

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY
Court of Common Pleas

MAR 09 2017

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.

FINAL BRIEF OF APPELLANT

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

Attorneys for the Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. **Did the Circuit Court err in holding that a ticket issued by DHEC is a criminal ticket when it was issued to a person whom the Magistrate and DHEC acknowledged was not the person who violated DHEC Regulation 61-47?**
- II. **Did the Circuit Court err in dismissing a Magistrate Court appeal on the basis that the ticket DHEC issued was a criminal ticket and, therefore, the statute of limitations to appeal a criminal ticket had run?**

STATEMENT OF THE CASE

This matter comes before the Court as a result of an appeal of Magistrate J. Reeves McLeod's Order regarding a DHEC ticket issued against Appellant Hieronymus on December 18, 2015. (R. pp. 1-3, 119.) On May 11, 2016, Defendant filed a Notice of Appeal to the Circuit Court contending, among other reasons, that it was unclear whether the ticket had been issued under the civil or criminal section of S.C. Code § 44-1-150. (R. pp. 8-16) and that the ticket was invalid on its face as Defendant could not be guilty of a crime under a *respondeat superior* theory. (R. p. 10, ¶ 4.)

The Magistrate signed a Return on May 12, 2016. (R. p. 17.) Appellant's Notice of Appeal was originally filed on May 11, 2016 and then refiled on May 17, 2016 and clocked in on May 20, 2016. It was forwarded to Colleton County Circuit Court on May 20, 2016. (R. pp. 8-16.) A hearing was held before the Honorable Perry M. Buckner on June 30, 2016 in Walterboro, S.C. (R. p. 100.) On July 7, 2016, Circuit Court Judge Buckner issued an Order denying the Magistrate Court Appeal which Order was filed July 13, 2016. (R. pp. 4-5.) The Circuit Court Order was received by Appellant on July 13, 2016. (Id.)

Appellant filed a Notice of Appeal with this Court on August 2, 2016. (R. pp. 18-24.) Respondent filed a Motion to Dismiss Appellant's Appeal on August 17, 2016. (R. pp. 25-29.) Appellant filed a Motion for Extension of Time to file a Return. (R. pp. 30-35.) The Motion for an Extension was granted and Appellant filed a Return on September 8, 2016. (R. pp. 6, 36-46.) Respondent's Motion to Dismiss was denied on November 4, 2016. (R. p. 7.) Appellant received the Circuit Court Transcript on November 9, 2016 and this appeal follows.

STATEMENT OF FACTS

St. Jude Farms is a business that harvests, transports and sells oysters and clams in Colleton County. (R. pp. 1-2.) Appellant Hieronymus is employed as a manager at St. Jude Farms. (Id.) On December 18, 2015, during a routine DHEC inspection of a building at St. Jude Farms on Bennett's' Point Road in Colleton County, DHEC discovered that twenty-two (22) bags of clams in a refrigerator were improperly identified. (R. p. 2.) Specifically, these twenty-two (22) bags of clams had tags on them that were mislabeled regarding the location from which the clams had been harvested. (Id.)

Appellant Hieronymus did not know a mistake had been made by one of St. Jude's employees regarding labeling the clam bags until he noticed the mistake while he was accompanying DHEC officials during the routine inspection. (R. p. 74, lines 1-5 and 14-18.) DHEC knew that Appellant Hieronymus was not the person who violated DHEC Regulation 61-47 as Officer Donahue testified at the Magistrate hearing that "one of [Mr. Hieronymus'] workers who does the tags doesn't speak English well miswrote some of the tags." (R. p. 52, lines 6-10.) Officer Donahue also told the Magistrate that "the guy who couldn't speak English mislabeled them." (R. p. 60, lines 9-11.) At the hearing, the

Magistrate noted that the person making the labeling mistake on the tags was not in the courtroom. (R. p. 80, lines 13-25.) Nevertheless, DHEC officer T.M. Donahue issued an Official Summons & Arrest Report to Appellant Hieronymus, for “improper shell stock ID (22 bags)” pursuant to DHEC Regulation 61-47. (R. p. 119.) DHEC was not represented by an attorney at the Magistrate hearing but the Court agreed to allow a DHEC attorney to submit a proposed order. (R. pp. 95-97, p. 49, line 5 – p. 51, line 25.) Thereafter, the Attorney General’s Office on behalf of DHEC, and Appellant each submitted proposed orders to the Magistrate.

ARGUMENTS

Applicable Standard of Review

On an appeal from magistrate court, the circuit court may make its own findings of fact. S.C. Code Ann. § 18-7-170 (1985) ("In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."); A & I, Inc. v. Gore, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct. App. 2005.) Where the circuit court has affirmed the magistrate court decision, the appellate court looks to whether the circuit court order is "controlled by an error of law or is unsupported by the facts." Parks v. Characters Night Club, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001.) "The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law." *Id.*

I. Did the Circuit Court err in holding that a ticket issued by DHEC is a criminal ticket when it was issued to a person whom the Magistrate and DHEC acknowledged was not the person who violated DHEC Regulation 61-47?

