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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2015-002073

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JUN 17 2016

SC Court of Appeals

THE STATE,

Appellant,

vs.

ROXANNE HUGHES,

Respondent.

RECORD ON APPEAL

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administered by the department or the payment of that tax or property assessment, in addition to other penalties provided by law, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both, together with the cost of prosecution.”

South Carolina Code §12-54-44(B)(3) states that,

“A person required under any provision of law administered by the department and who willfully fails to pay any estimated tax or tax, or who is required by any provision of law or by any regulation and who willfully fails to make a return, keep records, or supply information, at the time or times required by law or regulation, in addition to other penalties provided by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than one year, or both, together with the cost of prosecution.” (emphasis added)

South Carolina Code §12-54-44(B)(5) states that,

“A person required to supply information to his employer under Chapter 8, Title 12 who willfully supplies false or fraudulent information or who willfully fails to supply information which would require an increase in the tax to be withheld under Chapter 8, Title 12 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, or imprisoned not more than one year, or both.” (emphasis added)

It is well established that a specific statute controls over a more general one. *Skinner v. Westinghouse Electric Corporation*, 394 S.C. 428, 716 S.E. 2d 443 (2011). “General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.” *Bloate v. United States*, 559 U.S. 196, 130 S. Ct. 1345, L.Ed.2d 54 (2009) citing *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208, 52 S.Ct. 322, 76 L.Ed. 704 (1932). It is also well established that penal statutes are strictly construed against the State and in favor of the defendant. *State v. Fowler*, 322 S.C. 157, 470 S.E.2d

393 (Ct.App.1996).

In this case, Defendant Roxanne Hughes is alleged to have provided false information on Form W-4, which was submitted to her employer, causing less withholdings from her paychecks each pay period. She is also alleged to have subsequently failed to file a South Carolina Individual Income Tax Return for the years in question. These specific types of conduct—the provision of false information on a form submitted to an employer, and the failure to file a return—are *specifically* dealt with in subsections (B)(3) and (B)(5) of the same enactment under which Defendant is charged.

The State indicted Ms. Hughes under S.C. Code Ann. §12-54-44(B)(1), which provides *generally* that one who willfully attempts to evade or defeat a tax is guilty of a felony. While Ms. Hughes' alleged conduct arguably falls within the confines of §12-54-44(B)(1), the legislature saw fit to enact more specific legislation addressing specific types of offense conduct related to the tax process. The specific provisions found in §12-54-44(B)(3) and (5) are directly on point with the conduct alleged in the indictments.

South Carolina Code §12-54-44(B)(1) and South Carolina Code §12-54-44(B)(3) and (5) seem to be in conflict in that the specific conduct described in (B)(3) and (5) could be construed to also fall under the more general umbrella of “evasion” provided for in §12-54-44(B)(1). However, “when two statutes are in conflict, a specific state closely applicable to the substance of the controversy at hand controls over a more generalized provision.” *Pressley v. Tupperware Long Term Disability Plan*, 553 F.3d 334 (4th Cir. 2009).

Because Ms. Hughes' alleged conduct is specifically addressed with particularity in a later provision of the same enactment under which Ms. Hughes is indicted, the more specific statute should control.

Conclusion

For the reasons set forth above, the more specific statutory provision covering the defendant's alleged conduct should control over the more general provision.

RESPECTFULLY SUBMITTED, this 28th day of September, 2015.

Columbia, South Carolina

A handwritten signature in black ink, appearing to read "John R. Alphin", written over a horizontal line.

