



ALAN WILSON
ATTORNEY GENERAL

May 13, 2020

Wesley Vorberger, Esq.
Greenville County Sheriff's Office
4 McGee Street
Greenville, SC 29601

Dear Mr. Vorberger:

We received your request seeking an opinion on several questions related to a claim and delivery action for a stolen firearm pursuant to Section 40-39-145 of the South Carolina Code. This opinion sets out our Office's understanding of your question and our response.

Issue:

Your letter recounts the following facts:

A pawnbroker in Greenville County was sold a stolen firearm by an identified suspect. The GCSO . . . was notified that the stolen firearm had been sold and that an innocent owner was identified in Oconee County. The GCSO then seized the stolen firearm from the pawnbroker in an effort to return it to the innocent owner. The GCSO did not compensate the pawnbroker for the seizure. [footnote omitted] Pursuant to S.C. Code Ann. § 40-39-145(C), the pawnbroker then filed a claim and delivery action against the GCSO, seeking return of the firearm or compensation equal to the purchase price paid for the stolen firearm.

Your letter also recounts that at the conclusion of the case, the trial judge encouraged the GCSO to request an opinion from this Office. Accordingly your letter presents three questions:

1. Who is the proper defendant to be named by the pawnbroker in the claim and delivery action pursuant to Section 40-39-145? Stated differently, under the statute, is the seizing law enforcement agency a proper defendant, or only the alleged innocent owner?
2. What rights do pawnbrokers possess under Section 40-39-145(C)?
3. Is Section 40-39-145(B) the exclusive remedy for pawnbrokers in the event they purchase stolen goods that are later seized by law enforcement?

Wesley Vorberger, Esq.
Page 2
May 13, 2020



ALAN WILSON
ATTORNEY GENERAL

We will address each of your questions after setting out some of the applicable law. Section 40-39-145 reads in full:

(A) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, he shall deliver to the pawnbroker the relevant police report or case number pertaining to the property, and the pawnbroker shall release the property to the appropriate law enforcement agency for use in a criminal investigation or return the property to the identified innocent owner. A pawnbroker who releases the property to law enforcement must be listed as a statutory victim on all transmitted reports and case files. If at the conclusion of the criminal investigation no identifiable innocent owner is found, the property must be returned to the pawnbroker by the appropriate law enforcement agency.

(B) The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding involving the property identified as stolen, the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property.

(C) When law enforcement seizes property pursuant to subsection (A), they shall hold the seized property for ten business days before releasing it to an innocent owner. During this ten business day period, a pawnbroker may file an action for claim and delivery of the seized property, provided it also shall serve notice of this action to the law enforcement agency. If no notice is received within this ten business day period, the law enforcement agency may release the property to an identified innocent owner. A law enforcement agency that receives notice shall hold the property during the pendency of the action.

S.C. Code Ann. § 40-39-145 (Supp. 2019).

The general procedures for a claim and delivery action are set out in Chapter 69 of Title 15, titled "Recovery of Personal Property." For the purposes of this opinion we highlight two key provisions of that Chapter: Sections 15-69-20 and 15-69-200. Section 15-69-20 reads in full:

Wesley Vorberger, Esq.
Page 3
May 13, 2020

Any one or more of several joint owners of personal property who can establish such partial ownership in such property shall have the right to institute an action in claim and delivery to recover possession of the property from any wrongful holder thereof. In such an action the co-owners of the property who do not join the plaintiff in bringing the suit may be made parties defendant.

S.C. Code Ann. § 15-69-20 (2005). Section 15-69-200 reads in full:

If the property taken be claimed by any other person than the defendant or his agent and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the affidavit upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking executed by two sufficient sureties accompanied by their affidavit that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, and are freeholders and householders within this State. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid, and, notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

S.C. Code Ann. § 15-69-200 (2005). We turn now to the legal questions presented in your letter.

1. Who is the proper defendant to be named by the pawnbroker in the claim and delivery action pursuant to Section 40-39-145?

We understand that the main thrust of this question is whether it is appropriate to name the Sheriff's office as a defendant in a claim and delivery action. The question of whether a particular party is appropriately named in a pleading is a fact-specific question which cannot be answered definitively in a general opinion of this Office.

