

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal From York County
The Honorable John C. Hayes, III, Circuit Court Judge
Opinion No. 4983 (S.C. Ct. App. filed June 6, 2012)
Appellate Case No. 2012-213017.

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

BRIEF OF RESPONDENT

CHRISTOPHER A. WELLBORN

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ATTORNEY FOR RESPONDENT

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ISSUE PRESENTED

The Court of Appeals was correct in affirming the dismissal of the Respondent's case, strictly construing §56-7-10 and §56-7- 15(A) in accordance with the rules of statutory construction and upholding by implication the Separation of Powers provision of Art. I Section 18 of the South Carolina Constitution.

STATEMENT OF THE CASE

The Respondent was issued a uniform traffic ticket in York County on February 18, 2006, charging him with criminal domestic violence 1st offense. (See R. p. 2). This case was scheduled for jury trial on July 8, 2009 (See R. p. 20). At that time, Magistrate Johnny H. Grayson, heard and granted the Respondent's Motion to Dismiss for lack of jurisdiction. (See R. p.21-23). The State appealed to the Circuit Court which was heard before the Honorable John C. Hayes, III, on October 27, 2009 (See R. p.1-19). Judge Hayes affirmed the Magistrate's Court's dismissal for lack of jurisdiction by Order dated November 6, 2009. (See R. p. 24-26). The State then appealed Judge Hayes's Order to the South Carolina Court of Appeals. On June 6, 2012, the Court of Appeals affirmed the Magistrate's Court's dismissal for lack of jurisdiction. See State v. Ramsey, 398 S.C. 275, 727 S.E.2d 429 (2012). The State petitioned for a re-hearing on June 20, 2012 and the petition was denied on August 27, 2012. The State submitted its Petition for Writ of Certiorari on September 26, 2012. The Respondent filed his return to the Petition for Writ of Certiorari on November 19, 2012. On March 20, 2013, this Court granted the State's Petition for Writ of Certiorari to review the Court of Appeals Opinion. The State having submitted its Brief, the Brief of the Respondent follows.

ARGUMENT

The Court of Appeals correctly affirmed the dismissal of the Respondent's case where an officer did not use a warrant to charge the Respondent for an alleged criminal domestic violence offense that was not committed in the officer's presence.

Factual Background

On February 18, 2006 officers of the York County Sheriff's Department arrived at an apartment that was rented by Ms. Judy Ramsey, the wife of the Respondent, James Ervin Ramsey (James Ramsey). Both Judy Ramsey and James Ramsey met the officers in the parking lot of the apartment complex. As conceded by the State, the officers did not observe any criminal activity committed in their presence. However, after speaking with Judy Ramsey, their attention was drawn to a blister on Judy Ramsey's thumb which allegedly occurred as Jimmy Ramsey took a phone out of her hand. As a result, James Ramsey was placed under arrest, taken to the York County Detention Center, housed and held until he was able to appear some days later before the Circuit Court to request bond. The charging document which the officers used for this arrest was a uniform traffic ticket.

Standards of Review

Although statutory interpretation is a question of law, and this Court is free to decide matters of law with no particular deference to the lower court, in construing a statute, words are to take their plain and ordinary meaning without resort to forced construction. State v. Southerland, 316 S.C. 377, 384, 447 S.E.2d 862, 867 (1994). Furthermore, in a criminal

case, it is a cardinal rule statutory construction that penal statutes are to be strictly construed against the State. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

Discussion

The State has not raised in its Petition for Certiorari or at any time below, that the language of §56-7-10 or §56-7-15(A) is ambiguous and therefore has conceded that point. The State has sought to side-step this impediment by advancing the theory “legislative acquiescence”. The State suggest that the Legislature should be deemed to have acquiesced in the interpretation of these statutes by the Attorney General. More troubling is the State’s assertion that the Legislature’s decision not to amend §56-7-15(A) demonstrates that the Attorney General’s opinion is consistent with Legislative intent. The cases cited by the State do not support such a proposition. In Williams v. Morris, 320 S.C. 196, 464 S.E.2d 97 (1995), the Court upheld the veto power of the Governor as granted by our Constitution, finding the Attorney General’s opinion in support of the Governor’s position on this issue to be persuasive. This Court did not state or suggest the theory of legislative acquiescence advanced by the State in its brief in the instant case. The other court cases from the Court of Appeals, cited by the State in support of this theory, reaffirm the cardinal principle of statutory construction that “if a statute’s language is plainly unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning. State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct. App.1998); Branch v. City of Myrtle

