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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)

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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

CHRISTOPHER A. WELLBORN

JOHN W. McINTOSH
Chief Deputy Attorney General

142-C Oakland Avenue
Post Office Box 10191
Rock Hill, South Carolina 29730
(803) 366-1065

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

CHRISTINA J. CATOE
Assistant Attorney General
S.C. Bar No. 73562

CURTIS A. PAULING, III
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3970

ATTORNEYS FOR PETITIONER

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

The State, Appellant,

v.

James Ervin Ramsey, Respondent.

Appellate Case No. 2009-146306

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

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

AFFIRMED

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.

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-

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

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.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA, APPELLANT,

v.

JAMES ERVIN RAMSEY, RESPONDENT.

PETITION FOR REHEARING

On June 6, 2012, this Court issued a published opinion affirming the magistrate court's dismissal of Respondent's case, finding that S.C. Code Ann. § 56-7-15(A) does not authorize the use of a uniform traffic ticket ("UTT") to commence judicial proceedings in the magistrate court even though a first-offense criminal domestic violence ("CDV") has been freshly committed. State v. Ramsey, Op. No. 4983 (S.C. Ct. App. filed June 6, 2012). Pursuant to Rule 221, SCACR, the State hereby petitions for rehearing regarding the points this Court overlooked or misapprehended, as set forth below.

In its opinion, this Court agreed that the issuance of a UTT for a first-offense CDV committed in the presence of a law enforcement officer properly vests the magistrate court with jurisdiction to hear and dispose of the case. See S.C. Code Ann. § 56-7-10; § 56-7-15. However, this Court erred in concluding that, although Respondent's CDV was freshly committed, the police could not use a UTT to formally charge him with CDV. This Court

erred in this regard because it failed to take into account well-established South Carolina Supreme Court precedent stating that an offense occurs “in the presence of the officer” when the officer timely arrives on the scene of a freshly committed offense and personally observes the evidence of the offense. State v. Williams, 237 S.C. 252, 259, 116 S.E.2d 858, 861 (1960) (citation omitted); 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); State v. Clark, 277 S.C. 333, 287 S.E.2d 143 (1982); State v. Retford, 276 S.C. 657, 281 S.E.2d 471 (1981); State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978); see also Fradella v. Town of Mount Pleasant, 325 S.C. 469, 474-75, 482 S.E.2d 53, 56 (Ct. App. 1997) (concluding that the facts and circumstances observed by an officer through his sensory awareness shortly after the incident satisfied the requirement that a misdemeanor be committed “in an officer's presence” in order to justify a warrantless arrest); State v. Cannon, 329 S.C. 163, 164-65, 495 S.E.2d 218, 219 (Ct. App. 1997) (pointing out that S.C. Code § 16-25-70 allows a law enforcement officer to arrest a person either with or without a warrant if the officer has probable cause to believe the person is committing or has freshly committed a criminal offense involving domestic even if the act did not take place in the presence of the officer). These cases have not been overturned and this Court erred in finding that the reasoning of these cases does not apply to Respondent's case. In keeping with the above Supreme Court precedent, this Court should have held that an officer's direct observation of the immediate aftermath of a freshly committed offense satisfies the “in the presence of the officer” requirement of S.C. Code Ann. § 56-7-15(A); therefore, the UTT issued to Respondent for his freshly-committed CDV served as a valid charging document for purposes of commencing judicial proceedings in the magistrate court.

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This Court also rejected the State's argument that, in the previous appeal of this case, the South Carolina Supreme Court already determined that the magistrate had proper jurisdiction over this case. This was error. The South Carolina Supreme Court implicitly recognized the continued viability of State v. Williams and its progeny when it found no lack of jurisdiction in this case and instead expressly stated, after *specifically noting* that a UTT was issued to Respondent for this CDV offense, that, "[t]he CDV charge was within the magistrate's jurisdiction." See State v. Jimmy Ramsey, 381 S.C. 375, 376-77, 673 S.E.2d 428, 428-29 (2009). The Supreme Court then ordered that the matter be remanded to the magistrate for trial. See id., at 378, 673 S.E.2d at 429. In light of the Supreme Court's well-settled precedent indicating that an appellate court will take notice if there is a lack of jurisdiction in a case, this Court should have concluded that the Supreme Court's previous opinion in which it *ordered that Respondent's case to proceed to trial* confirmed that the magistrate court did indeed have proper jurisdiction to hear and dispose of Respondent's case. See, e.g., Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Services, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) ("As this Court's precedent expressly provides, *lack of subject matter jurisdiction in a case may not be waived and ought to be taken notice of by an appellate court.*") (emphasis in original).

This Court also failed to recognize the significance of the fact that in 2003, the South Carolina Attorney General issued an opinion directly on point stating his belief that uniform traffic tickets confer jurisdiction over freshly committed CDV offenses. See S.C. Atty. Gen. Op. dated November 13, 2003; see also 1990 S.C. Op. Atty. Gen. No. 90-48; S.C. Atty. Gen. Op. dated May 21, 1997; S.C. Atty. Gen. Op. dated June 12, 1998; S.C. Atty. Gen. Op. dated

September 23, 2003; S.C. Atty. Gen. Op. dated August 7, 2008; S.C. Atty. Gen. Op. dated May 2, 2012. The General Assembly is presumptively aware of opinions of the Attorney General, and, absent changes in the law following the issuance of opinions, the Legislature should be deemed to have acquiesced in the interpretation by the Attorney General. See Williams v. Morris, 320 S.C. 196, 202, 464 S.E.2d 97, 100 (1995) (affording great weight to Attorney General Opinions addressing the relevant issues in the case); Branch v. City of Myrtle Beach, 332 S.C. 575, 579, 505 S.E.2d 925, 927 (Ct. App. 1998), *overruled on other grounds*, (pointing out that while Attorney General Opinions are not binding precedent, they are often persuasive authority); see also State v. Son, 432 A.2d 947, 949 (N.J. 1981); Scheff v. Township of Maple Shade, 374 A.2d 43 (N.J. 1977).

Here, although the Legislature, in 2006, amended section (B) of S.C. Code Ann. § 56-7-15 to change the time period for filing CDV incident reports, the Legislature did not make any changes to section (A) of the statute. The Legislature's failure to amend section (A) of S.C. Code Ann. § 56-7-15 means that the November 13, 2003 Attorney General opinion is consistent with legislative intent that if a CDV offense is freshly committed, this satisfies the "in the presence of the officer" requirement of S.C. Code Ann. § 56-7-15. This Court should have adopted the above reasoning rather than summarily concluding that "the principle of statutory construction that penal statutes are to be strictly construed against the State defeats the State's argument." This conclusion was error because no "penal statute" is at issue in this case. See Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) ("When a statute is *penal in nature*, it must be strictly construed against the State and in favor of the defendant.") (citation omitted) (emphasis added); see also Black's Law Dictionary, 1421 (7th

Ed. 1999) (defining “penal statute” as “[a] law that defines an offense and prescribes its corresponding fine, penalty, or punishment”). The statutes at issue in this case are merely procedural statutes dealing with when a UTT may be used to commence proceedings in the magistrate court. See S.C. Code Ann. § 56-7-10; § 56-7-15. Therefore, the State respectfully requests that this Court reverse its conclusion on this point.

