

STATE OF SOUTH CAROLINA

MT. PLEASANT MUNICIPAL COURT

COUNTY OF CHARLESTON

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MOUNT PLEASANT
MUNICIPAL COURT

) Case No. : 98045DB

) Case No. : 98035DB

) Case No. : 98040DB

) Case No. : 98050DB

) Case No. : 98043DB

TOWN OF MOUNT PLEASANT,

vs.) FINDING OF FACTS AND ORDER

ROBERT L. CHIMENTO

JEREMY BRISTEL

MICHAEL WILLIAMSON

SCOTT RICHARDS

JOHN T. WILLIS

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This matter came to be tried on February 13, 2009 in the Town of Mt. Pleasant. It is admitted and is not contested that these defendants on April 12, 2006 were playing cards -- namely Texas Hold-
em in the home of Nathaniel Stallings in the Town of Mt. Pleasant. It is also uncontested that
chips, money and cards were in front of each defendant -- all of whom were seated at one of the
two tables used for such purpose in the home.

The State offered testimony that the participants in this card game were advised of its location
and availability over the Internet from a portion of a website called "Charleston Poker
Meetups.com."

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The Defendants do not challenge any of those facts. Instead they challenge whether or not Texas Hold-em is a game of skill and therefore beyond or outside the scope of the Statute 16-19-40.

They offered uncontroverted testimony from Michael Sexton, a professional poker player from Las Vegas, Nevada, who has been a full-time poker player since 1977 that Texas Hold-em is a game of skill. It is a game where the average player can become a better and better player. The player can do so from books, articles, experience and/or tutoring. It is a skill that can and is developed. In his testimony he set forth many of the skills required – most important skill is betting - whether to fold, raise or call. He talked about math knowledge, the art of bluffing, the ability to change gears in your manner of play, patience and discipline, self control and continuing to study and to learn. He was an expert paid to testify by the National Poker Players Alliance.

Then Professor Robert Hammun, Ph.D. testified. He has taught Statistics and Probability for thirty (30) years. He has written books and papers on gaming including poker. In his uncontroverted opinion Texas Hold-em is a game of skill. Skill is the predominant factor in winning or losing in the game of poker. He has a study of this that has been used in a Law Review. In cross examination he differentiated between the games of skill and games of chance – listing roulette, slots, blackjack as all having house advantages and therefore not predominated by skill.

In 103 million poker hands studied in Texas Hold-em:

Seventy-six percent are resolved before it gets to a show down

Twelve percent of the remaining hands will not get to showdown, but will be won by the lesser hand, and

Twelve percent of the time the best hand will win. This shows from that study that 88% of the outcome of hands are determined by skill.

He further testified that the consensus of the scientific community does agree that skill is the predominant factor in Texas Hold-em. He, too, was paid as an expert by the National Poker Players Alliance. He stated that in two cases, namely Wisconsin and Connecticut, has testified on behalf of the State, in two other states, Colorado and here in South Carolina, he has testified for the Defense.

The Defense further cited the fact that in the dissenting opinion in Johnson v Collins Entertainment Co., Inc., 333SC96, 508 S.E. 2d 575(1998) – Justice Burnett and Chief Justice Toal

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indicated that the “dominant factor” is the appropriate test in South Carolina – to determine whether a particular activity is a game of skill or not. The other justices in the majority in that case gave no indication of their opinion in that regard.

There are no clear guidelines given to this Court to follow. Each challenge to a particular gaming problem has been decided without the Supreme Court or the Legislature explicitly and precisely defining gaming or gambling house – key factors of determination in this case.

This Court, based on the above stated facts, finds that Texas Hold-em is a game of skill. The evidence and studies are overwhelming that this is so. On January 14, 2009, the State of Pennsylvania in a fact situation very similar to this one determined that Texas Hold-em poker is not unlawful gambling as defined by their gaming statutes because it is a game of skill, (Commonwealth of Pennsylvania vs Dent Case No. 733 of 2008). That Court said there are three elements of gambling: consideration, chance and reward. The determination hinged on whether or not Texas Hold-em was a game of chance or one where skill predominates. If the latter is true, then it is not gambling. The Court there accepted the “Dominant Factor” test. Studies by 35 Hofstra Law Review in Spring 2007 issue also opined that it is a game of skill. Therefore the Courts should look no further. The Honorable Thomas A. Jones, Jr. dismissed the gambling charges on January 14, 2009.

In the briefs filed with this Court, it is evident that the Courts in California, Missouri and Nebraska also accept the Predominate Factor test. If this Court knew that this State follows that test in this factual circumstance the decision would be simple. But it is not.

Here we have Nathaniel Stallings, who advertised on the Internet, who took twenty dollar (\$20) buy-ins, who took a rake out of the pot to cover food and drink provided. In addition to all of that, he appeared in the Court of General Sessions for the Ninth Judicial Circuit in Charleston and pled guilty on January 5, 2007, to Operating a Gaming House. He paid \$747.50 to the Court.

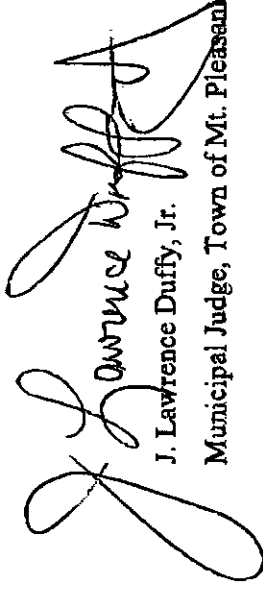
In addition, Code Ann. Section 16-19-40 reads as follows: “If any person shall play ... in any house used as a place of gaming.....at any games with cards or dice...upon being convicted thereof, before any magistrate

There is no definition by the Legislature as to what will or will not constitute a house as a place of gaming.

It is and appears to have been the public policy of the State of South Carolina to suppress gambling and that gambling in all forms is illegal in south Carolina. (Holiday v Governor of the State of South Carolina etal 78 F Supp 918 (1914). Further the Attorney General in opinion No. 04-18 dated January 22, 2004 indicates the Legislature prohibits playing of "any game with cards or dice".

In light of all of the matters set forth above, this Court will not set itself to definitively conclude that this State will or does follow the "Dominant Test" Theory and thus is compelled, since it has no clear guideline from the Legislature or from the majority of this Supreme Court to find the defendants guilty of violating Code Section 16-19-40, and therefore are required to pay the fines and assessments required by such a violation.

AND IT IS SO ORDERED


J. Lawrence Duffy, Jr.
Municipal Judge, Town of Mt. Pleasant

February 19, 2009

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