ORIGINAL

NO. 123370
IN THE
SUPREME COURT OF ILLINOIS

KENIN L. EDWARDS,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
HONORABLE MICHAEL L. ATTERBERRY and HONORABLE SCOTT J. BUTLER, Judges of the Eighth Judicial Circuit,	)	Schuyler County Circuit Court Case No. 16CV9
	)	
Respondents	)	
	)	
PEOPLE OF THE STATE OF ILLINOIS	)	

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

DANIEL G. O'DAY, ESQ.
CUSACK, GILFILLAN & O'DAY, LLC
415 Hamilton Boulevard
Peoria, IL 61602
Phone: (309) 637-5282
ARDC: 6181202
E-mail: doday@cgolawfirm.com

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Carolyn Taft Grosboll
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ORAL ARGUMENT REQUESTED

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Nature of the Case

Kenin L. Edwards is the named defendant in a purportedly-criminal conservation case, 16-CV-09, in Schuyler County. The charges in Schuyler County allege two counts of conduct which allegedly violated an administrative rule, as opposed to conduct which allegedly violated a criminal/penal statute.

After trial in the Circuit Court, a jury returned verdicts of guilty in relation to these two purported crimes. The jury was instructed solely under an administrative rule for the alleged elements of the charges. The Circuit Court has not entered judgment on either verdict, and this Court has stayed further proceedings before the Circuit Court pending resolution of this case. Mr. Edwards contends that the Circuit Court lacks jurisdiction or inherent authority to adjudicate the purported crimes, since no criminal statute has been cited or invoked in the charges, such that a writ of prohibition should issue.

Issue Presented

I. Whether the trial court lacks jurisdiction in a purported criminal prosecution based on an Information that alleges only violations of an administrative rule or regulation.

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Standard of Review

Here, the Information cites a rule or regulation, not a violation of any criminal statute. The issues raised herein should be reviewed de novo because the Court must ascertain what is alleged as well as the legal effects of the authorities cited in the Information. *People v. Rowell*, 229 Ill. 2d 82, 92 (2008). The standard of review is also de novo because the Court's decision will presumably rest on interpreting statutes and regulations. *People ex rel. Madigan v. Illinois Commerce Com'n*, 231 Ill. 2d 370, 380 (2008).

Jurisdiction

This Court has jurisdiction over this original action in a case relating to prohibition pursuant to Illinois Supreme Court Rule 381(a) and pursuant to Article VI, Section 4(a) of the Illinois Constitution of 1970.

Pertinent Regulations & Statutes

Article VI, Section 9 of the Illinois Constitution as follows:

"SECTION 9. CIRCUIT COURTS- JURISDICTION
Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law."

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Section 2 of the Timber Buyers Licensing Act ("TBLA") (225 ILCS 735/2) provides as follows:

"When used in this Act, unless the context otherwise requires, the term:

"Person" means any person, partnership, firm, association, business trust or corporation.

"Timber" means trees, standing or felled, and parts thereof which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of any article. "Timber" does not include firewood, Christmas trees, fruit or ornamental trees or wood products not used or to be used for building, structural, manufacturing or processing purposes.

"Timber buyer" means any person licensed or unlicensed, who is engaged in the business of buying timber from the timber growers thereof for sawing into lumber, for processing or for resale, but does not include any person who occasionally purchases timber for sawing or processing for his own use and not for resale.

"Buying timber" means to buy, barter, cut on shares, or offer to buy, barter, cut on shares, or take possession of timber, with or without the consent of the timber grower.

"Timber grower" means the owner, tenant or operator of land in this State who has an interest in, or is entitled to receive any part of the proceeds from the sale of timber grown in this State and includes persons exercising authority to sell timber.

"Department" means the Department of Natural Resources.

"Director" means the Director of Natural Resources.

"Employee" means any person in service or under contract for hire, expressed or implied, oral or written, who is engaged in any phase of the enterprise or business at any time during the license year."

Section 3 of the TBLA (225 ILCS 735/3) provides as follows:

"Every person before engaging in the business of timber buyer shall obtain a license for such purpose from the Department. Application for such license shall be filed with the Department and shall set forth the name of the applicant, its principal officers if the applicant is a corporation or the partners if the applicant is a partnership, the location of any principal office or place of business of the applicant, the counties in this State in which the applicant proposes to engage in the business of timber buyer and such additional information as the Department by regulation may require.

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The application shall set forth the aggregate dollar amount paid to timber growers for timber purchased in this State during the applicant's last completed fiscal or calendar year. In the event the applicant has been engaged as a timber buyer for less than one year, his application shall set forth the dollar amount paid to timber growers for the number of completed months during which the applicant has been so engaged. If the applicant has not been previously engaged in buying timber in this State, the application shall set forth the estimated aggregate dollar amount to be paid by the applicant to timber growers for timber to be purchased from them during the next succeeding 12 month period."

Section 5 of the TBLA (225 ILCS 735/5) provides as follows:

"It shall be unlawful and a violation of this Act:

(a) For any timber buyer to knowingly and willfully fail to pay, as agreed, for any timber purchased,

(b) For any timber buyer to knowingly and willfully cut or cause to be cut or appropriate any timber without the consent of the timber grower,

(c) For a timber buyer to willfully make any false statement in connection with the application, bond or other information required to be given to the Department or a timber grower,

(d) To fail to honestly account to the timber grower or the Department for timber purchased or cut if the buyer is under a duty to do so,

(e) For a timber buyer to commit any fraudulent act in connection with the purchase or cutting of timber,

(f) For a timber buyer or land owner or operator to fail to file the report or pay the fees required in Section 9a of this Act, and

(g) For any person to resist or obstruct any officer, employee or agent of the Department in the discharge of his duties under the provisions hereof."

Section 10 of the TBLA (227 ILCS 735/10) provides as follows:

"The Department may make such rules and regulations as may be necessary to carry out the provisions of this Act."

Section 1535.1(b) of Title 17, Illinois Administrative Code, provides as follows:

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"Only persons listed with the Department as authorized buyers may represent the licensee. Authorized buyers shall designate in all contractual arrangements that the licensee is the timber buyer. Failure to comply with this provision shall constitute "buying timber without a timber buyer's license". Authorized buyers may only be listed on one license. To be eligible to hold a timber buyer's license, the applicant must be at least 18 years of age."

Section 1535.60 of Title 17, Illinois Administrative Code, provides as follows:

"a) Any person violating the provisions of this Part shall, upon finding of guilt by a court of law, be subject to statutory penalties as prescribed by the Timber Buyers Licensing Act [225 ILCS 735] and to revocation of license and suspension of privileges, as set out in the Timber Buyers Licensing Act.
b) Any such revocation/suspension procedures shall be governed by the Timber Buyers Licensing Act and by Department Revocation Procedures (17 Ill. Adm. Code 2530)."