CONCLUSION

For the reasons set forth above, and in the State’s Final Brief and at oral argument, the State respectfully submits that this Court erred in concluding that uniform traffic tickets cannot be used to commence judicial proceedings in the magistrate court for freshly committed CDV offenses, because well-settled Supreme Court precedent states that an offense is committed within the presence of an officer, as is required by S.C. Code Ann. § 56-7-15(A), when the offense is freshly committed. Therefore, the State requests that this Court grant rehearing, reverse its previous opinion, and remand Respondent’s case for trial in the magistrate court.

Respectfully submitted,

ALAN WILSON
Attorney General

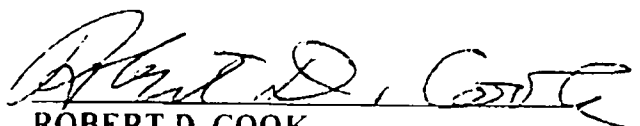
JOHN W. McINTOSH
Chief Deputy Attorney General

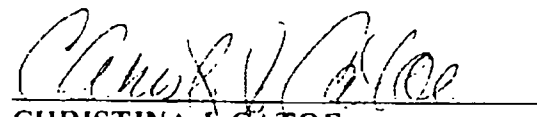
ROBERT D. COOK
Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

CURTIS A. PAULING, III
Assistant Attorney General


ROBERT D. COOK


CHRISTINA J. CATOE
SC Bar No. 73562

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

ATTORNEYS FOR PETITIONER

June 20, 2012

The South Carolina Court of Appeals

The State, Appellant,

v.

James Ramsey, Respondent.

Appellate Case No. 2009-146306

ORDER DENYING PETITION FOR REHEARING

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon, Jr. C.J.
Thomas E. Huff J.
Paul E. Short, III J.

Columbia, South Carolina

cc:

Alan Wilson
 John W. McIntosh
 Salley W. Elliott
 Curtis Anthony Pauling, III
 Christina J. Catoe
 Christopher A. Wellborn

FILED
 August 27, 2012

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HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

CURTIS A. PAULING, III
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
803-734-3970

ATTORNEYS FOR APPELLANT

CHRISTOPHER A. WELLBORN

Christopher A. Wellborn, P.A.
Post Office Box 10191
Rock Hill, SC 29731
803-366-1065

ATTORNEY FOR RESPONDENT

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CHRISTOPHER A. WELLBORN

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Chief Deputy Attorney General

Christopher A. Wellborn, P.A.
Post Office Box 10191
Rock Hill, SC 29731
803-366-1065

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

CHRISTINA J. CATOE
Assistant Attorney General

CURTIS A. PAULING, III
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
803-734-3970

ATTORNEYS FOR APPELLANT

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S.C. SUPREME COURT OPINION NO. 26595 27

In the Court of Common Pleas
York County, South Carolina

The State of South Carolina

versus

James Ervin Ramsey, Defendant

Case Number: 2006-CP-46-3069

Heard on Tuesday, October 27, 2009

Before the Honorable John C. Hayes, IV.

Appearances:

Curtis Pauling, III
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

Christopher Wellborn
Post Office Box 10191
Rock Hill, SC 29731

Reported by: Janet M. Rich
Circuit Court Reporter
1992 Downey Street
Rock Hill, SC 29732

The Court: All right. Mr. Pauling, this is your motion. You may proceed.

Mr. Pauling: May it please the court. Curtis Pauling for the State. This is an appeal from Judge Grayson's ruling back on July 8, 2009. At that time it was set to try James Ramsey, that being on ticket number 53259 BM for criminal domestic violence. At that time the defense made a motion to dismiss for lack of jurisdiction, judge Grayson dismissed the charge because it was on a uniform traffic ticket, so this is why this appeal follows.

I know the court has some background regarding this case, Your Honor, but just briefly this actual incident occurred back on February 18, 2006. This was at apartment [REDACTED] in Lake Wylie, South Carolina here in York County, Your Honor. Deputy Chris Farrell and Sergeant Blevins with York County Sheriff's Office responded to that location in reference to a domestic call. This was approximately 3:19 am. At 3:19 am is approximately when the incident occurred. They are dispatched at 3:21, actually arrived on scene 3:30 am. Mrs. Ramsey was present at the scene. This was her home. She and the defendant were separated at

the time. Upon arrival on the scene Deputy Farrell spoke with both Mrs. Ramsey, spoke with Mr. Ramsey, observed that a screen was taken from the window. Also observed a bruise blister on Mrs. Ramsey's hand which she indicated that that bruise had occurred during the altercation between her and her husband as he tried to take the phone from her hand.

At that time, based on the information he had, Deputy Farrell found there was probable cause to make an arrest on Mr. Ramsey, did so on a uniform traffic ticket.

It's the State's position that Deputy Farrell did comply with the relevant statutes, that being 56-7-10, 56-7-15. 56-7-15, Your Honor, says that, or this outlines use of uniform traffic ticket regarding domestic violence arrests and the pertinent part 56-7-15 subsection (B) states an officer who effects an arrest by use of the uniform traffic ticket or violation 25 title 16, which is the criminal domestic violence section of our code, shall complete the following incident report immediately following the issuance of the uniform traffic ticket. Deputy Farrell did complete his report that same day.

Subsection (A) says that the uniform traffic ticket may be used by officers to arrest a

person for an offense committed in the presence of a law enforcement officer if the punishment is within the magistrate court and municipal court which criminal domestic violence is.

The defense argues that the actual crime was not committed in the officer's presence. However, Your Honor, officer can't arrest for misdemeanor when the facts and circumstances observed by the officer give him probable cause to believe the crime has been freshly committed, and Your Honor, I point to section 23-13-60 power of arrest. The deputy sheriffs may for any suspected freshly committed crime whether upon view or upon prompt information or complaint arrest without a warrant. And, Your Honor, you've got to kind of read these in conjunction with the other statutes. As well 16-25-70 --

The Court: I've got it.

Mr. Pauling: It requires an officer, requires an officer to arrest -- beg the court's indulgence, requires an officer to arrest with or without a warrant a person at person's place of residence or elsewhere if visible manifestation of injury to the alleged victim are present and the officer has probable cause to believe that the person

is committing or has freshly committed a misdemeanor felony or under the provision of 16-25-20, again which is the criminal domestic violence section, even if the act did not take place in the presence of the officer. Furthermore, that uniform traffic ticket, Your Honor, does confer jurisdiction upon the magistrate.

