ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County
Alexander S. Macaulay, Circuit Court Judge

RECEIVED
MAY 14 2015
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

CHARLES MONROE HARRIS,

PETITIONER.

APPELLATE CASE NO. 2014-001236

PETITION TO ARGUE AGAINST PRECEDENT

Petitioner respectfully moves the Court pursuant to Rule 217, SCACR, for permission to argue against the precedent of State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008) (Pleicones , AJ concurring) wherein this Court held that "no overt act" needs to be done in furtherance of the charge of criminal solicitation of a minor. The instant case illustrates why Gaines is such a disturbing holding, it should respectfully be revisited, and overruled. This case is scheduled to be argued before this Court on June 3, 2015.

Here, Officer Bowling (impersonating the minor) admitted that petitioner never showed up at the scene to meet the police officer (minor), and there was no evidence petitioner "traveled" – anywhere. If petitioner ever had the fleeting intention to solicit

sex with a minor as envisioned under the statute, he abandoned it apparently without ever leaving his computer screen. A fundamental tenet of our criminal justice system has been -- hopefully not in the past tense -- that we do not punish people for their thoughts. We only punish people for their evil deeds.

Further, under a correct directed verdict analysis, the state's circumstantial evidence was *not substantial circumstantial evidence* showing petitioner had the criminal intention of enticing a person he reasonably believed to be under eighteen-years-old to have sex with him.

Also, unlike State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012) and State v. Reid, 393 S.C. 325, 713 S.E.2d 274 (2011) petitioner was not caught "red-handed."[1] Petitioner offered the explanation, presented in the state's case-in-chief, that he was trying to teach the "young woman" on the other side of the chat room "a lesson."

Moreover, the opinion of the Court of Appeals discourages abandonment of momentary criminal intent. A person could inquire about a willingness to grant a sexual favor on a computer while under the influence, but not "voluntarily intoxicated." That person takes no action in furtherance of the mere words and quickly abandons any intent to pursue the idea after a modicum of reflection. Under the legal standard articulated in State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008) – and by the Court of Appeals in this case following that precedent -- a person is guilty of criminal solicitation *from the moment* he or she asks the fictitious person about having sex. It is a strict liability offense from that second forward -- the uttered thought can never be

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[1] Petitioner understands the distinction in the crime of attempted criminal sexual conduct with a minor.

recaptured -- and abandonment of momentary intent is not possible. This Court should respectfully hold that violates the public policy of encouraging abandonment of any criminal intent. See State v. Cox, 278 N.W.2d 62 (Minn. 1979)(statute recognizing it is desirable to encourage the voluntary good faith withdrawal from the commission of a crime). People v. Forte, 269 Ill. 505, 110 N.E.47 (1915) (abandonment of being the aggressor in a crime that would be murder can revive the right of self-defense).

Further, strict liability offenses "[a]re wholly creatures of statute, unknown at the common law. They are usually regulatory in nature; most traffic offenses are of this type. A person may be convicted of driving in excess of the speed limit, even though he was totally unaware of his excessive rate of speed. Strict liability offenses ordinarily do not entail a substantial term of imprisonment. McAninch, Fairey, and Coggiola The Criminal Law of South Carolina (6th ed. 2013) at p. 15.

"Because conviction for an act alone without regard to intent or *mens rea* is certainly at odds with the long standing tradition of criminal law, legislative intent to dispense with the mental element will not lightly be inferred. *E.g.,* Morissette v. United States, 342 U.S. 246 (1952). When a statutory offense is simply silent as to the requirement of a mental state, courts will usually read such a requirement into the statute." McAninch, Fairey, and Coggiola The Criminal Law of South Carolina (6th ed. 2013) at p. 16. See State v. Jeffries, 316 S.C. 13, 446 S.E.2d 427 (1994); State v. Ferguson, 302 S.C. 269, 395 S.E.2d 182 (1990).

There was unfortunately no oral argument in this case in the Court of Appeals, and the summary opinion of that Court reveals that given this Court's opinion in Gaines that the Court of Appeals may well have considered its hands tied. However,

petitioner wrote in his brief in the Court of Appeals that he recognized "[t]hat in State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008) the Supreme Court held that no overt act needs to be done in furtherance of the charge of criminal solicitation of a minor. This case illustrates why that is such a disturbing holding and should be revisited." Brief at 9. This Court should respectfully grant the motion to argue against precedent in this case.

Respectfully submitted,

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May 14, 2015

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition to Argue Against Precedent in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th of May, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 14th of May, 2015

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.