John R. Alphin
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ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)
)
)
 v.)
)
)
 Roxanne Hughes,)
 Defendant)

RE: Indictments 2013-GS-15-0815
 2013-GS-15-0816
 2013-GS-15-0817

COLLECTOR GENERAL
 SEP 28 AM 11:40

RESPONSE TO DEFENSE MOTION

BACKGROUND

Defendant failed to timely file South Carolina income tax returns for tax years 2008, 2009, and 2010. Additionally, during those years, Defendant filed with her employer Forms W-4 which fraudulently asserted that she was "exempt" from tax withholding. The affirmative act of filing and signing fraudulent W-4 forms, along with the subsequent failure to file the required Income Tax Returns, resulted in no tax being withheld from her pay and none being paid at the end of the filing deadline for each of those years. The evidence to be presented to this court is clear: Defendant attempted, by a combination of both her action (fraudulent W-4's) and inaction (failure to file), to pay no tax for these three years. Defendant has been indicted for three counts of tax evasion, a felony, under S.C. Code § 12-54-44(B)(1)

Had Defendant filed a truthful Form W-4 with her employer, taxes in an appropriate amount would have been withheld. Had this occurred, a failure to subsequently file the required Income Tax Return would have resulted in either: Defendant having had to pay a certain amount to satisfy any deficit between what was withheld and what was owed, or (a more likely scenario) Defendant receiving a refund as a result of taxes being withheld in an amount greater than were owed. Proper withholding would have made Defendant's failure to file a simple misdemeanor. Similarly, had Defendant timely filed, her fraudulent misstatements on the various W-4's would have been no more than a misdemeanor. However: neither of these is the case.

LAW**A. THE STATE AND FEDERAL STATUTES ARE IDENTICAL**

A comparison of the Federal and State Tax evasion statutes reveals that they are virtually identical. By way of example, 26 U.S. Code §7201 reads:

“Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.”

Further, S.C. Code §12-54-44(B)(1) – the crime which the Defendant is charged with, reads:

“A person who wilfully attempts in any manner to evade or defeat a tax or property assessment imposed by a title administered by the department or the payment of that tax or property assessment, in addition to other penalties provided by law, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both, together with the cost of prosecution.

This is noteworthy for a particular reason: There is a plethora of caselaw regarding the proposition argued by Defendant. It is exclusively federal. The Federal decisions are based on substantially similar statutes, and apply logic and common law principles consistent with that of South Carolina, making their guidance both illuminating and compelling.

B. FEDERAL COURT TREATMENT OF THIS EXACT QUESTION

The United States Supreme Court has addressed the exact arguments made in the present motion. The Court squarely addressed “the Government’s contention that a willful failure to file a return together with a willful failure to pay the tax may, without more, constitute an attempt to defeat or evade a tax within [the statute]. Petitioner claims that such proof establishes only two misdemeanors...and that it takes more than the sum of two such misdemeanors to make the felony.” Spies v. U.S., 317 U.S. 492 (1943). In addressing this contention, the court stated clearly that, “A felony may, and frequently does, include lesser offenses in combination

with each other or with other elements. We think it clear that this felony (tax evasion) may include one or several of the other offenses against the revenue laws." Spies at 497. Further, the court goes on to say plainly that "Willful but passive neglect of the statutory duty may constitute the lesser offense, but to combine with it a willful and positive attempt to evade tax in any manner or to defeat it by any means lifts the offense to the degree of felony." Id. at 499.

What the Supreme Court described is precisely the situation before the trial court in the present case. The facts described here are now commonly referred to as a Spies evasion throughout the courts of the United States.

As a final note, the courts who have addressed this specific circumstance have held universally that filing false and fraudulent W-4 Forms claiming to be exempt from taxation in combination with failure to file tax returns for each year can constitute an affirmative act of evasion. See: United States v. Brooks, 174 F.3d 950, 954-956 (8th Cir. 1999); United States v. King, 126 F.3d 987, 991-994 (7th Cir. 1997); United States v. Williams, 928 F.2d 145, 147-149 (5th Cir.), cert. denied, 502 U.S. 811 (1991); United States v. Connor, 898 F.2d 942, 944-945 (3rd Cir.) cert. denied, 497 U.S. 1029 (1990); United States v. Copeland, 786 F.2d 768, 770-771 (7th Cir. 1985); United States v. Willis, 277 F.3d 1026, 1031 (8th Cir. 2002).