There was another charge that went along with that, which was a burglary charge, but even if there wasn't, Your Honor, just the way the case procedurally went, after this incident occurred there was a bond hearing that took place, I believe Your Honor actually set bond, I know it because the burglary charge was with it, but bond was set on the burglary as well as the criminal domestic violence charge, and it seems to defy logic that the court even set bond on a charge wherein there was no jurisdiction for the charge to begin with.

But as well, Judge, it puts the officer in the position of having to comply with the statute in that he must make an arrest if he sees a physical manifestation of an injury, has that probable cause to believe that a CDV occurred, but in the same token saying that he can't arrest with the, with a uniform traffic ticket.

The Court: Well, they're not really contesting the arrest, it's the charge, and that's the distinction that judge Grayson, I'm looking at his order, and that's -- the difference is not the arrest but whether or not that arrest whether or not then the arrest can be made into a charge by a uniform traffic ticket or does after an arrest, like with burglary obviously that's not within the jurisdiction of a magistrate, I can't think of any other example right off the bat, but the arrest is different from the charge. The charge is the charging paper, the uniform traffic ticket or a issuance of a warrant after a magistrate has found probable cause, I think that's the distinction that Judge Grayson relied on in dismissing it.

Mr. Pauling: And I do understand that, Your Honor, but the statute doesn't require that the officer then go back and get a warrant. I think 56-7-15 specifically -- well, it states when the officer has actually gotten a, or rather effected an arrest by this uniform traffic ticket in this particular circumstance what he shall do is complete the following incident report immediately. The statute in fact when it initially was in place had a 15 day window, they brought it down to immediately,

and he did do that. This isn't a case where someone is arrested on a warrant and then to confer jurisdiction to be prepared for trial that there has to be an indictment in place. And I simply use that as an example because it's one thing to arrest someone on a warrant, but then if you don't have an indictment then the court doesn't have jurisdiction to go forward to trial on that particular matter. I know that's general sessions, I'm using that example, but this uniform traffic ticket does confer jurisdiction to the magistrate and where we were at that point procedurally, we were ready, set to go forward at trial, and the court did have jurisdiction to hear that matter.

And I know this is not directly to the issue at this point, but even prior to, Your Honor, when we had the first appeal, the court felt that or felt at that time it had jurisdiction to hear the defense's motion to dismiss for lack of probable cause which still talking about that same uniform traffic ticket, and in that appeal or rather in the ruling upon that appeal, the Supreme Court even in its opinion said that the that jurisdiction noted that the court had jurisdiction, the magistrate's court had jurisdiction to actually hear the criminal

domestic violence charge. I mean that was the one reason they said he couldn't have that probable cause hearing at the time. Also noted that the CDV charge was on a uniform traffic ticket at that time, but that's just by way of background on that.

But for those reasons, Your Honor, we read these statutes together and it's specifically carves out, specifically carves out Chapter 25 title 16 and I believe for these particular circumstances I believe that the officer making the arrest based on he had proper, that he did it on a uniform traffic ticket since it was okay do it with or without a warrant. He completed that report that same day which was in compliance with the statute. I believe for all of those reasons respectfully requesting that the court reverse Judge Grayson's ruling and just remand for trial. That's all the State would have at this point.

The Court: Okay. Mr. Wellborn, help me a little bit before you make your argument. Judge Grayson sites 16-25-70 (H) (2) and you've got some quoted language. I don't find that.

Mr. Wellborn: Your Honor, all I have is Judge Grayson's cite 16-25-70 paragraph (A).

The Court: On his last page right above

conclusion he says section 16-25 states in part, got calculates two, and then he has an officer may arrest and file charges against a suspect, and that's where he made the distinction between arrest and charge.

Mr. Wellborn: Yes, sir.

The Court: I'm looking at 16-25-70 (H) (2) and it does not -- I mean it's been amended as of this year so it may have read different at that time and I don't know if you got a copy of what he was looking at, but the latest version of that (H) (2) doesn't say that.

Mr. Wellborn: No, sir, and one it may help the court is 16-25-70 was a statute that was enacted and came into effect in 2000. Let's see the exact date that it become law. Become effective January one, 2000. Well, I apologize. Make sure I get this right. It become effect in 2009 the portion that is relevant on whether an officer can arrest on a CDV case with or without an warrant even for an offense not committed in his presence, that became and based on Westlaw research here, that become effective in 2009 or 2008 I apologize. 2008. My client was arrested and charged with this offense on February 18, 2006, approximately two years earlier.

The Court: Well, do you have a copy of

the statute as it existed at that time?

Mr. Wellborn: No, sir, I do not. But I do have, I have looked at 16-25-70 subsection (A) which is the portion cited by both Magistrate Grayson and also referred to by the attorney general and it was the effect of the amendment in 2008 was to include language that allowed an officer to arrest someone on a uniform traffic ticket for the offense not committed in their presence if they had probable cause. Prior to that, that was what that amendment was, so one can only assume if that's what the legislature added by way of amendment as of 2008 that did not exist prior to that date.

The Court: What's the date of the offense again?

Mr. Wellborn: February 18, 2006, approximately two years earlier.

The Court: So this, then we need the version from effective January first of 2004.

Mr. Wellborn: Yes, sir.

The Court: Do you have that?

Mr. Wellborn: I'll be glad to check that right now on.

The Court: Of course that was that last amendment to this. 2003 act 92 effective January 1,

2004.

Mr. Wellborn: Yes, sir.

The Court: Let's see what it says down here. 2003 amendment subsection (A) substitutes some language. Let me let y'all argue. My brand new attorney, hasn't been sworn in but passed the bar, Ms. Terry is going to check on that. Go ahead with your arguments. We'll get that. I just don't see, he references very specifically and seems to rely on it.

Mr. Wellborn: Your Honor, I'm looking at it right now as we speak and I just passed it by. I think the language is there as of 2004 that actually allowed for the arrest based on probable cause and I'll find that.

The Court: I don't have a question about that. I'm having a question about his reliance on what he says is in 16-25-70 (H) (2) and he's got it quoted. He's got quote marks--well, actually I don't know where it, his quote marks don't make sense. Of course it's at the end of the quotation and there is no start to it. In any event he states that that section states an officer may arrest and file charges against a suspect for any offense arising from evidence discovered pursuant to this section and then

he says this indicates that the arrest and the charge are separate actions which indicates to me that he's saying in spite of the fact that you can make an arrest on a uniform traffic ticket, that's still different from a charge, but I don't see the language. My point is I don't see the language that he sites.

Mr. Wellborn: (H) (2), Your Honor, is quoted in 2004 amendment as follows: Quote, if it is evidence of a violation -- and I apologize, Your Honor. Would you like me to stand?

