THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner
Gene McCaskill, Commissioner
Avery B. Wilkerson, Jr., Commissioner

Appellate Case No. 2019-000613

James M. Stevenson, Claimant, Appellant,

v.

Arnold Laney, D/B/A Metal & Roofing Shingle Pros., Employer, and

South Carolina Workers' Compensation Uninsured Employers Fund Defendants, Respondents.

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ARGUMENT

This appeal concerns the basic matter of whether James Stevenson ("Stevenson") and his employer are subject to the South Carolina Workers' Compensation Act ("the Act"), so he may receive the benefits of the Act. It is undisputed that Stevenson suffered grievous injuries and is in need of benefits. (R. p. 88, lines 24 – 25; R. p. 89, lines 1 – 2; R. p. 79, lines 14 – 15). The primary questions are whether the South Carolina Workers' Compensation Commission ("Commission") erroneously concluded Stevenson was not an employee and erroneously concluded his employer, Arnold Laney ("Laney") was not subject to the Act. Stevenson argues the answer to those questions is "yes," and asks this Court to reverse the findings of the Commission on those issues. Since these questions are jurisdictional, Stevenson asserts this Court is empowered to make its own findings on those issues pursuant to its own view of the preponderance of the evidence. *See Harding v. Plumley*, 329 S.C. 580, 584–85, 496 S.E.2d, 31–32 (Ct. App. 1998).

A. The testimony shows Laney regularly employed four or more statutory employees

The crux of Stevenson's argument and the only issue genuinely disputed by the Respondents is whether or not Laney regularly employed four or more employees. Stevenson believes the answer to that question is "yes" and offered specific examples of jobs on which more than four employees worked for Laney. For example, Stevenson testified Billy Whitaker, Scott Faile, Walt, Lonnie, a laborer whose name Stevenson did not know, himself, and Laney were on the very first job he worked for Laney. (R. p. 58, lines 14 – 17). Stevenson was not claiming Laney should be counted as a statutory employee, but rather responded to the question from Respondents' counsel of "who were [the seven people on that job]." (R. p. 58, lines 10 – 17). Excluding Laney, who Stevenson never intended to be counted as a statutory employee, excluding

Lonnie Laney, and excluding the individual whose name Stevenson did not know, Laney still employed four employees for the job in question.

The fact of the matter is Stevenson recalled a total of seven employees, not including himself or the Laneys, with whom he personally worked. He testified that during the months he worked for Laney, the following also worked for Laney: Scott Faile, Jimmy Stevenson, Stevenson's brother, Walt, a man and woman whose names he did not recall, as well as another man who fell off a roof before Stevenson did. (R. p. 41, lines 5 – 9, 18 – 20). It is of no consequence that Stevenson did not know the full names of everyone who also worked for Laney.

Moreover, Laney's testimony either supported Stevenson's testimony or further strengthened Stevenson's argument, for Laney identified additional employees that Stevenson did not. Specifically, Laney acknowledged as employees and testified he directly paid Walt, Stevenson, Stevenson's brother, and Stevenson's father. (R. p. 77, lines 5 – 10). Laney further discussed his work with Scott Faile, Billy, and Billy's son. (R. p. 76, lines 16 – 25). Laney asserted that Faile was a subcontractor, based on method of payment alone. (R. p. 76, lines 24 – 25; R. p. 77, lines 1 – 2). Stevenson disputes that characterization, but for purposes of this appeal, that issue need not necessarily be resolved. *Corollo v. S. S. Kresge Co.*, 456 F2d 306 (4th Cir. 1972) (an owner or contractor's liability for compensation does not rest upon control). Instead, it is evident from Laney's testimony that in addition to employing the four men he testified he employed, he also had statutory employees in Billy and Billy's son.