C. THE ATTORNEY GENERAL'S DECISION TO PLACE THESE CHARGES BEFORE THE COLLETON COUNTY GRAND JURY WAS APPROPRIATE GIVEN BOTH HIS RESPONSIBILITY AND AUTHORITY

The State of South Carolina, via the authority of the Attorney General (whose name and signature appear on the current indictments), has charged Defendant with a crime. This is an appropriate and proper use of the authority of the Executive Branch of government. That Defendant wishes she had been charged differently, or not at all, is of no moment.

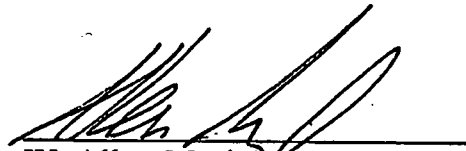
Justice Pleicones recently opined that "Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may

even decide whether an indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” State v. Langford, citing State v. Thrift, 312 S.C. 282 (1994), see also McLeod v. Snipes, 266 SC 415.

The present charges are appropriate given Defendant’s conduct and the law and have been instituted by the Attorney General appropriately.

CONCLUSION

Wherefore, the State respectfully requests that this court deny the present motion to compel the State of South Carolina to charge Defendant with only misdemeanor crimes.


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S.C. Department of Revenue

9/29, 2015

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF COLLETON) CASE NO.: 2013-GS-15-815-817

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
ROXANNE HUGHES,)
)
)
 , DEFENDANT.)
)

MONDAY, SEPTEMBER 28TH, 2015
COLLETON COUNTY COURTHOUSE
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE LARRY B. HYMAN, JR.

APPEARANCES:

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Rebecca H. Hill
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EXHIBITS

NONE.

1 MR. MYRICK: Good morning, Your Honor. We're here on
2 2013-GS-15-815, 816, and 817, the State v. Roxanne Hughes,
3 for three counts of felony tax evasion. I believe Mr.
4 Sellars has a motion.

5 THE COURT: Yes, sir, Mr. Sellars.

6 MR. SELLARS: Yes, sir, Your Honor. We have a motion
7 to proceed under the More Specific Events statute. I will
8 be brief, but will give you just a little bit of the
9 background of the case and the basis for our motion.

10 In this case, the defendant, Roxanne Hughes, is alleged
11 to have provided false information on the form W-4, which
12 was submitted to her employer causing less withholding from
13 her paychecks each pay period. She is also alleged to have
14 subsequently filed a -- or failed to file a South Carolina
15 individual income tax return for the years in question.

16 We allege that these specific types of conduct
17 provision of false information on a form submitted to her
18 employer and failure to file a return are specifically dealt
19 with in subsections (b)3 and (b)5 under the same indictment,
20 or enactment, under which the defendant is charged. These
21 specific provisions found in 12-54-44 (b)3 and 5 are
22 directly on point with the conduct alleged in the
23 indictment.

24 Because Ms. Hughes' conduct is specifically addressed
25 with specificity in a later provision of the same enactment

1 under which Ms. Hughes is indicted, the More Specific
2 Statute should control, Your Honor. Two points to that
3 point, it's well established that a specific statute
4 controls over a more general one; that is Skinner, Your
5 Honor, which we have provided to the Court.

6 General language of the statutory provision, although
7 broad enough to include it, will not be held to apply to a
8 matter specifically dealt with in another part of the same
9 enactment. The State's position is that A plus B in this
10 matter, that if you have one misdemeanor and another
11 misdemeanor, it should equal a felony. We, however, are of
12 the position that there is no authority for that. In fact,
13 this is one of the few times that the General Assembly
14 actually dealt with criminal violations with some
15 specificity. And we would also say that if there was an
16 intent to make A plus B equal a felony, then the General
17 Assembly would have stated so, Your Honor. We wish to
18 proceed under the two misdemeanor accounts.

19 THE COURT: All right. Let me hear from the State.

20 MR. MYRICK: Your Honor, earlier this morning, when
21 Your Honor was taking pleas, I filed a copy of the State's
22 response to the defendant's motion.