The Court: No, that's all right. You look comfortable.

Mr. Wellborn: "If it is evidence of a violation of this article, an officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section. Unless otherwise provided for in this action, no evidence of a crime found may result in a warrantless search administered pursuant to a complaint filed under this article is admissible under a court law," and that's what I have under (H) (2).

The Court: I agree. I've got the act here. What I'm wondering is where he got that

language if he relies on it.

Mr. Wellborn: I don't have any idea, Judge, but there are additional sustaining grounds.

The Court: All right. Let me let you go ahead.

Mr. Wellborn: Thank you, Your Honor. The original law goes back to, well, common law goes back to Honea Path versus Wright which is a 1940 case, that's 9 SE 2nd 924, and that cited the then code section 23-3-710 which at the time was a South Carolina code 9-30 and what it said under that code section at the time and that's cited on Honea Path is that all proceedings, because really this is a jurisdiction issue, that's what I was arguing, not whether the officer had a right to make an arrest.

The Court: I understand or I think I understand.

Mr. Wellborn: All proceedings before a magistrate in criminal cases shall be commenced upon information under oath, which is I think is commonly understood as a warrant, plainly and substantially setting forth the offense charged and upon which and only which shall be a warrant of arrest issued. And Then it further added proceeding in summary court for criminal offense is a nullity

and the court does not have jurisdiction of an defendant when the prosecution has been started without issuance of a warrant, so that's kind of where we start in the historical analysis.

The general assembly later came up with an exception for the warrant requirements and it gave a list of those offenses by which a uniform traffic ticket could be used and that was under 56-7-10. 56-7-10 become effective in its original version in 1976, was recodified in 1995, the latest version being 2003. The 2003 version does not mention criminal domestic violence. Section 56 -- and by the way the 2003 amendment occurred in June, was ratified in June 2000, simultaneously 56-7-15 which the attorney general does rely upon, was also ratified. And 56-7-15 requires that the misdemeanor offense of criminal domestic violence for a uniform traffic ticket issued has to be committed in presence of the officer.

The Court: What's that section again?

Mr. Wellborn: 56-7-15. And that was if you compare the ratification dates of 56-7-10 which lists everything you can use a warrant to arrest somebody with, and by the way 56-7-15 also talks about when the court has jurisdiction or vests

jurisdiction in magistrate court. It specifically mentions that that is the purpose of that statute is when does jurisdiction vest in magistrate's court and that, of course, is because that was a response to the old law under 22-3-710 as quoted in Honea Path, they created an exception, said magistrate's court can now try cases on traffic tickets but they listed the offenses on which those magistrate had jurisdiction. 56-7-15 said that, yes, the magistrate can also have jurisdiction CDV cases or criminal domestic violence cases, however, those case are specifically limited to where the offense took place in the presence of the officer and that was the law or existing law as of February 8, 2006. Now we can go forward to also there was a second exception created and that is 16-25-70 subsection (A) however under 16-25-70 subsection (A) there has to be probable cause. Now for there to be probable cause there has to be a determination made that there was probable cause and simply assuming without any evidence on the record, and there is no evidence as we stand here on the record from the officer for this particular appeal from this particular ruling by Judge Grayson which occurred last year, there is no evidence on the record regarding the probable cause

issue.

The Court: Has any evidence been taken?

Mr. Wellborn: Yes, there has been evidence taken and a previous ruling by Judge Grayson where he found a lack of probable cause and Your Honor dismissed the appeal for a lack of probable cause.

parenthetically the South Carolina Supreme Court said he had no right to make that determination to begin with and reversed on that discreet issue, so it went back to Judge Grayson who was told you don't get to have a hearing on probable cause, but 16-25-70 says the officer only gets to arrest using a ticket unless the offense was committed in his presence, which it was not, if there was a, if he had probable cause, so somebody clearly has to make that determination of probable cause and if it's not the trial judge, who is it? That's the problem. Now had there been a warrant issued subsequent to arrest, as is common in criminal cases, people are arrested all the time, and then later a warrant is issued for them, there would have been some determination from some judicial body or some judicial person that there was in fact probable cause for the warrant which is what 16-25-70 requires.

Had this been a situation where the officer actually witnessed the criminal domestic violence, we wouldn't be making this argument, but in this case we have a situation where clearly the officer arrested for an act that occurred outside his presence which means that 56-7-15 does not apply. It is not an offense for which a ticket can normally be issued regardless per 57, 56-7-10 and then going back further back Town of Honea Path versus Wright, so the only potential way that this magistrate court is vested with jurisdiction in this matter to hear this case is 16-25-70 subsection (A) applies. And 56-25-70 subsection (A) can only apply by the plain and ordinary meaning of the language contained within that statute if the officer had probable cause and there is nothing in the record to substantiate that the officer had probable cause and if you look at the history of this case, it's to the contrary, and so, therefore, for those reasons, without resorting to trying to interpret what Judge Grayson meant by subsection (H) and subsection (2) meant, just for those reasons alone Judge Grayson made the right ruling in this matter and did not abuse his discretion in dismissing this matter.

The Court: Mr. Pauling, anything follow

up? Mr. Pauling: Briefly, Your Honor. I'm looking at 16-25-07 subsection (A) does require probable cause and it says probable cause to believe that the person is committing or has freshly committed a misdemeanor under the provisions of 16-25-20. That's, and subsection (A) is, and I direct you to subsection (B), Subsection (A) may arrest with or without a warrant if the officer believes, if the police officer has probable cause to believe the person committed or has freshly committed a misdemeanor. Subsection (B) says, and the reason I quote it is that was because, it states must arrest, the only difference between A and B are that the physical manifestation of injury are present and there is probable cause, the officer has probable cause to believe that the person has committed or is committing a freshly committed a misdemeanor. And as to 56-7-15, I'm looking at the history. I've got amended by 2005 and effective January 1, 2006, regarding the use of the uniform traffic ticket. Regarding effecting arrest with uniform traffic ticket for violation of title 16 chapter 25. But again we belabor the point, Your Honor, but --

The Court: I'm listening. I'm reading and listening at the same time.

Mr. Pauling: But there has, back in July we basically argued just like we are now and I guess if you asked if there were facts in the record, there are facts on the record regarding the probable cause because there was a probable cause hearing albeit there should not have been, but there are facts in the record. I understand Mr. Wellborn's arguing for this hearing there were no facts in the record, but for Judge Grayson to reach this point, he must have considered what was already there prior to.

Again the court felt there was jurisdiction to hear the matter back in 2006, so it must have believed he had jurisdiction to hear the matter at that point, Your Honor.

Mr. Wellborn: Your Honor, I will only briefly respond to that. This issue was never raised back in 2006 or 2007. This issue was raised for the first time in this latest go around, Your Honor.