Statement of Facts[1]

Petitioner, Kenin L. Edwards, is charged in Schuyler County, Illinois, with two counts of purported criminal violations of administrative rules. A jury has returned guilty verdicts on both counts. The Circuit Court has not yet entered judgment on the verdicts.

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[1] On April 24, 2018, the undersigned counsel contacted the office of this Court's Clerk and spoke to "Jill," who advised that the Court or its Clerk would obtain the record below, if it is believed to be necessary. Most, if not all, of the proceedings below have been transcribed, at Mr. Edwards' expense. The undersigned counsel was also advised by "Jill" on May 14, 2018, that a supporting appendix was not needed for purposes of this brief and that, instead, the undersigned should cite to the appendix to his Motion for Supervisory Order and for Leave to File a Petition for Writ of Prohibition, by citing to the exhibit letters set forth in that previously filed appendix.

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Prior to trial, Mr. Edwards filed numerous pre-trial motions, including motions to dismiss. The first motion to dismiss attacked the State's initial Information on the basis of, *inter alia*, purporting to allege a violation of a criminal statute (225 ILCS 735/5) without alleging any facts that fell within the ambit of that statute.

After Mr. Edwards' first motion to dismiss was filed, the State sought and obtained leave to amend the Information. In the Amended Information, all citations to 225 ILCS 735/5 were eliminated. In their place, the State merely cited administrative regulations (17 Ill. Adm. Code 1535.1(b) and 17 Ill. Adm. Code 1535.60(a)), together with a purported rules-enabling statute that does not create a crime, namely, 225 ILCS 735/10, which provides that "[t]he Department may make such rules and regulations as may be necessary to carry out the provisions of this Act.".[2]

In response to the amendment, Mr. Edwards again filed numerous pre-trial motions, including motions to dismiss alleging, *inter alia*, the Circuit Court's lack of jurisdiction to adjudicate a criminal trial based upon regulations alone. Mr. Edwards also contended that, by its very language, the rules-enabling statute

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[2] The State subsequently sought and obtained leave to amend the Amended Information to add a *mens rea* of "knowingly" to each count, after Mr. Edwards repeatedly contended that a *mens rea* was required. Inasmuch as the addition of a *mens rea* element did not transform the charges into a justiciable matter, such addition and its implications will not be the focus herein.

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(225 ILCS 735/10) is only directed toward "[t]he Department," and he is not—and has never been alleged to be—the Illinois Department of Natural Resources. See 225 ILCS 735/2 (defining "Department" as "the Department of Natural Resources").

In the record below, the lack of a statute defining an "offense" has been apparent since Day One. A post-it note is attached to the original filed-stamped copy of the Information. The post-it note is apparently in the Circuit Clerk's handwriting; the Clerk apparently wrote: "4-27-16 alleges a crime? 225/735-5???." (Ex. A.) Based on the aforesaid question in the Circuit Clerk's post-it note, Mr. Edwards requested the Circuit Clerk to certify the Circuit Clerk's "CRIMIINAL HISTORY DATA" pertaining to this case, on March 9, 2018 (three weeks after the trial). (Ex. B.) Ironically, according to that document (Ex. B, 5th column), the Circuit Clerk determined that she needed to contact this Court's "AOIC" which appears to refer to the Administrative Office of the Illinois Courts. The Circuit Clerk wrote that the purported offenses alleged in the later-filed Amended Information and Second Amended Information are described as "<u>OFFENSE NOT IN TABLE-CALL AOIC, 0000ILCS, [Blank].</u>[3]

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[3] The original Information only alleged all of Section 5 of the Timber Buyers Licensing Act, but stated no subsection. The Circuit Clerk advised Mr. Edwards that she chose on her own to specify 225/735.0/5(e) as the underlying statute in her official records, because that was the only subsection of Section 5 that was a misdemeanor and the Information alleged misdemeanors. The State later

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Beforehand, on March 31, 2016, Schuyler County State's Attorney Ramon M. Escapa (hereinafter the "State") filed a two-count Information alleging that Mr. Edwards committed the purported offense of "Unlawfully Acting As A Timber Buying Agent For Multiple Licensed Timber Buyers" in violation of Section 5 of Act 735 of Chapter 225 of the Illinois Complied Statute of said State and Administrative Rule Section 1535.1(b). (Ex. C.) (No subsection of Section 5 was mentioned in the Information.) The Information identifies both counts as Class A Misdemeanors. In fact, Count II alleges "selling timber," not buying timber. (Ex. C.) The Information was verified under oath by Conservation Police Officer Eric L. Myers as the Complainant. (Ex. C, p. 2.)

The Timber Buyers Licensing Act does not concern itself with "selling timber"; rather, it pertains to those "buying timber" from the "timber growers." Likewise, the statute does not itself address "listings" under licenses. However, the Department permits others to be listed as agents under the licenses of those registered as timber buyers. Nothing in the Timber Buyers Licensing Act itself references requirements for "listings" or "agents" who are authorized under timber buyers. See, e.g., 225 ILCS 735/3 (referencing those who are to be engaged

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amended the Information– apparently because no subsection of Section 5 prescribed an offense that supported the State's theory. The only statute cited by State in the Amended Information and thereafter was Section 10 of the Timber Buyers Licensing Act, which merely allows the Department to make rules and regulations. Section 10 is not a penal statute.

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"in the business of timber buyer" applying for a license, rather than referring to agents of licensees). The practice of allowing listings and agents is best demonstrated by the Department's own website which identifies who is a licensed timber buyer and who is authorized to act as an agent for each of them. See www.dnr.illinois.gov/timberbuyers (under the button for "Buyer List"). In an application, a timber buyer lists those who are his or her authorized agents including the licensee himself an authorized buyer. See, e.g., www.dnr.illinois.gov/LPR/Documents/TimberBuyersApplication/2018.pdf. Here, the Amended Information (Exhibit H) alleged that Trent Copelen and Johnathan Luckett were timber buyers and that Mr. Edwards was listed as an agent for Copelen but that Mr. Edwards acted as an agent for Luckett in attempting to buy timber from timber growers. Per 17 Ill. Adm. Code Section 1535.1(b), one may be an "authorized buyer" on only one license. So, a licensee may not be listed as an authorized buyer on another licensee's license; nor may a non-licensee who is an authorized buyer on one licensee's license himself either obtain a license or be listed on any other licensee's license.

