THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Alison Renee Lee, Circuit Court Judge
Trial Court Case No. 2017CP1002711

Appellate Case No. 2018-002155

City of Charleston Housing Authority,

Respondent,

v.

Katrina Brown,

Appellant.

FINAL BRIEF OF RESPONDENT CITY OF CHARLESTON HOUSING AUTHORITY

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STATEMENT OF THE CASE

The Housing Authority of the City of Charleston's ("CHA") initial Lease Agreement governing this matter was signed on December 16, 2015 by Katrina Brown ("Brown") for 2214 – A Sunnyside Drive Charleston, SC 29403. Listed on the lease are Katrina Brown and her children J.R., a minor, and Anthony Cobb. A subsequent lease was signed by Brown on February 1, 2016, listing the same three individuals as occupants (Return of the Mag. at par. 5; R. p. 003, lines 1-4; Lease dated December 16, 2015 and February 1, 2016; R. p. 094, R. p. 098.).

CHA drafted and mailed a letter dated January 29, 2016 to Brown notifying her that she was in violation of the terms of her lease and listed sections 5(c), 5(d), 5(e), 5(f), 16(n), and 16(u) of her lease agreements (January 29, 2016 Notice of Termination letter from CHA letter to Brown, R. p. 102). The CHA subsequently filed an Application for Ejectment with the Charleston County Magistrate seeking to have Mrs. Brown evicted for violations of her lease agreement (February 24, 2016 Application for Ejectment Filed by CHA; R. p. 029). A Rule to Vacate or Show Cause was issued by the Magistrate on March 2, 2016 requiring Brown to either vacate the home or contact the Magistrate to show why they should not be ejected (March 2, 2016 Rule to Vacate or Show Cause; R. p. 002). Brown received the Rule and requested a hearing to show cause (Return of the Mag., signed May 19, 2016, filed May 20, 2016; R. p. 105, lines 7-8).

A bench trial was presided over by The Honorable Judge McCoy on March 16, 2016. The trial included testimony by Detective Jarrell that Cobb confessed to the attempted armed robbery and testimony from Brown that Cobb was in fact a resident on the premises, although he was being held at the Charleston County Detention Center at the time of the hearing (Return of the Mag., signed May 19, 2016, filed May 20, 2016 at par 7; R. p. 106, lines 5-23). Judge McCoy also included in her notes from the trial that Brown told officers that Cobb would cooperate with the

investigation regarding the co-defendant, but he did not. She also included a note that this is not the first incident involving Brown (Civil Disposition Sheet and Magistrate's Notes, March 16, 2016; R. p. 104). On March 31, 2016 Judge McCoy issued an order denying CHA's application for ejectment as to Brown and her daughter. Judge McCoy did authorize the CHA to remove Anthony Cobb as an authorized resident (Magistrate's Order filed May 20, 2016; R. p. 004, lines 16-18).

The CHA appealed Judge McCoy's Order to the Charleston County Court of Common Pleas (April 29, 2016 Housing Authority of the City of Charleston's Notice of Civil Appeal; R. p. 030) and the matter was heard by the Honorable Robin Stilwell on December 13, 2016. Judge Stilwell took the matter under advisement at that time and on January 11, 2017, Judge Stilwell remanded the matter to the magistrate court to issue a ruling consistent with United States Department of Housing and Urban Development v Rucker, et. al., 535 U.S. 125 (2002) (Order granting CHA's Motion for Remand signed January 11, 2017; R. p. 009, lines 18-19).

Judge McCoy issued an Order reversing her prior decision and granted CHA's application for ejection of all residents listed on the lease on January 30, 2017 in response to Judge Stilwell's Order (January 30, 2017 Magistrate's Order Upon Remand; R. p. 011). Brown then filed a Motion to Alter, Amend, or Clarify its Judgment (February 8, 2017 Letter from Brown Requesting Magistrate Vacate her January 30, 2017 Order Upon Remand; R. p. 031, lines 1-3) and Judge McCoy vacated the Order Upon Remand and gave the parties the opportunity to brief specific issues.

The issues were briefed by both parties and Judge McCoy issued a Final Order upon Remand on May 15, 2017 (May 15, 2017 Final Order Upon Remand; R. pp. 015-018).

Brown appealed the Final Order Upon Remand to the Charleston County Court of Common Pleas on May 30, 2017 (Brown's Notice of Civil Appeal filed July 31, 2017; R. p. 011). Judge McCoy filed a second, more detailed return on July 31, 2017 (Second Return of the Mag.; R. pp. 108-112).

The Honorable Alison Renee Lee heard the appeal on September 5, 2017 and issued an order on April 17, 2018, affirming the Magistrate's May 15, 2017 Final Order Upon Remand (April 17, 2018 Circuit Court Order; R. pp. 020-025).

Brown filed a Motion to Alter of Amend Judge Lee's Order (May 4, 2018 Brown Motion to Alter or Amend; R. p. 055-056) which was denied by Judge Lee on November 7, 2018 (November 1, 2018 Circuit Court Order on Reconsideration; R. pp. 026-028).

