# The Supreme Court of South Carolina

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August 22, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

**REMITTITUR**

Re: The State v. James Ervin Ramsey
Lower Court Case No. 2009CP4603069
Appellate Case No. 2012-213017

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Christopher A. Wellborn, Esquire
Salley W. Elliott, Esquire
Christina J. Catoe, Esquire
Curtis Anthony Pauling, III, Esquire

**THE STATE OF SOUTH CAROLINA**
**In The Supreme Court**

The State, Petitioner,

v.

James Ervin Ramsey, Respondent.

Appellate Case No. 2012-213017

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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

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Opinion No. 27418
Heard March 18, 2014 – Filed July 16, 2014

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**AFFIRMED**

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Attorney General Alan M. Wilson, Chief Deputy Attorney General John W. McIntosh, Deputy Attorney General Robert D. Cook, Senior Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Christina J. Catoe and Deputy Assistant Attorney General Curtis A. Pauling, III, all of Columbia, for Petitioner.

Christopher A. Wellborn, of Christopher A. Wellborn P.A., of Rock Hill, for Respondent.

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**JUSTICE HEARN:** The Court granted certiorari to review the court of appeals' opinion in *State v. Ramsey*, 398 S.C. 275, 727 S.E.2d 429 (Ct. App. 2012), affirming the dismissal of a criminal domestic violence (CDV) charge against James Ramsey on the ground that the magistrate lacked authority to hear the case. Specifically, the court found the crime was not committed "in the presence of a law enforcement officer" as required by Section 56-7-15(A) of the South Carolina Code (2006), *amended by* section 56-7-15 (A) (Supp. 2013). We affirm.

## FACTUAL/PROCEDURAL BACKGROUND

On February 18, 2006, Deputy Chris Farrell responded to a domestic call at the home of Ramsey's estranged wife (Wife). Farrell interviewed both parties and noticed a bruise on Wife's hand, which she indicated was the result of Ramsey attempting to grab a phone from her. Based on his observations, Deputy Farrell issued Ramsey a uniform traffic ticket for CDV.[1]

Ramsey moved to dismiss the charges for lack of jurisdiction. He argued that because the CDV was not committed in the presence of the officer, Deputy Farrell could not issue him a uniform traffic ticket under section 56-7-15(A), and absent a valid uniform traffic ticket, the magistrate lacked authority to hear the case. The magistrate agreed and dismissed the charges. The circuit court affirmed the dismissal on the alternative basis that only offenses listed under Section 56-7-10 of the South Carolina Code (2006), *amended by* 56-7-10 (Supp. 2013), allowed for prosecution solely based on a uniform traffic ticket and at the time the alleged crime was committed, CDV was not listed in section 56-7-10. Therefore, the circuit court concluded the magistrate did not have jurisdiction to hear the CDV charge until an arrest warrant was issued.

The court of appeals affirmed the dismissal. Although the court disagreed with the circuit court's conclusion that CDV could never be prosecuted in magistrate court absent an arrest warrant, it found that pursuant to section 56-7-15, an officer could only issue a uniform traffic ticket for CDV if the crime was committed in his presence. *Ramsey*, 398 S.C. at 280, 727 S.E.2d at 432. Because Deputy Farrell did not see the crime take place, but arrived on the scene after the fact, the court held the uniform traffic ticket was invalid and the charges were properly dismissed. *Id.* at 283, 727 S.E.2d at 433. This Court granted certiorari to review the court of appeals' opinion.

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[1] Ramsey was also arrested for burglary at the scene, but that charge was dismissed.

## ISSUE PRESENTED

Did the court of appeals err in affirming the dismissal of Ramsey's CDV charge because the offense did not occur in the presence of the officer?

## STANDARD OF REVIEW

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The text of a statute is considered the best evidence of the legislative intent or will, and the courts are bound to give effect to the expressed intent of the legislature. *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

## LAW/ANALYSIS

The State argues the court of appeals erred in holding that under these circumstances, a uniform traffic ticket could not be validly issued pursuant to section 56-7-15(A). We disagree.

We begin our analysis, as we must, with the plain language. Pursuant to Section 22-3-710 of the South Carolina Code (2007): "All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue." Section 56-7-10 provides an exception to the warrant requirement by allowing the issuance of a uniform traffic ticket to initiate proceedings before the magistrate for specified offenses. At the time of the incident, the list of specified offenses did not include CDV. However, section 56-7-15(A) provided: "The uniform traffic ticket . . . may be used by law enforcement officers to arrest a person for an offense *committed in the presence of a law enforcement officer* if the punishment is within the jurisdiction of magistrate's court and municipal court." (emphasis added).

