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Aug 17 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue, )  
)  
Petitioner, )  
)  
v. )  
)  
Agua Pina, LLC, d/b/a Hookah on the River, )  
)  
Respondent. )  
\_\_\_\_\_ )

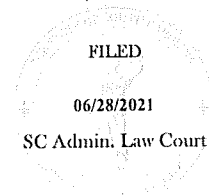
Docket No. 21-ALJ-17-0315-IJ

FINAL ORDER

**APPEARANCES:** For the Petitioner: Patrick McCabe, Esq.  
For the Respondent: Burnet Maybank, III, Esq. & Andrew Saleeby, Esq.

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for injunctive relief filed by the South Carolina Department of Revenue (Department) in relation to their determination issued on May 13, 2021. In their determination, the Department found Agua Pina, LLC, d/b/a Hookah on the River (Respondent or Hookah on the River), who holds an on-premises beer and wine permit and a business liquor-by-the-drink license, knowingly permits acts that constitute a public nuisance, poses an imminent threat to public health, safety, or welfare, and lacks a reputation for peace and good order. As a result, the Department now seeks to permanently revoke Respondent’s permit and license pursuant to section 61-4-270 of the South Carolina Code (2009), section 61-4-580 of the South Carolina Code (Supp. 2020), section 61-6-1820 of the South Carolina Code (2009), section 61-6-1830(1) of the South Carolina Code (2009), and sections 1-23-310 *et seq.* of the South Carolina Code (2005 & Supp. 2020).<sup>1</sup> The Court held a hearing on June 9, 2021, at the Court’s offices in Columbia, South Carolina.

<sup>1</sup> This matter originally came before the Court pursuant to a Motion For Emergency Suspension and Expedited Hearing (Motion) filed by the Department on May 13, 2021. In its Motion, the Department moved to suspend Respondent’s permit and license until a hearing on the merits could be held in this matter. The Department supported its Motion with the affidavit of Captain Steven Tapler of the Richland County Sheriff’s Department and several incident reports from the Richland County Sheriff’s Department. Captain Tapler attested Respondent’s business was an imminent danger to the public safety and welfare and emergency action was imperative to protect the safety and welfare of the citizens of Richland County. Captain Tapler further attested that, in his opinion, Respondent’s business “provides an atmosphere that is perceived as tolerant, thereby perpetuating the opportunity for criminal activities, including violence, to escalate.” Also on May 13, 2021, the Department filed its Final Determination, in which it notified Hookah on the River of its intent to revoke their on-premises beer and wine permit and restaurant liquor-by-the-drink license. Following a conference call on the Motion, the Court granted the Department’s request to suspend Respondent’s permit and license until the merits hearing.



## FINDINGS OF FACT<sup>2</sup>

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

### **General Findings**

Hookah on the River is located at 2700 Broad River Road, Suite B, Columbia, South Carolina. Respondent's business is permitted/licensed to sell beer, wine, and liquor. Jack Oliver (Oliver), the owner of the business since April 2020,<sup>3</sup> described Hookah on the River as primarily a restaurant/lounge, yet it has a DJ and rents hookahs to its patrons. Hookah on the River is located in a strip mall next door to an event center, Exquisite Event Center, and across the street from Rush's, a fast-food restaurant, neither of which have a beer and wine permit or a liquor license.

Oliver asserted he is present at the business two to three times a week and the manager has control of the business when he is not there. If the manager is not on duty, the assistant manager is in control of the premises. Kiera Nelson is the current manager. Chris Sullivan (Sullivan) used to be a manager. He currently holds the position of Respondent's public relations liaison as well as a promotional manager and consultant. Sullivan's job mainly consists of handling interactions with the government, media, and staff on behalf of Hookah on the River. Oliver testified Sullivan does not have day-to-day control of his business when he is not present. Although Sullivan is purportedly no longer a manager, he is the business's representative who has consistently interacted with law enforcement upon their arrival at the business.

### **Security at the Licensed Premises**

In terms of security at the premises, Respondent has a total of eight cameras and hires SLED-certified armed security through SC Security Protection to protect the outside of the

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<sup>2</sup> Pursuant to Rule 201 of the South Carolina Rules of Evidence (SCRE), the Court takes judicial notice of its own order in a prior case involving Respondent's business, in which the Court lifted the Department's summary suspension of Respondent's permit and license. *See S.C. Dep't of Revenue v. Agua Pina, LLC, d/b/a Agua Pina Lounge*, Docket No. 20-ALJ-17-0315-IJ (January 13, 2021). The Department had issued the summary suspension because Respondent violated the Governor's Executive Order by permitting the sale and consumption of beer, wine, and alcoholic liquor after 11:00 p.m. *Id.*

<sup>3</sup> In the prior case (Docket No. 20-ALJ-17-0315-IJ), Oliver testified he opened the business in April 2020 as Agua Pina but rebranded and reopened it in October 2020 as Hookah on the River. Although in this matter Oliver testified the business has been open since October 2020, Oliver has owned the business as an LLC since April 2020.

premises and control the entry of patrons into the business. Richard Higgins (Higgins), owner of SC Security Protection, explained he typically has two to six guys working at Respondent's location depending on the event.<sup>4</sup> According to Oliver, all patrons are checked at the door for weapons using a wand and/or a pat down and then patrons are patted down again once inside the premises. Sullivan also testified security pats down every patron at least twice. Additionally, Respondent employs security to maintain order inside the premises who they refer to as "bouncers." These individuals are not employees of SC Security Protection.