Brown filed and served their Notice of Appeal from the Circuit Court Orders dated April 17, 2018, November 7, 2018, and December 5, 2018 (Brown Notice of Appeal dated December 5, 2018; R. p. 057).

STATEMENT OF FACTS

Testimony was presented during the trial in Magistrate's Court that a Charleston Police Department incident report for trespass was generated on January 14, 2016 (January 14, 2016 Police Report). Officers responded to 1 Cool Blow Street in reference to an armed robbery. Anthony Cobb, Brown's minor son and a resident at the Sunnyside Drive location, was later arrested and charged with Unlawful Carrying of a Pistol and admitted to the Attempted Armed Robbery in conjunction with the incident at 1 Cool Blow in Charleston, SC. Judge McCoy found in favor of Brown but noted that the housing authority could proceed with the eviction against Cobb. (Magistrate's Order, Signed March 31, 2016, p.2; R. p. 004, lines 16-18). CHA appealed

this order on the basis that the magistrate incorrectly applies the Rucker case. (Housing of Authority of the City of Charleston's Notice of Civil Appeal, April 29, 2016; R. p. 030, lines 1-8).

Judge Stilwell heard this appeal and found in favor of CHA. Judge Stilwell noted that Rucker is the controlling case in this matter. Judge Stilwell held "The Supreme Court conducted a fairly exhaustive review of the relevant statute and determined, notwithstanding potential harsh results on tenants, the plain language of the statute vested a public housing authority with the authority to evict a tenant under circumstances similar to the case at bar...However, public policy, as advanced by the Legislature and the Supreme Court, recognizes that drug activity and violent crime is a plague on public housing communities. Therefore, this legislation was enacted to potentially curb this illegal activity. Quite simply, it is a tool of public policy enacted by the Legislature and found acceptable by the Supreme Court." (Order Granting CHA's Motion for Remand signed January 11, 2017 at p. 2-3; R. p. 009, lines 1-13). Judge McCoy issued an Order on remand reversing her earlier decision and ruling in favor of CHA.

Brown requested that the Magistrate vacate that Order and allow the parties to file briefs and conduct an evidentiary hearing if necessary. (Letter from Brown Requesting Magistrate Vacate her January 30, 2017 Order Upon Remand; R. p. 031, lines 1-3). Judge McCoy granted the request in part and allowed the parties to submit briefs. Judge McCoy held that Cobb was a person "under the tenant's control" based on 42 USC §1437d(1)(6) (May 15, 2017 Final Order upon Remand at p. 3 para. 1; R. p. 017, lines 1-3). Judge McCoy then went on to say that "It is the opinion of this court that, even though the underlying facts giving rise to the Rucker decision dealt with drug-related crimes, the Supreme Court's decision in Rucker is still applicable to the case at hand. The first portion of the statute clearly specifies 'any criminal activity that threatens...other tenants.'...While the statute does not require eviction under these circumstances, Congress has

vested that decision with the local housing authorities who are in the best position to judge when it is appropriate. It is, in fact, a strict liability standard, as recognized by the Supreme Court in Rucker" (Id. at p. 3 para 2; R. p. 017, line 16- p. 018, line 1).

Brown then appealed this order to the Circuit Court. Judge Lee heard the appeal on September 5, 2017 and issued his order on April 17, 2018, affirming the Magistrate. Judge Lee recognized that neither Brown nor Cobb engaged in any violent of drug-related activity on the premises in violation of the Lease. Judge Lee held "Cobb was charged by the Charleston Police Department with attempted armed robbery, which is a felony and a violent crime under S.C. Code Ann. §16-1-60. Additionally, he was charged with the unlawful carrying of a pistol. These were two separate charges that occurred in two separate incidents within a one-week period off CHA's premises. CHA had the right to terminate the lease based upon Paragraphs 5f and 16n" (April 17, 2018 Circuit Court Order at p. 3 para 3; R. p. 022, lines 22-26). Judge Lee went on to state, "The tenant may be evicted for criminal activity by judicial action if the housing authority determines that the 'covered person has engaged in criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. Pursuant to the lease, CHA had the authority to terminate the lease for a serious violation of the terms of the lease such as violent criminal activity performed by a member of the household or a person under the resident's control occurring on or off the premises...The incident occurred about a mile off CHA premises but it involved acts, from which it can be inferred, created a threat to the health, safety and right to peaceful enjoyment by residents in the vicinity of CHA's property" (Id. at p. 4 para 2-3; R. p. 023, lines 16-30).

Judge Lee then considered Brown's argument regarding the constitutionality of the federal statute and regulation that allow the eviction of "so-called 'innocent' tenants." (Id. at p. 5 para 1;

R. p. 024, lines 1-2). She held that Rucker considered this argument and held that "42 U.S.C. § 1437d(l)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of the household members...By the terms of the Statute, Rucker is not limited only to drug related activity. It applies to any criminal activity" (Id. at p. 5 para. 1; R. p. 024, lines 2-13).