On June 30, 2016, Mr. Edwards filed a motion to dismiss the original Information and a supporting memorandum stating, among other things, that the facts alleged in the original Information did not state an offense under Section 5 of the Timber Buyers Licensing Act (225 ILCS 735/5). Mr. Edwards

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argued that the original Information (Exs. A & C) failed to state an offense in violation of 725 ILCS 5/111-3 and that no subject-matter jurisdiction existed. (Ex. E, pp. 3-6, 9-15.) Additionally, Mr. Edwards sought dismissal because 17 Ill. Adm. Rule 1535.1(b) is not a criminal offense defined in the Criminal Code and is not otherwise a "statute." (Ex. E, pp. 11-15.) The State sought leave to amend the Information before Mr. Edwards' motion was heard, and such leave was granted. (Ex. F, G.) There were many things wrong with the initial Information, but at least it purported to be brought on the basis of a criminal statute that is, Section 5. No subsequent Information ever cited a criminal statute.

On September 14, 2016, the State filed the Amended Information which alleged that Mr. Edwards committed the "offense" of "unlawfully acting as a timber buying agent for multiple licensed timber buyers" purportedly in violation of Section 10 of the Timber Buyers Licensing Act, 225 ILCS 735/10. (Ex. H.) What had been referenced before (erroneously, in the original Information) as a violation of Section 5 was now, in the Amended Information, being referenced erroneously as a violation of Section 10, which is purportedly a rules enabling section. [4]

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[4] At times this brief refers to Section 10 (225 ILCS 735/10) as a "purported" rules enabling statute because Section 10 does not likely comport with this Court's standards for a delegation by the General Assembly to an administrative agency. In *Stofer v. Motor Vehicle Casualty Co.*, 68 Ill. 2d 361, this Court held that a

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On January 23, 2017, Mr. Edwards filed a motion to dismiss the Amended Information and a supporting memorandum. (Ex. I, J.) Amongst other things, Mr. Edwards argued that the State's citation to Section 10 of the Timber Buyers Licensing Act was insufficient to state an offense, because Section 10 is not a criminal statute and, in any event, Section 10 only governs the Department of Natural Resources—not a private citizen. (Ex. J, pp. 4-6.) Mr. Edwards argued that the Amended Information failed to state an offense in violation of 725 ILCS 5/111-3 and that no subject-matter jurisdiction existed. (Ex. J, pp. 5-6, 11-14, 16-18.) Mr. Edwards also argued 17 Ill. Adm. Rule 1535.1(b) is not a criminal offense. (Ex. J, pp. 13-14.) Additionally, he sought dismissal based on the State's failure to include a mental state and based on the statute of limitations. (Ex. J, pp.

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delegation to an agency must identify (1) the persons and activities potentially subject to regulation; (2) the harm sought to be prevented; and (3) the general means intended to be available to the administrator to prevent the identified harm. 68 Ill. 2d at 879. In *Stofer*, this Court condemned what it called "uncabined discretion." *Id.* at 880. However, in that case, this Court found that the statute in question imposed sufficient standards and thus upheld the rules enabling statute. Here, however, Section 10 is "uncabined." Section 10 of the TBLA simply provides the Department may make such rules and regulations "as may be necessary" to carry out the provisions of the Act. This general, vague phrase does not state who is regulated. There is no mention in the TBLA of agents of timber buyers or "listed" persons, so as to justify any regulation of non-licensee agents of licenses. Moreover, in Section 10, there is no attempt to identify the "harm sought to be prevented or to identify the means intended to be available to prevent the identified harm. *Thygesen v. Callahan*, 74 Ill. 2d 404, 409-411.

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11-13, 14-16.) The Honorable Scott J. Butler denied Mr. Edwards' motion but gave the State leave to amend the Amended Information until May 1, 2017. (Ex. K.) The State filed no such amendment on or before May 1, 2017.

Thereafter, Mr. Edwards filed a Second Motion to Dismiss Amended Information.[5] (Ex. L.) Therein, he cited *People v. Langford*, 195 Ill. App.3d 366 (4th Dist. 1990) for the proposition that an element of *mens rea*—specifically, "knowingly"—must be pled by the State when a crime is alleged under the Timber Buyers Licensing Act. After substantial discussion and dialogue, on July 31, 2017, the State orally sought leave to amend the Amended Information by interlineation to include a mental state of "knowingly" in each count. (Ex. H.) Over the objection of Mr. Edwards' counsel (because the State already had three bites at the apple to include a mental state and the May 1, 2017, deadline for amendments had long passed), the trial court allowed the amendment, and the State's Attorney engrafted the word "knowingly" into the Amended Information by interlineation in each count, albeit he did not do so under oath. (Ex. H.)

[5] Mr. Edwards initially filed the Second Motion to Dismiss together with a Supreme Court Rule 19 Notice of Claim of Unconstitutionality on or about May 12, 2017. However, the Honorable Scott J. Butler expressed concern that the motion was not itself "filed" since it was included with the Rule 19 Notice. To avoid any procedural issue or ambiguity, Mr. Edwards again filed the Second Motion to Dismiss, as a separate filing, on July 31, 2017.

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On August 14, 2017, Mr. Edwards filed a Motion to Dismiss the Second Amended Information[6]. (Ex. M.) Once again, Mr. Edwards contended that the trial court lacked subject-matter jurisdiction (and also raised other arguments, such as the statute of limitations, the lack of an oath swearing to the interlineation, and the insufficiency of the mental state that could reach wholly innocent conduct). (Ex. M, pp. 2, 5-6, 7-8.) The Honorable Scott J. Butler denied the motion. (Ex. K, p. 2, ¶ 5.)

On October 10, 2017, Mr. Edwards filed a Supplement[7] to Objection to Lack of Re-Arraignment, Lack of Plea, Lack of Furnishing Copy of Second Amended Information to Defendant and Demand for Same. (Ex. N.) He argued, amongst other things, that the "Offense Table Code" prepared by the Administrative Office of the Illinois Courts does not list Section 10 of the Timber Buyers Licensing Act as a criminal offense. (Ex. N, pp. 1-3.) The Honorable Scott J. Butler denied this supplement/objection as being moot. (Ex. O.)

On February 2, 2018, Mr. Edwards filed a Supplement to All Pending Motions (Ex. P), again contending that the trial court was without jurisdiction (there, because the 18-month statute of limitations had expired before the State

[6] For clarity, Mr. Edwards refers to the interlineated version of the Amended Information, in which the State handwrote the word "knowingly" into each count, as the Second Amended Information.
[7] An objection had been filed previously.

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added an essential element, a mental state). (Ex. P, pp. 2-10.) In other words, the interlineated amendment to the Amended Information occurred on July 31, 2017, which was more than 18 months after the alleged offense, which was on January 8, 2016 (Count I) and January 5, 2016 (Count II). The 18-month period to file a charge expired on July 8, 2017 and the important amendment to add a *mens rea* did not occur until 22 days later, on July 31, 2017.

On February 9, 2018, Mr. Edwards filed a Pre-Attachment Of Jeopardy Motion For Dismissal And Entry Of Judgment. (Ex. Q.) This motion again raised the lack of jurisdiction (and updated such contention in response to rulings made by the Honorable Scott J. Butler on February 5, 2018). (Ex. Q, pp. 1-3.)

