

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge

Opinion No. 27418 (S.C. Sup. Ct. filed 7/16/2014)
Appellate Case No. 2012-213017

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JUL 23 2014

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

PETITION FOR REHEARING

On July 16, 2014, this Court affirmed the magistrate court's dismissal of Respondent's criminal domestic violence charge, brought before the magistrate on a uniform traffic ticket, finding the magistrate lacked authority to hear the case because the crime was not committed "in the presence of a law enforcement officer" as required by S.C. Code § 56-7-15(A). The State submits that this Court overlooked several important points as discussed below and misapprehended the applicable law regarding statutory construction. For these reasons, the State requests that this Court reconsider its July 16, 2014 opinion and ultimately reverse the magistrate court's dismissal of Respondent's criminal domestic violence charge and remand the matter for trial.

The Court in this case applied the "plain meaning" canon of statutory construction in interpreting S.C. Code § 56-7-15(A). However, as this Court recently pointed out, appellate courts will presume that the legislature is aware of the common law and "where

a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.” Grier v. Amisub of South Carolina, Inc., 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012) (citations omitted).

As stated in Amisub, with respect to the term “negligent act or omission:”

The General Assembly therefore used a term of art which has a well-defined common law meaning as just breach, and we can find nothing indicating the General Assembly intended to vary from it. Accordingly, the plain and unambiguous language of the statute forecloses any argument that the affidavit contain a proximate cause opinion.

Amisub, 397 S.C. at 538, 725 S.E.2d at 697. This Court in Amisub thus used the well-established common law meaning in construing a term in the statute it was interpreting. Id.

Here, this Court overlooked the fact that, over the course of history in South Carolina, the term “in the presence of a law enforcement officer” has acquired a common law meaning which includes an officer having probable cause that an offense was freshly committed. As far back as 1882, this Court indicated that the term “in the presence of” an officer means in the view of the officer or upon “fresh and immediate pursuit.” State v. Sims, 16 S.C. 486, 494 (1882). Sims relies upon Lord Hale in England: “[T]hat in all cases of misdemeanor a peace officer may apprehend the party while committing the offense, and it should seem upon fresh and immediate pursuit in some instances.” The Sims court then held as follows:

It seems in this case that Thomas had raised a row in Griffin's store, and had beaten two or three men. Griffin had put him out, but he came back and went out again, but was still present and drunk when pointed out to the police; he refused to be arrested and got into another man's wagon. Was not this upon fresh and immediate pursuit? This was certainly within the principle laid down by Lord Hale, cited above. We think the arrest, under the special circumstances of *this case*, as detailed in the evidence, was legal. Without such power on the part of policemen under such

circumstances, municipal authorities for the preservation of peace and good order would be worthless, and our towns and cities would be frequently subjected to uncontrolled violence and disorder.

Sims at 494 (emphasis in original) (citation omitted).

In the State's view, the principle that "in the presence of" is broad enough to include an officer's sensory perceptions at the scene immediately after the crime, at a time when the crime is "freshly committed," has been reaffirmed in South Carolina over the course of time. See State v. Rivers, 186 S.C. 221, 156 S.E. 6, 9 (1938); State v. Williams, 237 S.C. 252, 259, 116 S.E.2d 858, 861 (1960); Prosser v. Parsons, 245 S.C. 493, 500-501, 141 S.E.2d 342, 346 (1965); State v. Mims, 263 S.C. 45, 49, 208 S.E.2d 288, 290 (1974); State v. Martin, 275 S.C. 141, 145, 268 S.E.2d 105, 107 (1980); see also State v. Biehl, 271 S.C. 201, 203, 246 S.E.2d 859, 860 (1978); Fradella v. Town of Mount Pleasant, 325 S.C. 469, 474-75, 482 S.E.2d 53, 56 (Ct. App. 1997); cf. State v. Sawyer, 283 S.C. 127, 129, 322 S.E.2d 449, 449 (1984) (Ness, J.) ("We hold the driver's admission should be treated as part of the officer's sensory awareness of the commission of the offense which satisfies the presence requirement argued by respondent."). Accordingly, the State submits that this Court should have applied this historic common law meaning of the term rather than looking only to the plain language of the statute. See Amisub, 397 S.C. at 538, 725 S.E.2d at 697.