The Court: Well, I'm going take this one under advisement.

(end of proceedings.)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO: 2009CP4603069

STATE OF SOUTH CAROLINA)
)

VS.)

RETURN TO APPEAL

9/15/09
C. & P. 14

JAMES ERVIN RAMSEY)
)
)
)

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SEP 15 2009

STATE GRAND JURY-
PROS SECTION

A jury trial was scheduled for July 8, 2009 at York County Magistrate Court, Clover, S.C.

Presiding Judge	Johnny H. Grayson
Present for the State	Attorney Curtis A. Pauling, III
	Attorney Priscilla Jones
Present for the Defense	Defendant James Ervin Ramsey
	Attorney Christopher A. Wellborn

Respondent's attorney made a Motion to Dismiss for Lack of Jurisdiction. His Motion was the officer's use of a uniform traffic ticket to charge the defendant with criminal domestic violence first offense without having viewed the actual violation. The Magistrate granted the Motion and dismissed the case.

The South Carolina Statues supporting the decision were:

Section 17-13-30. Officers may arrest without warrant for offenses committed in view. The sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of the State if such arrest be made at the time of such violation of law or immediately thereafter.

Section 56-7-15. Use of uniform traffic ticket for offense committed in officer's presence; domestic violence arrests and incident report.

(A) The uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, 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.

The languages in these two statutes are very plain, specific, understandable, and even simplistic. The offense has to be seen to make the charge on a uniform traffic ticket. Section 17-13-30 states

an officer may make a warrantless arrest if the violation is committed within their view. Section 56-7-15 states an officer may use a uniform traffic ticket to charge a person if the violation is made in their presence. This means the officer has to see it happen to use a uniform traffic ticket

The Petitioner made arguments during the hearing and reiterated the same in the appeal citing South Carolina Statutes and Case Law. The arguments were not relevant to the Motion to Dismiss.

These arguments were made and this Court agrees that:

- The Magistrate has jurisdiction to hear CDV 1st case.
- An officer can arrest for CDV 1st without a warrant.
- An officer can write a CDV 1st charge on a uniform traffic ticket.
- An officer does not need to write a charge on two separate charging documents.
- An officer can arrest for CDV 1st without having viewed the violation.
- A DUI charge (a traffic violation) can be written on a uniform traffic ticket (State v. Sims, 16 S.C. 486)

The court does not agree that:

- By reading S.C. Code 56-7-10 and 56-7-15 in pari materia, jurisdiction vests without an arrest warrant. Section 56-7-10 lists the misdemeanors that can be written on a uniform traffic ticket. CDV is not on the list. Section 56-7-15 states the offense has to be committed in the presence of a law enforcement officer.
- An officer can ever write a misdemeanor crime including CDV 1st on a uniform traffic ticket that he does not view.

The Motion to Dismiss was concerning the charging document used, not the actual arrest or the charge.

The Petitioner is confusing arrest with charge.

Arrest – All that is required for an arrest is some act by an officer indicating his intention to detain or take into custody and thereby subject that person to the actual control and will of the officer. No formal declaration of arrest is required.

Custody – This means detaining a person by virtue of lawful process or authority. It may mean actual imprisonment or physical detention.

Charge – In a criminal case, a charge is an accusation of a crime by a formal complaint, information or indictment.

A person can be arrested and taken into custody, held for 24 hours, and then charged with the crime using the proper charging document. In this case, it should have been a warrant because it was not viewed by the officer. An arrest may be made with an oral charge until the written charge is made.

Traffic violations are viewed and written on uniform traffic tickets. That is the reason misdemeanors viewed can be written on uniform traffic tickets. No warrant or sworn affidavit is necessary. An incident report is required immediately after a viewed CDV 1st charge is written on a uniform traffic ticket, but it is not a sworn affidavit.

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The normal procedure used in an arrest is to handcuff and escort the accused to the proper detention facility. After arrival and before booking, the officer writes the charge on the appropriate charging document and presents a copy to the defendant. If the proper charging document is a warrant, then the accused can be held up to 24 hours while the officer seeks a warrant... As the officer did for the Burglary charge made on this same defendant for the same incident time, location, and victim.

Arrest without warrant means an officer can detain or take into custody, or even imprison a person. But within 24 hours of arresting that person a formal declaration, a formal complaint or indictment must be made. The formal charge may be written on a uniform traffic ticket if it was viewed by the officer. If not viewed, a warrant must be the formal declaration made.

The high rate of criminal domestic violence cases in South Carolina and S.C.'s high national ranking for CDV cases led to some changes in CDV law. The Criminal Domestic Violence Act became effective January 1, 2006.

S.C. Code of Laws Section 16-25-70(A) states law enforcement officers may make an arrest without a warrant and not in view, if probable cause exists. If the arrest is made, the officer must present the results of the investigation to a magistrate for a warrant. The officer must seek the warrant, because he cannot make the charge of an unseen violation on a uniform traffic ticket.

Section 16-25-70. (A) A law enforcement officer may arrest, with or without a warrant, a person at the person's place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20(A) or (E), or 16-25-65 even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement agency. A law enforcement agency must complete an investigation of an alleged violation of this chapter even if the law enforcement agency was not notified at the time the alleged violation occurred. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

S.C. Code of Laws Section 16-25-70(B) eliminated an officer's options when investigating a possible CDV incident. The officer is now required to make an arrest if there is injury to the alleged victim.

Section 16-25-70. (B) A law enforcement officer must arrest, with or without a warrant, a person at the person's place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-30(A) or (E), or 16-25-65 even if the act did not take place in the presence of the officer. A law enforcement officer is not required to make an arrest if he determines probable cause does not exist after consideration of the factors set forth in subsection (D) and observance that no physical manifestation of injury is present.

S.C. Code of Laws Statute 16-25-70 states in part (H)(2)... "an officer may arrest and file charges against a suspect for any offense that arises from evidence discovered pursuant to this section. This indicates that the arrest and the charge are separate actions.

Conclusion

S.C. Code of Laws 56-7-15(B) adds criminal domestic violence to the list of misdemeanors that can be written on a uniform traffic ticket. By reading Section (B) and Section (A), in pari materia, CDV can only be written on a uniform traffic ticket if the offense is committed in the presence of a law enforcement officer.

Section 56-7-15. Use of uniform traffic ticket for offense committed in officer's presence; domestic violence arrests and incident report.

- (A) The uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, 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. A law enforcement agency processing an arrest made pursuant to this section must furnish the information to the State Law Enforcement Division as required in Chapter 3, Title 23.
- (B) An officer who affects an arrest, by use of a uniform traffic ticket, for a violation of Chapter 25, Title 16 shall complete and file an incident report immediately following the issuance of the uniform traffic ticket.