23 THE COURT: And I have that, and I have read it.

24 MR. MYRICK: I have no quarrel with Mr. Sellars on the
25 facts. It is uncontested that his client filed a false W-4

1 form with her employer for three years. It's also ---

2 THE COURT: There seems to be no contest at all about
3 the facts in this case.

4 MR. MYRICK: So far as we have discussed, there is
5 none.

6 MR. SELLARS: That is correct.

7 THE COURT: Go ahead.

8 MR. MYRICK: Thank you, sir. However, Your Honor, the
9 defense's assertion is that these are simply two
10 misdemeanors. The fact is the elements of the two
11 misdemeanors when combined together, the State has taken the
12 position that this is in fact felony tax evasion and not a
13 failure to file of a W-4 form.

14 The problem with the W-4 form was part of her plan to
15 evade taxes. If you're not going to file, it's best to
16 ensure nothing is withheld. Otherwise, your failure to file
17 would end up costing you because you wouldn't get any refund
18 that you're entitled to.

19 If she had only completed a false W-4, or if she had
20 only failed to file, each of those, in and of itself, would
21 have been one separate crime. The combination, Your Honor,
22 is what makes it a felony. Earlier, Your Honor, I handed
23 you a copy of a United States Supreme Court case, Spies v.
24 United States, and I'd like to point out at this point, Your
25 Honor what's in my motion ---

1 THE COURT: That's correct. It's a 1943 case.

2 MR. MYRICK: --- in that the Federal and the State tax
3 statutes are identical. And in fact, Mr. Sellars misspoke
4 in a small way when he said that the General Assembly you
5 know wisely did something in this particular instance when
6 setting up this particular scheme. What the General
7 Assembly did was they borrowed wholesale the Federal
8 statutes and incorporated them into South Carolina Law.

9 But what the Supreme Court said in Spies is this, and
10 they were specifically talking about evasion, Your Honor.
11 "A felony may, and frequently does, include lesser offenses,
12 in combination with each other or with other elements." That
13 is exactly what we have here, Your Honor. And on Your
14 Honor's copy of the case, it is on page ---

15 THE COURT: Well, let me ask you this real quick.
16 Spies, doesn't it say that the felony statute will sometimes
17 create a felony because of misdemeanor taken together or
18 with other elements? Are you saying that the Federal
19 statute requires, or specifically states, if there's two or
20 more it can be a felony?

21 MR. MYRICK: What I'm saying, Your Honor, is that this
22 combination of elements can clearly constitute a felony and
23 it is a question for the jury.

24 THE COURT: Well, one could under your theory, but you
25 wouldn't have to have two. You could just say either one of

1 these -- either one of these misdemeanors, if applied to the
2 felony statute, would satisfy.

3 MR. MYRICK: If I were to say that, Your Honor, I would
4 be exactly wrong. And I have not said that and I do not
5 intend to say that.

6 THE COURT: Okay. Well, that's where I want you to
7 help me here. The Federal statute states that any person
8 who willfully attempts in any manner to evade or defeat any
9 tax imposed by this title of payment thereof, shall, in
10 addition to other penalties, by law be guilty of a felony.
11 So it doesn't take two under a reading of that provision,
12 does it?

13 MR. MYRICK: A failure to file, Your Honor ---

14 THE COURT: --- anything ---

15 MR. MYRICK: --- is a willful inaction. What makes it
16 evasion is an affirmative act to ensure that no taxes are
17 withheld or paid. It is the State's contention that the
18 affirmative act in this particular instance ---

19 THE COURT: That's not what it says.

20 MR. MYRICK: It's her W-4. That's exactly what Spies
21 says, Your Honor.

22 THE COURT: It says, "Any person who willfully attempts
23 in any manner to evade or defeat any tax imposed," which
24 means that you could elevate a single misdemeanor to a
25 felony status.

1 MR. SELLARS: Your Honor, if I may?

2 MR. MYRICK: If I may?

3 MR. SELLARS: Go ahead.

4 THE COURT: Go ahead.

5 MR. MYRICK: Your Honor, I am a courtroom lawyer. I'm
6 not an appellate lawyer, and issues of intent quite often
7 have to be explained to me. But I will say this, Your
8 Honor, the willful element in the particular case where we
9 are, the willful element, and the intent are exemplified by
10 the flat-out lie which she signed under penalty of perjury
11 on not one, not two, not three, but at least five forms of
12 W-4, where you sign, "I certify under penalty of perjury
13 that I owed no tax last year and I do not expect to owe any
14 money this year." That lie, in conjunction with the failure
15 to file, that affirmative act, makes this an evasion case.