South Carolina has long held that an upstream employer or owner is immune from tort liability and liable to provide workers' compensation benefits. *See e.g., Smith v. Timbers Co.*, 311 S.C. 321, 428 S.E.2d 878 (1993); *Singleton v. J.P. Stevens & Co., Inc.*, 533 F.Supp. 887 (D.S.C. 1982); *Carrier v. Westvaco Corp.*, 806 F.Supp. 1242 (D.S.C. 1992) (An employee of a

subcontractor is a statutory employee where the trucking of goods from the manufacturer's plant to its customers is an essential and important part of the manufacturer's trade). When such a situation arises, South Carolina law is clear that the employee of a subcontractor is a statutory employee of every upstream contractor or owner. *See Parker v. Williams and Madjanik, Inc.*, 275 S.C. 65, 70, 267 S.E.2d 524, 527 (1980) (South Carolina workers' compensation law makes upstream employers liable for workers' compensation benefits and makes them the statutory employers of the subcontractors' employees). The inverse is also true; the employees of the subcontractor are employees of the contractor for purposes of the Act. *Fortner v. Thomas M Evans Constr. & Dev. L.L.C.*, 402 S.C. 421, 432, 741 S.E.2d 538, 544 (Ct. App. 2013) ("The statutory employee doctrine converts conceded non-employees into employees for purposes of [the Act].").

The test for determining if an employee of a subcontractor is a statutory employee for purposes of the Act was stated by this Court as:

> To determine whether the work performed by a subcontractor is a part of the owner's business, this Court must consider whether (1) the activity of the subcontractor is an important part of the owner's trade or business; (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner's business; or (3) the identical activity performed by the subcontractor has been performed by employees of the owner.

Voss v. Ramco, Inc., 325 S.C. 560, 568, 482 S.E.2d 582, 586 (Ct. App. 1997). Here, that test is met. Laney would "subcontract" out a house to Scott Faile, and Billy and Billy's son would do their work with the help of Laney's employees. (R. p. 76, lines 16 – 22). Here, the activities performed by Billy and Billy's son are identical to those performed by Laney's employees, thus Billy and Billy's son are statutory employees of Laney for purposes of the Act. Therefore, Laney had, pursuant to his own testimony, three or four employees who worked directly for him in

Stevenson, Stevenson's father, Stevenson's brother, and Walt; and had at least two additional statutory employees in Billy and Billy's son.

In essence, Stevenson testified generally that the work he performed for Laney necessitated four or more people, and offered several specific examples of jobs in which more than four employees were present at the same time. Laney also testified his work required more than three people, (R. p. 72, lines 17 – 19), and testified that he had three or four direct employees as well as two statutory employees. (R. p. 76, lines 16 – 25; R. p. 77, lines 1 – 10). Moreover, while Laney testified, when asked directly, that he would only have two or three people on a job,[1] this fact, even if true, is not dispositive of his exclusion from the Act. The testimony from Laney shows that he and his employees worked when he had jobs to be completed and that some of his work was completed on weekends and other work was completed on weekdays. Who he employed on what days depended on the laborers' individual schedules. The fact that a laborer had another job is also not relevant to their status as employee of Laney. Here, the record shows that Laney had more than four employees who worked for him, even if they did not work on the same jobs or on the same days. The only requirement in the Act is that the employer regularly employs four or more employees; they need not all work together, work at the same time, or work on the same jobs. Ultimately, Stevenson testified Laney regularly employed four or more employees and Laney's testimony, despite his intentions, supports and strengthens Stevenson's argument. Thus, Stevenson respectfully asks this Court reverse the findings of the Commission, for Laney was subject to the Act based upon his employment of four or more laborers.

[1] This statement from Laney was in contradiction to his previous statement where he stated "I'd have three or two laborers and I can't do a job with that." (R. p. 72, lines 17 – 19).

B. The evidence shows Laney was the employer of at least four of the laborers.

The testimony of Laney and Stevenson shows Laney was the employer of four or more laborers. As discussed *supra,* Laney is the employer of his direct employees and also the employer of his statutory employees, for purposes of the Act. Testimony as to the specifics of the employer employee relationship of the various laborers was offered by both Stevenson and Laney. Stevenson testified about his father's employment with Laney. (R. p. 38, lines 17 – 21). He further testified that none of the men and women who worked alongside him had a business license. (R. p. 43, lines 9 – 12). Stevenson stated directly that Walt worked for Laney. (R. p. 59, lines 5 – 12).