On February 13, 2018, the day the jury trial was to start, the Honorable Michael L. Atterberry denied Mr. Edwards' Pre-Attachment of Jeopardy Motion For Dismissal And Entry Of Judgment[8] and proceeded to trial. (Exs. Q, R.)

During trial, at the close of the State's case, Mr. Edwards filed a Motion for Directed Verdict. (Ex. S.) Therein, he renewed all relevant prior motions and arguments. (Ex. S.) The Honorable Michael L. Atterberry denied the motion.

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[8] Judge Atterberry ruled that the adding of a *mens rea* element was merely a formal amendment and does not change the substance of a charge. (Ex. R). *Contra People v. Kincaid*, 87 Ill. 2d 107, 125 (1981).

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The issue of the lack of a cognizable "offense" was also raised during jury-instruction conferences. For instance, Mr. Edwards tendered a jury instruction setting forth what hypothetically would be the elements of Section 10 of the Timber Buyers Licensing Act—the only statute cited in the Second Amended Information, albeit a non-criminal statute—which the trial court refused.

To repeat, the State characterized the purported offenses in this case as "Unlawfully Acting as a Timber Buying Agent for Multiple Licensed Timber Buyers" in each version of a charging instrument—the latest of which was read verbatim to the jury at the beginning of trial. No such offense or charge is defined in either the Timber Buyers Licensing Act or in Section 1535.1 of the administrative rules. The State apparently surmised this point toward the end of the trial. Then, during a jury-instruction conference, the State for the first time argued that the purported offenses should be called "Buying Timber without a License," since this is the moniker set forth in 17 Ill. Adm. Code 1535.1(b). (See Jury Instructions, Exs. T-X.) No such description or elements appear in Section 10 of the Timber Buyers Licensing Act. The Second Amended Information was not amended to include this last-stage change; the prosecution never requested leave to amend the charge. Mr. Edwards was never re-arraigned or asked to plead to the new description or elements set forth in jury instructions.

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On February 15, 2018, after numerous jury instructions were given over Mr. Edwards' objection, he was found guilty on both counts by the jury— by the same jurors who heard the statement of the case, before trial, describing an alleged offense of "unlawfully acting as a timber buying agent for multiple licensed timber buyers." (Exs. Y, Z.) There is no good label for this turnabout without using the word "switcheroo." The Amended Information alleged, and the jury was read as the statement of the case, that Mr. Edwards was charged with "Unlawfully Acting as a Timber Buying Agent for Multiple Licensed Timber Buyers," in violation of Section 10 and administrative rules, then came the "switcheroo" of the jury being instructed (supposedly) under Ill. Adm. Code 1535.1(b), not Section 10, for the alleged offense of "Buying Timber without a Timber Buyer's License." One cannot get a timber buyer's license in one's own name if one is listed as an authorized buyer on another person's license. The switcheroo thus evolved into an impossible suggestion that Mr. Edwards should have obtained a license himself; that is not possible while having the status of being a non-licensee who is listed on the license of a licensee (such as licensee Trent Copelen).

After the verdict was announced, the Honorable Michael L. Atterberry entered an order stating that "the jury finds defendant guilty of [Count] I and [Count] II" and set the matter for a post-trial motion and sentencing hearing. (Ex.

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AA). Meanwhile, this Court has stayed further proceedings pending disposition of the petition for writ of prohibition. (See Order entered by this Court on April 12, 2018.)

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Argument

II. The Circuit Court lacks subject-matter jurisdiction where the purported criminal charges before it rely solely upon an administrative regulation and not a penal statutory or constitutional provision.

This case is an experiment by the Illinois Department of Natural Resources ("IDNR") and the Schuyler County State's Attorney. In the history of Illinois criminal law, to the undersigned's knowledge, there has never been any reported decision allowing a jury verdict, criminal finding of guilt, or sentence based solely upon an alleged violation of an administrative rule. Yet, here, the IDNR and State's Attorney seek to establish authority to do just that: to begin applying the penal force of criminal law to mere administrative regulations, without invoking or charging any statutory or constitutional authorization for doing so.

Historically, criminal law has permitted some references to administrative facts or rules as results or attendant circumstances, but in each such instance, there is a statute that is alleged to be violated, not just an allegedly-criminal violation of an administrative regulation or a rules-enabling statute.

For example, in *People v. Gurell,* 98 Ill. 2d 194 (1983), the statute provided that no person shall "[i]ntentionally fail to correct or interfere with the correction of [certain plans established pursuant to administrative rules]." *Id.* at 200-201. The defendants were charged with violating the statute, stemming from

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violations of regulations. *Id.* at 199, 202. This Court found that the alleged conduct not only violated a regulation, but also a statute: "Civil penalties may be imposed for the original violation. [Citation omitted.] However, criminal penalties are not imposed for the original violation." *Id.* at 208.

Similarly, in *People v. Fearon*, 85 Ill. App. 3d 1087, 1088 (1st. Dist. 1980), a defendant was charged with violating Section 5 of the Bingo License and Tax Act, which provided that any person who "willfully violates any rule or regulation of the Department is guilty of a misdemeanor." Again, a violation of a statute was alleged; the crime was a violation of a statute, not a violation of a rule, even though a regulation was involved.

There are many other examples of criminal statutes based in whole or in part on administrative rules. For instance, there is a statute which prohibits the conduct of driving a motor vehicle coupled with the attendant circumstance of a license that has been administratively revoked. See, e.g., 625 ILCS 5/6-303. Another example would be prosecutions under the official misconduct statute (720 ILCS 5/33-3(a)), which are brought as violations of the statute, but which can involve proof of a violation of a rule or regulation, if the rule or regulation may be said to be a "law." *People v. Williams*, 239 Ill. 2d 119 (2010).

In these cases, a criminal statute is charged, and such statute prescribes the prohibited conduct and any attendant circumstances that are part of the

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prosecution's burden of proof. In these cases, in Illinois and sister states, a defendant does not face prosecution for violating a rule; rather, a defendant faces criminal prosecution because he or she allegedly violated a statute. *State v. Chvala*, 271 Wis. 2d 115, 148, 149 (2004). As succinctly noted by the Supreme Court of Indiana in *Tiplick v. State of Indiana*, 43 N.E. 3d 1259, 1269 (2015), "disobedience [is] in violation of the statute, and not a rule of the ministerial board." In contrast, this case does not charge a criminal statute; it charges a regulation. The Illinois Supreme Court should put an end to this experiment.

The norm is (and always has been) that Circuit Courts have jurisdiction over justiciable matters involving alleged crimes based on conduct described in a "statute." See IL Const. of 1970, Art. VI, § 9 (conferring jurisdiction to Circuit Courts only as to "all justiciable matters"). Without a statute, there can be no crime. Without a statute, there can be no justiciability.