Although Respondent employs security, Corporal Hawkes and Sergeant Torres, both with the Richland County Sheriff's Department, observed that Respondent's security fails to correctly frisk or pat down patrons, which can result in patrons walking into the business with weapons. Sergeant Torres also opined that Respondent's security cannot handle the magnitude of patrons and chaos that occurs at the location. In fact, Respondent's security has lost their weapons when fighting patrons and, recently, two guns were found in the floorboards of Respondent's business. Still, Oliver claims Respondent has reported to law enforcement every weapon that has been discovered at the premises.

### **Incidents at the Licensed Premises**

Since October 23, 2020, Richland County Sheriff's Department has responded to calls at Respondent's location over 100 times<sup>5</sup> for increasingly violent incidents including assaults, weapon law violations, and shootings. In fact, as Sergeant Torres specifically explained, there have been 102 calls for service since January 2021 at Respondent's location. Recently, two shootings occurred within two weeks in which someone was shot. These two incidents exemplify the escalating violence.<sup>6</sup>

The first shooting incident occurred on May 2, 2021. On that date, shots were fired and law enforcement discovered eleven (11) 9mm shell casings in the parking lot at 2640 Bush River Road (Rush's restaurant) across from Respondent's business where Respondent's patrons sometimes park. While the officers were investigating the incident in the Rush's parking lot, they

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<sup>4</sup> Higgins hires former law enforcement and military as security guards. All of Higgins' employees are trained on how to correctly pat down a patron.

<sup>5</sup> The exact number of service calls is disputed by the parties but the overall testimony from the Sheriff's Department indicates there have been at least 100 calls for service to Respondent's location.

<sup>6</sup> Oliver was not present at the business during these incidents and did not know which manager or assistant manager was on duty on those days.

heard additional shots from the parking lot in front of Respondent's business. Law enforcement then discovered a security guard from Respondent's business had been shot in the head. Because of the large number of individuals in the parking lot, additional units from other regions and officers from the City of Columbia were dispatched to get the crowd under control and the shooter was never identified. Sullivan was present that night and he admitted the crowd was out of control and that there were "multiple fights and shootings" but asserted a rap concert had just ended next door and it is unclear whether the shooter was a patron of Respondent.<sup>7</sup> Sullivan testified that after he heard shots, he went to the front door where he saw the security officer lying down bleeding. Higgins was also present on May 2, 2021, and witnessed his employee get shot. Higgins stated that was the last day his company worked for Respondent.

Investigator Short described the second incident that occurred on May 8, 2021,<sup>8</sup> in which law enforcement responded to Prisma Richland Hospital in reference to a shooting victim. Investigator Short interviewed the victim who alleged he was at Respondent's premises when his friend was involved in an altercation and, as a result, the victim was shot in the stomach. Investigator Short testified the evidence establishes that the victim was shot inside Respondent's business.

Video footage from May 8, 2021, is consistent with a shooting taking place inside Respondent's business. The video footage shows patrons running from the entrance of Hookah on the River and the victim exiting the premises clutching his stomach. Additionally, one of Respondent's security guards is seen facing the entrance of the business and brandishing his weapon in response to the commotion.<sup>9</sup> Approximately eighteen minutes after the shooting occurred, security is still seen holding its weapon in a defensive posture.<sup>10</sup> Additionally, some

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<sup>7</sup> At the hearing, Respondent claimed its employees provided the name of the shooter to law enforcement, yet no one has been arrested. Sullivan admitted that none of Respondent's employees witnessed the shooting, but they reviewed the video footage afterwards and found the shooter on Facebook. The Sheriff's Department's investigation is still on-going.

<sup>8</sup> Notably, SC Security Protection was not present to secure the entrance of the business the date this shooting occurred. Rather, security was being provided by some other company.

<sup>9</sup> Respondent argues the video footage does not reflect a shooting since the footage shows some patrons walking in and out of the premises freely shortly after the incident occurred. However, the actions of some patrons shortly after the incident do not reflect the immediate chaotic scene that occurred right after the incident took place or the reactions of the security guards and other patrons, which are consistent with a shooting.

<sup>10</sup> Although Higgins asserted his employees were not there on May 8, 2021, and that he did not know who the guards were in the video, he testified guards are trained to pull a weapon when they are threatened or if they hear gun shots.

patrons appear to hide behind a parked car until a security officer escorts them away. It also appears that a club employee returns a bullet proof vest or safety vest to a car after the incident is over.