The text of the statute explicitly authorizes use of a uniform traffic ticket in circumstances where the offense was "committed in the presence of a law enforcement officer." Although the State asks us to construe "in the presence" to include crimes that were freshly committed, we perceive no ambiguity in the language that would allow us to accept such a broad construction. The statute plainly states the offense must be committed in the presence of the officer. This

Court has no authority to impose another meaning where the legislative language is clear.

Nevertheless, the State argues there is precedent supporting the proposition that "in the presence" should be interpreted expansively so as to include freshly committed crimes. The State relies on *State v. Martin*, 275 S.C. 141, 268 S.E.2d 105 (1980), where the Court considered the legality of a warrantless arrest for operating a vehicle under the influence when the officer did not witness the defendant driving the vehicle, but arrived at the scene after an accident. In its analysis, the Court observed that: "It is the law of this State that an officer cannot arrest one charged with a misdemeanor, not committed in his presence, without a proper warrant . . ." *Id.* at 144, 268 S.E.2d at 107 (quoting *Mims*, 275 at 48, 208 S.E.2d at 289). However, the Court found this principle was qualified by Section 23-13-60 of the South Carolina Code (2013), which allows an arrest without a warrant for "any suspected freshly committed crime." *Id.* at 145, 268 S.E.2d at 107. The Court therefore harmonized these two distinct concepts and held "while generally an officer cannot 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 that a crime has been freshly committed." *Id.* at 145–146, 268 S.E.2d at 107. Although the facts similarly involved a freshly committed offense, the resolution in *Martin* relied on a statute that specifically allowed warrantless arrests for "freshly committed" crimes, rather than ones committed in the presence of the officer. The case unequivocally indicates that the Court regards these as two distinct concepts.

Furthermore, use of the term "freshly committed" in section 23-13-60 illustrates the legislature knows how to draft a statute extending an officer's authority to freshly committed crimes. *See also* S.C. Code Ann. § 16-25-70 (2003) (authorizing officers to effectuate warrantless arrests in suspected cases of domestic violence where the officer "has probable cause to believe that the person is committing or has freshly committed" an act of criminal domestic violence, even if "the act did not take place in the presence of the officer"). The legislature could have employed this phraseology when enacting section 56-7-15, but it did not and we must give such omission effect. *See* 82 C.J.S. *Statutes* § 478 (2014) ("[W]here a statute contains a given provision, the omission of such a provision from a similar statute concerning a related subject is significant to show that a different intention has existed.").

Nevertheless, the State entreats us to accept the reasoning of an Attorney

General's opinion that concludes under section 56-7-15(A), "So long as the officer has probable cause to believe that the offense of criminal domestic violence has been freshly committed, the officer may make the charge by way of the Uniform Traffic Ticket and such ticket bestows jurisdiction . . . ." 2003 WL 22862788 at *4 (S.C.A.G. Nov. 13, 2003). It is well settled that although it may be persuasive authority, an Attorney General's opinion is not binding on this Court, and because we disagree with the reasoning, we decline to adopt it. *See Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011) ("Attorney General opinions, while persuasive, are not binding upon this Court.").

Specifically, the Attorney General's opinion relies on cases we deem inapposite, *Martin* and *State v. Biehl*, 271 S.C. 201, 246 S.E.2d 859 (1978). As discussed *supra*, *Martin* does not support the proposition that "in the presence" encompasses crimes that are freshly committed. In *Biehl*, the Court addressed the scope of section 56-7-10, which generally allows for the issuance of uniform traffic tickets for listed offenses. 271 S.C. at 203, 246 S.E.2d at 860. That statute contains no limiting language as to when a ticket can be issued. The Court therefore found:

> While we do not hold that an officer may arrest for a misdemeanor not committed within his presence, we do hold that the issuance of a uniform traffic ticket vests jurisdiction in the traffic court, even though the officer may not have personally seen the accused person commit the offense with which he is charged.

*Id.* at 204, 246 S.E.2d at 860. Subsequent to the *Biehl* decision, the legislature enacted section 56-7-15 and specifically included the limiting language that a uniform traffic ticket can be utilized pursuant to that statute where a crime was committed in the presence of the officer. We find this inclusion evinces the South Carolina General Assembly's intent that circumstances where an officer can issue a uniform traffic ticket under section 56-7-10 are distinct from those under section 56-7-15, and *Biehl*'s holding is inapplicable to our analysis.