A ·~~II~~. The Criminal Code does not permit criminal charges based upon regulations alone.

Section 1-3 of the Criminal Code provides that "[n]o conduct constitutes an offense unless it is described as an offense <u>in this Code or in another statute</u> of this State." 720 ILCS 5/1-3 (emphasis added). Similarly, Section 2-12 defines an "offense" as a "violation of any penal <u>statute</u>." 720 ILCS 5/2-12 (emphasis added); see also 725 ILCS 5/102-15.

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The term "statute" is also defined. It means "the Constitution or an Act of the General Assembly of this State." 720 ILCS 5/2-22. An administrative rule, of course, is neither the Constitution nor an Act of the General Assembly. Rather, it is a regulatory creature of the executive branch. Thus, a regulation alone does not invoke the provisions of the Illinois Criminal Code (or the constitutional requirement of justiciability). In other words, there can be no subject-matter jurisdiction over an alleged criminal proceeding charging solely a regulatory violation, inasmuch as this does not fit within the definition of an "offense" set forth in the Criminal Code. Nor does it otherwise constitute a justiciable matter under the Illinois Constitution, as further discussed below.

Notably, Section 1-5 of the Criminal Code, which is entitled "State criminal jurisdiction," limits the trial court's subject-matter jurisdiction in criminal cases to matters involving an "offense." 720 ILCS 5/1-5. In other words, an administrative regulation cannot create an offense, and without an offense, there can be no criminal jurisdiction.

B. ~~X~~. The only statute cited by the State in the relevant charges—Section 10 of the Timber Buyer's Licensing Act—is not a penal statute.

Here, in the Amended Information and Second Amended Information, the State cited one statute: Section 10 of the Timber Buyers Licensing Act. See 225 ILCS 735/10. However, this does not invoke jurisdiction or justiciability according to the Illinois Constitution, the Criminal Code, or the Code of Criminal

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Procedure. This is because the statute does not describe a crime; it is not penal in nature.

Section 10 states in its laconic entirety that "[t]he Department may make such rules and regulations as may be necessary to carry out the provisions of this Act." 225 ILCS 735/10. This statute does not fit within the definition of an "offense" and certainly does not, in any event, apply to private, non-IDNR persons such as Mr. Edwards who are not capable of violating Section 10 by, for example, not making rules and regulations. Rather, this statute merely allows the IDNR to make rules and regulations. Nor is it penal. Rather, it is a rules-enabling statute which purports to authorize rulemaking by the IDNR. By its terms, Section 10 confers power on an agency to make rules, not power on an individual citizen or a court or a State's Attorney. Thus, Section 10, as pled in the Amended Information, cannot be viewed as describing conduct which constitutes an offense within the meaning of 720 ILCS 5/1-3, 720 ILCS 5/2-22, 720 ILCS 5/2-12, or 725 ILCS 5/102-15. In fact, Section 10 of the Timbers Buyers Licensing Act is not even on the Criminal Offenses Table of the Administrative Office of Illinois Courts ("AOIC"). See Ex. AC, at Ex. 3 thereto.

C. ~~F.~~ The two regulations cited in the relevant charges do not describe an "offense."

Each of the two administrative rules referenced in the Amended Information are codified in Title 17, Part 1535, of the Illinois Administrative

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Code. One such rule is 17 Ill. Adm. Code 1535.1(b). This rule describes itself as creating a provision, non-compliance with which constitutes "buying timber without a timber buyer's license." Section 1535.1(b) only on the surface resembles what is provided in a non-pleaded statute, namely, Section 3 of the Timber Buyers Licensing Act (225 ILCS 735/3), which requires a person to obtain a license before engaging in the business of timber buyer. (Section 3 does not address the topic of agents or listed persons, such as Mr. Edwards.) A violation of Section 3 is a Class A misdemeanor pursuant to Section 11(a-5) (225 ILCS 735/11(a-5)). Section 3 appears to require licensure, as it governs those who should be licensed, while Section 1535.1(b) is geared more towards whom a licensee may list as agents (who are not themselves licensed). Here, as alleged in all versions of the Information filed in the Circuit Court, Mr. Edwards was a listed agent for a timber buyer, not himself a licensee, at all relevant times.

D. ~~K.~~ The State has abandoned any reliance on Section 5 of the Timber Buyers Licensing Act which, in any event, is inapplicable.

This prosecution initially commenced with an Information that alleged a violation of Section 5 of the Timber Buyers Licensing Act (225 ILCS 735/5), without alleging violation of any sub-section thereof and without otherwise alleging facts that fell within the ambit of any part of Section 5. In any event, under Section 5, sub-sections (a) through (f) only apply to a licensee, and Mr. Edwards was not a licensee at the time and was not alleged to be a licensee.

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Here, once the State realized that Section 5 did not describe Mr. Edwards' conduct in any way, the State abandoned pleading the statute (Section 5) and filed an Amended Information that was based on a rules-enabling statute in Section 10 (225 ILCS 735/10) and two administrative rules (17 Ill. Adm. Code 1535.1(b) and 1535.60). Perhaps these are among the reasons why the administrative rules in Sections 1535.1(b) and 1535.60 were selected and charged by the State and the IDNR, rather than the statute set forth in Sections 3 or 5 of the Timber Buyers Licensing Act, in that the State believed alleged violations of the regulations would be easier for the State to prove than alleged violations of the statutes. In any event, neither Section 3 nor Section 5, nor any penalty provision in Section 11(a)[9] or 11(a-5), of the Act was charged in the Amended Information. Here, it is plain that the Amended Information is not based on any statute that describes an offense. Rather, the Amended Information is based solely on two administrative rules and one rules-enabling statute.

E. ~~F~~. A purported penalty provision adopted by the Department of Natural Resources in the Illinois Administrative Code does not obviate the Criminal Code, Code of Criminal Procedure, and Illinois Constitution.

The second administrative rule alleged in the Amended Information is 17 Ill. Adm. Code 1535.60(a), which provides as follows:

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[9] Section 11(a) (225 ILCS 735/11(a)) is not listed on the AOIC's Criminal Offenses Table. It was removed from the "active" portion of the Table and is now listed in the "inactive" portion of the Table.

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> Any person violating the provisions of this Part shall, upon finding of guilt by a court of law, be subject to statutory penalties as prescribed by the Timber Buyers Licensing Act [225 ILCS 735] and to revocation of license and suspension of privileges, as set out in the Timber Buyers Licensing Act.