Respondent disputes that a shooting occurred. Sullivan testified he was in the kitchen that day when he heard a commotion, but he claims the commotion occurred because a hookah fell and broke and not because of a shooting.<sup>11</sup> Respondent also argues the Sheriff's Department is withholding footage from its surveillance van that should have captured the shooting if it occurred. However, Investigator Short explained that the distance between the Sheriff Department's van and the front door of Hookah on the River was at least 200 feet, and a Jack Oliver Pool & Spa van was parked in front of their van, which blocked their view. Moreover, the shooting also took place inside the premises, which would have prevented the van from capturing any footage of the shooting itself. Nevertheless, the video footage from Respondent's own security camera is consistent with a shooting occurring on May 8, 2021, in its premises.

Thus, the evidence indicates a shooting occurred inside Respondent's premises on May 8, 2021. Accordingly, despite Respondent's adamant contentions to the contrary, I find the shooting occurred within its business. However, Richland County Sheriff's Department did not receive a call from Respondent's premises on May 8, 2021, which suggests Respondent failed to report the incident to law enforcement. In fact, the Sheriff's Department was not aware of the shooting until the hospital reported it to them the next day.

The video footage not only indicates that a shooting occurred, but it also supports the conclusion that Respondent's security was failing to properly frisk its patrons. The footage shows security failing to fully frisk each individual, thus creating an opportunity for weapons to enter its business. Additionally, after the incident occurred, the entry line in front of security dissolves—with the ropes and standards creating the line-up area having been knocked over—and patrons appear to be coming in and out of the business without having to go through security. Corporal Hawkes also stated he has personally been present at Respondent's business around thirty times and each time witnessed Respondent's security frisk patrons poorly.

In addition to the two shooting incidents described above, other incidents have occurred at Respondent's location. On November 18, 2020, law enforcement attempted to conduct a

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<sup>11</sup> Interestingly, in its Response to the Department's Motion for Emergency Suspension, Respondent indicated the commotion was due to a pushing and shoving match in the club that resulted in bottles breaking.

compliance check related to Respondent's license and permit, but Sullivan denied them access. On February 7, 2021, Corporal Hawkes responded to a call from Respondent's business about an unruly crowd at approximately 3:00 a.m. Corporal Hawkes observed a man emerge from the club carrying an AF-15 assault rifle who claimed to work at SLED and provide security. Corporal Hawkes was then called away to respond to another, higher priority incident. When he returned to the location, he was informed that patrons were causing a disturbance at the door to the premises and the business was trying to close. Corporal Hawkes then began asking the crowd to leave because the business was closing; however, after the crowd began to disperse, Respondent's security began to allow patrons to reform a line to enter the business again. Later that same night, at approximately 4:00 a.m., Corporal Hawkes responded to another disturbance at the premises. Upon arrival, he discovered security had discharged pepper spray inside the premises. Consequently, the fire department had to shut down Respondent's business due to a lack of oxygen inside the premises. Corporal Hawkes did not find a manager or owner at the premises at the time of the incident and was again referred to Sullivan.

Then, on February 11, 2021, Corporal Hawkes responded to a call at Respondent's business and observed Respondent's business was still open after 2:00 a.m. and loud noise was emanating from the premises. Corporal Hawkes asked to speak with the manager, who again was not present. He was directed to speak to Sullivan instead.<sup>12</sup> Eventually, Corporal Hawkes spoke by phone with Oliver and explained the noise issue and the business hours permitted pursuant to the Governor's state of emergency mandate. Corporal Hawkes also requested access to the premises to ensure all Covid-19 guidelines were being met but was "emphatically denied access" by the owner. Therefore, law enforcement was again denied entry into the business, this time directly by the owner, Oliver.

Overall, interactions between Respondent's staff and law enforcement have not been cordial or cooperative. For instance, Corporal Hawkes has been denied access numerous times, including one time when there was an injured patron inside the premises. Sergeant Torres and

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<sup>12</sup> Respondent presented an offer of proof that Corporal Hawkes had a conversation with Sullivan and told him to shut down Hookah on the River that night pursuant to the Governor's state of emergency mandate. However, that testimony does not change this Court's determination, and, in fact, Corporal Hawkes acknowledged he was incorrect about Respondent violating the Governor's state of emergency mandate as it had already been lifted, unbeknownst to him.

Corporal Hawkes also explained Respondent's staff and patrons are hostile towards law enforcement.

### **Respondent's Defense**

Respondent presented several arguments suggesting that it was not responsible for the criminal activity occurring at the location but is merely a victim of its location and a victim of targeted attempts to harm the business. Respondent argues the patrons of the other businesses surrounding Respondent's premises are the cause of the incidents that have occurred. Specifically, Oliver testified the Exquisite Event Center hosts rap concerts and, when those concerts end, the patrons spill into the parking lot in front of Respondent's business and become unruly.

However, the incidents to which law enforcement has responded have been calls for assistance at Respondent's location, suite B, and not the event center location, suite A. Furthermore, the evidence establishes the rap concerts that Respondent asserts are the egis of the criminal activity at the location occurred infrequently. In fact, Corporal Hawkes is aware of only one concert being held at the event center. Similarly, Sergeant Torres and Corporal Hawkes testified they do not get calls for service from the event center, and the event center typically is not open when they respond to calls at Respondent's location. Finally, although Respondent attributes many of the law enforcement issues to Exquisite Event Center, since May 22, 2021, when the Court granted the Department's Motion to suspend Respondent's permit and license pending a hearing, there has only been only one call for service at Respondent's business. If rap concerts are held frequently and are the primary source of calls to law enforcement as Respondent suggests, then the Court would have expected more than one call to have come in since the suspension considering the frequency of the calls prior to the suspension.

