed. But then, when you get to the  
23 identification of the shellfish in the marketplace, the  
24 regulation provides that you can either have a harvest  
25 tag or a sale tag, and that the sale tag has different

1 requirements.

2           What Mr. Hieronymus will explain to you is that  
3 when the -- when the clams go from the refrigerator to  
4 be processed, to get -- before they get their sale tag  
5 in, he has a process in place to catch errors. And  
6 this was -- and so the book would have shown that it  
7 was 140. He would have noted, or his production  
8 manager -- I'll let him explain that, the process, to  
9 you -- would have caught this error and it would have  
10 been correct on the sales tag when the product was  
11 sold. So what we have here, Your Honor, is we do have  
12 a mistake, not anything intentional, not anything  
13 harmful, but a mistake that would have been caught  
14 prior to the sales tag because the information in the  
15 book was correct.

16           And in that case, nobody in business should be  
17 punished for mistakes that occur in the process before  
18 sales. There's no safety or health issue here. And  
19 there's no reason -- there was no requirement that that  
20 harvest tag -- tag be exactly the same as the sales  
21 tag. In fact, the regs say don't change the harvest  
22 tag, which is why they have the process in place. So I  
23 would like to call, ask for -- ask Mr. Pressley a few  
24 questions about his process, so that he can explain  
25 that to you and you can be comfortable that there was

1 never a health or safety issue by mislabeling in the  
2 refrigerator.

3 THE COURT: You said -- you don't mean  
4 Mr. Pressley.

5 MS. BLOODGOOD: I'm sorry, Mr. Hieronymus.

6 THE COURT: Right.

7 MS. BLOODGOOD: I would like to ask him a few  
8 questions, so that you can understand why there was no  
9 health or safety problem with mislabeling a bag in the  
10 refrigerator before it ever went through the process of  
11 getting --

12 THE COURT: Well, I -- I -- I can save you  
13 some time on that. I -- I understand that line. I do,  
14 okay? So if you want to ask him, that's fine. I  
15 certainly don't want to run your case for you.

16 But, Mr. --

17 MR. HIERONYMUS: Hieronymus.

18 MS. BLOODGOOD: Hieronymus.

19 THE COURT: Hieronymus, excuse me. Please  
20 stand and raise your right hand. Do you swear to tell  
21 the truth, the whole truth, and nothing but the truth,  
22 so help you God?

23 MR. HIERONYMUS: Yes, sir.

24 THE COURT: Thank you. And you can -- you  
25 can have a seat, if you want to. Whatever is more

1 comfortable. Ms. Bloodgood, go ahead and ask whatever  
2 you wish.

3 DIRECT EXAMINATION BY MS. BLOODGOOD:

4 Q. Just very briefly. How long have you been in  
5 the business of harvesting oysters and clams?

6 A. I mean, basically, my whole life. You know,  
7 I'm from Wrightsville Beach, North Carolina,  
8 originally. My father had run Brothers Seafood. I was  
9 born and raised in a commercial fishing family. You  
10 know, I've been in the industry my whole life. I've  
11 worked in restaurants a little bit, but mainly  
12 commercial fish.

13 Forty-one years old and I have never received a  
14 fishing ticket or any kind of shellfish ticket. I've  
15 always been in good standings with law enforcement.

16 You know, I -- I've known about -- you know, I  
17 respect the fact how DHEC handles things. But --  
18 because it's basically about traceability. For our  
19 company and myself, you know, it's in our best interest  
20 to hit our mark when we -- we have -- I have certain  
21 managers on the floor that I've trained personally. I  
22 am HACCP certified. You know, I have a floor manager  
23 and I have a cooler manager. They collaborate. Now,  
24 this -- we handle fresh seafood, but also on our  
25 shellfish, through any course of period of time, these

1 two that -- that -- they've been there longer enough,  
2 over a year now, that if -- if there -- if there has  
3 been mistakes on a tag, we do try to correct it. Now,  
4 we do handle thousands of clams and hundreds of bushels  
5 of oysters. And we -- we try to -- to make sure we,  
6 you know, cross our T's and dot our I's.

7 On the DNR trip ticket book that has been in  
8 question, brought up several times, when Officer Mike  
9 Marshall and Tara and Ron came in for the routine  
10 shellfish inspection, we toured the whole facility,  
11 went over a few things. And when we walked into  
12 that -- the walk-in cooler, we -- we keep the -- we had  
13 all the clams separated.

14 Now, these -- if it's a clerical error on the tag,  
15 the person making the tag had -- had gone through. We  
16 had a crew that was working, oystering at 137, and we  
17 had a crew that was clamming in S-140. The two  
18 managers on the deck know exactly where everyone is at.  
19 When they come back in, then, that's filled out.  
20 Obviously, when they -- they came in, they -- they  
21 probably labeled the oysters. They did, like, 137.  
22 But the person had put 137 on the tag and actually had  
23 marked it a sale tag and it should have been a harvest  
24 tag. And it should have been on S-140.

25 Now, in the trip ticket book, I don't know. I

1 mean, when we walked in there with Mike Marshall --  
2 because I brought it to his attention when we looked in  
3 there. He was actually looking -- first of all, what  
4 brought his attention was there was two different dates  
5 on the tag and that they were on top of each other.  
6 And we've gone through that before. But they don't --  
7 you know, two different dates can't be touching. Two  
8 different areas can't be touching, okay? Say  
9 there's -- say there's -- just layman's terms, Your  
10 Honor. Say bad water here and -- and these areas  
11 touch, then, say this -- this clam is contaminated and  
12 this one is not, but they touched, then, it can  
13 contaminate the other one. So that's the difference of  
14 keeping it separated. But, basically, when we went and  
15 I -- I saw right away that it was -- on the tags, it  
16 was 137. I immediately told Mr. Marshall that these  
17 tags are incorrect. I came right out and was honest  
18 with him. And when we went further, that --

19 THE COURT: I don't -- who is Mr. Marshall?

20 THE WITNESS: Mike Marshall. I don't know if  
21 he's -- he -- I guess he's an officer.

22 THE COURT: Is he a DHEC official or  
23 something?

24 THE WITNESS: He's in Little River. So, for  
25 one, I was kind of surprised he came all the way from

1 Little River.

2 THE COURT: But he's a state official?

3 THE WITNESS: DHEC, yes, sir.

4 THE COURT: Okay.

5 BY MS. BLOODGOOD:

6 A. So he was kind of -- when -- my impression,  
7 when he was down in my facility, he was the one in  
8 charge with the two other officers. There was three  
9 officers there at one time. But when we walked in that  
10 cooler, I said, obviously -- now, he -- first thing  
11 that brought his attention was the two different dates  
12 that were -- that were touching, okay? So he started  
13 separating them.

14 And I said, No, wait a minute, Mike. These are  
15 not from 137. They're definitely from 140. And let's  
16 go look in the trip ticket book.

17 Now, that -- I remember that I know that we've got  
18 those dates correct as to 140 in the DNR trip ticket  
19 book. Now, the DNR trip ticket book, it's mainly --  
20 one, it assists DHEC with their traceability. Two, for  
21 the State it records how much shellfish are coming off  
22 of different areas. And, actually, they want to know  
23 what the revenue is for the State, because you add in  
24 how much you pay your fisherman, so then it helps the  
25 State, you know, analyze how much revenue shellfish

1 brings to the State.

2 Your Honor, basically, what I'm saying, I straight  
3 up got two floor managers would have caught that before  
4 it went out to the retail sale, before it got on any  
5 one of our delivery trucks.

6 They were in harvester bags. We bag our clams,  
7 per se, in a hundred -- usually, our customers buy a  
8 hundred at a time, or in a 100-bag. And then what we  
9 do is, we go through and we pre-bag them in a different  
10 color bag. And then we go right through and do a new  
11 -- a new sales tag. Now, on that sales tag, if you  
12 will look, or on the harvest tag, sales tag, we use the  
13 same thing. On the bottom it will say "To". And then,  
14 that's when we put the restaurant name on there. And  
15 on the back it's marked off if it's wild-caught, for  
16 sale, or it's for harvest, you know, whichever you use  
17 that tag for.

18 But just wanted to reiterate that I was -- when  
19 Mr. Marshall came in, he was originally looking at the  
20 two dates just touching each another. And that's what  
21 the issue was. But I recognized right away that --  
22 that -- because I knew for a fact that, you know, all  
23 the folks had been clamming on State Ground 140 and not  
24 Culture Ground 137. So I did -- you know, I did let  
25 him know. I said that -- it was obviously a clerical

1 error on our part.

2 Now, I've got two managers that do watch for these  
3 items. Like I said, it is in our best interest. We're  
4 a successful business now, been doing this about four  
5 years. You know, I've always abided, never had any  
6 issues with DHEC before. I know, just starting --  
7 we've been -- like I said, we've been here for close to  
8 four years. In 2016, we've had more encounters from  
9 DHEC than we have in the past.