Beach, 332 S.C. 575, 578, 505 S.E.2d 925, 926 (Ct. App. 1998), *overruled on other grounds*. In State v. Son, 179 N.J. Super 549, 432 A.2d 947 (N.J. Super, A.D. 1981), the Appellate Division of New Jersey addressed this issue stating that although the absence of any amendment to a statute following an Attorney General's formal opinion strongly suggests that the views expressed therein are consistent with legislative intent, this rule is not absolute and merely an aid to statutory construction, and it is still necessary for the Court to undertake an independent analysis of the statute's construction. 179 N.J. Super 553-554, 432 A.2d 949. The same principle was applied by the Court of Appeals of Maryland in Twinbrook Swimming Pool Corp. v. Comptroller of the Treasury, Admissions Tax Division, 274 Md. 88, 333 A.2d 49 (1975). In that case, the court addressed whether dues to a private club for membership constituted an admissions fee and were therefore taxable. The statute the court was interpreting did not address the distinction between membership dues and admissions fees, however the Court found it significant that the controller's regulation followed the statutory interpretation adopted by the Attorney General for the State of Maryland. In Gomez v. Jackson Hewitt, Inc., 427 Md. 128, 46 A.3d 443 (2012), the Maryland Court of Appeals again addressed the theory of "legislative acquiescence". In a case involving the interpretation the Maryland Credit Services Business Act (CSBA), the Court found that "neither party argues that the language of CSBA is ambiguous" 427 Md. at 159. 46 A.3d at 462 n 27 (2012). The court went on to affirm the principle that "Courts are not bound by an attorney general's opinion but that when the meaning of the legislative language is not entirely clear, such legal interpretation should be given consideration in

determining the legislative intention”. 427 Md. at 170, 46 A.3d at 469 n.36.

The State’s argument, if accepted, would render the Legislature’s role to that of a functionary of the Attorney General and at best advisory. The idea that the General Assembly, after drafting a statute which is clear and unambiguous in its language, must periodically reaffirm that it meant what it said or otherwise risk nullification or amendment by way of an attorney general’s opinion is offensive to the Separation of Powers provisions of Art. I, Sec. 8 of our Constitution. Although, power may love a vacuum, such a legislative vacuum is not created by our General Assembly failing to periodically send such reminders to the Attorney General.

The Court of Appeals has correctly identified the clear distinction between the terms “freshly committed” and “committed in the officer’s presence”. The State suggests there is no factual distinction between an officer observing someone commit an offense, in flagrante delicto, and an officer arriving post-offense and deducing from the circumstances that the offense occurred prior to such officer’s arrival. The most recent cases that address this distinction are Fradella v. Town of Mt. Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) and State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980). In Fradella the Court recognized that “an officer can arrest for a misdemeanor [not committed within his presence] when the facts and circumstances *observed by the officer* give him probable cause to believe that a crime has been freshly committed”. 325 S.C. at 475, 482 S.E.2d at 56, citing State v. Martin, 275 S.C. at 146. 268 S.E.2d at 107. The Court at no time suggested that the two concepts were synonymous, but that they had the same legal effect by creating an exception

to the traditional warrant requirements. In Martin, our Court held while generally an officer can not arrest, without a warrant, for a misdemeanor not committed in his presence, an officer can arrest for a misdemeanor when the facts and circumstances observed by the officer give him probable cause to believe a crime has been freshly committed. Thus an exception is created to the general rule if the crime was “freshly committed”. The State has seized upon the language of State v. Williams, 237 S.C. 252, 116 S.E.2d 858 (1960) to suggest there is no such distinction. In Williams, a highway patrolman saw a jar of un-stamped liquor under a passenger seat occupied by the Defendant, thereby violating liquor law with the direct observation of the officer. Of interest, is that the Williams court relied upon a previous opinion from the Supreme Court of West Virginia in State v. Koil, 103 W. Va. 19, 136 S.C. 510 (1927), where that Court stated “an offense can be said to be committed in the presence of an officer only when he sees it with his own eyes, or sees one or more series of acts constituting the offense, and is aided by his other senses or information as to the others”. 103 W. Va. 19, 136 S.E. 510. Even the opinion of our Attorney General does not equate the concepts but suggest that they have the same legal affect, stating that “a uniform traffic ticket may be used to charge an alleged perpetrator of criminal domestic violence even if the investigating law enforcement officer arrives on the scene after the offense has been committed.....” S.C. Atty. Gen. Op. Nov. 13, 2003 (2003 WL 22862788). Therefore, the State, via the Attorney General, is in the unique posture of taking a position that is inapposite to that of the Attorney General on this discrete issue.

CONCLUSION

For all the forgoing reasons, the Respondent submits that the decision of the Court of Appeals should be affirmed and the Respondent's criminal domestic violence case dismissed.

Respectfully submitted,


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ATTORNEY FOR RESPONDENT

June 7, 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable John C. Hayes, III, Circuit Court Judge
Opinion No. 4983 (S.C. Ct. App. filed June 6, 2012)

THE STATE OF SOUTH CAROLINA,

PETITIONER,

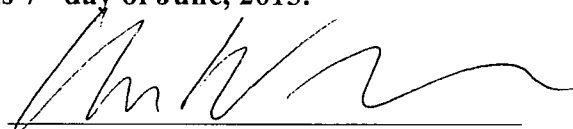
v.

JAMES ERVIN RAMSEY,

RESPONDENT.

PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Brief of Respondent** in the above-referenced case has been served by United States mail upon counsel for Petitioner, as follows: Christina J. Catoe, Assistant Attorney General, Office of Attorney General, Post Office Box 11549, Columbia, SC 29211, **this 7th day of June, 2013.**



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