However, the State reasons that because the General Assembly did not amend section 56-7-15(A) in response to the Attorney General's opinion, it must agree with the result. The State is correct that the Court has accorded some significance to the inaction of the General Assembly in light of an opinion by the Attorney General. *See Calhoun Life Ins. Co. v. Gambrell*, 245 S.C. 406, 414, 140 S.E.2d 774, 778 (1965) (noting that in "concluding that [the Insurance Commission has no power to regulate certain rates and commissions], a fact of particular importance is that the legislature has not seen fit to take any action subsequent to

the opinion of the Attorney General [reaching the same conclusion.]"). However, legislative inaction cannot legitimize a flawed analysis nor does it alter our obligation to rely on the plain language of a statute.

We therefore find unavailing the State's arguments that we should look beyond the plain language of the statute in interpreting its scope. In drafting section 56-7-15, the General Assembly chose to confine the use of uniform traffic tickets to instances where an offense is committed in the presence of a law enforcement officer. Because there is no contention Deputy Farrell witnessed the incident, the uniform traffic ticket could not be used to initiate proceedings in magistrate court.

## CONCLUSION

For the aforementioned reasons, we hold that at the time of the alleged crime, section 56-7-15 required an officer to be present during the commission of a crime to validly issue a uniform traffic ticket. Therefore, the magistrate properly dismissed the CDV charge. Accordingly, we affirm the court of appeals' opinion.[2]

**PLEICONES, BEATTY, JJ., and Acting Justice James E. Moore, concur. TOAL, C.J., concurring in result only.**

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[2] However, we clarify that the statute at issue has been revised. As of June 13, 2013, section 56-7-15(A) provides: "The uniform traffic ticket . . . may be used by law enforcement officers to arrest a person for *an offense that has been freshly committed or is committed in the presence of a law enforcement officer* if the punishment is within the jurisdiction of magistrates court and municipal court." (emphasis added). Effective the same day, section 56-7-10(A) was amended to specifically include CDV first and second as offenses subject to the uniform traffic ticket provisions. Additionally, section 56-7-10(B) was amended to provide: "In addition to the offenses contained in subsection (A), a uniform traffic ticket may be used in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been *freshly committed or is committed in the presence of a law enforcement officer*." (emphasis added). Accordingly, we recognize this opinion has been abrogated and its holding applies only to incidents occurring prior to June 13, 2013.

**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

The State, Appellant,

v.

James Ervin Ramsey, Respondent.

Appellate Case No. 2009-146306

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Appeal From York County
John C. Hayes, III, Circuit Court Judge

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Published Opinion No. 4983
Heard March 27, 2012 – Filed June 6, 2012

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**AFFIRMED**

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Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Christina J. Catoe, Assistant Attorney General Curtis A. Pauling, III, all of Columbia, for Appellant.

Christopher A. Wellborn, Christopher A. Wellborn, P.A., of Rock Hill, for Respondent.

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**FEW, C.J.:** This appeal involves the circumstances in which the State may use a uniform traffic ticket to commence judicial proceedings in the magistrate court on a charge of criminal domestic violence, first offense (CDV). We hold that the

ticket officers issued to James Ramsey for CDV did not commence judicial proceedings. We affirm the dismissal of the charge.

## I. Facts and Procedural History

On February 18, 2006, officers responded to a call from Ramsey's estranged wife and arrested him for burglary and CDV. The officers issued Ramsey a uniform traffic ticket for the CDV. They did not seek an arrest warrant on that charge.

The circuit court held a preliminary hearing on the burglary charge. Finding a lack of probable cause, the court dismissed the burglary and remanded the CDV to the magistrate court. Ramsey then made a motion to dismiss the CDV for lack of probable cause. The magistrate granted the motion, and the circuit court affirmed. The supreme court reversed and remanded, holding magistrates may not conduct preliminary hearings in cases within their trial jurisdiction. *State v. Ramsey*, 381 S.C. 375, 377-78, 673 S.E.2d 428, 429 (2009).

On remand, Ramsey made another motion to dismiss. He argued his case was not properly before the magistrate court because service of the ticket on him did not commence proceedings in that court. The magistrate granted the motion, holding service of a uniform traffic ticket for CDV first offense does not commence proceedings in the magistrate court if an officer did not see the offense being committed.