10 THE COURT: Okay.

11 MS. BLOODGOOD: One last thing, Your Honor.  
12 I heard Officer Donahue say that we were in violation  
13 of our plan requirements. That's not before the court.  
14 It's not --

15 THE COURT: I understand that.

16 MS. BLOODGOOD: Thank you.

17 And just, finally, businesses are going to make  
18 mistakes. And if he had done anything intentional,  
19 absolutely, he should be ticketed. But there is a  
20 process. And we were in the middle of the process.  
21 And I don't -- and there is no -- nothing in the  
22 regulations that allows a ticket for the middle of a  
23 process, between harvesting and sale. And that's --  
24 that's the problem here. There's no opportunity --

25 THE COURT: Well, yeah.

1 MS. BLOODGOOD: -- to correct that.

2 THE COURT: Yeah, I understand that. But, I  
3 mean -- I mean, I -- I get your point. Let me -- since  
4 you're kind of just talking a little bit, let me ask  
5 you some questions.

6 MS. BLOODGOOD: Sure.

7 THE COURT: I completely understand what  
8 you're saying, it never got sold, what's the harm? No  
9 harm, no foul. I get it, okay? But one mistake -- I  
10 mean, the -- the -- the devil's advocate position would  
11 be, well, one -- one mistake was made, why wouldn't --  
12 why -- how could one -- another mistake not be made? I  
13 mean, you know, so that's -- that's just carrying on  
14 that conversation. You know, again, I -- I understand  
15 that. But, I mean, they could have missed it at the  
16 checkout line. I mean -- I mean, just following the  
17 opposite of what you're telling me.

18 MS. BLOODGOOD: Sure.

19 THE COURT: Okay.

20 MS. BLOODGOOD: And -- and maybe  
21 Mr. Hieronymus didn't explain that enough. But there  
22 has -- the process to get it onto the trucks, maybe you  
23 should talk about that. Because they have to check the  
24 books. He's got two people whose job it is to  
25 double-check all the information. So --

1 THE COURT: It's also somebody's job to write  
2 the correct numbers on the ticket, right?

3 MS. BLOODGOOD: That's right, Your Honor.

4 THE COURT: Okay. And that's all I'm saying,  
5 is -- I mean, a mistake was made at that point. I  
6 mean, you know, there's certainly no uncertainty of  
7 making mistakes.

8 MS. BLOODGOOD: Sure.

9 THE COURT: And again, I mean, you said this  
10 was an honest mistake. I understand that. You know,  
11 but, I mean, just -- just because it's an honest  
12 mistake doesn't mean it's not a violation of the law.

13 MS. BLOODGOOD: Well, I think -- I think  
14 there's a problem there, Your Honor.

15 THE COURT: Why?

16 MS. BLOODGOOD: Because I think that you have  
17 to have an intent to violate this law.

18 THE COURT: Criminal intent?

19 MS. BLOODGOOD: The way that it is written,  
20 this is a regulation over a business.

21 THE COURT: Uh-huh.

22 MS. BLOODGOOD: And if -- if he had a process  
23 that was negligent or a process whereby he would  
24 intentionally -- or if he had gone to the wrong ground,  
25 was intentionally trying to hide that it was from the

1 wrong ground, absolutely. But he should not be treated  
2 as any -- differently than any other business in the  
3 state. Businesses have processes in place to catch  
4 these mistakes. And what is happening here is he's  
5 being penalized at the beginning of the process and not  
6 given an opportunity to fix the mistake when he's got a  
7 process in place to catch this kind of thing, because  
8 mistakes will be made. They will be made.

9 THE COURT: Right. And, again, I understand  
10 that. And -- and here's, again, just -- in -- in  
11 talking further with this, I -- I understand what you  
12 and him are telling me about it being an innocent  
13 mistake, okay? The problem with that is, is he didn't  
14 make the innocent mistake, did he?

15 MS. BLOODGOOD: No, one -- someone who worked  
16 for him did.

17 THE COURT: Where are they? So how do I know  
18 that they're -- if we want to talk about intent, I  
19 mean, if that's what we really want to talk about, I  
20 need to talk to the guy who actually wrote this down,  
21 right? Because he and I -- I totally agree with you.  
22 He didn't make a mistake at all, right?

23 MS. BLOODGOOD: No.

24 THE COURT: Because he's not the one that  
25 wrote it.

1 MS. BLOODGOOD: But, Your Honor, what I  
2 would -- what I would argue is, the way the regs are  
3 written, even if the man who made the mistake did it  
4 intentionally, he decided he was just going to write  
5 down the wrong thing --

6 THE COURT: Right.

7 MS. BLOODGOOD: -- it would not have mattered  
8 because but for them coming in, in the middle of the  
9 process, that mistake would have been caught, whether  
10 it was negligent or intentional --

11 THE COURT: Uh-huh.

12 MS. BLOODGOOD: -- because the book was  
13 correct. And the book would have been checked. And  
14 the -- and -- and his process, and the jobs that those  
15 two people do, it would be correct when it went on --

16 THE COURT: So --

17 MS. BLOODGOOD: -- to sale.

18 THE COURT: -- and, again -- and, again, I  
19 understand that. So what you're essentially telling me  
20 is that the entire process, from harvesting to selling  
21 of these things, have to be completed before they can  
22 be in violation of this regulation?

23 MS. BLOODGOOD: Yes. Under --

24 THE COURT: Okay.

25 MS. BLOODGOOD: -- the regulation --

1 THE COURT: Good.

2 MS. BLOODGOOD: -- there's harvesting or  
3 there's sale. There's not in between.

4 THE COURT: I got you. Okay. Good. And --  
5 and dependent on what I believe, whether that's  
6 accurate or not, is really the crux of how I have to  
7 make my decision.

8 MS. BLOODGOOD: I -- I agree, sir.

9 THE COURT: Got it. Okay. Good. Right.  
10 You understand her argument to me?

11 OFFICER DONAHUE: Yes, Your Honor.

12 THE COURT: Okay. Do you want to respond to  
13 that at all?

14 OFFICER DONAHUE: Yes, Your Honor.

15 THE COURT: Okay, go ahead.

16 OFFICER DONAHUE: I actually --

17 THE COURT: And -- and, I'm sorry, let me  
18 say, I assume you don't have any other witnesses?

19 MS. BLOODGOOD: No.

20 THE COURT: Okay. Got it. Okay.

21 OFFICER DONAHUE: They're talking about the  
22 receiving log. I actually got the copy from DNR. They  
23 have to send it in every month. And I had DNR send it  
24 to me. And their -- even after they sent it in, they  
25 did not write anything about the date on the 12th, when

1 they harvested.

2 THE COURT: I understand. No, I understand  
3 your testimony, that the -- that the logbook --

4 OFFICER DONAHUE: Right.

5 THE COURT: It would -- it -- you checked it,  
6 I think four days later, and it didn't have these  
7 particular oysters in the logbook. Isn't that --

8 OFFICER DONAHUE: Well --

9 THE COURT: -- what you testified earlier?

10 OFFICER DONAHUE: -- that, and when they sent  
11 -- like, I got the whole month, like, when they  
12 finalized it, sent it. And, like, there's no  
13 recollection even of them putting it -- picking from  
14 S-140 on that -- on the 12th, when they were actually  
15 picked. Like, they don't have any --

16 THE COURT: Well, not -- not any  
17 recollection.

18 OFFICER DONAHUE: Well --

19 THE COURT: No --

20 OFFICER DONAHUE: No --

21 THE COURT: -- notation or something of  
22 them --

23 OFFICER DONAHUE: Correct.

24 THE COURT: -- picking those?

25 OFFICER DONAHUE: Right.

1 THE COURT: So -- so that's opposite than  
2 what he told me in his testimony.

3 OFFICER DONAHUE: Right.

4 THE COURT: But I understood that to be your  
5 testimony, right? I mean, that was your testimony,  
6 that these things were not entered into --

7 OFFICER DONAHUE: Correct.

8 THE COURT: -- the book?

9 OFFICER DONAHUE: Correct.

10 THE COURT: He said they were.

11 OFFICER DONAHUE: Right.

12 THE COURT: So that's -- that's -- that's --  
13 that's a fact issue, which I'm going to have to --

14 OFFICER DONAHUE: Right.

15 THE COURT: -- determine. But, again, what  
16 Ms. Bloodgood is saying is that regardless of all of  
17 that -- and this is what I want you to address for me.  
18 Regardless of all that, the way I am supposed to read  
19 this regulation is that there could be no violation of  
20 the regulation until a sale of these oysters have  
21 occurred, okay? That's what she is telling me. I'm  
22 not saying she's right.

23 OFFICER DONAHUE: Right.

24 THE COURT: But that's what she's saying. So  
25 I want you to address that for me.

1           OFFICER DONAHUE: Okay. Well, that is  
2 incorrect. The minute they put a sale tag on that  
3 product, like, that throws out all the in-between time  
4 between the harvest and sale tag. That sale tag was on  
5 it, so that takes -- you know, that -- that --

6           THE COURT: That tag you showed me, was that  
7 a sales tag --

8           OFFICER DONAHUE: That was a sales tag.

9           THE COURT: -- or was that a harvest tag?

10          OFFICER DONAHUE: It was a sales tag, yeah.  
11 So on the back, if you flipped it over, it checked sale  
12 on it.

13          THE COURT: Okay. So you're telling me,  
14 regardless of what she's saying, the fact that there is  
15 a sale tag on there, if we're going to argue the  
16 process has to be complete, the sales tag on there  
17 completes the process, not the physical selling of the  
18 oysters?