Judge Lee noted that "CHA became aware of the circumstances surrounding the arrest of Cobb for not one but two separate incidents occurring within a short period of time. CHA alone had the discretion to bring an eviction action individually against the tenant (Brown) or the household member (Cobb) or both...The magistrate properly applied the legal standard set forth in Rucker" (Id. at p 5 para 3; R. p. 024, lines 24-29).

Brown filed a Motion to Alter or Amend the Circuit Court's April 17, 2018 order. (May 4, 2018 Brown Motion to Alter or Amend; R. p. 054). Brown first argued that the CHA abused its discretion in evicting all of the tenants. Judge Lee held, "Under the statute and the CHA lease, the housing authority has the power to evict the tenant as well as the household member. The U.S. Supreme Court in Rucker has interpreted the statute and authorized eviction of the tenant even in the absence of any offending behavior by the tenant of knowledge thereof" (R. p. 028, lines 1-4). Brown then argued that the activity must present a current of ongoing threat to the health, safety, or right of peaceful enjoyment of other residents of the public housing complex or those living in the immediate vicinity. Judge Lee correctly determined that the "Defendant reads additional words into the statute and lease. Based upon Defendant's interpretation the CHA would not be able to evict any tenants unless the conduct complained of was a present and ongoing threat. The clear language of the statute and lease do not support Defendant's interpretation...Whether this threat

was removed does not negate the violation" (November 1, 2018 Circuit Court Order on Reconsideration at p. 2 para 2; R. p. 028, lines 11-18).

Brown filed this appeal of December 5, 2018. (Brown Notice of Appeal dated December 5, 2018; R. p. 057).

STANDARD OF REVIEW

In reviewing the Circuit Court's adjudication of an appeal of an ejectment proceeding in magistrate's court, findings of fact are to be upheld if there is any supporting evidence. McNair v. United Energy Distrib., 390 S.C. 44, 49 699 S.E.2d 723, 726 (Ct. App. 2010). In such cases "the Court of Appeals still retains *de novo* review of whether the facts show the circuit court's affirmance was controlled of affected by errors of law." Bowers v. Thomas, 373 S.C. 240, 245 644 S.E.2d 751, 753 (Ct. App. 2007) (*citing* Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000)). The South Carolina Supreme Court, in Stanford v. Cudd, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913), held that where the testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, this court will assume the circuit court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. Bowers, 373 S.C. at 245, 644 S.E.2d at 753. There were no errors of law made by the Magistrate for the Circuit Court Orders, and therefore this Court should affirm the Circuit Court Orders.

ARGUMENT

I. UNITED STATES DEPARTMENT OF HOUSING & URBAN DEVEVELOPMENT V. RUCKER IS RELEVANT AND CONTROLLING IN THIS MATTER

It is CHA's contention that this argument is not properly before the Court. Brown has never argued that United States Department of Housing & Urban Development v. Rucker, 535 U.S. 125

(2002) is not applicable to this matter. If the Court determines that this matter is properly before the Court, CHA addresses this argument below.

Brown attempts to argue that Rucker is not controlling because Brown is not relying on the "innocent tenant defense," when that is precisely what Brown is doing. Appellant Br. Brown is not arguing that her son Cobb, who engaged in the criminal activity, should not be evicted, she is arguing that she and her other child should be allowed to remain in public housing. Brown also argues that CHA has "failed to establish that Cobb's conduct met the threshold requirements for termination of a public housing tenancy for non-drug related criminal activity" in spite of two circuit court judges' rulings that the CHA did in fact do so. Appellant Br. Brown goes on to argue that the CHA abused its discretion in seeking to terminate Brown's tenancy, which both circuit court judges also ruled on and found in CHA's favor.

Initially, Judge McCoy found in favor of Brown at the Magistrate level. However, after CHA appealed that decision and Judge Stilwell issued an order requiring that a decision be made properly applying Rucker, Judge McCoy reversed her decision and ruled in favor of eviction. Brown asserts that one distinction between Rucker and the instant case is that Rucker did not address the statutory and regulatory requirement that a housing authority prove that non-drug-related criminal activity present a threshold threat. Brown has argued in her appeals that Rucker is distinguishable due to the fact that it dealt with drug-related activity. Both circuit court judges addressed this argument and determined the statute, regulations, and lease agreement all include provisions for "other criminal activity" as well as drug-related crimes. Judge Lee specifically held, "The incident occurred about a mile off CHA premises but it involved acts, from which it can be inferred, created a threat to the health, safety and right to peaceful enjoyment by residents in the

vicinity of CHA's property." (April 17, 2018 Circuit Court Order p. 4 para 3; R. p. 023, lines 27-30).

Brown argues that Rucker's core holding does not apply to this case. Seldom do we have facts in cases which are identical. We must often search for and apply the cases that are the most relevant to the case at hand, which is what was done in this matter. While the facts of Rucker do not precisely match the facts of the case at hand, it is the most relevant and controlling case. The Rucker facts are substantially similar to this matter. Grandsons and children of residents in an Oakland Housing Authority (OHA) property were found to be engaging in drug related activity and the OHA initiated proceedings to remove the tenants. The case eventually made its way through the court system and to the United States Supreme Court, who reviewed the Housing and Urban Development (HUD) regulations and statutes and concluded that, "Section 1437d(1)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug related activity." Rucker, 535 U.S. at 136. In the case at hand, while Brown's son was not arrested for a drug crime, it is a violent crime and the intention of the regulation is the same- to hold the head of household responsible for the tenant's activity, regardless of if they were aware of the illegal activity.