The circuit court affirmed on a different ground. It held that with the exception of offenses listed in section 56-7-10 of the South Carolina Code, proceedings do not begin in magistrate court until an arrest warrant is issued and served. Because CDV is not listed in that section and an arrest warrant was not issued for the charge, the circuit court concluded the magistrate properly dismissed the case.

## II. Commencement of Proceedings in Magistrate Court

Section 22-3-710 of the South Carolina Code (2007) provides "[a]ll proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue." Under this section, and subject to exceptions we will discuss, the State may not commence judicial proceedings in the magistrate court without first obtaining an arrest warrant. *See Bayly v. State*, ___ S.C. ___, ___, 724 S.E.2d 182, 184-85 (2012) (discussing section 56-7-10's elimination in limited circumstances of the requirement for an arrest warrant in

order to commence judicial proceedings in the magistrate court); *State v. Fennell*, 263 S.C. 216, 220, 209 S.E.2d 433, 434 (1974) (finding it necessary to have an arrest warrant to commence judicial proceedings in the magistrate court unless an exception applied); *State v. Praser*, 173 S.C. 284, 286, 175 S.E. 551, 551 (1934) (affirming the issuance of a writ of habeas corpus on the basis that, under the precursor to section 22-3-710, the municipal court had no power to hear a case as to which no arrest warrant was issued).

In 1971, the Legislature created an exception to the warrant requirement of section 22-3-710. Under what is now codified as section 56-7-10, law enforcement officers may use a uniform traffic ticket in arrests for "traffic offenses" and offenses listed in the section. S.C. Code Ann. § 56-7-10 (Supp. 2011). The section goes on to provide: "The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction[1] to hear and to dispose of the charge for which the ticket was issued and served." *Id.* Through these provisions, section 56-7-10 "eliminates the need for an arrest warrant and authorizes the use of a uniform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court." *Bayly*, 724 S.E.2d at 184-85. Therefore, if the offense is a traffic offense or is listed in section 56-7-10, an officer may make an arrest with a uniform traffic ticket, and the State may proceed to trial in the magistrate court without an arrest warrant. *Id.*

In 1990, the Legislature enacted section 56-7-15, which provides that the uniform traffic ticket "may be used by law enforcement officers to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction[2] of magistrates court . . . ." S.C. Code Ann. § 56-7-

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[1] The term "jurisdiction" in this section does not refer to a court's subject matter jurisdiction, "which is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). Rather, it refers to the fact that, as to appropriate charges, the section authorizes the use of a uniform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court.

[2] In this section, "jurisdiction" refers to the subject matter jurisdiction of the magistrate court. *See Bayly*, 724 S.E.2d at 186 (stating the enactment of section 56-7-15 "did not operate to increase the subject matter jurisdiction of the magistrate court").

15(A) (Supp. 2011). This subsection "specifically references section 56-7-10, to expand the list of offenses for which a uniform traffic ticket may be used to arrest a person" and to commence proceedings in magistrate court. *Bayly*, 724 S.E.2d at 186. Thus, if subsection 56-7-15(A) applies to an offense, the State may proceed to trial in the magistrate court using a uniform traffic ticket instead of an arrest warrant. 724 S.E.2d at 186-87.

Under sections 56-7-10 and 56-7-15, therefore, there are three categories of offenses for which the State may use a uniform traffic ticket instead of an arrest warrant to commence proceedings in the magistrate court: (1) traffic offenses; (2) offenses specifically listed in section 56-7-10; and (3) offenses within the subject matter jurisdiction of the magistrate court that are committed in the presence of a law enforcement officer.

## III. Subsection 56-7-15(A) Does Not Apply to the Offense in this Case

The issue in this case is whether Ramsey's alleged offense fits within the third category.[3] In other words, because the State did not obtain an arrest warrant, it may not proceed to trial in Ramsey's case unless we determine that despite the language in subsection 56-7-15(A) limiting its application to offenses "committed in the presence of a law enforcement officer," and despite the fact that no officer was present when the CDV occurred, the State may use a uniform traffic ticket to formally charge Ramsey with CDV. We find the State did not properly commence judicial proceedings in this case because subsection 56-7-15(A) does not apply to Ramsey's alleged offense.