A Motion to Dismiss this case was based on a CDV 1st charge that was not viewed, but was written on a uniform traffic ticket.

A Magistrate does not have jurisdiction to hear a misdemeanor charge that was not viewed and charged on a uniform traffic ticket.

Respectfully submitted,

 9-10-09

Johnny H. Grayson
York County Magistrate

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 State of South Carolina,)
)
 Plaintiff,)
)
 v.)
)
 James Ervin Ramsey)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

Case No: 2009-CP-46-03069

ORDER

DAVID HAMILTON
 C.C.C.P. & GS
 YORK COUNTY, SC

2009 NOV 10 AM 8:06

FILED - RECEIVED

Defendant was arrested and charged with criminal domestic violence pursuant to a uniform traffic ticket. A jury trial on the charge was scheduled for July 8, 2009 at the York County Magistrate Court in Clover, South Carolina before Judge Johnny H. Grayson, and at trial Judge Grayson granted the Defendant's Motion to Dismiss and dismissed the case for lack of jurisdiction. Plaintiff appeals.

Plaintiff filed a Notice of Intent to Appeal on July 16, 2009 arguing that the court had jurisdiction to hear the merits of the criminal domestic violence charge when the charge was issued on a Uniform Traffic Ticket. Plaintiff cites the language of §56-7-15, South Carolina Code of Laws, 1976 as amended (The Code), for its argument that the magistrates court is vested "with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served." However, §56-7-15 of The Code is not applicable to the case at hand because §56-7-15 concerns the use of uniform traffic tickets for offenses that are committed in the officer's presence. Although Subsection B of §56-7-15 of The Code refers to criminal domestic violence, Section B cannot be reached if the crime was not committed in the presence of the officer.

Plaintiff also cites State v. Mims, 263 S.C. 45, 208 S.E. 2d 288 (1974) (citing State v. Williams, 237 S.C. 252, 116 S.E. 2d 858 (1960)) for the definition of "committed in the

presence” of a police officer. However, the Court finds that a thorough look at §56-7-10 will solve the issue at hand.

However, first the Court is aware of the Court of Appeals case of Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (2006) wherein the facts stated that Godwin received a citation that charged him with criminal domestic violence, and the uniform traffic ticket set a trial date. Godwin was tried and convicted based on the ticket; however, The Court of Appeals did not address the issue of the efficacy of a uniform traffic ticket conferring jurisdiction for the crime on the Summary Court. This Court does not find the Godwin case applicable here, even though the scenario there mirrors the one here.

The Court now turns its focus towards Section 56-7-10 wherein it states that “[t]here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses.” Section 56-7-10 proceeds to give an all-inclusive list of additional offenses for which a uniform traffic ticket can be used. Although offenses such as disorderly conduct, glue sniffing, and ticket scalping are listed as additional offenses for which a uniform traffic ticket can be used, criminal domestic violence is not on the list. There is an Attorney General’s Opinion which aids the Court in its conclusion.¹

The Attorney General’s Opinion does not make note of the additional offenses that the beginning paragraph of §56-7-10 sets forth. However, the Attorney General’s Opinion states:

[W]hen an individual is arrested for a misdemeanor violation other than a traffic offense, while there is nothing to prevent the officer from issuing and serving the uniform traffic ticket, the criminal offense may not be properly disposed of by the court unless and until an arrest warrant has been issued and served on the arrestee or is in the possession of the magistrate when the trial is held. . . Thus while an officer is permitted to arrest without a warrant for

¹ 1976-77 Op Atty Gen, No. 77-122, p 104. Formerly §46-871, S.C. Code of Laws, 1962.

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misdemeanors committed in his presence, a warrant should be obtained as soon after as possible.²

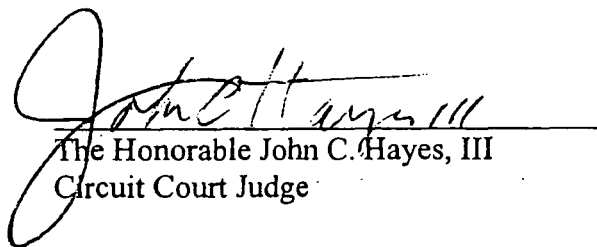
The Attorney General Opinion also elaborates on the purposes of the warrant. The warrant "informs the arrested persons of the charge against him" which meets the requirement of §17-255, Code of Laws of South Carolina, 1962. Furthermore, the warrant constitutes the charging papers; and thus, is necessary for cases being tried by a magistrate, so the Defendant is aware of the charges against him. Section 43-111, Code of Laws of South Carolina, 1962.

Therefore, this Court finds that for arrests other than for traffic violations and the additional offenses listed in §56-7-10, a Summary Court does not have jurisdiction until an arrest warrant has been issued and served. Plaintiff only served Defendant with a warrant for his burglary first degree charge and did not serve him with a warrant for his criminal domestic violence charge. Therefore, the Magistrate Court correctly ruled in this case.

The Plaintiff's Appeal is DISMISSED.

IT IS SO ORDERED.

~~November~~
October 27, 2009.


The Honorable John C. Hayes, III
Circuit Court Judge

² 1976-77 Op Atty Gen, No. 77-122, p 104. Formerly §46-871, S.C. Code of Laws, 1962. (emphasis added).

JC # 3

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

The State, Appellant,

v.

Jimmy Ramsey, Respondent.

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

Opinion No. 26595
Heard October 8, 2008 – Filed February 9, 2009

REVERSED AND REMANDED

Attorney General Henry Dargan McMaster,
Chief Deputy Attorney General John W.
McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Senior
Assistant Attorney General Harold M.
Coombs, Jr., all of Columbia, for
Appellant.

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

CHIEF JUSTICE TOAL: In this case, the magistrate held a probable cause hearing on Respondent Jimmy Ramsey's criminal domestic violence (CDV) charge and dismissed it for lack of probable cause. The circuit court affirmed the magistrate's finding. On appeal, the State claims the magistrate erred in holding a probable cause hearing and dismissing Respondent's CDV charge.

Factual/Procedural Background

On February 18, 2006, Respondent was arrested on a warrant for burglary first degree and was issued a uniform traffic ticket for CDV first offense. On May 16, 2006, the circuit court held a preliminary hearing on the burglary charge. The circuit court dismissed the burglary charge for lack of probable cause and remanded the CDV charge to the magistrate. Respondent filed with the magistrate a motion to dismiss the

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CDV charge for lack of probable cause. On August 14, 2006, the magistrate held a hearing to determine probable cause and granted Respondent's motion to dismiss. The State appealed to the circuit court. The circuit court affirmed the magistrate's order of dismissal and the State appealed. We certified this case pursuant to Rule 204(b), SCACR.

Issue

Did the magistrate have jurisdiction to hold a probable cause hearing on Respondent's charge for criminal domestic violence?