Judge Lee evaluated Rucker along with the corresponding statutes, regulations, and lease agreement and determined that the CHA was within their discretion to evict Brown. Judge Lee held, "Under the statute and the CHA lease, the housing authority has the power to evict the tenant as well as the household member. The U.S. Supreme Court in Rucker interpreted the statute and authorized eviction of the tenant even in the absence of any offending behavior by the tenant or

knowledge thereof" (November 1, 2018 Circuit Court Order on Reconsideration p. 2 para 1; R. p. 028, lines 1-4).

Judge Lee further held that,

> "The tenant may be evicted for criminal activity by judicial action if the housing authority determines that the 'covered person has engaged in criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. 24 C.F.R. § 966.4(1)(5)(ii)(A). Pursuant to the lease, CHA had the authority to terminate the lease for a serious violation of the terms of the lease such as violent criminal activity performed by a member of the household or a person under the resident's control occurring on or off the premises...The incident occurred about a mile off CHA premises but it involved acts, from which it can be inferred, created a threat to the health, safety and right to peaceful enjoyment by residents in the vicinity of CHA's property" (April 17, 2018 Circuit Court Order p. 4 para 2-3; R. p. 023, lines 16-30).

Brown then argues that in the Rucker case, Pearlie Rucker was not in fact evicted. This is an example of that housing authority exercising its discretion under the unique and individual circumstances in that situation. The CHA exercised its discretion in this matter and after evaluating the situation, including the two arrests for separate incidents, refusal to cooperate with the police, and past incidents with Brown, exercised its discretion in pursuing the eviction against Brown.

While the Rucker facts do not exactly match the facts in this matter, they are substantially similar. Rucker's holdings deal with housing authority's exercise of discretion and with the same statutes and regulations relevant to this matter. Rucker is therefore the controlling case in this matter and the lower courts were correct in relying on it.

II. THE CIRCUIT COURT WAS CORRECT IN AFFIRMING THE MAGISTRATE REGARDING THE THREAT TO HEALTH, SAFETY, AND RIGHT TO PEACEFUL ENJOYMENT OF OTHER RESIDENTS OR THOSE IN THE IMMEDIATE VICINITY

Brown discussed two code sections in her argument that the drug-related provisions create a more stringent standard for eviction than the section that addresses "other criminal activity." Appellant Br.

Brown asserts that,

> Tenant is obligated "to assure that no...member of the tenant's household...engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents." 24 C.F.R. § 966.4(f)(12)(i)(A). The regulations also require that the lease contain provisions for evictions for "other good cause" which includes "criminal activity...provided in paragraph (l)(5) of this section." 24 C.F.R. § 966.4(l)(iii)(A). Paragraph (l)(5) grants the housing authority the authority to terminate the tenancy for criminal activity or alcohol abuse. In cases where the eviction is based on criminal activity that is not drug related, "the lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of the tenancy." 24 C.F.R. § 966.4(l)(5)(ii)(A).

Brown argues that the activity at issue must present an ongoing threat. This was addressed specifically by Judge Lee in her Order on Reconsideration. "Defendant reads additional words into the statute and the lease. Based on Defendant's interpretation CHA would not be able to evict any tenant unless the conduct complained of was a present and ongoing threat. The clear language of the statute and the lease do not support [Brown's] interpretation. Cobb admittedly engaged in criminal activity that threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity. His activities were a threat when they occurred. The activity was a violation of the lease provision. Whether the threat is removed does not negate the violation" (Order on Reconsideration p. 2. Para 2; R. p. 028, lines 11-18). There is no requirement that the threat be current or ongoing in the statute or the lease.

The Circuit Court correctly found that the conduct of the tenants was sufficient to authorize the CHA to proceed with evicting the tenants.

A. <u>The Circuit Court Correctly Held CHA Was Authorized to Evict Brown</u>

The applicable lease provisions provide that "neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any violent or drug-related criminal activity on or off the premises" and that "any violent or drug-related criminal

activity performed by any household members, guest or other persons under the Resident's control on or off the premises, not just on or near the premises" constitutes a violation of the lease (Circuit Court Order, signed April 17, 2018, filed April 24, 2018, p. 3; R. p. 022, lines 12-18).

During the March 16, 2016 bench trial presided over by Judge McCoy, Detective Jarrell testified that Cobb confessed to the attempted armed robbery. Brown testified that Cobb was in fact a resident on the premises, although he was being held at the Charleston County Detention Center at the time of the hearing. In spite of Brown's testimony that Cobb would not be residing with her if he were to make bail prior to trial, she listed him as a resident on the February 1, 2016 lease, which was executed two weeks after the armed robbery incident.