19          OFFICER DONAHUE: Correct. And, you know,  
20 she says they were in the process. But there was six  
21 days in between when they --

22          THE COURT: I know. Again, I understand  
23 the --

24          OFFICER DONAHUE: Right.

25          THE COURT: -- facts.

1 OFFICER DONAHUE: Yeah.

2 THE COURT: I'm not --

3 OFFICER DONAHUE: Yeah, you're --

4 THE COURT: I'm not worried about facts.

5 OFFICER DONAHUE: Okay.

6 THE COURT: I -- I get to decide the facts.

7 OFFICER DONAHUE: Okay.

8 THE COURT: So whether y'all two agree on the  
9 facts are a different story. But I'm just --  
10 Ms. Bloodgood has made an argument to me that the way  
11 I'm supposed to read the law is that the process has to  
12 be complete before anybody can be found in violation of  
13 this law.

14 OFFICER DONAHUE: That's --

15 THE COURT: That's what she's saying.

16 OFFICER DONAHUE: Correct.

17 THE COURT: And you're -- you're saying --  
18 you're saying, even if that was the case, there was a  
19 sales tag on the oysters, which would complete any  
20 process, if her argument was correct?

21 OFFICER DONAHUE: Yes.

22 THE COURT: Okay. Yes, ma'am?

23 MS. BLOODGOOD: Could I explain that, the  
24 harvest versus the sale?

25 THE COURT: Sure. Absolutely. Please. Yes,

1 sir. Go right ahead.

2 MR. HIERONYMUS: On that, we -- we've come to  
3 the conclusion that it was a clerical error on the tag.  
4 That tag is not fully completed. If you look, you  
5 had -- still have one of our --

6 THE COURT: I don't.

7 MR. HIERONYMUS: -- tags? I would like to  
8 show you --

9 OFFICER DONAHUE: Yeah.

10 THE COURT: That's fine. Show  
11 Mr. Hieronymus.

12 MR. HIERONYMUS: Hieronymus.

13 THE COURT: Hieronymus, I'm sorry.

14 MR. HIERONYMUS: That's all right.

15 THE COURT: Hieronymus, got it.

16 MR. HIERONYMUS: I'll show you?

17 THE COURT: Absolutely.

18 Come on up here, Ms. Donahue. And, Ms. Bloodgood,  
19 if you need to come up here.

20 MR. HIERONYMUS: This -- okay. This --  
21 this -- if we use this tag for a harvest tag, it is  
22 supposed to be checked harvest, okay? If we do use it  
23 for a sale tag, we check sale tag, okay, which this one  
24 has obviously been checked. We have farm-raised  
25 oysters or wild-caught oysters. And that's where we

1 check those, okay? Now, this tag is not completed  
2 until, one, there is an actual shipping date and, two,  
3 to the recipient, whether it be one of our customers,  
4 whether it be, you know, a restaurant. So this is not  
5 a completed sales tag.

6 THE COURT: I understand. Is this one of the  
7 sales tags that were pulled off of the bags?

8 OFFICER DONAHUE: Yes, Your Honor.

9 THE COURT: Okay. But, again, that goes to  
10 the question that Ms. Bloodgood was making to me, i.e.  
11 the process was not complete, thus, there can't be a  
12 violation of the regulation until the process is  
13 complete. That -- that's your argument to me,  
14 Ms. Bloodgood --

15 MS. BLOODGOOD: Yes, it is.

16 THE COURT: -- correct?

17 Do you have any -- any -- any -- any case law or  
18 anything that -- that would show me that?

19 MS. BLOODGOOD: The regulations that I  
20 pointed out.

21 THE COURT: Okay.

22 MS. BLOODGOOD: I underlined the parts.  
23 There is nothing -- there are no requirements for  
24 tagging in the refrigeration section. And I've  
25 underlined that. And that's where the violation was

1 found, in the refrigeration. There also is language in  
2 here that says you can't alter the harvest tag. And  
3 then it says --

4 THE COURT: Well, I mean, does it make sense  
5 that I can't alter a tag if I incorrectly labeled it?

6 MS. BLOODGOOD: I --

7 THE COURT: I mean, is that --

8 MS. BLOODGOOD: I agree. It would --

9 THE COURT: Right.

10 MS. BLOODGOOD: -- make sense. But that's  
11 what it says. And -- and -- and I think that --

12 THE COURT: But going back to your point of  
13 safety, wouldn't that -- I mean, that would be --

14 MS. BLOODGOOD: Well, when you --

15 THE COURT: I mean, it would -- it wouldn't  
16 make sense if I couldn't alter a bad tag --

17 MS. BLOODGOOD: Right.

18 THE COURT: -- in the name of safety.

19 MS. BLOODGOOD: And the way -- when it's  
20 altered, it's altered at the sales tag, because that's  
21 a different tag that goes when it goes out the door.  
22 So it -- the harvest tag turns into a sales tag when it  
23 goes out the door and has all the information on it.  
24 And at that point, when you're doing the sales tag, you  
25 could make corrections and --

1 THE COURT: If you caught it.

2 MS. BLOODGOOD: Yes. Yes.

3 OFFICER DONAHUE: Can I say something, Your  
4 Honor?

5 THE COURT: Sure.

6 OFFICER DONAHUE: She's talking about the  
7 regulations that she underlined. And on page 13, if  
8 you go a little lower, for D, must be legible and  
9 contain accurate, unaltered information.

10 Then, flip the page over and go to number six.  
11 The most precise application of the harvest location --  
12 I mean, I can continue to read it, but --

13 THE COURT: Go ahead.

14 OFFICER DONAHUE: As is practical --  
15 practicable, including the initials of standard harvest  
16 and through designation of the growing area by indexing  
17 an administrative geographical location.

18 So it says right there, you know, it's got to be  
19 accurate and it's got to have the correct area on it,  
20 you know? Regardless of what step of the process  
21 you're on, the minute you write that tag, it's got to  
22 be accurate. I mean, I understand that somebody made a  
23 mistake, but, like --

24 THE COURT: The solution is to put a new tag  
25 on it?

1           OFFICER DONAHUE: Right. They should have  
2 taken them off and put a new tag on. But, regardless,  
3 it's a violation, whether it was intentional or not.  
4 You know, if that was the case, then, half the tickets  
5 we write -- obviously, nobody's going to purposely try  
6 and get someone sick and write the wrong tag number  
7 down.

8           THE COURT: Again, I understand. I  
9 understand that.

10          OFFICER DONAHUE: Yeah.

11          THE COURT: I understand that.

12          OFFICER DONAHUE: So this --

13          THE COURT: I need -- this is -- again, I --  
14 I understand. And Ms. Bloodgood understands what I'm  
15 talking about, is that I'm going to have to look at  
16 this --

17          OFFICER DONAHUE: Right.

18          THE COURT: -- because there may be some law  
19 out there that says -- what I mean by that, case law.  
20 And, again, she understands what I'm talking about, so  
21 this is mainly for your benefit. I need to just kind  
22 of review this a little bit. Because if -- she is  
23 making a legal argument to me, not a factual argument  
24 to me. She's making a legal argument to me in regards  
25 to whether the ticket was ripe. Would that be a good

1 term for it?

2 MS. BLOODGOOD: Yes, Your Honor, whether  
3 it -- whether it was finalized.

4 THE COURT: Right, whether the process had  
5 been completed or not, okay? So what I'm going to do,  
6 Ms. Donahue, is -- and it won't be today, so I'll have  
7 to get back with y'all, is -- is to determine, one, her  
8 legal issue that she is asking the court to determine,  
9 which is do I believe -- do I find that the law, as she  
10 says it, the process must be complete before -- and I  
11 want you to make sure I'm saying this right, okay?  
12 That the entire process, from harvesting to sale, is  
13 complete prior to a ticket being able to be issued for  
14 a violation of the regulation.

15 MS. BLOODGOOD: Well, you know, there is a  
16 harvest tag --

17 THE COURT: Okay.

18 MS. BLOODGOOD: -- when it comes in. And  
19 that has to be completed. And it should have the  
20 correct number on it. But what I'm saying is, when it  
21 comes in --

22 THE COURT: Uh-huh.

23 MS. BLOODGOOD: -- and then -- and it's  
24 refrigerated --

25 THE COURT: Uh-huh.

1 MS. BLOODGOOD: -- there still is a process  
2 before the sales tag.

3 THE COURT: Correct.

4 MS. BLOODGOOD: So the fact that the harvest  
5 tag was not correct is irrelevant, if there's a process  
6 to correct it before a sale.

7 THE COURT: Right. And that -- and that's  
8 what I mean. So, again, I mean, because we're talking  
9 about a harvest tag here. And your argument to me is a  
10 violation cannot be written for a harvest tag?

11 MS. BLOODGOOD: In the refrigerator, when  
12 it's in the refrigerator, or in the process of creating  
13 a sales tag.

14 THE COURT: Right. I mean, you're  
15 essentially telling me it could never be ticketed,  
16 because the process was never completed. But for it to  
17 be complete, there's got to be a sales tag, eventually.  
18 So essentially you're telling me at no time can a  
19 harvest tag be ticketed for incorrect information?