The subsection does not apply because the offense was not committed in the presence of a law enforcement officer. Ramsey's estranged wife called 911 to report that Ramsey had broken into her apartment. Ramsey is accused of injuring her hand in an effort to take the phone from her during the 911 call. As the State concedes, no officer was present when any of this happened. The officers did not arrive at Mrs. Ramsey's apartment until eleven minutes after she called 911. Therefore, the alleged offense does not fit into the third category of exceptions, and the State cannot use the ticket to commence proceedings in the magistrate court. Because the State never sought an arrest warrant, and because the use of a uniform

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[3] The magistrate court has subject matter jurisdiction over criminal domestic violence, first offense. S.C. Code Ann. § 16-25-20(B)(1) (Supp. 2011). The issue before us therefore involves only the "committed in the presence" requirement of subsection 56-7-15(A).

traffic ticket to commence proceedings was not authorized under sections 56-7-10 or 56-7-15, the magistrate could not hear the case.

## IV. The State's Arguments

The State makes several arguments in support of its position that the ticket served on Ramsey did commence proceedings in the magistrate court. First, the State argues that the offense was "freshly committed" when the officers arrived, and that a freshly committed offense was committed in the officer's presence. We agree the offense was freshly committed. We disagree, however, that a freshly committed offense is committed in an officer's presence.

The State's argument is based on a series of decisions in which our appellate courts held that an officer may make a warrantless arrest for an offense not committed in the officer's presence if the offense was "freshly committed" when the officer arrived on the scene. For example, in *State v. Martin*, 275 S.C. 141, 143, 268 S.E.2d 105, 106 (1980), the supreme court stated, "while generally an officer cannot 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 that a crime has been freshly committed." 275 S.C. at 145-46, 268 S.E.2d at 107.

Relying on *Martin*, the State argues an officer's observation of the aftermath of a freshly committed offense satisfies the "in the presence" requirement of subsection 56-7-15(A). The State is incorrect in arguing the reasoning of *Martin* applies to this case. *Martin* actually illustrates that offenses committed in an officer's presence and "freshly committed" offenses are distinct concepts, such that an offense is "freshly committed" only if it is not committed "in the presence of a law enforcement officer." The State's argument, however, equates these concepts. Such a position is contrary to *Martin*, and to the Legislature's treatment of these concepts in other statutes. *See* S.C. Code Ann. § 16-25-70(A)-(B) (Supp. 2011) (permitting an officer to arrest a suspect upon probable cause to believe the suspect "is committing *or* has freshly committed" a criminal domestic violence offense (emphasis added)); § 23-1-212(B)(3) (2007) (permitting a federal law enforcement officer to enforce state criminal laws either when the crime is "committed in the federal law enforcement officer's presence *or* under circumstances indicating a crime has been freshly committed" (emphasis added)). Therefore, we reject the State's argument.

Second, the State argues the application of several rules of statutory construction indicates the Legislature intended that subsection 56-7-15(A) would authorize the use of a uniform traffic ticket to commence judicial proceedings even when an offense was not committed in the officer's presence. We find the principle of statutory construction that penal statutes are to be strictly construed against the State defeats the State's argument. *See Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) ("When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.").

Third, the State argues the supreme court already addressed the issue before us in the first appeal of this case. We disagree. The first appeal involved only the question of whether the magistrate had the power to hold a probable cause hearing on Ramsey's CDV charge. *See Ramsey*, 381 S.C. at 376, 673 S.E.2d at 428. We have reviewed the briefs and record from *Ramsey*, and the applicability of subsection 56-7-15(A) is not mentioned by either party or by the lower courts. We believe the supreme court's statement that Ramsey's "CDV charge was within the magistrate's jurisdiction," 381 S.C. at 377, 673 S.E.2d at 429, was a comment that the magistrate court has subject matter jurisdiction over the type of offense with which Ramsey was charged, not a case-specific determination that the ticket served on Ramsey commenced proceedings in the magistrate court.

The State's remaining arguments are not preserved, and therefore we do not address them. *See State v. Sheppard*, 391 S.C. 415, 423, 706 S.E.2d 16, 20 (2011) ("Our law is clear tha[t] an issue may not be raised for the first time on appeal.").

## V. Conclusion

Section 56-7-15(A) does not authorize the use of a uniform traffic ticket to commence judicial proceedings in the magistrate court unless the offense charged was "committed in the presence of a law enforcement officer." Because officers arrived on the scene after the alleged CDV ended, the service of the uniform traffic ticket on Ramsey did not commence judicial proceedings, and the magistrate court properly dismissed the charge. The decision of the circuit court to affirm the magistrate court is

**AFFIRMED.**

**HUFF and SHORT, JJ., concur.**