The above-quoted language references a person violating "the provisions of this Part." In this context, the term "Part" refers to Part 1535 of Title 17. The "Part" is not a statute; it is a grouping of rules or regulations in the Illinois Administrative Code. The above-quoted language from Section 1535.60(a) presupposes that a Circuit Court could enter a "finding of guilt" for a violation of the provisions of Part 1535. The notion, in this regulation, that a Circuit Court could enter a "finding of guilt" for an alleged violation of an administrative rule, is problematic for several reasons. First, a violation of the provisions of Part 1535 would not constitute an "offense" under 720 ILCS 5/1-3, 720 ILCS 5/2-12, 720 ILCS 5/2-22, or 725 ILCS 5/102-15, because Part 1535 is not a "statute." Second, the IDNR has no authority to confer jurisdiction on a Circuit Court. Third, the role of Circuit Courts is defined in Article VI, Section 9 of the Illinois Constitution as follows:

> SECTION 9. CIRCUIT COURTS- JURISDICTION
>
> Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

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The Constitution provides for Circuit Courts to "review administrative action as provided by law." The Constitution does not provide original jurisdiction to adjudicate alleged violations of administrative rules as crimes.

In short, Section 1535.60(a) cannot confer jurisdiction on a Circuit Court to enter findings of guilt for alleged violations of the IDNR's rules in Part 1535. In Section 1535.60(a), the Department cannot create a crime out of every administrative rule in Part 1535, because Part 1535 is not a "statute." Although prosecutions of statutory crimes are "justiciable matters," administrative rule violations as non-crimes are not "justiciable matters" for exercising the original jurisdiction of a Circuit Court in a criminal case, even if the Constitution grants to Circuit Courts the power to "review" administrative actions as provided by law.

Here, the point is, this purported criminal case is based upon two administrative rules (§§ 1535.1(b) and 1535.60(a)) and one rules-enabling statute (225 ILCS 735/10), none of which constitutes a penal statute. This is why this Court should issue a writ of prohibition, to put an end to this experimental prosecution, because a criminal prosecution for allegedly violating an administrative rule is both peculiar and wrong. Due to the novelty and importance of this experimental prosecution, it is hereby suggested that this Court request oral argument.

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Further, Mr. Edwards' livelihood is at stake. Following the jury's adverse verdict after receiving non-IPI instructions purportedly setting forth elements of a violation of an administrative rule (Section 1535.1(b)), Mr. Edwards now awaits sentencing in Schuyler County. (During the pendency of the case before this Court, however, this Court has stayed further proceedings in the trial court.) Not only that. Under Section 1535.60(a), referenced in the Amended Information, a Circuit Court's "finding of guilt" for a statutory violation under Part 1535 may very well lead to a revocation of Mr. Edwards' Timber Buyer's License. Thus, Mr. Edwards could conceivably be sentenced to jail for two days shy of two years for alleged violations of an administrative rule, plus have his IDNR-issued license revoked. This is why Mr. Edwards requests the assistance of the Illinois Supreme Court, to halt the criminal proceedings before the Circuit Court that involve no penal statute, no offense, no justiciable matter, and no jurisdiction. A writ of prohibition should issue. Mr. Edwards' business will falter if he is jailed or if his license is revoked, even if he later prevails after using the ordinary appellate process.

The IDNR should not be allowed to use criminal proceedings as a maneuver to adjudicate what is pled as a violation of regulations, not a penal statute. Here, Section 10 of the Timber Buyers Licensing Act (225 ILCS 735/10) is

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not such a statute. Rather, Section 10 confers rulemaking authority on the Department, not jurisdiction on a Circuit Court.

The purpose of a writ of prohibition is to provide a court of superior jurisdiction a means to prevent an inferior court from exercising jurisdiction with which it is not legally vested. *People ex rel. Sokoll v. Municipal Court*, 359 Ill. 102, 107 (1934). A writ of prohibition is used to restrain an inferior court from further action in the cause at issue when damage and injustice are likely to result from such action. *People ex rel. Modern Woodmen of America v. Circuit Court*, 347 Ill. 34, 39 (1931).

In the instant case, if the prosecutorial experiment is allowed to proceed based solely on alleged violations of an administrative rule, the criminal justice system will be extended well beyond its intended ambit. State agencies will pester prosecutors to charge violations of their administrative rules rather than charging violations of statutes. Non-justiciable matters will occupy the courts' scarce resources, when those resources should be devoted to justiciable matters. One can only imagine the Administrative Office of Illinois Courts needing to expand its "Criminal Offenses Table" to incorporate a multitude of regulations contained in the Illinois Administrative Code. Plus, there would presumably be a need either to (1) as here, craft non-IPI instructions or (2) task a committee to

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prepare IPI instructions for a multitude of regulations, for use in criminal cases.[10] There is good cause for this Court to rule that without a statutory criminal statute being pled in an Information or Indictment, jurisdiction in a criminal case is lacking.[11]

Mr. Edwards has preserved this argument in the Circuit Court on numerous occasions, after which Respondents, the Honorable Scott Butler and the Honorable Michael Atterberry, denied all such dispositive motions. In the interest of judicial economy, and administration of justice, Mr. Edwards asks this Court to issue a writ of prohibition.

The Circuit Court has no "justiciable matter" before it and as such lacks subject-matter jurisdiction; all previous orders entered by the Circuit Court, after an Amended Information was filed alleging only administrative rules, were in excess of its jurisdictional and inherent authority. This Court has held that

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[10] In the end, here, the Circuit Court issued non-IPI instructions asking that the jury decide whether Mr. Edwards should be found guilty of "buying timber without a license." (This issue, and other issues, have been raised before the Circuit Court in a motion for arrest of judgment.)

[11] Mr. Edwards' counsel has researched authority concerning 725 ILCS 5/111-3(a)(2) and was unable to locate any authority concerning jurisdiction and the State's failure to cite a statutory provision in an information or indictment. However, Ill. Const. 1970, art. VI, sec. 9 refers to all "justiciable matters," and 720 ILCS 5/1-5(a) states "State criminal jurisdiction" in reference to a person who is subject to prosecution in this State for an "offense." As noted earlier, "offense" means a violation of any penal statute of this State" 720 ILCS 5/2-12. No statute, no offense. No offense, no jurisdiction.

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"[t]here can be no doubt that jurisdiction is lacking where the circumstances alleged do not constitute the offense charged as it is defined in the statute and nothing short of alleging entirely different facts could cure the defect. * * * A conviction entered in such a case exceeds the statutory and constitutional authority which determine the subject matter jurisdiction of a court in a criminal case." *People v. McCarty*, 94 Ill. 2d 28, 38 (1983); *see also People v. Devine*, 295 Ill. App. 3d 537, 543 (1st Dist. 1998) ('To vest a court with jurisdiction in a criminal case, the information must charge the accused with a crime.").[12] Lastly, the circuit court is without jurisdiction to enter a conviction against a defendant based upon actions that do not constitute a criminal offense. *People v Kayer*, 2013 IL App (4th) 120028, ¶ 9.

This Court addressed the implications of the constitutional requirement of a "justiciable matter" in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), as follows:

> Our current constitution does not define the term 'justiciable matters,' nor did our former constitution, in which this term first appeared. Generally speaking, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon legal relations of parties having adverse legal interests.