S.C. Code § 44-1-150 provides for both civil and criminal penalties for violations of DHEC Regulations. Section (A) of S.C. Code § 44-1-150 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.” Whereas, 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.”

It is elementary that criminal penalties cannot be imposed against a person whom the state or governmental entity knows did not commit the alleged crime. The Supreme Court has acknowledged criminal charges must be brought against a person the prosecutor believes has committed the 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)).

Respondent has admitted and represented to the Magistrate Court that Appellant Hieronymus was not the person who violated DHEC Regulation 41-7 by mislabeling the clams. Nevertheless, Respondent contends it can bring criminal charges against Appellant. Criminal penalties available under S.C. Code § 44-1-150 (A) must be assessed

against the person who actually committed the violation. As Respondent and the Magistrate acknowledged the fact that Mr. Hieronymus is not the person who mislabeled the clams, Mr. Hieronymus is the wrong person against whom the assessment of criminal charges can be brought and he cannot be guilty of a misdemeanor. Therefore, the Circuit Court erred as a matter of law when it held that Appellant was guilty of a misdemeanor. DHEC could have assessed a civil penalty against the business, St. Jude Farms, but it did not. Further, there is no evidence in the record that a civil penalty would have been appropriately assessed against Appellant merely because he was a manager working at St. Jude Farms.

II. Did the Circuit Court err in dismissing a Magistrate Court appeal on the basis that the ticket DHEC issued was a criminal ticket and, therefore, the statute of limitations to appeal a criminal ticket had run?

The Circuit Court Order is unsupported by the facts as it assumes in error that Appellant was the person who committed the alleged misdemeanor and, therefore, a criminal statute of limitations should apply. The Magistrate Order contains no finding of fact as to who committed the misdemeanor. (R. pp. 1-3.) Yet, the uncontroverted testimony before the Magistrate was that Appellant was not the person who mislabeled the clams. Appellant's counsel argued to the court that Appellant should only be ticketed if he had done something intentional; not if an employee of his made a mistake. (R. p. 77, lines 18-19; p. 70, lines 11-15.) The Magistrate acknowledged that Defendant was not the person who made the error, "The problem is he didn't make the mistake, did he?... if we want to talk about intent, I mean, if that's what we really want to talk about, I need to talk to the guy who actually wrote this down because ... I totally agree with you. He didn't make a mistake at all, right?" (R. p. 80, lines 13-23.)

Nevertheless, in his Return, the Magistrate stated in error that Appellant mislabeled the clams. (R. p. 17.) Specifically, the Return states, "Evidence was presented that the Defendant has mislabeled bagged clams..." (Id.) This statement in the Return is unsupported and, in fact, contradicted by the facts in the record. The Circuit Court also erred when it assumed the Magistrate's statements in the Return were supported by fact as the Magistrate Hearing Transcript was made an Exhibit to the Return and available to review. (R. p. 101, line 23 – p. 103, line 24.) "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Menne v. Keowee Key Prop. Owners' Ass'n, 368 S.C. 557, 568, 629 S.E.2d 690, 696 (Ct. App. 2006).

The Circuit Court also erred by ignoring the fact that the ticket at issue did not state on its face which section of the statute it was written under, the civil or criminal section, and, thus, it was not clear in both forums whether a civil or criminal fine was being assessed. (R. pp. 79-80; p. 105, lines 10-24; p. 119.) Appellant argued at the Circuit Court Hearing that it was unclear whether the ticket was criminal or civil in nature. (R. p. 106, lines 1-4.)

The undisputed testimony at both the Magistrate Hearing and at the Circuit Court Hearing was that Appellant was not the person who mislabeled the clams. Appellant testified he learned of the labeling mistake at the same time it was discovered by DHEC officials. (R. p. 74, lines 1-24) and that DHEC should have written the ticket against the business as a civil fine and not against Appellant as a criminal fine (R. p. 112, lines 3-10; p. 114, line 24 – p. 115, line 1.)

As the Circuit Court failed to determine the relevant facts in this case based on the facts established at the Magistrate Court Hearing, which hearing was transcribed and made a part of the record, it erred when it concluded that the penalty against Appellant was criminal in nature and that S.C. Code § 18-3-30 was, therefore, the applicable statute of limitations. (R. p. 4.)

CONCLUSION

As there are no facts to establish Appellant was the person who mislabeled clams in violation of DHEC Regulation 61-47, the Circuit Court erred by upholding the criminal penalty DHEC assessed against Appellant. The Circuit Court also erred when it dismissed the Circuit Court appeal based on its application of a criminal statute of limitations. Appellant respectfully requests this Court hold that the criminal ticket issued by DHEC to Appellant is void and further requests this matter be remanded to the Magistrate so the ticket can be voided:



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

Attorneys for the Appellant

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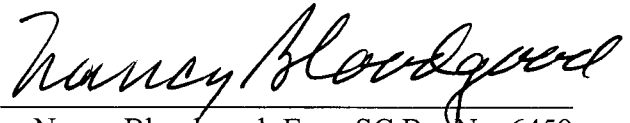
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CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief complies with Rule 211(b),
SCACR.



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

Attorneys for the Appellant