The CHA exercised its discretion and proceeded with the eviction of Brown. CHA did not attempt to evade regulatory limits by utilizing statutory and regulatory mandates in its lease agreements, as Brown alleges. Cobb's repeated criminal activity which occurred within a mile of the residence satisfied the requirement that the criminal activity threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity and was a breach of the lease agreement. Additionally, Judge McCoy noted that Brown instructed Cobb not to cooperate with the police investigation into his co-defendant (Second Return of the Magistrate; R. p. 106, lines 13-17), and she noted that the housing authority had had issues with Brown in the past (Civil Disposition Sheet and Magistrate's Notes. March 16, 2016; R. p. 104).

Brown first cites Hill v. Richardson, 740 F. Supp. 1393 (S.D. Ind. 1990) a case out of the Southern District of Indiana, which is not controlling, to try to support her position. Hill is distinguishable from this matter. As an initial issue, the Hill matter states from the onset the issues that it discussed apply to the Section 8 Existing Housing Program. See Hill v. Richardson, 740 F. Supp. 1393 (S.D. Ind. 1990). Section 8 is governed by 24 C.F.R. §§ 882.101-606, which is a

completely separate code section from the public housing codes that govern Brown's lease. Brown is not a Section 8 participant; therefore, Hill does not apply. Moving on, the court in Hill determined the reasons for denial or termination of assistance specified in the applicable regulation were the sole grounds for such action. 740 F. Supp. at 1397. In the case at hand, CHA terminated for grounds that are listed in the regulation. As stated earlier and as was held by the Circuit Court, Cobb's repeated criminal activity which occurred within approximately a mile of the residence satisfied the requirement that the criminal activity threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity, and was a breach of the lease agreement.

Brown goes on to cite other cases which are not controlling and not relevant. The first case out of the U.S. District Court for the Eastern District of Louisiana dealt with the applicable housing authority's violation of the statute by terminating participation in the housing program for failing to report a change in marital status. See Holly v. Hous. Auth. Of New Orleans, 684 F. Supp. 1363 (E.D. La. 1988). The second case out of the Commonwealth Court of Pennsylvania dealt with an individual not getting the applicable housing authority's permission prior to moving to a new unit. See Cain v. Allegheny Hous. Auth., 986 A. 2d 947 (Pa. Commw. Ct. 2009). Neither of these cases are on point. Neither deal with violent crime committed by a household member or someone under control of the resident.

Brown next argues that CHA's prohibition of criminal activity is unenforceable because it is not rationally related to a legitimate housing purpose. Brown cites Richmond Tenant's Organization v. Richmond Redevelopment and Housing Authority, 751 F. Supp. 1204, 1205 (E.D. Va.1990), which held that housing lease provisions must be "rationally related to a legitimate housing purpose." Judge Stilwell specifically addressed this in his order. "However, public policy,

as advanced by the Legislature and the Supreme Court, recognizes that drug activity and violent crime is a plague on public housing communities. Therefore, this legislation was enacted to potentially curb this illegal activity...Quite simply, it is a tool of public policy enacted by the Legislature and found acceptable by the Supreme Court" (Order Granting CHA's Motion for Remand signed January 11, 2017; R. p. 009, lines 8-13). Brown goes on to argue that Cobb's conduct did not create a threat to the public housing complex. As we have stated repeatedly and as held by Judge Lee, Brown's repeated criminal activity which occurred within a mile of the residence satisfied the requirement that the criminal activity threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity, and was a breach of the lease agreement.

Brown again goes on the cite several cases which are not controlling and are not relevant to the case at hand. None of the cases deal with violent criminal activity which was admitted to by the resident. The Kolio case dealt with misappropriation of funds. See Kolio v. Hawai'i Pub. Hous. Auth., 349 P.3d 374 (Haw. 2015). The Bush case deals with removal of a stop sign. See Hous. Auth. of Bangor v. Bush, (349 S.E.2d 501 (Ga. App. 1986). The Bryant case dealt with credit card fraud. See Boston Hous. Auth. v. Bryant, 693 N.E.2d 1060 (Mass. App. Ct. 1998).

Cabrini-Green is the most relevant case cited by Brown. See Cabrini-Green Local Advisory Council v. Chicago Hous. Auth., 2007 U.S. Dist. LEXIS 6520 (N.D. Ill. Jan. 20, 2007). The language at issue in that case was found in the lease rider and stated: "For termination of the LEASE, the following procedures shall be followed by LESSOR and the TENANT: ...The LEASE may be terminated...[when] [t]he TENANT or any authorized family member is convicted of a felony." Cabrini-Green, 2007 U.S. Dist. LEXIS at *4. The Court notes that "As an initial matter, it should be noted that public housing leases are already required to enable property managers to

terminate leases based on perceived threats to community safety." Id. "The requirement is found in 42 U.S.C. § 1437d(l)(6), which provides that '[e]ach public housing agency shall utilize leases which...provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.'" Id. at *5-6.