20 MS. BLOODGOOD: I think the harvest tag  
21 actually has incorrect information --

22 THE COURT: Which this one does.

23 MS. BLOODGOOD: -- on it.

24 THE COURT: Right.

25 MS. BLOODGOOD: And could not -- and, still,

1 there would have to be an opportunity to correct an  
2 error.

3 THE COURT: I got you.

4 MS. BLOODGOOD: In the -- if you have a  
5 process to do that, the employer has the right to  
6 exercise the process and run his business like he --

7 THE COURT: Correct. And, again, my question  
8 is still -- is, by your reading of the law, of the  
9 regulation, is a harvest tag cannot be ticketed  
10 until -- until the process is done?

11 MS. BLOODGOOD: Yes.

12 THE COURT: And, I guess, if I took that a  
13 step further, the only reason a harvest ticket would be  
14 incorrect was if the sales ticket would be incorrect,  
15 as well?

16 MS. BLOODGOOD: Right.

17 THE COURT: Right?

18 MS. BLOODGOOD: If you're --

19 THE COURT: Okay.

20 MS. BLOODGOOD: Yes.

21 THE COURT: Good. And, again, I want --  
22 because I -- I want -- I just want to make sure, before  
23 I go study this issue, that's -- that's what we talked  
24 about. I think I got my hands around it.

25 MS. BLOODGOOD: Okay.

1 THE COURT: Okay. Factually, I understand  
2 the facts. And they admit the facts, that the harvest  
3 ticket was incorrect. Now, they -- they say there was  
4 no intention to be incorrect. Again, I understand  
5 that. So, now, Ms. -- Ms. Bloodgood, if you would  
6 like, you could certainly --

7 MS. BLOODGOOD: I was just going to offer --

8 THE COURT: -- send me something.

9 MS. BLOODGOOD: -- a proposed order.

10 THE COURT: Yep.

11 MS. BLOODGOOD: Okay.

12 THE COURT: And I would like a proposed  
13 order. And make sure you give it to her.

14 Now, of course, Ms. Donahue, understand her  
15 proposed order is going to be favorable to her side of  
16 the case.

17 OFFICER DONAHUE: Right.

18 THE COURT: But if I rule for her, this --  
19 this case will go away. If I don't rule for her, you  
20 know, then I'll -- I have to do some sort of verdict,  
21 whether it's guilty or not guilty of the violation,  
22 okay?

23 OFFICER DONAHUE: Okay.

24 THE COURT: My assumption is DHEC has a  
25 general counsel, okay? And if he wants to talk to

1 Ms. Goodblood about this, you can certainly give them  
2 her number and that way they can speak. That way, he  
3 has a chance to review any order or something --

4 OFFICER DONAHUE: Okay.

5 THE COURT: -- like this. Because I don't --  
6 again, I don't know.

7 And, you know, sometimes magistrates make law, not  
8 on purpose. But, you know, regardless of the way I  
9 rule on this, either DHEC can appeal it or  
10 Ms. Bloodgood could -- could appeal it. And, I mean,  
11 it could go all the way to the Supreme Court. Now, it  
12 more than likely won't. But, I mean, this is how laws  
13 are made. I -- I get -- I have to determine what --  
14 what she feels like, because I'm not aware of a judge  
15 above me that has -- has ruled on this. But maybe it  
16 has, maybe it hasn't. That's why I want to give the  
17 DHEC attorney an opportunity.

18 I don't want this to last too long. But you think  
19 two weeks is okay?

20 MS. BLOODGOOD: That's good, Your Honor.

21 THE COURT: You know, I think that would at  
22 least give DHEC's counsel the opportunity to respond in  
23 any way and not be pushed or anything. But if they  
24 need some more time, I'm sure y'all can get in touch  
25 with them.

1 MS. BLOODGOOD: If you give me your contact  
2 information, I'll send it to you. And then, if you can  
3 forward to it your counsel, that would be --

4 THE COURT: And --

5 MR. HIERONYMUS: Hieronymus.

6 THE COURT: Hieronymus. You know, I  
7 apologize. I keep looking at that H-i-e-r and it  
8 messes me up. So your -- your attorney can explain it  
9 to, kind of what's going on.

10 MR. HIERONYMUS: Thank you, sir.

11 THE COURT: If -- if the DHEC counsel needs  
12 to speak to somebody and Ms. Goodblood is not  
13 available, he can certainly call on me and I can try  
14 my best, if you don't mind?

15 MS. BLOODGOOD: That's fine.

16 THE COURT: But, again, I'm sure you'll be  
17 able to explain to him what I'm talking about. And I  
18 will certainly let you know if he contacts me. And we  
19 can try and do a conference call or something. That  
20 way, it's no ex parte communications.

21 MS. BLOODGOOD: Okay.

22 THE COURT: But I want everybody to be on the  
23 same footing here, if possible. So with that, I'm  
24 going to hold this open for two weeks. If you need any  
25 more time, just please let me know. But do be in

1 contact, okay?

2 OFFICER DONAHUE: Yes, Your Honor.

3 THE COURT: All right. Thank y'all so much.

4 (The recording ended.)

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA:  
COUNTY OF DORCHESTER:

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3  
4 I, MARY ANN RIDENOUR, Registered Professional  
5 Reporter and Notary Public, State of South Carolina at  
6 Large, certify that I was authorized to and did  
7 stenographically transcribe the foregoing audio file;  
8 and that the transcript is a true record of the  
9 testimony given by the witness, and was sworn as such.

10 I further certify that I am not a relative,  
11 employee, attorney or counsel of any of the parties,  
12 nor am I a relative or employee of any of the parties'  
13 attorney or counsel connected with the action, nor am I  
14 financially interested in the action.

15 WITNESS MY HAND AND OFFICIAL SEAL this 28th day of  
16 June, 2016, in the Town of Summerville, County of  
17 Dorchester, State of South Carolina.

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23 Mary Ann Ridenour, RPR, CLR  
24 and Notary Public  
25 My commission expires:  
March 14, 2021

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In the Court of Common Pleas for the  
State of South Carolina, County of Colleton

Case No.: 2016CP1500626

State of South Carolina,

Plaintiff(s),

vs.

Transcript of Record

Daniel Glen Hieronymus,

Defendant(s).

June 30, 2016

Walterboro, South Carolina

BEFORE:

The Honorable PERRY M. BUCKNER

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PROCEEDINGS

THE COURT: That brings us now to number 42, which is State of South Carolina versus Daniel Hieronymus. Ashley McMahan. Nancy Bloodgood. Hold on a second. Because I have got to read.

(Pause.)

THE COURT: All right. I have a return in the file. First of all, I have got a summons.

(Judge reviews documents.)

~~THE COURT: All right. Let the record reflect~~  
that Ms. Bloodgood is present along with Ms. McMahan, and it is 2016 at 626, the State versus Daniel Glen Hieronymus. An appeal from magistrate's court. I have read the summons, a copy of which is in the clerk's file, charging Daniel Glen Hieronymus with the offense of improper shell stock. And I have read the magistrate's return, which is the return of Judge McCloud dated May 12th, 2016. And I have read the notice of appeal of Nancy Bloodgood dated May the 11th, 2016. I'll be happy to hear from you now, Ms. Bloodgood. You both asked me for 15 minutes. You are the Petitioner. Happy to hear from you.

MS. BLOODGOOD: Thank you, Your Honor. I don't believe that the record of the hearing was transcribed, so I transcribed -- I got a court reporter --

1 THE COURT: That is why we have a return from the  
2 magistrate. I'm bound by the magistrate's return  
3 because it's not a court of record.

4 MS. BLOODGOOD: Right, Your Honor, so I have  
5 transcribed it at my expense and I have a copy of the  
6 transcription. I was going to file that.

7 THE COURT: Nancy, do you agree that it is a  
8 certified transcript? Because unless the parties agree  
9 I can't accept it to be the record. That is why we  
10 require them to file a return.

---

11 MS. McMAHAN: Your Honor, honestly I have not seen  
12 Ms. Bloodgood's transcription of it. But I do have the  
13 audio version of it because I did supply it to Ms.  
14 Bloodgood's office. But I haven't actually looked at  
15 the typed version of it.

16 THE COURT: You are not in a position to tell me  
17 whether you would agree to it or not?

18 MS. McMAHAN: Well, it looks like it is -- do you  
19 have the original with the signature?

20 MS. BLOODGOOD: The original I was going to file  
21 after this hearing, but the -- it's done by a  
22 registered professional reporter. I have the original  
23 that is not marked. It is exactly the same.

24 THE COURT: Any objection, Nancy?

25 MS. McMAHAN: If I can just make sure that the

1 signature is original on the back, then I don't have an  
2 objection to it.

3 MS. BLOODGOOD: It came by email so it is not --

4 THE COURT: I want you to understand, so you know,  
5 that I'm happy to take it without objection, but I'm  
6 bound by the return, and that is the reason that we are  
7 required for the magistrates to do it. So, to the  
8 extent that there may be something inconsistent, that  
9 brings up the problem. But I'm happy, without  
10 objection, to accept it. Do you understand?

