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Jan 29 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2023-002003
Opinion No. 2023-UP-342 (S.C.Ct.App. filed October 25, 2023)

The State,

Respondent,

vs.

Kristy Olympia Davis,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
S.C. Bar No. 101188

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial court properly denied Petitioner's motion for directed verdict because the element of household member as defined by section 16-25-10 of the South Carolina Code was met even if both Petitioner and the victim were the same gender.

STATEMENT OF THE CASE

The Abbeville County Grand Jury indicted Petitioner on a charge of domestic violence of a high and aggravated nature. She proceeded to trial before a jury and the Honorable Donald B. Hocker. At trial, the jury found her guilty of the lesser included offense of domestic violence in the third degree. Judge Hocker sentenced her to ninety days incarceration. She filed a post-trial motion for a new trial and Judge Hocker held a hearing on August 26, 2021. By Order dated September 14, 2021, Judge Hocker denied the motion for a new trial.

Petitioner timely filed a notice of appeal. The court of appeals affirmed her conviction in an unpublished opinion filed October 25, 2023. App. 1. Her petition for rehearing was denied on November 17, 2023. App. 11. Petitioner filed a petition for writ of certiorari on December 18, 2023. This return follows.

STATEMENT OF FACTS

Petitioner and Victim, both females, began a romantic relationship in July 2019 and moved in together. (T.75; R.56). On January 28, 2020, Petitioner sought to end the relationship with Victim. She came home to confront Victim who was playing on her phone. When Victim did not get off her phone while Petitioner was talking, Petitioner started punching her. (T.75-76; R.56-57). After being punched, Victim grabbed Petitioner's arms and pushed her into a coffee table, breaking the glass top. (T.76-77; R.57-58).

Victim left the room, went to her room, and began packing her things. Petitioner came up behind her and began punching Victim in the head. (T.77-78; R.58-59). Victim reacted by punching Petitioner in the face. Petitioner, shocked, left the bedroom to grab a golf club in the living room and began hitting Victim with the club. (T.78-79; R.59-60). Victim was hit across the chest and in the head by the golf club. (T.80; R.61). Victim reached to her head and felt blood gushing. (T.82; R.62). Petitioner told the victim: "now I'm really about to kill you." Victim left the house and was able to call 911. (T.82-83; R.63-64).

After being transported to the hospital, Victim was seen by Dr. Brian Weaver, an ER physician. (T.58; R.39). Victim presented with a laceration to her scalp and Dr. Weaver ordered a CT scan. (T.59; R.40). Victim was found to have a fracture in the temporal area of her skull. (T.60; R.41).

ARGUMENT

I. The trial court properly denied Petitioner’s motion for directed verdict because the element of household member as defined by section 16-25-10 of the South Carolina Code was met even if both Petitioner and Victim were the same gender.

Petitioner contends the trial court erred in denying her motion for a directed verdict. She maintains the statutory definition of “household member” in section 16-25-10 applicable to the domestic violence statutes does not contemplate same-sex couples and so an individual cannot be convicted of domestic violence towards a cohabitating person of the same gender. The statute is read as applying to both males and females in such a way that it would include same-sex couples. Additionally, this Court in Doe v. State, 421 S.C. 490, 508, 808 S.E.2d 807, 816 (2017), found the definition of “household member” in this section unconstitutional as applied to same-sex couples who were cohabitating but not married. The Court specifically determined the statute has to be read to allow protections for same-sex couples, which would mean prosecutions may be initiated under the Domestic Violence Reform Act against the perpetrator of domestic violence by the victim in an unmarried, cohabiting same-sex relationship.

Standard of Review

On appeal from the denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the State. State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As this Court recently reiterated: “[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.”” State v. Bennett,

415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)).

Merits

The Domestic Violence Act provides: “It is unlawful to . . . cause physical harm or injury to a person’s own household member” It then differentiates domestic violence based on the degree of injury or the actions taken by the defendant in causing the injury. See S.C. Code Ann. § 16-25-20 and 16-25-65 (Supp. 2021). The Act specifically requires the injury be to a person’s “household member” and that term is defined by section 16-25-10(3) of the South Carolina Code. The relevant portion includes: “a male and female who are cohabiting or formerly have cohabited.” S.C. Code Ann. § 16-25-10(3)(d) (Supp. 2021).

Petitioner contends that because the statute uses the phrase “male and female” it can only refer to opposite-sex couples. However, the statute, even as written and without any interpretation by this Court, would apply to same-sex couples. The Legislature has provided guidance on how it would have its acts and resolutions construed. In section 2-7-30, which is entitled “Construction of words,” the Legislature provided:

- (A) The words “person” and “party” and any other word importing the singular number used in any act or joint resolution shall be held to include the plural and to include firms, companies, associations, and corporations and all words in the plural shall apply also to the singular in all cases in which the spirit and intent of the act or joint resolution may require it. **All words in an act or joint resolution importing the masculine gender shall apply to females also and words in the feminine gender shall apply to males.** And all words importing the present tense shall apply to the future also.