16 If it were just failure to file and she hadn't lied on
17 her W-4, plenty of taxes would have been withheld. Most
18 likely, she would have been entitled to a refund, which many
19 taxpayers are. So again, Your Honor, and I realize I sound
20 like a broken record, it is the combination of the failure
21 to file, which is one misdemeanor, and the affirmative act
22 of lying and committing perjury on Form W-4 which complete
23 her attempt to evade taxes for those three years.

24 THE COURT: But would not either offense be a willful
25 offense?

1 MR. MYRICK: I wouldn't see how you would generate --
2 how anyone would generate an attempt from a failure to do
3 any act. A failure to file might not be an attempt to
4 evade.

5 THE COURT: But what about the fact that you said she
6 lied? That's an affirmative act. Yes, sir, Mr. Sellars?

7 MR. SELLARS: Yes, Your Honor. And I'm just a country
8 lawyer. I've not heard necessarily either one, but I will
9 tell you that there is no authority for the State's position
10 here today. In fact, when we talked about just the clear
11 context of what these misdemeanors say, it says "willfully
12 failed to pay," and then the other one it says, "willfully
13 supplies false or fraudulent information." But the State
14 wants you to just make this leap of faith and create law
15 here today by saying that A plus B equals felony, Your
16 Honor, and what we're saying is that the acts under which
17 she is guilty are clearly laid out in the misdemeanors that
18 are put forth by the South Carolina General Assembly, Your
19 Honor. There is nothing else there. They are clearly laid
20 out right here. If the State's contention is that she did
21 this five or six times, then my client will have to stand
22 before Your Honor and plead guilty to five or six
23 misdemeanors. Just because it's five or six times doesn't
24 mean that you can make the Court make a leap of faith with
25 no authority, none whatsoever. No State authority

1 whatsoever to go forward under a felony statute. In fact,
2 we've given you many cases, Supreme Court cases, which are
3 directly on point that says when a statute has some
4 specificity, it outrules a general statute; and that's all
5 we're asking, Your Honor.

6 THE COURT: Tell me precisely what you're asking for in
7 the form of relief.

8 MR. SELLARS: Your Honor, in the form of relief, we
9 would ask you to dismiss the indictment with leave for the
10 State of South Carolina to pursue misdemeanor charges.

11 THE COURT: I will grant the motion.

12 MR. SELLARS: Thank you, Your Honor. I would also ask
13 that my client be allowed to pay whatever outstanding
14 balance, either to the Department of Revenue or to the Court
15 here in Colleton County, as I am under the belief that the
16 State of South Carolina may pursue some Appellate remedies,
17 and I don't want a larger penalty, or interest, to accrue on
18 my client during that timeframe. I would like for her to go
19 ahead and pay that restitution.

20 THE COURT: Why would we take the money?

21 MR. SELLARS: I don't know the answer to that.

22 THE COURT: My understanding, also, is that everybody
23 agrees that the \$12,008 is the maximum today, right?

24 MR. MYRICK: I could confer with the actual case agent
25 who's in the courtroom, but I won't dispute Mr. Sellers. If

1 he says it's \$12,008, I believe it's true. It is an actual
2 fact that interest is accruing daily, and I don't even know
3 about penalties, and we think it is a fine idea. I was
4 discussing this with Mr. Sellars earlier. I don't know why,
5 you know, after she was arrested she filed three times, and
6 she didn't pay then.

7 THE COURT: Is there a bar to her tendering the money?

8 MR. MYRICK: No, sir, not at all.

9 MR. SELLARS: Your Honor -- Your Honor, that's not
10 actually all the way accurate. Because from what I
11 understand, and my co-counsel does tax law all the time, and
12 apparently she cannot pay her -- she cannot remit the amount
13 owed to the State while a criminal action is pending.