In the Amisub case, this Court also stated that "when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it . . . we look beyond the statute's plain language." Amisub, 397 S.C. at 536, 725 S.E.2d at 695-96 (citation omitted); see also Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) ("However plain the ordinary meaning of

the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.”) (citation omitted). The State submits it is simply absurd to apply the literal meaning of “in the presence of” because criminal domestic violence is a concealed crime that almost always occurs behind closed doors in the privacy of the home. Surely the legislature did not contemplate that officers would routinely bear direct witness to such crimes. Interpreting the words “in the presence of” to include freshly-committed offenses escapes this absurdity and also follows the rule of Amisub that a well-established common law definition of a term takes precedence over the plain language of a statute.

Finally, the legislative intent that uniform traffic tickets be used for freshly-committed CDV offenses was demonstrated when the legislature acted at its first opportunity following the Court of Appeals’ opinion in this case – the first appellate opinion construing section § 56-7-15(A) and finding it did not include freshly committed offenses – to clarify the statute to specifically state that uniform traffic tickets could be used for both freshly-committed offenses and criminal domestic violence offenses. See S.C. Code § 56-7-15 (as amended June 13, 2013). As argued extensively at oral argument, the 2013 amendments merely clarified the law rather than changing it. See Cotty v. Yartzeff, 309 S.C. 259, 262, 422 S.E.2d 100, 102 (1992); Hyde v. South Carolina Dept. of Mental Health, 314 S.C. 207, 209, 442 S.E.2d 582, 583 (1994); Proveaux v. Medical University of South Carolina, 326 S.C. 28, 32, 482 S.E.2d 774, 776 (1997); Stuckey v. State Budget and Control Bd., 339 S.C. 397, 401, 529 S.E.2d 706, 708

(2000); In re Manigo, 398 S.C. 149, 158-59, 728 S.E.2d 32, 36-37 (2012) (all supporting the notion that a statutory amendment can, in some circumstances, be considered to clarify rather than change the law). This clarification of the law, combined with the legislative acquiescence illustrated by the General Assembly's failure to amend S.C. Code § 56-7-15(A) in 2006 following the 2003 Attorney General's Opinion stating his belief that a freshly-committed CDV is committed "in the presence of the officer" for purposes of S.C. Code § 56-7-15, makes crystal clear our legislature's intent that uniform traffic tickets be used as charging documents for freshly-committed CDV offenses. Therefore, the State submits that this Court erred by rejecting its argument regarding legislative acquiescence and ratification.

CONCLUSION

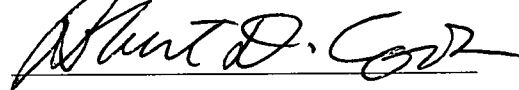
For all of the reasons set forth above, along with the reasons discussed at oral argument and in the State's brief, the State respectfully requests that this Court grant its Petition for Rehearing, overturn its July 16, 2014 opinion, reverse the magistrate court's dismissal of Respondent's CDV charge, and remand the matter for trial.

Respectfully submitted,

ALAN WILSON
Attorney General

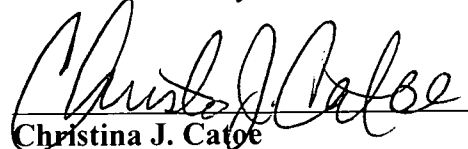
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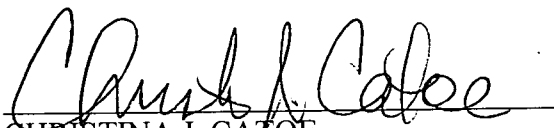
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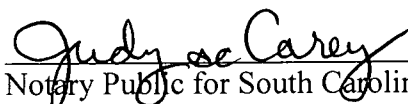
AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a copy of the State's **Petition for Rehearing** in the above-referenced matter has been served upon **Christopher A. Wellborn**, Post Office Box 10191, Rock Hill, South Carolina, 29731, this **23rd** day of **July, 2014**.


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SWORN to before me this 23rd day of July, 2014.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024