---

11 MS. BLOODGOOD: I do, Your Honor. Is there an  
12 objection?

13 MS. McMAHAN: Can I just see the email?

14 THE COURT: It amazes me how you can't communicate  
15 ahead of time before we start about exhibits.

16 MS. BLOODGOOD: Your Honor, I only got the  
17 transcript yesterday.

18 THE COURT: But you have had all morning to talk  
19 to her and say, I have got the transcript.

20 Any objection, Nancy?

21 MS. McMAHAN: No, Your Honor, that is fine.

22 THE COURT: Give it to the Court Reporter, please,  
23 to be marked as an exhibit. Appellate's Exhibit No. 1.  
24 without objection.

25 All right. Ms. Bloodgood, let me hear from you.

1           (Whereupon, Appellate's Exhibit No(s). 1 marked  
2 for identification and received in evidence.)

3           MS. BLOODGOOD: Thank you, Your Honor. I would  
4 like to hand up to you and Ashley also the statutes  
5 that I'm going to refer to, a copy of the regulations,  
6 and a marked-up copy of the transcript. They are  
7 identical the way that I have marked them up. Because  
8 I think that it'll go faster if you have them in front  
9 of you.

10           THE COURT: Any objection?

11           MS. McMAHAN: Your Honor, the regulations are  
12 already included in the return from the magistrate.

13           THE COURT: Is there any objection to me having  
14 two copies?

15           MS. McMAHAN: No objection.

16           THE COURT: You know, y'all are an example of why  
17 people get frustrated with lawyers. That is because  
18 y'all don't talk to one another. Ms. Bloodgood, she's  
19 been sitting in this courtroom since before 10:00 this  
20 morning, and it is after 12 and you haven't shown her a  
21 transcript or an exhibit yet for purposes of this  
22 hearing. I find that to be very objectionable.  
23 Because all that you are doing now is handing her at  
24 the last minute, when she hasn't had a chance to read  
25 it, and then you ask her if there's an objection. That

1 is not the way that I expect my lawyers to practice in  
2 my courtroom. We don't have trials or appeals by  
3 ambush.

4 All right. Let's proceed.

5 MS. BLOODGOOD: Your Honor, my first argument is  
6 that the ticket is facially invalid because it refers  
7 to regulation 621-47, a copy of which you have in front  
8 of you, which is 33 pages long. It doesn't state which  
9 part of that regulation has been violated.

10 ~~Additionally, the ticket does not make any reference to~~  
11 whether 44-1150(a) or (b) is at issue. And you know, I  
12 gave you that statute, Your Honor. If you look at  
13 44-1150, it is the penalty for violating rules of the  
14 department. A is a misdemeanor. And there cannot be a  
15 penalty more than \$200.

16 And then B is a simple penalty, and that could be  
17 \$1,000. I don't know why there's a criminal and a  
18 civil different penalties. But in this case what the  
19 magistrate did, and there was no -- I have to tell you,  
20 Your Honor, there was no attorney at the hearing. The  
21 State DNR officer just presented their case.

22 So, at that hearing there's nothing in the record  
23 as to which portion of the statute the State was going  
24 under. And the penalty was \$470, which is not the  
25 penalty allowed in the criminal proceeding. And as I

1 indicated in my appeal, if it was supposed to be a  
2 criminal proceeding, the wrong person was fined because  
3 in the transcript, and to save time, I won't read  
4 through it but I'll give you the cites. Several times  
5 the State DNR officer admitted that the person who  
6 mislabeled the ticket -- this is all about mislabeling  
7 tickets on clams -- bags of clams, that the person who  
8 mislabeled the ticket has made a mistake and is not the  
9 person, Daniel Hieronymus.

10 I think that if you are going to charge someone  
11 with a criminal act, not only do you have to have the  
12 right person, the person who took the action, but it  
13 has to -- it has to be intentional, it can't be a  
14 mistake.

15 It is undisputed on pages 6, 8, 14, 33 and 34 of  
16 the transcript that the State agrees that Daniel  
17 Hieronymus, who was a manager, had nothing to do with  
18 writing the improper tag on the clams. The other thing  
19 was that the State DNR person and Mr. Hieronymus  
20 several times testified that this was a mistake, there  
21 was no intent. The man who put the tag on didn't speak  
22 very good English. The clams were not ready for sale.  
23 They were in the refrigerator. And Mr. Hieronymus  
24 testified that there was a process by which, when the  
25 clams came out of the refrigerator and got the sales

1 tags and were ready to go in the truck for transport,  
2 the sales tag would say who it was going to and where  
3 it was going to, who it was sold to. There was  
4 testimony that that was not on these tags. So, yes,  
5 there was absolutely a mistake. But what I argued to  
6 the court is that when a business has a process and has  
7 a process for catching mistakes, you cannot criminally  
8 fine somebody just in the room who didn't -- when there  
9 was no intent and it was a mistake.

10 ~~And then, Your Honor, the issue that is --~~

11 THE COURT: What is the allegation in the statute?  
12 I see the penalty statute that you have handed me.  
13 What is the allegation; does it prohibit possession?

14 MS. BLOODGOOD: The allegation is that clams were  
15 mislabeled. And the site -- I tagged it on the  
16 regulation that I handed you. Specifically the  
17 Court -- the issue was, even though there's seven  
18 places where tagging is discussed in this regulation,  
19 the issue was, is -- can you fine a seafood processor  
20 if -- when the clams are in the refrigerator.

21 There's one for harvesting, you need a tag. You  
22 need a tag when it's in the refrigerator. But then you  
23 need a tag when it's transported. You need a tag for  
24 sale. But DNR's position is that at any point that tag  
25 is wrong -- now, I understand on the sale it is a

1           problem. But they are saying that when it's in the  
2           refrigerator, you are going to get fined. You do not  
3           have -- even if your business has a process in place,  
4           we are not going to give you the opportunity to check  
5           their book and say, whoop, wrong, that is the wrong  
6           tag.

7           THE COURT: What is the allegation as to the  
8           impropriety of the tag?

9           MS. BLOODGOOD: The allegation, Your Honor, is  
10          that -- and DNR says that this is a safety and health  
11          issue. That if someone complains of an oyster being  
12          tainted or they get sick from an oyster, DNR has to  
13          come back and see where the grounds were the oyster  
14          came from. And since this tag had the wrong -- I am  
15          sorry, clams, the clam grounds on it, it would be hard  
16          for them to find it out. However, Your Honor, in the  
17          transcript I specifically --

18          THE COURT: What was it that you proceed was  
19          improper about the tagging here, regardless of whether  
20          we had the proper defendant or not? What is the  
21          allegation of the impropriety of the tag, which you  
22          haven't told me other than DNR has a position and they  
23          want to constantly update them.

24          MS. BLOODGOOD: I am sorry, Your Honor. There are  
25          different grounds that they come from, some are state

1 and some are private grounds. So, when they come in  
2 you have to say where you harvested the clams from.  
3 So, these tags they were harvested, say, at 140 but the  
4 tag said 130 and it was a mistake. They really were  
5 harvested at 140.

6 THE COURT: Is 140 the name of a clam ground or is  
7 that a time?

8 MS. BLOODGOOD: Yes, it is the name of an area.  
9 They named their different areas different numbers.

10 THE COURT: So, what was improper, allegedly,  
11 about this is the area where the clams were harvested,  
12 which you concede were not the area where the clams  
13 were in fact harvested; is that correct?

14 MS. BLOODGOOD: Yes, that is what they contended.  
15 However, at the hearing, DNR admitted that the safety  
16 and health issue only starts at the time of sale, so  
17 therefore, Your Honor, it was our contention that until  
18 we got ready to sell those clams, the fact that they  
19 were mislabeled in the refrigerator is not a crime or  
20 not violating the statute.

21 THE COURT: Where is the substantive statute DNR  
22 alleges that was violated by Mr. Hieronymus?

23 MS. BLOODGOOD: Certainly. Your Honor, I have  
24 tagged it. It starts on Page 10 of the regulation,  
25 which is called, Harvesting, handling and

1 transportation of shellfish. Specifically, they  
2 alleged and the magistrate found that, and it's  
3 actually the part that he found, I'll show you is  
4 (c)(2), which is handling, on Page 12, (d) over on 13.

5 THE COURT: You said on Page 10?

6 MS. BLOODGOOD: It starts on Page 10, Your Honor.

7 THE COURT: Okay. That is harvesting handling and  
8 transportation of the shellfish?

9 MS. BLOODGOOD: Yes, Your Honor. And the specific  
10 one that they said was violated is on Page 13, which is

11 (c)(2), little (d) (1). And what that says is  
12 identification of shell stock in the marketplace.  
13 These clams were not in the marketplace, they were in  
14 the refrigerator. But it says that, When at the  
15 facilities of a certified shipper, unless certified as  
16 a reshipper, shell stock shall be tagged in  
17 accordance -- and then it goes back to the (c). And  
18 those two references, Your Honor, you need a harvest  
19 tag and then you need a sales tag.

20 They had a harvest tag on them but the harvest tag  
21 was incorrect. At the time they would have been sold  
22 they would have said who they were going to, and then  
23 they would have gotten a sales tag. And there was  
24 testimony that at that point the book would have been  
25 checked and someone would have said, Oh, they didn't

1           come from 140, they came from whatever the correct  
2           ground was, and that would have been corrected. So,  
3           there's no evidence in the record of intent to violate.  
4           There's no evidence that the process wouldn't work.  
5           There's no evidence that these clams in the  
6           refrigerator were ready to be sold to anyone, so there  
7           cannot be a health and safety issue.