The Plaintiffs in this matter even point out "seemingly non-threatening violations of the law such as wireless service theft presently fall under 13(c)(9), and it would not be burdensome to redraft the document so that manager discretion would not incorporate every felony in the state of Illinois." Id. at *9. This furthers CHA's position in the present matter. Cobb committed a violent crime, attempted armed robbery, along with unlawful carrying of a pistol. His crimes were far from non-threatening violations. The court went on to discuss the prohibition on unreasonable terms and conditions and eventually determined that the language used by the Chicago Housing Authority was in fact too broad. CHA's contract language is distinguishable. It relates to violent criminal activity, not merely any felony conviction, which could include non-violent crimes such as those mentioned in the other cases cited by Brown. Violent criminal activity such as attempted armed robbery, and gun-related offenses, as noted by Judge Stilwell, is a plague on low-income housing. Cobb's conduct threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity, and was a breach of the lease agreement.

The language that is included in CHA's lease is included in the statutes and regulations as grounds for termination of public housing tenancy and CHA rightfully terminated Brown's tenancy.

B. Cobb's Conduct Constituted a Threat

Brown continues her argument that there was no threat to the health, safety, or right to quiet enjoyment of other residents or of those living in the immediate vicinity. Brown argues that the magistrate failed to make a specific finding as to this issue. Brown's contention that there was an absence of evidence upon which such a finding could be based is necessary is incorrect. Cobb committed two separate crimes. He admitted to taking part in an attempted armed robbery, which is a violent crime. He was also arrested for unlawfully possessing a firearm. Cobb's possession of a firearm is clearly a threat to the health, safety, or right to quite enjoyment of other residents or of those living in the immediate vicinity of the home. Cobb's taking part in an attempted armed robbery, a violent crime which involves the use of a deadly weapon, is also clearly a threat to the health, safety, or right to quite enjoyment of other residents or of those living in the immediate vicinity. Judge McCoy notes in both her March 31, 2016 Order and her Final Order Upon Remand that Cobb was arrested for unlawful carrying of a pistol and that he admitted to taking part in an attempted armed robbery. These incidents occurred days apart, meaning that Cobb presumably returned to his home in the meantime, continuing to endanger those around him. The fact that he engaged in violent criminal activity involving a firearm is sufficient evidence that a threat existed.

Cobb's presence living in CHA's housing was a threat to those who live there and in the immediate vicinity. Cobb's crimes took place within a mile of the property, in the vicinity of the residence. His actions alone were a breach of the lease agreement. Additionally, there is clearly the risk that at any time, someone could have engaged in an act of retaliation, or attempted to take

the gun from Cobb, while he was residing on housing authority property. This would clearly have endangered the neighbors and other housing authority tenants whom the CHA is charged with keeping safe via the applicable statutes and regulations.

Brown argues that whether Cobb's conduct constituted a threat is a question of fact which must be supported by some evidence in the record in order for the Circuit Court's order to be affirmed under Vacation Time of Hilton Head Island, Inc., v. Kiwi Corp., 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984). Cobb's crimes and confession to those crimes are in and of themselves evidence of a threat. Cobb was unlawfully in possession of a firearm. He admitted to taking part in an attempted armed robbery, a violent crime. These actions were violations of the lease agreement and grounds for termination of the tenancy. Additionally, Cobb had a co-defendant in the attempted armed robbery who he refused to identify to the police, in spite of Brown's assurance that he would do so. In fact, Brown instructed Cobb not to speak with the police during his second interview rather than ensure that he cooperated.

Brown again relies on cases that are not controlling and not relevant in an attempt to further her position. Housing Authority of Decatur v. Brown is a case dealing with a tenant who was arrested for possession of marijuana and was later terminated due to unauthorized occupants having drugs in his apartment when he was in the hospital. 349 S.E.2d 501 (Ga. App. 1986). The requirements of Brown's lease were that his conduct "would not disturb his neighbors' peaceable enjoyment of their accommodations and would be conducive to maintaining the project in a decent, safe and sanitary condition." Id. at 484. Brown's crimes were possession of small amounts of marijuana, not violent crimes and not involving firearms. We previously discussed the Bryant case which involved credit card fraud. Credit card fraud and possession of a small amount of marijuana are in no way equatable to violent crimes such as attempted armed robbery and the

unlawful possession of a firearm. The violent nature of an attempted armed robbery and the inherent danger in the unlawful possession of a firearm occurring approximately one mile from the residence deem those actions as inherently dangerous crimes which threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity, and was a breach of the lease agreement.

C. Cobb's Conduct Affected the Residents in the Immediate Vicinity of the Public Housing Complex

In this section of her brief, Brown essentially makes the same argument made in section B, but attempts to argue that actions must be in the immediate vicinity of the public housing complex. The regulation states "the lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of the tenancy." 24 C.F.R. § 966.4(l)(5)(ii)(A). The repeated criminal activity occurred merely one mile from the residence. As HUD has not defined immediate vicinity, it is up the Court to interpret the meaning. Brown begins by relying on Bailey v. U.S., 568 U.S. 186 (2013). The Bailey case deals with a detention of the person in relation to a search warrant, which is entirely unrelated and relies on a different standard. The Bailey case discusses the three officer-related concerns related to a search warrant, namely officer safety, facilitation of completion of a search warrant, and interest in preventing flight. See Bailey v. U.S., 568 U.S. 186 (2013). The Bailey court evaluated the detention of the man in question who was "almost a mile away" from the location of the search warrant in relation to those interests listed above, not the interests of a public housing authority and its discretion in proceeding with an eviction. Bailey, 568 U.S. at 194. Bailey is irrelevant to the issues presented in this matter.