[12] This authority was cited to the circuit court in Mr. Edwards' Memorandum in Support of Motion to Dismiss, filed on June 28, 2016.

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Id. at 335 (internal citations omitted). The term "justiciable" has been defined as "(of a case or paper) brought before a court of justice; capable of being disposed of judicially." Blacks Law Dict. 9th Ed. The circuit court's authority to adjudicate a justiciable matter derives exclusively from the state constitution. *In re Luis R.*, 239 Ill. 2d 295, 304 (2010). In *Luis*, this Court determined the issue of jurisdiction by looking to "whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine." *Id.* at 301. Under Article VI, Section 9 of the Illinois Constitution, administrative actions are matters for review by circuit courts, not adjudication by circuit courts, in the original instance. Thus, adjudication of administrative actions alone is not within the class of cases that the circuit courts are authorized to hear and adjudicate, criminally, in the first instance. Violations of criminal statutes are, in contrast, within a class of cases that are justiciable. The circuit courts have jurisdiction in all cases involving criminal offenses which fall within the ambit of Section 1-5 of the Criminal Code. *People v. Gilmore*, 63 Ill. 2d 23, 26-27 (1976).[13] However, "[t]he

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[13] As discussed in the special concurrence of Justice Moran in *People v. Pankey*, 94 Ill.2d 12 (1983):

> The 1970 Illinois Constitution abolished the various limited-jurisdiction trial courts and established a single unified trial court: the circuit court. (Ill. Const. 1970, art. VI, sec. 1.) This avoided the multiple trials, 'fragmentation and troublesome jurisdictional questions which were the hallmark of the former constitutional and legislative courts of limited jurisdiction, such as the county courts,

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trial court is <u>not</u> authorized to convict a person who has <u>not</u> been charged with a violation of the criminal law." *People v. Greene,* 92 Ill. App. 2d 201, 204 (1st Dist. 1968) (emphasis added), *citing People v. Minto,* 318 Ill. 293 (1925). In the absence of an accusation charging a defendant with a violation of the criminal law, a charge is void on its face, the trial court has no jurisdiction or authority to convict, and the defendant cannot by waiver or consent confer such jurisdiction or authority. *People v. Fore,* 384 Ill. 455, 458 (1943); *Minto,* 318 Ill. at 295-297. As such, it does not confer jurisdiction upon a court. *People ex rel. Kelley v. Frye,* 41 Ill. 2d 287, 290 (1968) (writ of habeas corpus denied because indictment was not void due to lack

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> probate courts, city and municipal courts and others.' (6 Record of Proceedings, Sixth Illinois Constitutional Convention 808. See generally, G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 330-31 (1969).) The Constitution, of necessity, vested original jurisdiction over all justiciable matters in the one remaining trial court. (Ill. Const. 1970, art. VI, sec. 9.) But this change in court structure should not be read as conferring subject matter jurisdiction for any matter brought to the attention of or filed with the Circuit Court. Section 9 of article VI allows any justiciable matter, which previously should have been brought in one of the limited jurisdiction courts, to be brought in the circuit court. This same provision was contained in section 9 of article VI of the Judicial Article of 1962, effective January 1, 1964. But subject matter and personal jurisdiction are still required. In fact, even after this constitutional section was adopted, this Court said that an indictment which failed to charge an offense deprived the court of jurisdiction. *People v. Wallace* (1974), 57 Ill.2d 285, 288, 312 N.E.2d 263.

Id. at 23-24 (Moran, J., specially concurring).

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of signature by grand-jury foreperson, such that there was subject-matter jurisdiction).

F. M. Even if a regulation can serve as the criminal law pled in an Information, Section 1535.1(b) is not a criminal regulation.

Even assuming solely for the sake of argument that a provision of an administrative rule (not a statute) could be pled as the criminal law upon which a prosecution in Illinois is based, Section 1535.1 could not be considered to be a criminal law. First, as set forth in footnote 4, *supra,* Section 10 of the Timber Buyers Licensing Act cannot be viewed as a valid delegation of legislative authority to adopt rules such as Section 1535.1. The first factor discussed in footnote 4, *supra,* is that the statute must identify the persons and activities potentially subject to regulation. Here, the statute does not mention listed persons or agents of timber buyers, which is how Section 1535.1 is being used in the instant case. For this reason, and the other reasons set forth in footnote 4, *supra,* the provision in Section 10 that provides the Department with authority to "make such rules as may be necessary" does not satisfy the test of *Stofer v. Motor Vehicle Casualty Co.*, 68 Ill. 2d at 879.

Second, Section 1535.1 was not adopted to be a criminal provision. In *United States v. Izurieta,* 710 F.3d 1176 (11th Cir. 2013), the court predicated its ruling to vacate the criminal conviction of a food importer based on an examination of the true nature of the regulation in question and opted for lenity.

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This is especially appropriate in cases where, as here, "a regulation giving rise to what would appear to be civil remedies is said to be converted into a criminal law." *See id.* at 1182. In vacating the defendant's criminal conviction in *Izurieta,* the court held that the text of the regulation at issue was civil in nature, setting forth contractual terms between an importer and U.S. Customs. *Id.* at 1184. The *Izurieta* court, therefore, evaluated the true nature of the regulation in question and opted for lenity where, as here, "a regulation giving rise to what would appear to be civil remedies is said to be converted into a criminal law." *Id.* at 1181-82. The *Izurieta* court found a lack of subject-matter jurisdiction before the trial court in that case because "the indictment did not adequately set forth a violation of criminal law, and subject matter jurisdiction does not exist." *Id.* at 1185.

Here, to determine the true nature of the regulation in question, this Court can examine the regulatory history leading up to what the IDNR added as 17 Ill. Adm. Code 1535.1 *et seq.* in a "New Section" on May 26, 1992. Specifically, the IDNR published in the Illinois Register at 92 Ill. Reg. 8499-8502 the "Summary and Purpose" of the regulation, i.e., the Agency's administrative purpose of 17 Ill. Admin. Code 1535.1. In this publication, the IDNR stated: **"Section 1535.1 is being added to outline the Timber Buyer's License application procedures"** (emphasis added). Notably, there is no statement of intent to create a crime or to

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otherwise apply the regulation to agents of licensed timber buyers, rather than only apply to licensed timber buyers and timber buyer license applicants themselves.

Courts in other jurisdictions have found that only statutes—not merely regulations—provide what is a crime including the elements thereof. *See, e.g., Chvala*, 271 Wis. 2d at 148, 149; *Tiplick*, 43 N.E. 3d at 1269 (2015); *United States v. Alghazouli*, 517 F.3d 1179, 1187-88 (9th Cir. 2008) (finding a statute is required in order to criminalize a violation of a regulation); *United States v. Eaton*, 144 U.S. 677, 687-88 (1892) (holding that regulatory requirement imposed by Commissioner of Internal Revenue could not form the basis of a crime under a statute penalizing failure to do a thing "required by law"). In other words, here, 17 Ill. Adm. Code 1535.1 is not, and was not intended to be, a criminal rule. It cannot form the basis of a criminal prosecution.