8           THE COURT: Where was this allegation of the  
9           improper tag, where was Mr. Hieronymus at the time that  
10          this offense was made or charged?

---

11          MS. BLOODGOOD: There's no evidence where he was.  
12          And he is the manager. He could have been in the  
13          field. He could have been -- all he knew -- he learned  
14          after the fact, when they came into the refrigerator,  
15          he looked at it and said, Oh, that can't be right. I  
16          know where we were harvesting today, this morning, and  
17          that tag is wrong. But there was an acknowledgment by  
18          the State that it was a different worker who made the  
19          mistake on that tag, not Mr. Heironymous.

20          THE COURT: What is Mr. Heronymous' relationship  
21          to the St. Jude's?

22          MS. BLOODGOOD: He is one of the managers there.

23          THE COURT: Okay. And when DNR checked, or  
24          whoever it was checked, they were checking a St. Jude's  
25          business location for which he was present at manager?

1 MS. BLOODGOOD: Yes. Yes, he was Your Honor.

2 THE COURT: All right.

3 MS. BLOODGOOD: That is one of the points that I  
4 was trying to make. If they had written the ticket  
5 against the business and assessed a civil fine, it  
6 would be very different than assessing -- calling it a  
7 misdemeanor against somebody who is not Mr. Hieronymus  
8 who they admit made the mistake. But they didn't write  
9 the ticket against the business. They could have done  
10 that under the second part of this statute.

---

11 And it was very confusing in the hearing and I  
12 think -- and the magistrate's return also, basically,  
13 who was -- who was the person at fault. Now, if they  
14 were to write it against the business, which I think  
15 that they should have done if they thought that there  
16 was a violation, the second part of my argument, Your  
17 Honor, is that the regulations require a tag be in the  
18 refrigerator, that the harvest tag be on there, but it  
19 also requires a sales tag. And the fact that there is  
20 no -- nobody took into consideration the fact that the  
21 business has the right to have a process to check and  
22 recheck and fix mistakes. And so they are being  
23 penalized for something before -- well, it's too early,  
24 before it goes to sale, before they have a chance to do  
25 anything.

1           It would be like building a house and being --

2           THE COURT: You are saying that you have improper  
3 tags while you are offering tags in storage that might  
4 not identify the proper place where they were obtained,  
5 but because you are going to change that before you  
6 sell it, that the wildlife department doesn't have the  
7 opportunity to come in and check you and say if this  
8 isn't where you harvested them you are required to give  
9 us up to date information because you say, Well, I'm  
10 ~~going to do it before I am going to do that when I sell~~  
11 them is your argument?

12           MS. BLOODGOOD: Well, there was a process in place  
13 with managers and there was testimony that it was  
14 people's jobs to check those tags to make sure because  
15 mistakes are made. And if a mistake is made then a  
16 business has to have an opportunity, and they do -- and  
17 there was testimony that there is a process in place to  
18 fix that.

19           Now, I agree, if it had not been fixed,  
20 absolutely. When those are offered for sale that would  
21 have been an absolute violation. But they were not  
22 being offered for sale in the refrigerator. Nobody can  
23 get hurt and DNR admitted that.

24           THE COURT: Doesn't the regulations say at all  
25 times?

1 MS. BLOODGOOD: It does say at all times under the  
2 heading of marketplace. And they were not in the  
3 marketplace, Your Honor, they were in --

4 THE COURT: Identification of the shell stock in  
5 the marketplace, and it says, at all times that it  
6 shall be labeled.

7 MS. BLOODGOOD: Right. And, Your Honor, the way  
8 that the regulation is broken up, they have  
9 identification during harvesting, during handling,  
10 during transportation and in the marketplace. But they  
11 were not in the marketplace. They were not even being  
12 transported, and they hadn't been sold yet. First, it  
13 cannot possibly be a criminal violation against --  
14 because they had the wrong person, they admitted it was  
15 a mistake.

16 But if it is a technical violation of the  
17 statute -- I don't think that the statute says that,  
18 Your Honor. And I think that I know the purpose of the  
19 statute is for health and safety. But we weren't to  
20 that point yet. A business has -- you are going to  
21 make mistakes and it's not fair to treat a business and  
22 say that -- hold them to a standard of not being able  
23 to make mistakes.

24 But I think that that's just probably an argument  
25 that doesn't need to be made now, because the ticket

1           itself is against the wrong person. And they have  
2           admitted that what was done was a mistake. And there's  
3           testimony in the record that nobody got hurt because  
4           they weren't ready to sell these things yet and that  
5           there was a process to fix their mistakes.

6           THE COURT: Thank you very much. Let me hear from  
7           you.

8           MS. McMAHAN: Your Honor, This is pretty simple.  
9           This Court doesn't have jurisdiction to entertain this.

10          THE COURT: You are going to have to speak up or  
11          you have to talk louder and come to the microphone.

12          MS. McMAHAN: This court does not have  
13          jurisdiction to entertain this appeal because it is a  
14          criminal case. And because it is an appeal from a  
15          criminal prosecution in magistrate's court you have ten  
16          days to file the notice of appeal, not 30. So, when  
17          the ticket was entered on April 12, 2016 the notice of  
18          appeal should have been filed by April 22nd, 2016.  
19          This notice --

20          THE COURT: You don't think that it was timely?

21          MS. McMAHAN: It was not at all timely filed  
22          because it was not filed until May 20th, 2016.

23          THE COURT: All right.

24          MS. McMAHAN: As for the underlying fine. A lot  
25          of these issues were not even brought up during the

1 Bench trial. But as for the fine, the \$200 fine, as  
2 you know, Your Honor, in any court in this state if you  
3 are fined you have 100 plus percent court cost that  
4 goes on top of it, which is why the total came out to  
5 470 something dollars. And that is it.

6 THE COURT: Very well. All right. My concern  
7 here Ashley. And number one, I wasn't aware that it is  
8 a criminal violation or alleged criminal violation,  
9 which is her argument. And there is a statute on  
10 criminal appeals, so I am going to ask you both to  
11 submit proposed orders. I ask, Ms. Bloodgood, that you  
12 confine yours to whether or not it should be made to  
13 St. Jude's rather than to Mr. Hieronymus. Do you  
14 understand?

15 MS. BLOODGOOD: Yes, Your Honor.

16 THE COURT: And not your argument that somehow or  
17 another they are going to correct it before sale, which  
18 frankly I find to be without merit.

19 And, Ashley, you can confine your order to  
20 whatever grounds including the jurisdictional grounds  
21 for the Court of Appeals and I'll decide it. I will  
22 expect you both to submit your orders to me within  
23 seven days of today. Please submit them to me at PO  
24 Drawer 470, Walterboro, 29488. And please copy  
25 opposing counsel on your transmittal of your orders

1           within seven days. Please include a self addressed  
2           stamped envelope with sufficient postage affixed  
3           thereto for the return of orders. Now, any question?

4           MS. McMAHAN: Your Honor, Since today is my last  
5           day, this is Nicole Wetherton, she will be the one who  
6           will send you the order.

7           THE COURT: Congratulations.

8           (Off-the-record discussion held.)

9           THE COURT: Okay. I'll expect your record within  
10          seven days. I'm taking with me the handouts and the

---

11          copy of the transcript. Obviously the original was  
12          made an exhibit in connection with this. Any questions  
13          about proposed order procedure from the moving party?

14          MS. BLOODGOOD: No, Your Honor.

15          THE COURT: From responding party?

16          MS. McMAHAN: Nope.

17          THE COURT: Thank you both for your patience and  
18          time. This hearing is now concluded.

19          (Hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 8th day of November, 2016.

*Mona L. Manley /s/*  
MONA L. MANLEY  
Official South Carolina Court Reporter  
Circuit Reporter for the 14th Circuit  
(850) 893-6662  
mmanley@sccourts.org

Phone #: [REDACTED] No. 22603



South Carolina  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
OFFICIAL SUMMONS & ARREST REPORT

STATE OF SOUTH CAROLINA  
VERSES

NAME Daniel Glenn Hieronymus  
ADDRESS [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE  
TRIAL OFFICER Magistrate

ADDRESS 40 B Klein St, Walterboro SC 29488  
ON February 16th, 2016 AT 10:00 A.M

COURT APPEARANCE REQUIRED -  YES  NO  
CHARGE Improper Shellstock ID (22 Bags)  
CODE SEC. & REG. No. P-61-47 DATE 12/18, 2015  
AT OR NEAR Bennet's Point, St. Judes Farm

DATE BAIL RECEIVED <u>N/A</u> , 20 <u>  </u>	BY ENV. CONTROL OFFICER <u>T.M. Donahue</u>	DOLLARS <u>\$ 470.00</u>
---	--	-----------------------------