Respondent also argues some incident reports are the result of fake 911 calls. It contends these calls were made to make its business look bad. Yet, Sullivan only enumerated three fake calls—two fake police calls, along with a fake fire alarm being pulled.<sup>13</sup> Moreover, Respondent did not present evidence showing which incident reports were the result of fake 911 calls or when these calls even occurred. On the other hand, Corporal Hawkes explained that sometimes the Sheriff's Department receives a 911 call and, when they show up, the issue is resolved and they

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<sup>13</sup> Oliver, who was never at the location when law enforcement arrived, claimed 20-30 fake calls have occurred. However, even if Sullivan's testimony were credible, Oliver's claim was plainly not persuasive. In fact, Respondent's attorney only claimed that there were ten fake 911 calls.

are not needed. Nonetheless, he was not aware of any fake 911 calls occurring at Respondent's location. Thus, it is questionable whether the Sheriff's Department responded to any fake calls at Respondent's location. But, even if the calls Sullivan referenced that the Sheriff's Department responded to at Respondent's location were fake, those calls were a small portion of the over 100 calls received since January 2021, and do not diminish this Court's concerns regarding the overall frequency and severity of the calls for assistance at Respondent's location.

Respondent further argues the Sheriff's Department is targeting its business because the Sheriff's Department has had a surveillance van near their business for three months. However, the evidence simply did not support this theory. Employees of the Sheriff's Department specifically denied that they were targeting Respondent's business, and I found their testimony credible. Furthermore, law enforcement's presence at the location was primarily a response to the criminal activity taking place at Respondent's location.

Respondent also argues the Sheriff's Department is unfairly targeting it because other businesses that have had more violent incidents have not had their licenses revoked. In support of this theory, Respondent submitted incident reports for McCary's Sports Bar & Grill (McCary's), which retains its permit and license. The Court finds the incident reports for McCary's location are not comparable to the incident reports for Respondent's location. There are only 60 incident reports in a period of ten years for McCary's, whereas law enforcement has been called to Respondent's location 102 times since January 2021, a span of five months, to include three incidents involving the discharge of a weapon.<sup>14</sup> Additionally, the Sheriff's Department avowed that if McCary's had the same number of violent incidents and calls for service in the same time span and pulled the same number of resources from the Sheriff's Department like Respondent, then it would support the revocation of McCary's license. Also, Joanna McDuffie (McDuffie), the Sheriff's Department Deputy Chief of Legal Affairs, stated she is aware of McCary's incidents and does not believe McCary's business is worse than Respondent's business.<sup>15</sup> Thus, the frequency and severity of the activity at the two businesses is not comparable.

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<sup>14</sup> Moreover, some of the incident reports for McCary's resulted from traffic stops and, thus, were not attributable to the business's actions.

<sup>15</sup> Notably, Respondent emphasized that a murder had occurred at McCary's in the last ten years. Ms. McDuffie acknowledged that in the last ten years an individual had been charged for murder that had occurred outside of McCary's, but the Sheriff's Department later determined the individual acted in self-defense.

Respondent also cited to Wal-Mart and a nearby convenience store to support its argument that there are other businesses that have more incidents or calls for service that are allowed to continue operating. However, a Wal-Mart does not exist in the same location as Respondent and, moreover, because Wal-Mart is a large retail establishment and not a bar, I do not find it to be comparable to Respondent's business. As for the convenience store, it also has a completely different alcohol permit/license, and it operates twenty-four hours a day, seven days a week, which would increase the opportunity for crimes to occur compared to Respondent's more limited business hours. Therefore, these businesses are not comparable and do not support Respondent's argument that it is being unfairly targeted.

### **Burden on Law Enforcement**

Sergeant Torres and Corporal Hawkes classified Respondent as a "problem" location due to the large number of calls and crowds at its business. More specifically, Sergeant Torres asserts the business is an unreasonable strain and burden on law enforcement. She explained that she often must get units from another region to assist on calls to Respondent's business, and sometimes she must ask the City of Columbia for help too. Consequently, responding to calls from Respondent's business takes away resources from other areas, which puts officer safety and community safety in jeopardy in reduced-staffed areas.