Laney offered more clarity as to the nature of the employment relationship between him and his employees and shed light on the fact that he did in fact employ many of the laborers identified by Stevenson. Laney testified he employed Stevenson's father. (R. p. 76, lines 3 – 9). He testified sufficiently to show Billy and Billy's son were his statutory employees. (R. p. 76, lines 16 – 25; R. p. 77, lines 1 – 4). Furthermore, he testified as to his employment relationship with Stevenson, his father, his brother, and Walt; he discussed their payment arrangements and referred to them as "[his] own people." (R. p. 77, lines 6 – 10). Any confusion as to the relationship between Laney and his nephew Lonnie Laney is irrelevant, as is any instance when Stevenson included Laney in his count of laborers. First, as noted above, Laney alone testified to six statutory employees. Second, every instance of Stevenson including Laney and Lonnie Laney in his laborers count, the total count was seven with them included. Thus, counting Laney and Lonnie Laney is not necessary to show Laney was employing four or more employees on those jobs.

C. Laney worked regularly.

Laney and his employees worked regularly; as Respondents stated in their brief, Laney worked "a couple days a week." In fact, the evidence shows Laney had different employees he worked on different days of the week depending on the jobs he had available. For example, Laney testified Stevenson's father worked for him almost every other weekend. (R. p. 72, lines 18 – 23). Stevenson worked for Laney during the work week. Laney testified Walt worked for him two or three days per week. (R. p. 78, lines 11 – 14). Further, Laney testified Scott Faile, Billy, and Billy's son worked for him every other weekend.

It is of no consequence that Laney did not work "full time" or that he did not normally work five days per week. The *Hartzell v. Palmetto Collision, LLC* Court sated plainly that a determination of regular employment does not require a finding of regularity with regard to hours or days worked. 406 S.C. 233, 243, 750 S.E.2d 97, 102 (Ct. App. 2013), *rev'd on other grounds*, 415 S.C. 617, 785 S.E.2d 194 (2016). Thus, the evidence of record shows by a preponderance of the evidence that Laney's employees worked "regularly" as contemplated by the Act.

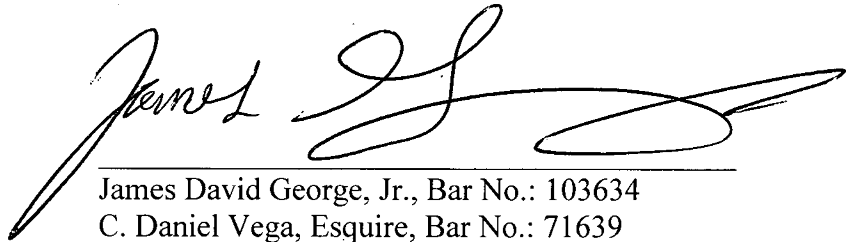
D. Stevenson disputes the Commission's ultimate credibility determination.

Stevenson disputes the Commission's ultimate determination that he did not testify credibly. However, Stevenson does not intend to argue on appeal that the Commission specifically erred in its admission of Stevenson's criminal record or criminal background check. Instead, Stevenson argues the Commission erroneously relied upon his arrest records and his testimony regarding his employment to find that he was not credible. Stevenson testified truthfully about his arrest record and offered more information than was asked or was relevant. Stevenson's otherwise relevant crimes were greater than ten years in the past and he did not lie about them. *See* Rule 609, SCRE. Thus, his criminal history was of no relevance.

Regarding his employment history, Stevenson testified credibly. He responded to the Respondents' counsel's questions regarding his prior employment completely. (R. p. 50, lines 12 – 25; R. p. 51; R. p. 52, lines 1 – 13). No further evidence was presented on that matter, Stevenson did not contradict himself, and Laney offered no testimony to contradict Stevenson. Further, as noted in Stevenson's initial brief, the Commission's addition of credibility findings was odd and confusing. (*See* R. pp. 2–13). Therefore, Stevenson respectfully asks this Court reverse the Commission's findings on credibility, for they are not supported by substantial evidence.

Conclusion

Based upon the foregoing, the Commission's denial of Stevenson's claim for benefits should be reversed.



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The undersigned certified that this Reply Brief complies with Rule 211(b), SCACR

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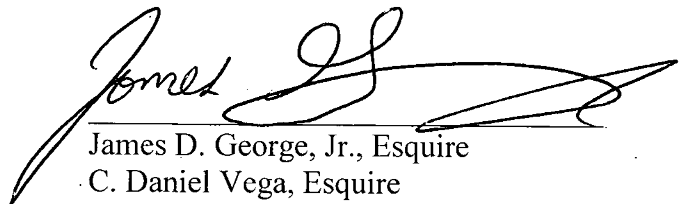

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