CASE BEFORE							AMOUNT OF FINE	
COUNTY JUDGE <input type="checkbox"/>	MAGISTRATE <input checked="" type="checkbox"/>	RECORDER-MAYOR <input type="checkbox"/>					\$	
FEDERAL JUDGE <input type="checkbox"/>	MIL. COURT <input type="checkbox"/>	STATE COURT <input type="checkbox"/>					AMOUNT SUSP.	
DISPOSITION							\$	
NOT GUILTY <input type="checkbox"/>	FORFEITED BAIL <input type="checkbox"/>	TRIED IN ABSENCE <input type="checkbox"/>					VEHICLE LICENSE#	STATE
NOLLE PROSSED <input type="checkbox"/>	SENT TO HIGHER CT. <input type="checkbox"/>	TURNED TO MIL. <input type="checkbox"/>					<u>N/A</u>	<u>N/A</u>
GUILTY <input type="checkbox"/>	CHANGE OF VENUE <input type="checkbox"/>					MAKE OF VEH.	YEAR	
DESCRIPTION OF ACCUSED							<u>N/A</u>	<u>N/A</u>
RACE	SEX	BIRTHDAY	HT.	HAIR	WT.	EYES	TYPE <input type="checkbox"/> AUTO <input type="checkbox"/> TRUCK	
<u>W</u>	<u>M</u>	<u>11/22/74</u>	<u>6'6"</u>	<u>B</u>	<u>195</u>	<u>G</u>		
SENTENCE OF COURT		JAIL	SUSP.	CONT. TO		DRIVER'S LICENSE#		STATE
						<u>103742997</u>		<u>SC</u>
CERTIFIED CORRECT JUDGE						DATE	COR. CODE#	

TRIAL OFFICER \_\_\_\_\_  
PRESENT THIS SUMMONS TO \_\_\_\_\_ SHOWN ABOVE. BE SURE THAT YOU UNDERSTAND FROM THE ENVIRONMENTAL CONTROL OFFICER THE EXACT TIME AND PLACE OF THE TRIAL.

DHEC-1844 (09/2014)

Phone #: 843-844-3381  
 No. 22603



South Carolina  
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
 OFFICIAL SUMMONS & ARREST REPORT

STATE OF SOUTH CAROLINA  
 VERSES

NAME Daniel Green Hieronymus  
 ADDRESS [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE

TRIAL OFFICER Magistrate

ADDRESS 40 B Klein St, Walterboro, SC 29789

ON Tuesday 12th, 2016 AT 10:00 A M

COURT APPEARANCE REQUIRED -  YES  NO

CHARGE Improper Shell Duck ID (227-195)

CODE SEC. & REG. NO. 17-61-47 DATE 12/18, 2015

AT OR NEAR Green + S Point, St Johns Farm

DATE BAIL RECEIVED <u>N/A</u> 20 <u>  </u>	BY ENV CONTROL OFFICER <u>Tim Donahue</u>	DOLLARS <u>\$ 470.00</u>
---	--	-----------------------------

CASE BEFORE  
 COUNTY JUDGE  MAGISTRATE  RECORDER-MAYOR   
 FEDERAL JUDGE  MIL COURT  STATE COURT

DISPOSITION  
 NOT GUILTY  FORFEITED BAIL  TRIED IN ABSENCE   
 NOLLE PROSSO  SENT TO HIGHER CT.  TURNED TO MIL.   
 GUILTY  CHANGE OF VENUE

DESCRIPTION OF ACCUSED						
RACE	SEX	BIRTHDAY	HT.	HAIR	WT.	EYES
<u>W</u>	<u>M</u>	<u>11/22/74</u>	<u>6'0</u>	<u>B</u>	<u>195</u>	<u>G</u>

VEHICLE LICENSE# <u>N/A</u>	STATE <u>N/A</u>
MAKE OF VEH. <u>N/A</u>	YEAR <u>N/A</u>

SENTENCE OF COURT	JAIL	SUSP.	CONT. TO

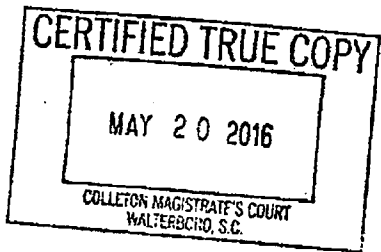
TYPE <input type="checkbox"/> AUTO <input type="checkbox"/> TRUCK
DRIVER'S LICENSE # STATE <u>103742977 SC</u>
COR CODE#

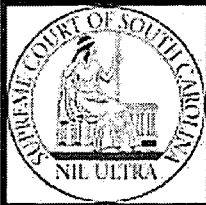
CERTIFIED CORRECT JUDGE [Signature] DATE 4-12-16  
 TRIAL OFFICER

PRESENT THIS SUMMONS TO [REDACTED] SHOWN ABOVE. BE SURE THAT YOU UNDERSTAND FROM THE ENVIRONMENTAL CONTROL OFFICER THE EXACT TIME AND PLACE OF THE TRIAL.

DHEC-194 (08/2014)

ATTACHMENT A





# Colleton County Fourteenth Judicial Circuit Public Index



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**Switch View**

The State of South Carolina VS Daniel Glenn Hieronymus					
<b>Case Number:</b>	22603	<b>Court Agency:</b>	Colleton County Magistrate	<b>Filed Date:</b>	01/07/2016
<b>Case Type:</b>	Criminal	<b>Case Sub Type:</b>	Criminal		
<b>Status:</b>	Rescheduled	<b>Assigned Judge:</b>	Campbell, Kenneth Arthur Jr.	<b>Disposition Judge:</b>	
<b>Disposition:</b>					
<b>Disposition Date:</b>		<b>Date Received:</b>		<b>Arrest Date:</b>	12/18/2015
<b>Law Enf. Case:</b>		<b>True Bill Date:</b>		<b>No Bill Date:</b>	
<b>Prosecutor Case:</b>		<b>Indictment Number:</b>		<b>Waiver Date:</b>	
<b>Probation Case:</b>					

**Case Parties**

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Bloodgood, Nancy	895 Island Park Drive Ste 202 Charleston SC 29492				Defendant Attorney		01/27/2016
Donahue, T M	P. O. Box 8206 Columbia SC 292028206				Officer		01/28/2016
<input checked="" type="checkbox"/> Hieronymus, Daniel Glenn	[REDACTED]		M	1974	Defendant		01/07/2016

**Charges**

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Hieronymus, Daniel Glenn	3791-DHEC / DHEC Regulation R.61-47 violation of requirements for producers, processors, harvesters, and transporters of shellfish	3791-DHEC / DHEC Regulation R.61-47 violation of requirements for producers, processors, harvesters, and transporters of shellfish	

**Actions**

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Hieronymus, Daniel Glenn	Criminal/Traffic Rescheduled	Event		03/15/2016-10:00		
Hieronymus, Daniel Glenn	Criminal/Traffic Court	Event		02/16/2016-10:00	03/15/2016-11:30	
Hieronymus, Daniel Glenn	Archived Court Summons	Filing		01/28/2016-00:00		

**Financials**

Summary			
<b>Fine/ Costs:</b>	\$470.00	<b>Total Paid for fine/costs:</b>	\$0.00
		<b>Balance Due:</b>	\$470.00
12			
Costs			

Description	Cost Code	Amount	Charge Account	Disbursed Amount
State Assessment	STAASM	\$191.00		\$0.00
Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$0.00
Fine to DHEC for Shellfish Enforcement	99DHSE	\$66.65		\$0.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$24.00		\$0.00
Fine to General Fund Shellfish	99DHGF	\$66.70		\$0.00
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$25.00		\$0.00
Fine to DHEC for State Treasurer	99DHST	\$66.65		\$0.00
SC Criminal Justice Academy Training	SCCJAT	\$5.00		\$0.00
<b>Payments</b>				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
None				

## Amanda Kramer

---

**Subject:** Scan from a Xerox WorkCentre( Ticket #22603 Daniel Glenn Hieronymus)  
**Attachments:** DOC.PDF

-----Original Message-----

From: Pam White [mailto:pwhite@colletoncounty.org]  
Sent: Tuesday, April 12, 2016 12:44 PM  
To: Nancy Bloodgood  
Subject: FW: Scan from a Xerox WorkCentre( Ticket #22603 Daniel Glenn Hieronymus)

Please see attached

-----Original Message-----

From: Pam White [mailto:pwhite@colletoncounty.org]  
Sent: Tuesday, April 12, 2016 12:21 PM  
To: 'amcmahan@scag.gov' <amcmahan@scag.gov>; 'donathutm@dhec.sc.gov' <donathutm@dhec.sc.gov>  
Subject: FW: Scan from a Xerox WorkCentre( Ticket #22603 Daniel Glenn Hieronymus)

Please see attached decision on Daniel Glenn Hieronymus by Judge John Reaves McCleod citation if you have any questions please contact the court.  
843-549-1140

Thanks Ms. Pam White

-----Original Message-----

From: mag7120wc@colletoncounty.org [mailto:mag7120wc@colletoncounty.org]  
Sent: Tuesday, April 12, 2016 12:59 PM  
To: Pam White <pwhite@colletoncounty.org>  
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

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Attachment File Type: PDF

WorkCentre Location: machine location not set  
Device Name: XRX0000AA6E8A6E

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	14 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	Shellfish Ticket 22603
State of South Carolina	)	
	)	
vs.	)	<b>ORDER FINDING</b>
	)	<b>DEFENDANT GUILTY</b>
Daniel Glenn Hieronymus,	)	
	)	
Defendant.	)	
	)	

This matter is before the Court by way of shellfish ticket 22603 issued on December 18, 2015. A bench trial was held on March 15, 2016 before the undersigned. The State was represented by Officer Tara M. Donahue. The Defendant was present and represented by Nancy Bloodgood.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The applicable law in this case is SC Code §§ 44-1-140 and 44-1-150 as well as SC Code of Regulations 61-47. SC Code 44-1-140 gives the SC Department of Health and Environmental Control (DHEC) the authority to “make, adopt, promulgate and enforce reasonable rules and regulations” pertaining to the “safety and sanitation in the harvesting, storing, processing, handling, and transportation” of shellfish. See SC Code 44-1-140(5). As a result, DHEC promulgated R.61-47. The current version of these regulations became effective on June 26, 2015.