Notably, Corporal Hawkes asserted he did not think Respondent's business is a burden on law enforcement because the Sheriff's Department has the ability to adequately respond to all incidents at Respondent's location. However, simply because the Sheriff's Department is capable of responding to the incidents that occur at the location does not mean that the business is not creating a burden upon law-enforcement. Indeed, Corporal Hawkes's testimony repeatedly undermined his assertion that the location is not a burden. Corporal Hawkes explained that violent crimes were escalating at Respondent's location and, as a result, the Sheriff's Department has had to expend a significant amount of manpower to respond to respond to calls at the location. He further testified the incidents at Respondent's location were redirecting resources away from the rest of the County on a regular basis. This testimony indicates Respondent's business is creating a burden on law enforcement and frequently leaving other parts of the community with fewer officers and, thus, leaving those parts of the community more vulnerable. Therefore, the Court finds Corporal Hawkes's testimony supports finding Respondent's business is a burden on law enforcement despite his assertion to the contrary. Furthermore, even if the Court were to rely

solely on Corporal Hawkes's statement that the location is not a burden and ignore his other testimony, the testimony of his superior officer, Sergeant Torres, clearly explained why Respondent's business is a burden upon law-enforcement.

In lieu of the foregoing findings, and the evidence showing Respondent's business, and not the other businesses surrounding it, is the cause of the incidents at the location, I find the business is an unreasonable strain and burden on law enforcement.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, I conclude the following as a matter of law:

#### **General Conclusions**

The Department issued a Final Determination finding Respondent is in violation of section 61-4-580(A)(5) of the South Carolina Code (Supp. 2020) because Respondent's business knowingly permits a public nuisance on the licensed premises. Furthermore, the Department found that Respondent's business constitutes an "immediate threat to the public's health, safety, and welfare" pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830. The Department also found Respondent no longer has a reputation for peace and good order in the community in violation of § 61-6-1820. Finally, the Department also determined that revocation was the appropriate penalty for the violations of § 61-4-580 and § 61-6-1820. Respondent challenges those determinations.

Section 1-23-600 of the South Carolina Code (Supp. 2020) grants the ALC jurisdiction to hear contested cases under the Administrative Procedures Act.<sup>16</sup> Furthermore, section 61-2-260 of the South Carolina Code (2009) grants the Court the responsibility to determine contested matters governing alcoholic beverages, beer, and wine. *See also Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984) ("[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed. . . .").

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<sup>16</sup> This case comes before the Court in an unusual procedural posture. Ordinarily, the party whose permit or license is suspended or revoked would request relief from this Court, but in this case, the Department brought this matter before the Court requesting an emergency suspension of Respondent's license and an expedited hearing pursuant to SCALC Rule 68; Rule 65, SCRPC; § 1-23-370(c); and § 12-60-1340. The Court granted the emergency suspension pursuant to § 1-23-370(c) and § 12-60-1340 until this Court could hear the case on the merits based upon the Department's determination to revoke Respondent's permit and license. Accordingly, although this case began as a request for injunctive relief, this Court held a hearing on the merits without objection.

The standard of review in this case is a preponderance of the evidence. *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) (“Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence.”). Because the Department is seeking to permanently revoke Respondent’s license and permit, the Department has the burden of proof to show by a preponderance of the evidence that Respondent’s permit and license should be revoked. SCALC Rule 29(B) (“In matters involving the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders, the agency shall have the burden of proof.”).

Section 61-2-20 of the South Carolina Code (2009) authorizes the Department to administer and enforce the laws and regulations involving alcoholic beverages, including beer and wine. Generally, neither a license for the sale and consumption of alcoholic beverages nor a beer and wine permit is a contract or a property right. It is, rather, a privilege granted in the exercise of the State’s police power “to do what otherwise would be unlawful to do. . . .” *Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). These privileges may be used and enjoyed only so long as the holder complies with the restrictions and conditions governing them. *See id.*

### **Violations**

The Department contends the on-premises beer and wine permit and liquor-by-the-drink license for Hookah on the River’s should be revoked because: (1) Respondent’s business is permitting a public nuisance in violation of § 61-4-580(5); (2) the location is no longer suitable as defined § 61-4-520 and § 61-6-910; (3) Respondent’s business constitutes and immediate threat to the public’s health, safety, and welfare pursuant to § 1-23-370(C), § 12-60-1340, § 61-6-1820(2), and § 61-6-1830; and (4) Respondent’s business has failed to maintain a reputation for peace and good order in its community in violation of § 61-6-1820.

Respondent contends its permit and license should not be revoked. Respondent argues the other businesses surrounding Respondent’s premises are the cause of the incidents that have occurred. Specifically, it argues the concert venue next door to the premises, Exquisite Event Center, hosts rap concerts and, when those concerts end, the patrons spill into the parking lot and become unruly. It contends that problems arise when Respondent denies entry to those unruly patrons. Respondent further asserts no shooting occurred in its premises on the night of May 8, 2021. Instead, it asserts the incident was a hookah breaking on the floor. In addition, Respondent

argues that the Sheriff's Department is targeting their business because other businesses in the area have violent incidents that occur on their premises, but their licenses are not being revoked.

#### Beer and Wine Permit

Section 61-4-580(A)(5) prohibits the holder of a beer or wine permit from "knowingly" permitting "any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State." S.C. Code Ann. § 61-4-580(A)(5) (Supp. 2020). A violation of section 61-4-580 "is a ground for the revocation or suspension of the holder's permit." § 61-4-580(B). The Department argues Respondent has knowingly permitted acts that tend to create a public nuisance in violation of section 61-4-580(A)(5).