14 MR. ALPHIN: She can pay the money, but my
15 understanding is -- and Mr. Blackwell, correct me if I'm
16 wrong, but it will not be posted to her civil file. That
17 her civil file is stayed pending the criminal action; is
18 that correct?

19 MR. BLACKWELL: That's correct, the \$12,008.

20 THE COURT: Are you telling me that if she pays today,
21 you're still going to charge her interest?

22 MR. BLACKWELL: Yes, sir. The \$12,008 is a criminal
23 matter.

24 MR. MYRICK: May I be heard, Your Honor?

25 THE COURT: Okay.

1 MR. MYRICK: I think, over the State's objection, that
2 Your Honor is about to dismiss these charges. At that
3 point, depending on the appeal, there won't be a criminal
4 case and I will look into it. As Your Honor knows, the
5 ethics laws prohibit me from involving myself on the civil
6 and a criminal side of the same case at the same time.

7 THE COURT: I understand that.

8 MR. MYRICK: But so far as I'm able -- so far as I'm
9 able, I will get in touch with Mr. Sellars and Mr. Alphin
10 and make sure this money gets to where it needs to go.

11 THE COURT: I just find it unconscionable that someone
12 would pay it and would still get taxed the interest on it.
13 Is that what you're telling me?

14 MR. BLACKWELL: To my understanding, Your Honor, I
15 don't work the civil side. I'm just in the criminal part of
16 this case.

17 MR. MYRICK: I have great respect for Mr. Blackwell,
18 Your Honor. He's a great investigator.

19 THE COURT: They put people in jail for doing this.

20 MR. MYRICK: Your Honor, I can have the civil auditor
21 from civil audit here. We can proffer testimony. I hate to
22 get bogged down in this issue right now when we have what I
23 regard as serious legal issue that needs to be resolved.

24 THE COURT: I understand.

25 MR. MYRICK: And I think Your Honor has already

1 resolved it.

2 THE COURT: And I may be incorrect in my ruling. I may
3 very well be incorrect. You know, we're just here today to
4 do what seems to be right and that often controls what a
5 judge does. You have an argument, Mr. Sellars has an
6 argument. Both of you have put your arguments forth to me
7 in a very concise and clear manner. I just have ruled in
8 favor of Mr. Sellars' position that may be correct or not.
9 As I understand it, this taxpayer now admittedly owes money,
10 and if you tender the money, it just doesn't seem right that
11 you are then taxed interest on that money when you've paid
12 it. That doesn't seem right. How does that work?

13 MR. MYRICK: I work on the criminal side, Your Honor.

14 THE COURT: Everybody wants to tell the judge this is
15 what we do.

16 MR. MYRICK: I will say this, Your Honor, Mr. Sellars
17 well knows that the statutory scheme under which the
18 Department operates was created by the General Assembly, so
19 he would know ---.

20 MR. SELLARS: It wasn't created by the minority party,
21 Your Honor.

22 THE COURT: But I understand you're going to correspond
23 with Mr. Sellars ---

24 MR. SELLARS: We'll make every effort, Your Honor, to
25 work with the Department of Revenue to get that paid

1 THE COURT: I can't change whatever the policy is or
2 whatever the law provides in that regard, so you fellows
3 handle that.

4 MR. MYRICK: May I be heard on one other matter?

5 THE COURT: Yes, certainly.

6 MR. MYRICK: Earlier, I also gave you a copy of the
7 O'Connor case, and I think that is exactly correct. And
8 finally, Your Honor, in explanation, let me say this, this
9 typical scheme of claiming exempt and then not filing so
10 that the following April when you don't pay any taxes when
11 millions of South Carolina citizens do, this scheme is
12 rampant in our state. I have currently a docket of over 50
13 cases, at least half of which are this exact scheme.

14 THE COURT: Tell me how it works.

15 MR. MYRICK: We would like an answer, Your Honor. We'd
16 like an answer. Because if Mr. Sellars is right, clearly,
17 you can neglect to pay your taxes for years and years and
18 suffer a misdemeanor. Then, pay up and like, ha, ha, I got
19 one over on the state, and that is if we catch you. If we
20 don't catch you, not only do you not have to pay, but you
21 face no punishment.