Law/Analysis

In general, magistrates have criminal jurisdiction "of all offenses which may be subject to the penalties of either fine or forfeiture not exceeding five hundred dollars or imprisonment in the jail or workhouse not exceeding thirty days." S.C. Code Ann. § 22-3-550 (2007). For crimes outside magistrates' jurisdiction, magistrates are authorized to conduct a preliminary examination. See Rule 2, SCRCrimP ("Any defendant charged with a crime not triable by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing."). The purpose of a preliminary examination is to determine whether probable cause exists to believe that the defendant committed the crime and to warrant the defendant's subsequent trial. 12 S.C. Jurisprudence *Magistrates and Municipal Judges* § 31. Nevertheless, for those matters within magistrates' jurisdiction, preliminary determinations of probable cause are not authorized by statute. Indeed, South Carolina law requires that all magistrate proceedings "shall be summary or with only such delay as a fair and just examination of the case requires." S.C. Code Ann. § 22-3-730 (2007).

In the present case, Respondent was charged with criminal domestic violence, first offense, pursuant to Section 16-25-20 of the South Carolina Code, which provides that the offense "must be tried in summary court." S.C. Code Ann. § 16-25-20 (2007). Prior to ruling on the merits, the magistrate found that Section 22-5-710 of the South Carolina Code gave him the authority to hold preliminary examinations in criminal cases. See S.C. Code Ann. § 22-5-710 (2008). We disagree, and hold that the magistrate did not have the authority to hold a preliminary hearing in this matter.

Section 22-5-710, relied upon by the magistrate, grants "magistrates in counties where a county court has been established" the authority to conduct a preliminary hearing "as is provided by law in criminal cases beyond the jurisdiction of magistrates." *Id.* This section is inapplicable because South Carolina no longer uses a county court system. However, even if we were to assume that the magistrate intended to rely upon the authority granted him by Section 22-5-320, which empowers magistrates to conduct preliminary hearings upon the motion of the defendant on matters beyond their jurisdiction, we must find that the magistrate exceeded his authority. See S.C. Code Ann. § 22-5-320 (2008). The CDV charge was within the magistrate's jurisdiction, and we find there is no authority for the proposition that magistrates are authorized to conduct preliminary hearings on matters within their own trial jurisdiction. To hold otherwise would undermine the summary nature of magistrate proceedings and unduly



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expand magistrate dockets.

Accordingly, we hold that the magistrate judge should have declined Respondent's request for a probable cause hearing and instead brought the charge to trial for summary disposition. The trial court therefore erred in considering the merits of the probable cause inquiry and affirming the magistrate.

Conclusion

For the foregoing reasons, we hereby reverse and remand this case to the magistrate for summary disposition.

WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

APPELLANT,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant hereby certifies that this **Record on Appeal** contains all material proposed to be included by the parties and not any other material, and that this **Record on Appeal** also complies, to the best of my ability, with the South Carolina Supreme Court's August 13, 2007 Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.


CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

October 6, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

APPELLANT,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

FINAL BRIEF OF APPELLANT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

CURTIS A. PAULING, III
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
803-734-3970

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

APPELLANT,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

FINAL BRIEF OF APPELLANT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

CURTIS A. PAULING, III
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
803-734-3970

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower courts erred in dismissing Respondent's case for lack of jurisdiction where the officer charged Respondent via a uniform traffic ticket, pursuant to S.C. Code Ann. § 56-7-10 and § 56-7-15, for a freshly committed act of criminal domestic violence.

STATEMENT OF THE CASE

Respondent was issued a uniform traffic ticket on February 18, 2006, charging him with first-offense criminal domestic violence. (See R. p. 2). Respondent's motion to dismiss for lack of probable cause was heard before York County Magistrate Judge Johnny H. Grayson on August 14, 2006. (See R. p. 28). Judge Grayson granted Respondent's request for a preliminary hearing and, following this hearing, concluded that there was no probable cause and dismissed the charge. (R. p. 27-28). The State filed and served a Notice of Appeal to the circuit court. The matter came before the Honorable John C. Hayes, III, for a hearing, and Judge Hayes affirmed the magistrate's dismissal. The State filed and served a Notice of Appeal to the South Carolina Court of Appeals. The South Carolina Supreme Court certified the case pursuant to Rule 204(b), SCACR. On February 9, 2009, the Supreme Court reversed, finding that the magistrate could not hold a preliminary hearing on a matter within its own trial jurisdiction. See State v. Jimmy Ramsey, 381 S.C. 375, 673 S.E.2d 428 (2009). (See R. p. 27-29). The Supreme Court remanded the case to the magistrate for disposition. (See R. p. 29).

Thereafter, the case was scheduled for a jury trial on July 8, 2009. (See R. p. 20). At that time, Magistrate Judge Johnny H. Grayson heard and granted Respondent's motion to dismiss for lack of jurisdiction. (See R. p. 20-23). The State appealed to the York County Circuit Court on July 16, 2009. A hearing was held before the Honorable John C. Hayes, III, on October 27, 2009. (See R. p. 1-19). Judge Hayes affirmed the magistrate court's dismissal for lack of jurisdiction by Order dated November 6, 2009. (See R. p. 24-26). The State timely served and filed a Notice of Appeal.

ARGUMENT

Background Facts

On February 18, 2006, two officers from the York County Sheriff's Office responded to a 3:21 am dispatch to the victim's residence in reference to a domestic incident that occurred at approximately 3:19 am. (R. p. 2). Officers arrived on the scene at 3:30 am. (R. p. 2). Respondent, the victim's estranged husband, was still present. (See R. p. 2-3). Officers spoke with both the victim and Respondent. (R. p. 3). The victim told officers that Respondent caused a "bruise blister" to her hand during the altercation. (R. p. 3). Officers observed this injury, and also observed a screen that had been removed from the victim's window. (See R. p. 3). The officers concluded that there was probable cause to arrest Respondent for criminal domestic violence ("CDV"), first offense, and a uniform traffic ticket was issued to Respondent regarding that charge.¹ (R. p. 3). The officer properly completed the incident report that same day pursuant to S.C. Code Ann. Sec. 56-7-15 (B). (See R. p. 3-8).

Lower Court Rulings

The magistrate court granted Respondent's motion to dismiss for lack of jurisdiction. (See R. p. 20-23). The judge, relying primarily upon S.C. Code Ann. § 56-7-15 (A), concluded that the magistrate court had no jurisdiction over the CDV offense because the uniform traffic ticket could not serve as a charging document for an offense which the officer did not view. (See R. p. 21-23). On appeal, the circuit court affirmed the magistrate's dismissal. (See R. p. 24-26). The circuit court concluded that, "for arrests other than for traffic violations and the additional offenses listed in § 56-7-10, a

¹ Respondent was also arrested for first-degree burglary, but that offense was later dismissed following a preliminary hearing.