G. ~~H~~. Prohibition is warranted.

This Court is authorized, by the Illinois Constitution of 1970, to exercise original jurisdiction in cases relating to prohibition. Ill. Const. 1970, art. VI, sec. 4(a); Illinois Supreme Court Rule 381(a); *Hughes v. Kiley*, 67 Ill. 2d 261, 266 (1977). "The purpose of a writ of prohibition is to provide a court of superior jurisdiction a means to prevent an inferior court from exercising jurisdiction with which it is not legally vested and to restrain an inferior court from further action in the

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cause at issue when damage and injustice are likely to result from such action." *Hughes*, 67 Ill. 2d at 266 (internal citations omitted). For a writ of prohibition to be issued: (1) the action to be prohibited must be judicial or quasi-judicial in nature; (2) the jurisdiction of the tribunal against which the writ is sought must be inferior to that of the issuing court; (3) the action to be prohibited must be either outside the tribunal's jurisdiction or, if within its jurisdiction, beyond its legitimate authority; and (4) the petitioner must be without any other adequate remedy. *People ex rel. No. 3 J. & E. Discount, Inc. v. Whitler*, 81 Ill. 2d 473, 479-80 (1980).

Here, Mr. Edwards meets the aforesaid elements to obtain a Writ of Prohibition: (1) Mr. Edwards is seeking an Order of this Court prohibiting the Honorable Michael L. Atterberry from conducting a sentencing hearing or any other action of the circuit court; (2) Mr. Edwards is seeking to enjoin a circuit court which is legally inferior to this Court; (3) the circuit court is without jurisdiction and as such any actions taken by the circuit court would be outside the tribunal's jurisdiction or, if within its jurisdiction, beyond its legitimate authority; and (4) Mr. Edwards has no other adequate remedy since the Honorable Michael L. Atterberry and the Honorable Scott J. Butler previously ruled the court had jurisdiction and proceeded to trial on the State's defective Second Amended Information over objection from the defendant. (Ex. H). It

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would be futile to say the least to raise the lack of subject matter jurisdiction to the circuit court again, since the circuit court has already ruled at least twice that the court had jurisdiction when denying dispositive motions prior to trial.

Here, the State lacked the ability to prosecute an unknown or unrecognizable criminal offense of "Unlawfully Acting As A Timber Buying Agent For Multiple Licensed Timber Buyer." Evidence of this fact is the State's inability to cite a criminal statute that Mr. Edwards purportedly violated. Therefore, the circuit court lacks the ability to enter any valid disposition or other order when no statute proscribed the alleged criminal offenses charged by the State.

Nullum crimen sine lege ("no crime without law") is a principle in criminal law that a person cannot and should not face criminal punishment except for an act that was criminalized by law before he/she performed the act.

Here, Defendant's convictions are based solely on 17 Ill. Adm. Rule 1535.1(b), which is civil in nature and not criminal in nature. Because the State has presented a charge to the circuit court that is fatally defective on its face for failure to cite any criminal statutory provision that Mr. Edwards purportedly violated (and for not adhering to strict compliance in charging a criminal offense as required in, e.g., 725 ILCS 5/111-3), the circuit court did not and does not have subject-matter jurisdiction.

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Conclusion

WHEREFORE, for the foregoing reasons, Petitioner, KENIN L. EDWARDS, respectfully requests that this Honorable Court grant his petition for writ of prohibition as aforesaid and grant such other, further relief the Court deems just and appropriate.

Respectfully submitted,

KENIN L. EDWARDS, Petitioner,

By: DANIEL G. O'DAY, ESQ.

DANIEL G. O'DAY, ESQ.
CUSACK, GILFILLAN & O'DAY, LLC
415 Hamilton Boulevard
Peoria, IL 61602
Phone: (309) 637-5282
ARDC: 6181202
E-mail: doday@cgolawfirm.com

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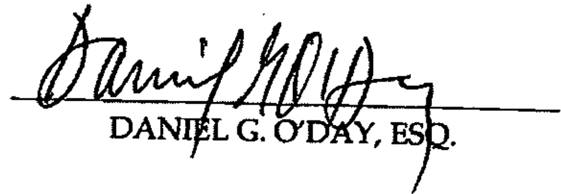
Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 38 pages or words.



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PROOF OF SERVICE

The undersigned, DANIEL G. O'DAY, counsel for Petitioner under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certifies that the statements set forth in this instrument are true and correct, except as to matters herein stated to be on information and belief and as to such matter the undersigned certifies as aforesaid that he verily believes the same to be true, as follows: the foregoing Petitioner's Brief in Support of Petition for Writ of Prohibition was transmitted by e-mail on the 18th day of May 2018, to the following persons and parties at the following e-mail addresses:

HONORABLE MICHAEL L. ATTERBERRY
Circuit Judge of the Eighth Judicial Circuit
102 South Seventh Street
Petersburg, Illinois 62675
m.atterberry@co.menard.il.us

HONORABLE SCOTT J. BUTLER
Circuit Judge of the Eighth Judicial Circuit
127 S. Congress
P.O. Box 295
Rushville, Illinois 62681
butlera@schuylercounty.org

HONORABLE LISA MADIGAN
Illinois Attorney General's Office, Criminal Division
100 W. Randolph
Chicago, Illinois 60601
mglick@atg.state.il.us

HONORABLE LISA MADIGAN
Illinois Attorney General's Office, Civil Division
100 W. Randolph
Chicago, Illinois 60601
pracette@atg.state.il.us

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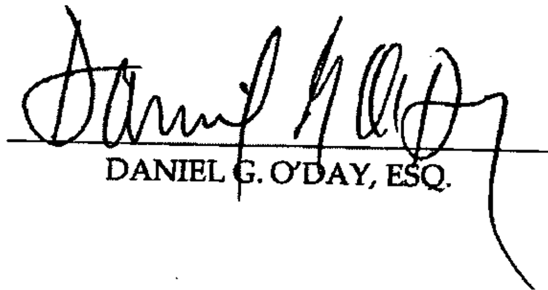
HONORABLE RAMON M. ESCAPA
Schuyler County State's Attorney
127 S. Congress
P.O. Box 295
Rushville, Illinois 62681
rescapa@statesattorney.schuyler.il.us

STATE'S ATTORNEY'S APPELLATE PROSECUTOR, FOURTH DISTRICT
725 South Second Street
Springfield, Illinois 62704
4thdistrict@ilsaap.org



DANIEL G. O'DAY, ESQ.

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Carolyn Taft Grosboll
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