S.C. Code Ann. § 2-7-30(A)(1976) (emphasis added). This statute predates section 16-25-10 and especially any amendments to the section. As a result, the Legislature drafted 16-25-10 with an understanding of how they specifically asked that their words be construed. They drafted the

language of section 16-25-10 knowing the inclusion of the word “male” meant both male and female while using the word “female” meant both male and female as well. See, e.g., State v. McKnight, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003) (“There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”); Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997) (Finding “there is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”). As a result, even though they included “male and female” in the language, the impact is to only require two people of any gender to be cohabiting since each gender designation can also mean the other under section 2-7-30.

The courts of this state have had occasion to apply section 2-7-30 or its predecessors on limited occasion. In the case of In re Roton’s Will, 95 S.C. 118, 78 S.E. 711 (1913), the Court found that a statute which invalidated the will of a widower who later remarries without making provision in the will—and the statute only used masculine language throughout—also applied to a widow because of the predecessor to the provision discussed above. The same analysis would provide that where “male” is used section 16-25-10 it would also mean female, so as to allow a reading of “a female and female who are cohabiting or formerly have cohabited” and would bring Petitioner under the Domestic Violence Act to hold her accountable and liable for her actions in injuring Victim.

Additionally, in State v. Riddle, 160 S.C. 477, 158 S.E. 833 (1931), the Court found that the word “person” in a statute would also criminalize action against a corporation based on the predecessor to section 2-7-30. The Court specifically noted: “In the absence of there being some provision in the act under consideration to show that it was the intention of the Legislature for the

act not to apply to corporations, it seems clear to us that the act should not be construed to exclude corporations.” Riddle, 160 S.C. 477, 158 S.E. at 835. Here, there is no language in the act evincing a desire to prevent application of section 2-7-30.

As a result of the reading of section 16-25-10(3)(d) in connection with section 2-7-30, the term “household member” would apply to a same-sex couple and the trial court properly denied the motion for a directed verdict.

In the alternative, this Court should rely on its holding in Doe v. State, 421 S.C. 490, 808 S.E.2d 807 (2017), and find the Court’s holding, while primarily aimed at the Order of Protection provisions, also controls construction of the domestic violence offenses and the interpretation of section 16-25-10(3)(d). Doe challenged the definition of household member in both statutes—section 16-25-10(3) and 20-4-20(b). While the relief she sought related solely to section 20-4-20(b)’s definition, she challenged the constitutionality of both statutes’ inapplicability to same-sex cohabitating couples.

This Court specifically found **both** sections 16-25-10(3) and 20-4-20(b) unconstitutional as applied to Doe and similarly situated individuals in same-sex cohabitating but unmarried relationships. Doe, 421 S.C. at 509-510, 808 S.E.2d at 817. The Court also made it clear that individuals similarly situated to Doe could not be precluded the protections afforded opposite-sex couples under the Criminal Domestic Violence Act and the Protection from Domestic Abuse Act. Id. As a result, prosecutions may be initiated by a victim in a same-sex cohabiting relationship such as the one in the instant case. See S.C. Atty. Gen. Op. of Sept. 17, 2018 (Finding “based on the Supreme Court’s decision, that individuals in or formerly in a same-sex relationship not only may seek an Order of Protection against a same-sex partner, but that similarly situated individuals may pursue a criminal prosecution for acts of domestic violence where criteria of S.C. Code § 16-

25-20 or 16-25-65 are satisfied.”). Accordingly, the trial court properly found section 16-25-10(3) included same-sex couples, and as a result, Petitioner caused physical harm to her own “household member.” Therefore, the trial court properly denied the motion for a directed verdict.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that the petition should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
S.C. Bar No. 101188

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY:  _____
Joshua A. Edwards

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by emailing her counsel of record, Wanda H. Carter, at her primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 29th day of January, 2024.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

From: [Anne Mueller](#)
To: [Wanda Carter](#)
Cc: [Scott Leverett \(sleverett@sccid.sc.gov\)](mailto:sleverett@sccid.sc.gov)
Subject: State v. Kristy Olympia Davis, 2023-002003
Date: Monday, January 29, 2024 4:29:00 PM
Attachments: [Davis Kristy - 2023-002003 - Return To Petition For Writ Of Certiorari \(03490214xD2C78\).PDF](#)
[image001.png](#)

Good afternoon.

Attached to this email is the State's Return To Petition For Writ Of Certiorari. We will be filing the Return with the Court this afternoon.

Sincerely,

Anne Mueller

Legal Assistant

ANNE A. MUELLER, Legal Assistant
Office of the South Carolina Attorney General
Criminal Appeals Division
Office 803-734-3727
P.O. Box 11549 âColumbia SC 29211
scag.gov



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