Brown then attempts to rely on Powell v. Housing Authority of the City of Pittsburgh, 760 A.2d 473 (Pa. Commw. Ct. 2000*) rev'd on other grounds*, 812 A.2d 1201 (Pa. 2002). This case is again distinguishable because it deals with Section 8 assistance, not public housing. The court itself noted, "It was Appellee's position that while Section 8 authorizes landlords to terminate a tenancy in the event a family member commits certain crimes, it does not allow the PHAs to terminate Section 8 assistance on such a basis." Powell, 812 A.2d at 1204. The Court went on to hold, "Accordingly, we hold that a PHA may terminate Section 8 benefits for the violent criminal activity of a family member without having to prove that the violent criminal activity threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or threatens the health, safety, or right to peaceful enjoyment of their residences of persons residing in the immediate vicinity of the Section 8 premises." Id. at 1216.

In his concurrence, Justice Nigro added:

> [T]he regulations make clear that in exercising its discretion to determine whether to terminate assistance, the PHA: may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure. 24 C.F.R. § 982.552(c)(2)(i). Moreover, when only certain family members are culpable for the criminal activity giving rise to the threat of termination, the PHA is specifically authorized to: impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit other members of a participant family to continue receiving assistance. 24 C.F.R. § 982.552(c)(2)(ii).

Id. at 1217. The Supreme Court did not address the issue of the interpretation of "immediate vicinity" in its analysis of the case.

Brown then erroneously argues that Lowell Housing Authority v. Melendez, 865 N.E.2d 741 (Mass. 2007), which held that a robbery of a convenience store with an eight-inch kitchen knife which occurred about a mile from the housing authority property did threaten the health and

safety of the public housing authority, is distinguishable. Brown argues that the decision was based on an ongoing threat by the perpetrator, but her argument is misplaced. Melendez' argument was that since the crime took place almost a mile away from the home, it could not threaten the health or safety of the other occupants. The court held that the violent crime which took place in approximately the same distance as Cobb's crimes was sufficient to constitute a threat to the health and safety of the housing complex. The Court further held, "The judge found that the defendant assaulted and attempted to rob a patron of a nearby convenience store and, further, found that "[i]t requires no stretch of the imagination to conclude that a violent criminal act, committed in the same city, in this case about a mile from the housing development where the defendant lives, is near enough to other public housing residents to threaten their health, safety, and quiet enjoyment.' We agree." Lowell, 865 N.E.2d at 744.

It is immaterial whether the crimes were committed by Brown or by Cobb. The statute, regulations, and lease agreement all include language extending the responsibility for those who are household members and those under their control.

D. CHA Does Not Have to Show that Cobb's Conduct Presents a Current Threat

Brown argues that the activity at issue must present an ongoing threat. The language of the statute reads "the lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of the tenancy." 24 C.F.R. § 966.4(l)(5)(ii)(A). Again, this was addressed specifically by Judge Lee in her Order on Reconsiderations. "Defendant reads additional words into the statute and the lease. Based on Defendant's interpretation the CHA would not be able to evict any tenant unless the conduct complained of was a present and ongoing threat. The clear language of the statute and the lease

do not support [Brown's] interpretation. Cobb admittedly engaged in criminal activity that threatened the health, safety, or right to peaceful enjoyment of the residents of the housing complex and those living in the vicinity. His activities were a threat when they occurred. The activity was a violation of the lease provision. Whether the threat is removed does not negate the violation." (November 1, 2018 Circuit Court Order on Reconsideration; R. p. 28, lines 11-18). There is no requirement that the criminal activity and threat must be ongoing.

CHA exercised its authorized discretion in choosing to end the tenancy of all of the occupants. The fact that CHA *could* have only moved forward with ending Cobb's tenancy is irrelevant. The fact that Brown testified that Cobb would reside with another family member once bail was made is also irrelevant. The crime was committed by a member of the household who was under Brown's control, which at the time constituted a threat and was a violation of the lease provisions. CHA also considered the fact that Brown advised Cobb to not cooperate with the related police investigation, along with prior issues that they have had with Brown in choosing to proceed with the eviction.

III. THERE WAS NO ABUSE OF DISCRETION BY THE CIRCUIT COURT

Brown notes that the USHA permits eviction for other criminal activity which presents the requisite threat. Brown also correctly notes that pursuant to HUD regulations, CHA may consider other circumstances in determining whether to evict a tenant and whether to evict an entire household or just the household member who committed the crime. The CHA's actions in this matter were not arbitrary and there is no evidence in the record to support that contention. There is no evidence in the record that CHA's actions were arbitrary or "outside the boundaries of the federal laws and regulations." Greenville Hous. Auth. v. Salters, 281 S.C. 604, 608, 316 S.E.2d 718, 720 (1984).