Furthermore, a person who “after notice violates, disobeys, omits, or neglects to comply with a regulation of [DHEC] made pursuant to Section 44-1-140, is guilty of a misdemeanor.” See SC Code 44-1-150(A).<sup>1</sup>

Officer Donahue along with other shellfish officers from DHEC entered and inspected OV Associates / St. Jude Farms (St. Jude) on December 18, 2015. St. Jude

---

<sup>1</sup> The statute defines notice as actual or constructive notice. SC Code 44-1-150(D). I find that the Defendant had constructive notice of the regulations given the years he indicated he’s been harvesting shellfish and managing shellfish processing facilities, as well as the fact the regulations must be complied with prior to being issued a shellfish harvesting permit from DHEC. (Defendant stated that he has been in the harvesting business “his whole life”.) The regulations are also readily accessible online through DHEC’s website and through the SC Legislature’s website.

is a processor/certified shipper<sup>2</sup> of shellfish located at or near Bennett's Point in Colleton County. Mr. Hieronymus, the Defendant, is the manager of the facility.

The facts are not in dispute. DHEC entered St. Jude's facility on December 18, 2015, to perform a routine inspection. While DHEC was inspecting a cooler that contained bagged clams, DHEC noticed the sales tags on the bags had listed two different harvest areas.<sup>3</sup> When one of the DHEC shellfish officers questioned Mr. Hieronymus why clams harvested from two different areas were in the same bin, the Defendant stated that the tags were incorrect and that they all came from the same harvesting area, S-140. The tags noted harvesting areas of both S-140 (a public harvesting area) and C-137 (a commercial harvesting area leased by St. Jude). The bags of clams were tagged with tags that St. Jude could use as both harvest tags and sales tags depending on the box checked; however these tags were being used as sales tags as noted by box checked "SALE" on the back.

The Defendant argues that he cannot be found guilty of a misdemeanor because the "process that's in place" to catch these mistakes was not yet completed. Defendant also argues he is not guilty of violating §44-1-150 / R.61-47 because even though the sales tags were incorrect, the "clams were not yet put into commerce." These legal arguments are without merit. Statute §44-1-150 is clear. Anyone who "neglects to comply" with the regulation is guilty of a misdemeanor. Arguing that the entire process has to be complete is akin to arguing that one cannot be arrested for burglary when caught in the act of robbing a victim's home simply because the burglar has not finished with the act of burglarizing.

R.61-47 makes it clear what is required of a shellfish sales tag. R61-47.C.2(d)(1) states when at "the facilities of a certified shipper...shellstock shall be tagged in accordance with the provisions of ...C.2.(d)(2) at all times." (emphasis added.) The tag requirements are set forth in the next section. Besides the sales tags having to be a certain size the regulations require "identification of the harvest

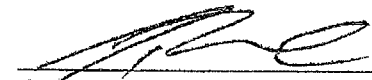
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<sup>2</sup> See R61-47(A)(2)(g) and (A)(2)(qq)

<sup>3</sup> Defendant testified at the hearing that shellfish harvested from two different areas cannot be stored together in the same area due to cross contamination. See also R61-47(I)(8).

location as is practicable including [DHEC's] designation of the growing area..." See R.61-47.C.2.(d)(2)(d)(6). The plain language of R61-47.C.2(d)(1) notes that the clams do not have to be offered or distributed for sale before a violation occurs. While the clams are at the certified shipper, in this case St. Jude, the "clams shall be tagged in accordance" with the regulations. There is no gray area. The clams must be tagged accordingly. I find the clams were not tagged in accordance with the regulations for having the wrong harvest area listed and the Defendant admitted the sales tags were incorrect. I find therefore, the Defendant is guilty of a misdemeanor pursuant to SC Code 44-1-150 & R61-47.

IT IS SO ORDERED!

  
\_\_\_\_\_  
J. Reaves McLeod  
Presiding Magistrate Judge

Apr. 12, 2016  
Walterboro, South Carolina

Phone #: [REDACTED]

No. 22603



South Carolina  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
OFFICIAL SUMMONS & ARREST REPORT

STATE OF SOUTH CAROLINA  
VERSES

NAME Daniel Glenn Hieronymus  
ADDRESS [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE  
TRIAL OFFICER Magistrate

ADDRESS 40 B Klein St, Walterboro SC 29488  
ON February 16th, 20 16 AT 10:00 A.M.

COURT APPEARANCE REQUIRED -  YES  NO  
CHARGE Improper Shell/DCK ID (22 Bags)  
CODE SEC. & REG. NO. D-61-47 DATE 12/18, 20 15  
AT OR NEAR Bennet's Point, St. Judes Farm

DATE BAIL RECEIVED NA 20 20 BY ENV. CONTROL OFFICER T.M. Donahue DOLLARS \$ 470.00

CASE BEFORE							AMOUNT OF FINE	
COUNTY JUDGE <input type="checkbox"/> MAGISTRATE <input checked="" type="checkbox"/> RECORDER-MAYOR <input type="checkbox"/>							\$	
FEDERAL JUDGE <input type="checkbox"/> MIL COURT <input type="checkbox"/> STATE COURT <input type="checkbox"/>							AMOUNT SUSP.	
DISPOSITION							\$	
NOT GUILTY <input type="checkbox"/> FORFEITED BAIL <input type="checkbox"/> TRIED IN ABSENCE <input type="checkbox"/>							VEHICLE LICENSE#	
NOLLE PROSSED <input type="checkbox"/> SENT TO HIGHER CT. <input type="checkbox"/> TURNED TO MIL. <input type="checkbox"/>							STATE	
GUILTY <input type="checkbox"/> CHANGE OF VENUE <input type="checkbox"/>							N/A N/A	
DESCRIPTION OF ACCUSED							MAKE OF VEH. YEAR	
RACE	SEX	BIRTHDAY	HT.	HAIR	WT.	EYES	N/A N/A	
W	M	11/22/74	6'0"	B	195	G	TYPE <input type="checkbox"/> AUTO <input type="checkbox"/> TRUCK	
SENTENCE OF COURT		JAIL	SUSP.	CONT. TO		DRIVER'S LICENSE # STATE		
						103742997 SC		
CERTIFIED CORRECT JUDGE							CDR CODE #	
TRIAL OFFICER								

Guilty  
Fine due  
\$470.00

To Be Signed  
OFF 4-19-16  
at 10:00am.

PRESENT THIS SUMMONS TO [REDACTED] SHOWN ABOVE. BE SURE THAT YOU UNDERSTAND FROM THE ENVIRONMENTAL CONTROL OFFICER THE EXACT TIME AND PLACE OF THE TRIAL.  
DHEC-1944 (06/2014)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626  
Appellate Case No. 2016-001624

**RECEIVED**

MAR 09 2017

**SC Court of Appeals**

State of South Carolina,

Respondent,

v.

Daniel Glen Hieronymus,

Appellant.

**CERTIFICATION OF COUNSEL AND CERTIFICATION OF COMPLIANCE  
WITH ORDER ON REDACTION OF PERSONAL DATA IDENTIFIERS**

I, Nancy Bloodgood, Esquire, hereby certify, pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, that this Record on Appeal contains all of the material and documentation proposed to be included by any of the parties and does not contain any other material. In addition, I further certify that this Record on Appeal complies with the South Carolina Supreme Court's Order dated August 13, 2007 and Revised Order

dated April 15, 2014, addressing the redaction of personal data identifiers and other sensitive information.



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Nancy Bloodgood, Esq., SC Bar No. 6459

**Bloodgood & Sanders, LLC**

242 Mathis Ferry Road, Suite 201

Mt. Pleasant, SC 29464

Telephone: (843) 972-0313

Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)

*Attorneys for the Appellant*

Charleston, South Carolina

Date: February 16, 2017

**RECEIVED**

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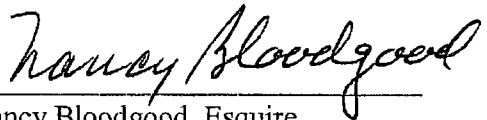
**PROOF OF SERVICE OF RECORD ON APPEAL**

Nancy Bloodgood, Esq., SC Bar No. 6459  
**Bloodgood & Sanders, LLC**  
242 Mathis Ferry Road, Suite 201  
Mt. Pleasant, SC 29464  
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Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)

*Attorneys for the Appellant*

I hereby certify that on February 16, 2017 I served a copy of the Record on Appeal via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

J. Benjamin Aplin  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211  
*Attorneys for the Respondent*

  
\_\_\_\_\_  
Nancy Bloodgood, Esquire

Charleston, South Carolina

Date: February 16, 2017