To constitute a public nuisance, the nuisance must be located in a public place where the public frequently congregates or where members of the public are likely to come within the range of its influence. *Neal v. Darby*, 282 S.C. 277, 318 S.E.2d 18 (Ct. App. 1984). "The difference between a public nuisance and a private nuisance does not consist in any difference in the nature or character of the thing or activity itself." *Home Sales, Inc. v. City of North Myrtle Beach*, 299 S.C. 70, 81, 382 S.E.2d 463, 469 (Ct. App. 1989). In other words, "[a] nuisance is public because of the danger to the public which might have been created." *Id.* Further, a public nuisance it is not based on "the number of persons annoyed, but the possibility of annoyance to the public by invasion of its rights, the fact that it is in a public place and annoying to all who come within its sphere." *Belton v. Wateree Power Co.*, 123 S.C. 291, 115 S.E. 587 (1922). Finally, whether an act(s) constitutes a nuisance depends upon the facts of the case and "no definite rule can be laid down for the determination of the question." *Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 160, 130 S.E.2d 363, 367 (1963).

Section 61-4-580(A)(5) also requires the act creating the public nuisance to be knowingly permitted. The term "knowingly" includes not only actual knowledge but also knowledge that could be gained by reasonable inquiry when the circumstances are such as would cause a prudent man to inquire. *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). A person may also be found to act "knowingly" where it appears that the person "[shut] his eyes to avoid knowing what would otherwise be obvious." *State v. Thompkins*, 263 S.C. 472, 484, 211 S.E.2d 549, 554 (1975). Furthermore, the permittee is responsible for the acts of his servants, agents, or employees and cannot seek to avoid the consequences of a violation for lack of personal knowledge. *See, e.g., Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306,

309, 257 S.E.2d 496, 497 (1979) (“It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.”). Our Supreme Court has also approved the following language describing the knowing permittance of a public nuisance:

Although the defendants may have a license for the sale of wine and beer, and the drinking of it on the premises violates no statutory law, they have no right to habitually allow the assembling in and around the Circle Bar of noisy, drunken, boisterous crowds, whose noise and profanity disturb the peace and quiet of the public coming within the range of its influence. One who knowingly suffers or permits such conduct commits a public nuisance.

*State v. Turner*, 198 S.C. 487, 18 S.E.2d 372, 375 (1942). The Supreme Court likewise approved the following language: “If one maintains a place where people are allowed to frequent for immoral purposes, such a place would be a common or public nuisance, because it is a criminal offense and affects the happiness, the tranquility and the morals of the community. And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.” *Id.* at 487, 18 S.E.2d at 376.

I conclude the evidence shows Respondent’s business knowingly permitted acts that tend to create a public nuisance in violation of § 61-4-580(A)(5). Since January 2021, Richland County Sheriff’s Department has responded to over 100 calls at Respondent’s location for increasingly violent incidents to include assaults, weapon law violations, and shootings. Two of these incidents resulted in persons being shot: on May 2, 2021, law enforcement discovered a security guard from Respondent’s business had been shot in the head, and on May 8, 2021, a patron was shot in the stomach inside Respondent’s establishment. The incidents taking place at Respondent’s business are violent, frequent, and incontrovertibly dangerous to the public because, although Respondent’s business is privately owned, it is located in a shopping center, which is a place where the public is likely to gather and does gather. *See Home Sales, Inc.*, 299 S.C. at 81, 382 S.E.2d at 469 (holding “[a] nuisance is public because of the danger to the public which might have been created”).

Indeed, the evidence shows the business draws public crowds that are often large and unruly. Sergeant Torres and Corporal Hawkes classified Respondent as a “problem” location due to the large number of calls and crowds at its business. Similarly, Corporal Hawkes responded to a call from Respondent’s business about an unruly crowd at approximately 3:00 a.m. on February 7, 2021. And, on May 2, 2021, the crowd was so large and out of control that law enforcement had to call in extra units and could not track down the shooter. Therefore, the evidence shows that

members of the public frequently congregate at Respondent's location and are "likely to come within the range of its influence." *See Neal*, 282 at 277, 318 at 18.

Moreover, that Respondent suffers the presence of large, unruly crowds on a regular basis is indicative of its knowing permission of the crowds and their activities. *See Turner*, 198 S.C. at 487, 18 S.E.2d at 375. The crowds inside and outside the establishment have engaged in numerous criminal acts, like assaults and weapons violations, as documented by the Sheriff's Department's numerous incident reports. Respondent is clearly aware, or "knows" of the criminal activity occurring at its premises because it has discussed the issue with law enforcement and even admitted the crowd was chaotic during certain incidents. However, despite Respondent's discussions with law enforcement about how to curtail the criminal activity, those efforts have not reduced the frequency and severity of the activity. Thus, the issue is not whether Respondent is necessarily responsible for the criminal activity because Respondent knowingly approves or openly encourages it, but rather Respondent knowingly suffers its continued occurrence at the location. *See Turner*, 198 S.C. at 487, 18 S.E.2d at 376 ("And it is not necessary that such a place for such purposes be conducted openly or notoriously to constitute a nuisance.").