The North Carolina Supreme Court case cited by Brown is not applicable to this matter. That case involved a small amount of marijuana left in a tenant's house by a guest, not an attempted armed robbery and firearm offense committed by a household member. That housing authority operated on the incorrect belief that the eviction was mandatory. See E. Carolina Reg'l Hous. Auth. v. Lofton, 789 S.E.2d 449, (N.C. 2016). In this case, CHA exercised its discretion and made the decision to proceed with the eviction.

Brown then shifts her reliance to cases from New Jersey referring to Oakwood Plaza Apartments v. Smith, 800 A.2d 265 (N.J. Super. Ct. App. Div., 2002), to Vermont in Bennington Housing Authority v. Bush, 933 A.2d 207 (Vt. 2007), and Illinois with Gaston v. CHAC, Inc., 872 N.E.2d 38 (Ill. App. Ct. 2007), which all hold that Section 8 landlords may not act in arbitrary or capricious fashions. None of these cases involved violent criminal activity by a household member committed over the course of several days. They involve drug related criminal activity and misrepresentations by a co-applicant on an application. Again, the record reflects that CHA considered all of the surrounding circumstances in deciding to terminate the lease. Their actions were neither arbitrary nor capricious.

The record reflects that Cobb was arrested for unlawful carrying of a pistol and admitted to an attempted armed robbery that occurred days before his arrest. Cobb refused to reveal the name of his co-defendant in the attempted armed robbery, and when the Charleston Police Department contacted his mother, Brown, she assured them that he would cooperate with the police. During the subsequent interview Cobb continued to refuse to cooperate and Brown told Cobb not to speak with the police anymore, she herself also refusing to cooperate with the investigation. While Brown testified at the March 16, 2016 hearing that Cobb would reside with his grandmother if he were to make bail, she listed him as a resident on the February 2016 lease

agreement which was executed *after* Cobb's January 13, 2016 arrest. Further, CHA had issues with Brown in the past (R. p. 104). All of this was taken into consideration by the CHA when they exercised their discretion in moving forward with evicting all of the parties to the lease agreement.

Brown cites several South Carolina cases dealing with the exercise of discretion, none of which are housing authority cases. Again, there is no evidence that the actions of the CHA were arbitrary. The fact of the cases as shown in the magistrate's returns and the circuit court orders all indicate that the CHA exercised its discretion in looking at the circumstances surrounding the multiple crimes committed by Cobb over the course of several days, Brown's contradictory actions/testimony regarding the lease and where Cobb would reside if let out of jail, her advising Cobb not to cooperate with the police investigation into his co-defendant in the armed robbery, and past incidents involving Brown.

Judge Lee correctly held that the CHA exercised its discretion in this matter. The testimony presented in magistrate's court identified not only the actions of Cobb, but also the actions of Brown, which drove CHA's decision to terminate the tenancy of all of the household. The termination was neither automatic nor mandatory, but was within CHA's discretion. This evidence was presented at the magistrate hearing. The CHA was aware of the regulations, relied on the evidence surrounding the arrest and both subsequent and past actions of the parties, and made the decision to move forward with the eviction. Brown argues that Judge Lee misapplied the law regarding abuse of discretion. We disagree, but even if there was an error of law, it was harmless as it has been clearly shown that the CHA properly exercised its discretion in making the decision to terminate Brown's tenancy.

The CHA has been vested with the discretion to determine when eviction is the right course of action via statute and regulations. It is CHA's duty to protect all of its residents and to afford

them a safe living environment, to the extent that they are able. In this case, Brown's son Cobb, a household resident who was under the control of Brown, committed an attempted armed robbery and was arrested days later for unlawful possession of a pistol. Brown advised her son not to cooperate with police in identifying his co-defendant in the robbery investigation. She testified that he would no longer reside with her after signing a subsequent lease AFTER the arrest had taken place, where she listed Cobb as a resident. CHA also advised that they have had issues with Brown prior to these incidents. CHA took all of this into consideration and made the decision to proceed with the eviction of the household.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

Respectfully Submitted,

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CITY OF CHARLESTON HOUSING AUTHORITY

Charleston, South Carolina
May 30, 2019

The South Carolina Court of Appeals

City of Charleston Housing Authority, Respondent,

v.

Katrina Brown, Appellant.

Appellate Case No. 2018-002155

The Honorable Alison Renee Lee
Charleston County
Trial Court Case No. 2017CP1002711

ORDER

Counsel for the Appellant has filed a motion to file fewer than fifteen (15) copies of the Record on Appeal and Final Briefs in this appeal. The motion is hereby Granted. By copy of this order, all parties are allowed to prepare an original and six (6) copies of the Record on Appeal and Final Briefs.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
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FILED
May 9, 2019

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

RECEIVED
MAY 31 2019
SC Court of Appeals

Appellate Case No. 2018-002115

The Housing Authority of the City of Charleston,.....Respondent,

v.

Katrina Brown, ...Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCRAC.

By: _____

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Charleston, South Carolina
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