22 THE COURT: I understand.

23 MR. SELLARS: Your Honor, we have a check today for
24 \$12,008 for the outstanding balance and we would like to
25 remit that to the State of South Carolina.

1 THE COURT: And Mr. Sellars, I don't think that's
2 appropriate for me to make a ruling on that. I would submit
3 ---

4 MR. MYRICK: He can talk to Mr. Blackwell upon the ---

5 THE COURT: Mr. Blackwell, do you have any objection to
6 taking the check on behalf of the State of South Carolina
7 for \$12,008?

8 MR. BLACKWELL: Certainly, we'll take it. I have no
9 problem taking it, Your Honor, but it will not prejudice any
10 criminal charges.

11 THE COURT: Well, I don't think that's what his intent
12 is. All he wants to do is get it paid so that the interest
13 running on it, or the penalty running on it ends.

14 MR. BLACKWELL: Your Honor, I'm not prepared to discuss
15 penalty or interest. That's not a part of ---

16 THE COURT: Well, I understand that, but that's what he
17 wants to do.

18 MR. SELLARS: And this is on the record and we will go
19 ahead that we've presented this check.

20 THE COURT: All right. Thank you very much.
21
22
23
24
25

WITNESSES

Investigator Andy Blackwell, SC
Department of Revenue

(AMT)

ARREST WARRANT NUMBER

2013A1510100665

Arrested:

ACTION OF GRAND JURY

TRUE BILL

Ramona Miles

Foreperson of Grand Jury

Date: 2-20-14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 13 - GS - 15 - 0815

The State of South Carolina

COUNTY OF COLLETON

COURT OF GENERAL SESSIONS

FEBRUARY 2014 TERM

THE STATE

vs.

ROXANNE HUGHES

120 Yearling Lane,
Walterboro, SC 29488

Indictment for

**TAX/EVASION OF A TAX OR
PROPERTY ASSESSMENT OR
PAYMENT**

Section 12-54-44 (B) (1)
CDR Code: 2757

After being advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

2014 FEB 20 PM 2:22
GENERAL SESSIONS COURT

R. 25

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

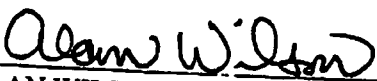
INDICTMENT - VIOLATION OF
SECTION 12-54-44 (B) (1) Code
of Laws of South Carolina, 1976, as amended.

At a Court of General Sessions, convened in February 2014, the Grand Jurors of Colleton County present upon their oath:

TAX/ EVASION OF A TAX OR PROPERTY ASSESSMENT OR PAYMENT
(12-54-44 (B) (1)) (CDR Code #2757)

That on or about April 15, 2010, in Colleton County, the defendant, Roxanne Hughes did willfully attempt to evade and defeat a tax or property assessment imposed by the South Carolina Department of Revenue or the payment of that tax or assessment; to wit: the defendant willfully and knowingly filed a false withholding allowance certificate with her employer in Colleton County, in which the Defendant claimed to be exempt from withholding taxes. Because of this false withholding certificate, the employer did not withhold sufficient taxes from the Defendant's pay as required by law. The Defendant earned taxable income of more than \$80,000 during the tax year 2009 and had a State tax liability of over \$2,000. Despite being required by law to file a South Carolina individual income tax return by April 15, 2010, the defendant knowingly and willingly failed to file a South Carolina individual income tax return for tax year 2009 and did not pay the required tax.

These actions being in violation of Section 12-54-44 (B) (1), Code of Laws of South Carolina, 1976, as amended, against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON
(AMT)

WITNESSES

Investigator Andy Blackwell, SC Department of Revenue

(AMT)

ARREST WARRANT NUMBER

2013A1510100666

Arrested:

ACTION OF GRAND JURY

TRUE BILL

Roxana Miles
Foreperson of Grand Jury

Date: 2-20-14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 13-GS-15-0816

The State of South Carolina

COUNTY OF COLLETON

COURT OF GENERAL SESSIONS

FEBRUARY 2014 TERM

THE STATE

vs.