Respondent's indifference to, if not acquiescence to, the criminal activity at its location is demonstrated by its failure to report the shooting that occurred on May 8, 2021.<sup>17</sup> It is also demonstrated by Respondent's inability to adequately prevent the presence of weapons on the premises. Oliver's testimony indicates he is aware that guns occasionally slip by security and are carried inside the premises by patrons, yet guns continue to be an issue at the location. For example, Respondent's security has lost their weapons when fighting patrons at the location and, recently, two guns were found in the floorboards inside Respondent's business. Additionally, the video footage from the incident on May 8, 2021, supports the Sheriff's Department's testimony that Respondent's security does a poor job patting down patrons and a patron could have slipped inside with a gun that evening.<sup>18</sup> Further, if Respondent was truly concerned about abiding by the law, and reducing criminal activity in concert with law enforcement, it would not regularly deny

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<sup>17</sup> Although Respondent may not have been aware of the specific individual who was shot at its location on May 8, 2021, it certainly should have been aware of shots being fired at its location based upon the reaction of its patrons and staff.

<sup>18</sup> It is also noteworthy that Higgins asserted his trained employees were not present on May 8, 2021. In fact, Respondent never confirmed who exactly was working as security that night but only that they had guards there.

law enforcement access to its business on numerous occasions, including when a patron was injured.

Respondent contends the surrounding businesses, and not Respondent's business, are responsible for the incidents creating the nuisance. However, Respondent only provided testimonial evidence about one business causing problems—Exquisite Event Center. Sullivan testified that on the night of May 2, 2021, a rap concert ended at the event center before the shooting occurred in the parking lot outside Respondent's business and suggested that a patron of the rap center likely caused the incident. Even if a rap concert occurred that night, the event center was not open and a concert was not on-going when the incident occurred and police arrived. Rather, Respondent's business was open and operating. Therefore, even if the shooter had originally come from the rap concert, Respondent's open business and its attendant unruly crowd provided the opportunity for the shooter to engage in a criminal act that put the public in danger.

Furthermore, Respondent did not present evidence, beyond conclusory arguments and speculation, that the event center was active when law enforcement responded to other incidents at Respondent's location. In contrast, multiple officers with the Sheriff's Department testified the event center is typically not open when they respond to calls at Respondent's business. Indeed, Corporal Hawkes was aware of only one concert being held at the event center. Further, since the Court issued the order granting the suspension of Respondent's permit/license pending the merits hearing, there has only been one call for service at the location, which is indicative of the Respondent's business being the cause of the criminal activities occurring in and around the location. Thus, I find the preponderance of the evidence indicates Respondent's business, and not the surrounding businesses, is the nuisance.

A further consideration when determining whether a business is a nuisance is whether it is a burden on law enforcement. *See Winget*, 242 S.C. at 160, 130 S.E.2d at 367 (holding that whether an act constitutes a nuisance depends upon the facts of the case and "no definite rule can be laid down for the determination of the question"). Normally, whether a location is a burden on law enforcement is discussed in the context of whether a location is "proper" or suitable for the *issuance* of a beer and wine permit. § 61-4-520(5) ("A retail permit authorizing the sale of beer or wine must not be issued unless: (5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one."); *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 250, 317 S.E.2d 476, 478 (Ct. App. 1984) (upholding the denial

of a beer and wine permit because the location was “unsuitable” because it was in a “rural residential area, in close proximity to other residences, and . . . there have been law enforcement problems in the area”). Here, the Court is considering whether Respondent is in violation of its beer and wine permit, not whether Respondent should be issued a beer and wine permit. Accordingly, I do not find that whether the location is “proper” or suitable is necessarily the correct inquiry or ground upon which to determine this case.

Nevertheless, I find whether the location is a burden on law enforcement to be an inextricable factor in determining whether Respondent’s business is a public nuisance. It is inextricable because, when law enforcement is burdened by a location, its presence is removed from other locations, which leaves the public in those other locations more vulnerable. *See Home Sales, Inc.*, 299 S.C. at 81, 382 S.E.2d at 467 (explaining a “[a] nuisance is public because of the danger to the public which might have been created”). The testimony of the officers shows the nature of the calls coming from Respondent’s business and its reputation requires a heightened law enforcement response that removes officers from other areas of the community. In particular, Sergeant Torres testified the business is an unreasonable strain and burden on law enforcement, and she further explained that she typically requests units from another region to assist on calls to Respondent’s business and sometimes she asks the City of Columbia for help too. For example, during the incident on May 2, 2021, when Respondent’s security officer was shot in the head, officers from other regions and deputies from the City of Columbia were dispatched.