As a general matter, however, this Office is not aware of any provision in Section 40-39-145 or the statutes governing claim and delivery which expressly exempt a Sheriff's office from a claim and delivery action. *See* S.C. Code Ann. §§ 40-39-145 (Supp. 2019), 15-69-10 et. seq. (2005). Section 15-69-20 provides that a claim and delivery action may be brought to "recover possession of the property from any wrongful holder thereof." S.C. Code Ann. § 15-69-20 (2005) (emphasis added). This Section does not expressly limit who those holders may be. *See id.* The same Section also establishes that "the co-owners of the property who do not join the plaintiff in bringing the suit may be made parties defendant." *Id.* The legislative intent here appears to be

that all persons who are or may be entitled to possession of the property should be brought into a claim and delivery action so that the court can adjudicate claims with finality. Furthermore, Section 15-69-200 expressly contemplates a person making a “claim to such property” against sheriff when the sheriff is in possession of the property in dispute. S.C. Code Ann. § 15-69-200 (2005).

Additionally, at least one reported case of the South Carolina Supreme Court has upheld the right of a litigant to bring a civil action for recovery of personal property against a sheriff. In *Dudley v. Green*, 46 S.C. 199, 24 S.E. 186 (1896), the sheriff of Marlboro County seized certain stock in trade from a business in the course of executing a court order. The sheriff then received a demand for the goods from a trustee asserting a superior mortgage on the same property. 46 S.C. at 199, 24 S.E. at 186. Notwithstanding the demand, the sheriff auctioned off the property, and the trustees thereafter brought an action against the sheriff to recover the property or its value. *Id.* In the resulting appeal, our Supreme Court opined:

When a sheriff (or anyone else) takes personal property belonging to another person, and upon demand therefor refuses to surrender it, but, on the contrary, sells such property, the person thus wronged has his right of action against such sheriff for claim and delivery, and, in the event such delivery cannot be had, then, in that event, for a judgment for its value.

46 S.C. at 199, 24 S.E. at 187 (emphasis added).

2. What rights do pawnbrokers possess under Section 40-39-145(C)?

Section 40-39-145 sets out several provisions which establish protections for pawnbrokers. In general, pursuant to the statute:

- A pawnbroker who releases the property to law enforcement must be listed as a statutory victim on all transmitted reports and case files.
- A pawnbroker may file an action for claim and delivery of the seized property within ten days, provided it also shall serve notice of this action to the law enforcement agency.
- If at the conclusion of the criminal investigation no identifiable innocent owner is found, the property must be returned to the pawnbroker by the appropriate law enforcement agency.
- If the property is not returned to the pawnbroker, they have a right to restitution from the conveying customer.

Wesley Vorberger, Esq.
Page 5
May 13, 2020

This summary is a general statement, and is not intended to be definitive and should not be construed as an exclusive listing of all relevant rights in this situation.

3. Is Section 40-39-145(B) the exclusive remedy for pawnbrokers in the event they purchase stolen goods that are later seized by law enforcement?

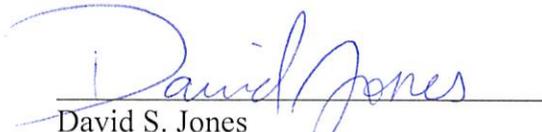
Nothing in the Section 40-39-145 or in Chapter 39 of Title 40 mandates that the Section is the exclusive remedy for a pawnbroker. For that reason, we do not believe it must be construed as such. However, it may be the most appropriate remedy under the circumstances of a particular case. Whether and what additional remedies might be available is a fact-specific question which depends on the circumstances of a particular case.

Conclusion:

In conclusion, the question of whether a particular party is appropriately named in a pleading is a fact-specific question which cannot be answered definitively in a general opinion of this Office. As a general matter, however, this Office is not aware of any provision in Section 40-39-145 or the statutes governing claim and delivery which expressly exempt a Sheriff's office from a claim and delivery action. See S.C. Code Ann. §§ 40-39-145 (Supp. 2019), 15-69-10 et. seq. (2005). Additionally, at least one reported case of the South Carolina Supreme Court has upheld the right of a litigant to bring a civil action for recovery of personal property against a sheriff. *Dudley v. Green*, 46 S.C. 199, 24 S.E. 186 (1896).

A pawnbroker generally has, at least, a right under Section 40-39-145 to be listed as a victim, to bring a claim and delivery action pursuant to Section 40-39-145 for a judicial determination of the title to the personal property, to have the property returned if not returned to an innocent owner, and in the event that another party has a superior claim to the property then the pawnbroker has the right to seek restitution as a victim for their loss. S.C. Code Ann. § 40-39-145 (Supp. 2019). Nothing in the Section 40-39-145 or in Chapter 39 of Title 40 mandates that the Section is the exclusive remedy for a pawnbroker. However, it may be the most appropriate remedy under the circumstances of a particular case.

Sincerely,



David S. Jones
Assistant Attorney General

Wesley Vorberger, Esq.
Page 6
May 13, 2020

REVIEWED AND APPROVED BY:

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

Robert D. Cook
Solicitor General