ROXANNE HUGHES

120 Yearling Lane,
Walterboro, SC 29488

Indictment for

**TAX/EVASION OF A TAX OR
PROPERTY ASSESSMENT OR
PAYMENT**

Section 12-54-44 (B) (1)
CDR Code: 2757

After being advised as to my legal rights, I hereby waive pre-arrestment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

2014 FEB 20 PM 2:22

GENERAL SESSIONS COURT

R. 27

WITNESSES

Andy Blackwell, Department of Revenue

(AMT)

ARREST WARRANT NUMBER

2013A1510100667

Arrested:

ACTION OF GRAND JURY

TRUE BILL

Ramona Miles

Coreperson of Grand Jury

Date: 2-20-14

VERDICT

Coreperson of Petit Jury

Date:

DOCKET NO. 13 - GS - 15 - 0817

The State of South Carolina

COUNTY OF COLLETON

COURT OF GENERAL SESSIONS

FEBRUARY 2014 TERM

THE STATE

vs.

ROXANNE HUGHES

120 Yearling Lane,
Walterboro, SC 29488

Indictment for

**TAX/EVASION OF A TAX OR
PROPERTY ASSESSMENT OR
PAYMENT**

Section 12-54-44 (B) (1)
CDR Code: 2757

After being advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within Indictment or to

Defendant

Witness:

2014 FEB 20 PM 2:22

COURT OF GENERAL SESSIONS
COLLETON COUNTY

R. 29

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

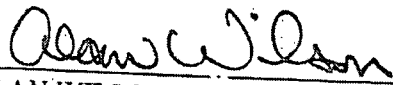
INDICTMENT - VIOLATION OF
SECTION 12-54-44 (B) (1), Code
of Laws of South Carolina, 1976, as amended.

At a Court of General Sessions, convened in February 2014, the Grand Jurors of Colleton County present upon their oath:

TAX/ EVASION OF A TAX OR PROPERTY ASSESSMENT OR PAYMENT
(12-54-44 (B) (1)) (CDR Code #2757)

That on or about April 17, 2012, in Colleton County, the defendant, Roxanne Hughes did willfully attempt to evade and defeat a tax or property assessment imposed by the South Carolina Department of Revenue or the payment of that tax or assessment; to wit: the defendant willfully and knowingly filed a false withholding allowance certificate with her employer in Colleton County, in which the Defendant claimed to be exempt from withholding taxes. Because of this false withholding certificate, the employer did not withhold sufficient taxes from the Defendant's pay as required by law. The Defendant earned taxable income of \$90,000 during the tax year 2011 and had a State tax liability of \$4,000. Despite being required by law to file a South Carolina individual income tax return by April 15, 2012, the Defendant knowingly and willingly failed to file a South Carolina individual income tax return for tax year 2011 and did not pay the required tax.

These actions being in violation of Section 12-54-44 (B) (1), Code of Laws of South Carolina, 1976, as amended, against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALAN WILSON
(AMT)

**NOTICE OF APPEAL OF PRETRIAL RULING FROM THE COURT OF
GENERAL SESSIONS**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2013-GS-15-0815, 0816, and 0817

The State of South Carolina,

Appellant,

v.

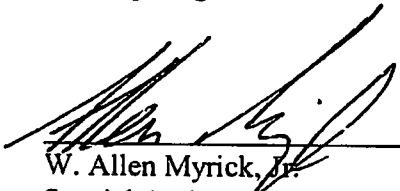
Roxanne Hughes,

Respondent.

NOTICE OF APPEAL

The State of South Carolina appeals the trial court's dismissal of the indictments in this case. The dismissal was ordered by the Honorable Larry B. Hyman, Jr. on September 28, 2015. This appeal is taken from the oral order of the Honorable Larry B. Hyman Jr., granting Respondent's Motion to dismiss the charges against her. No written Order is forthcoming.

October 2, 2015



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Attorney for Respondent

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by the parties and not any other material and this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

RECEIVED

JUN 17 2016

SC Court of Appeals

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BY: 

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June 17, 2016