Based on all the above, I find Respondent has knowingly permitted acts that constitute a public nuisance to take place at its establishment in violation of § 61-4-580(A)(5).<sup>19</sup>

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<sup>19</sup> The Department also argues that by Respondent knowingly permitting acts that constitute a public nuisance, it has become an “immediate threat to the public’s health, safety, and welfare” pursuant to § 12-60-1340 and § 1-23-370(c). The Court agrees that the nature and frequency of the incidents at Respondent’s location are an “immediate threat to the public’s health, safety, and welfare”; however, this is not a ground for revocation on its own. Rather, it is a ground for summary suspension of a permit or license pending revocation. *See* § 12-60-1340 (providing “[a]nything else in this chapter notwithstanding, if the department determines that public health, safety, or welfare requires emergency action, it shall seek an emergency revocation order from the Administrative Law Court, pursuant to Section 1-23-370(c)”; § 1-23-370(c) (“If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered *pending proceedings for revocation* or other action.” (emphasis added)). In this case, the fact that Respondent’s business poses an immediate threat to the public’s health, safety, and welfare supports the Court’s conclusion that Respondent’s business is a public nuisance and supports revocation pursuant to § 61-4-580(B).

### Liquor-By-The-Drink License

Section 61-6-1820(2) provides an individual holding a liquor license must be of good moral character or, if a corporation or association, it must have “a reputation for peace and good order in its community, and its principals [must be] of good moral character.” S.C. Code Ann. § 61-6-1820(2). The Department contends that in knowingly permitting a public nuisance and creating an immediate threat to the public’s health, safety, and welfare, Respondent has sacrificed its reputation for peace and good order in the community in violation of § 61-6-1820(2).

The evidence established that Respondent does not have a reputation for peace and good order in the community.<sup>20</sup> Sergeant Torres’s and Corporal Hawkes’s testimony revealed that Respondent’s business is a “problem” location due to the large number of calls and crowds at its business. Again, the frequency and escalating severity of the incidents—over 100 calls for service since January—shows a pattern of criminal activity that frequently occurs at the location. Moreover, despite Oliver’s efforts to control the behavior of his patrons with armed security, security cameras, and pat downs, these security measures have been ineffective and, in the case of pat downs, appear to have been poorly executed. Weapons have been found in the floorboards of Respondent’s establishment, and Respondent also failed to report to law enforcement that a shooting occurred inside its premises on May 8, 2021. Although Respondent may not have been aware of the specific individual who was shot at its location on that date, it certainly should have been aware of shots being fired at its location based upon the reaction of its patrons and staff. Furthermore, Respondent’s contentions that the event center is the cause of the unruly crowds and incidents at its location are unpersuasive. The evidence reflects the Sherriff’s Department does not receive calls for service from the event center, and the event center is typically not open when they respond to calls at Respondent’s location.

Proper management also appears to be absent at Respondent’s business, creating more opportunity for incidents to escalate rather than being dealt with appropriately. Often, the manager was not present during the incidents reported by law enforcement. This kind of management is particularly concerning considering the frequency and type of criminal incidents that have taken place at the location. And, when law enforcement interacts with Respondent’s staff, not only is management usually absent, but both Corporal Hawkes and Sergeant Torres testified Respondent’s

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<sup>20</sup> Importantly, this finding reflects the reputation of the business and its location rather than Oliver’s personal reputation.

staff and patrons are hostile towards law enforcement. A hostile attitude does not reflect a willingness to work with law enforcement to promote peace and good order in the community.

Based upon the above reasons, and because I find Respondent's business is knowingly permitting a public nuisance (and a nuisance, by its very definition, is not compatible with peace and good order), I conclude Respondent does not have "a reputation for peace and good order in its community" in violation of § 61-6-1820(2).

### **Penalty**

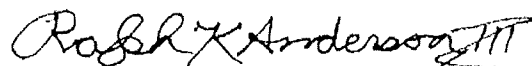
The Department, and therefore this Court, has the authority to revoke Respondent's beer and wine permit and liquor-by-the-drink license upon finding Respondent has failed to comply with the requirements for the permit and license. S.C. Code Ann. § 61-4-580(B) (2009) (providing "a violation of any provision of [§ 61-4-580] is a ground for the revocation or suspension of the holder's permit"); S.C. Code Ann. § 61-6-1830(1) (2009) ("The department may suspend, revoke, or refuse to renew a license issued pursuant to subarticle 1 of this article upon finding that: (1) the applicant no longer meets the requirements of Section 61-6-1820."). Furthermore, where the General Assembly authorizes a range of alternatives for an administratively imposed penalty, the administrative fact-finder may set the amount of the penalty after a hearing on the dispute. *Walker v. S.C. ABC Comm'n*, 305 S.C. 209, 407 S.E.2d 633 (1991). In this case, I conclude Respondent has violated its beer and wine permit pursuant to § 61-4-580(A), and it has violated its liquor-by-the-drink license pursuant to § 61-6-1820(2). I further find that based on the severity of the violations, revocation is the correct penalty. § 61-4-580(B); § 61-6-1830(1).

### **ORDER**

Based upon the above Findings of Fact, and Conclusions of Law,

**IT IS HEREBY ORDERED** that the on-premises beer and wine permit and business liquor-by-the-drink license for Agua Pina, LLC, d/b/a Hookah on the River are **REVOKED**.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

June 28, 2021  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



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Stephanie Perez  
Judicial Law Clerk

June 28, 2021  
Columbia, South Carolina



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