Summary Court does not have jurisdiction until an arrest warrant has been issued and served.” (R. p. 26). Appellant submits that both lower courts erred.

The lower courts erred in dismissing Respondent’s case for lack of jurisdiction where the officer charged Respondent via a uniform traffic ticket, pursuant to S.C. Code Ann. § 56-7-10 and § 56-7-15, for a freshly committed act of criminal domestic violence.

S.C. Code Ann. § 22-3-710 states that “[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.” However, S.C. Code Ann. § 56-7-10, enacted subsequently, carved out several exceptions in which a uniform traffic ticket (“UTT”) will vest the magistrate court with jurisdiction and may be used in lieu of an arrest warrant. This section states that service of the UTT vests the magistrate court with jurisdiction to hear and dispose of the charge for which the ticket is issued and served. See S.C. Code Ann. § 56-7-10. S.C. Code Ann. § 56-7-15 was later enacted, which provides that a UTT may be used by 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 the magistrate’s court. Thus, § 56-7-15 expands the use of the UTT to include any magistrate-level offenses committed “in the presence of” the officer.

Although § 56-7-15 does not expressly state that service of a UTT for an offense committed in the officer’s presence vests the magistrate court with jurisdiction over the charge, when read together with § 56-7-10, the two statutes indicate that jurisdiction vests upon issuance of the UTT. See State Farm Mutual Auto. Ins. Co. v. Lindsay, 284 S.C. 472, 328 S.E.2d 80 (S.C.App.1984) (statutes *in pari materia* have to be construed together and reconciled, if possible, so as to render both operative); Fisburne v. Fisburne, 171 S.C. 408, 172 S.E. 426 (1934) (different statutes *in pari materia* though enacted at

different times, should be construed together as one system and as explanatory of each other); Columbia Gaslight Co. v. Mobley, 139 S.C. 107, 137 S.E. 211 (1927) (separate statutes relating to the same subject-matter must be construed together and effect given to each); Berkebile v. Outen, 311 S.C. 50, 53, 426 S.E.2d 760, 762 (1993) (“A basic presumption exists that the legislature has knowledge of previous legislation when later statutes are passed on a related subject.”). Section (B) of § 56-7-15, later added as a part of the Domestic Violence Prevention Act of 2003, further provides that an officer making an arrest pursuant to a UTT for a CDV offense must complete and file an incident report immediately upon issuance of the ticket.² Since section (B) specifically references CDV offenses, it is clear that section (A) of § 56-7-15 contemplates the use of a UTT for an offense of CDV, if the offense is otherwise within the magistrate court’s jurisdiction. First-offense CDV is clearly a magistrate-level offense. See S.C. Code Ann. § 22-3-550; § 16-25-30.

Based upon the foregoing, the State submits that the issuance of a UTT for a first-offense CDV occurring within the officer’s presence properly vests the magistrate court with jurisdiction to hear and dispose of the case, without the necessity of obtaining an arrest warrant. See S.C. Code Ann. § 56-7-10; § 56-7-15. Both Respondent and the magistrate judge acknowledged this below. (See R. p. 15, lines 9-14; p. 21-23). However, the State’s position is that the magistrate court’s definition of “in the presence of the officer” was too restricted because it failed to take into account long-standing principles of law. Specifically, Respondent submits that in South Carolina, an offense occurs “in the presence of the officer” when the officer timely arrives on the scene of a freshly committed offense and personally observes the evidence of the offense.

² Section (B) was amended in 2006 to change the time period from “fifteen days” to “immediately.” See S.C. Code Ann. §56-7-15(B) (as amended).

In 1960, the South Carolina Supreme Court stated that: “[a] crime is committed in the presence of an officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case.” State v. Williams, 237 S.C. 252, 259, 116 S.E.2d 858, 861 (1960) (citation omitted). The language was later quoted with approval in State v. Mims, 263 S.C. 45, 49, 208 S.E.2d 288, 290 (1974), and in State v. Martin, 275 S.C. 141, 145, 268 S.E.2d 105, 107 (1980); see also Fradella v. Town of Mount Pleasant, 325 S.C. 469, 474-75, 482 S.E.2d 53, 56 (Ct. App. 1997) (concluding that the facts and circumstances observed by an officer through his sensory awareness shortly after the incident satisfied the requirement that a misdemeanor be committed “in an officer's presence” in order to justify a warrantless arrest). These cases have not been overturned and they properly reflect the current law of this State. Therefore, an officer’s direct observation of the immediate aftermath of a freshly committed offense satisfies the “in the presence of the officer” requirement.

Accordingly, the State submits that where an officer responds to a CDV call within minutes of the incident and observes fresh injuries and/or other evidence clearly confirming the incident, the CDV has been “freshly committed” and must be regarded as having occurred “in the presence of the law enforcement officer” for purposes of S.C. Code Ann. § 56-7-15 (A). The offense in Respondent’s case was freshly committed, as illustrated by the background facts described above, and the State submits that the UTT issued to him for CDV served as a valid charging document for purposes of vesting the magistrate court with jurisdiction over the charge. See S.C. Code Ann. § 56-7-10 & § 56-7-15.

In Town of Hilton Head Island v. Godwin, the defendant was charged with criminal domestic violence via a uniform traffic ticket. Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006). Although the issue raised on appeal involved a new trial motion, this Court specifically pointed out that an appellate court can always take notice of a lack of jurisdiction at any time. Id. at 60-61; 223. This Court did not find a lack of jurisdiction in that case. Here, in the previous appeal of Respondent's case on other grounds,³ the South Carolina Supreme Court similarly found no lack of jurisdiction, and instead expressly stated, after noting that a uniform traffic ticket was issued to Respondent for this CDV offense, that, "[t]he CDV charge was within the magistrate's jurisdiction." See State v. Jimmy Ramsey, 381 S.C. 375, 673 S.E.2d 428 (2009). (See R. p. 28). The State submits that the Supreme Court's conclusion clearly supports its position in this appeal.

Additionally, the South Carolina Attorney General has issued an opinion directly on point stating his opinion that uniform traffic tickets confer jurisdiction over freshly committed CDV offenses. See S.C. Atty. Gen. Op. dated November 13, 2003; see also 1990 S.C. Op. Atty. Gen. No. 90-48. The South Carolina General Assembly is presumptively aware of opinions of the Attorney General, and, absent changes in the law following the issuance of opinions, the Legislature should be deemed to have acquiesced in the interpretation by the Attorney General. See Williams v. Morris, 320 S.C. 196, 202, 464 S.E.2d 97, 100 (1995) (affording great weight to Attorney General Opinions addressing the relevant issues in the case); Branch v. City of Myrtle Beach, 332 S.C. 575, 579, 505 S.E.2d 925, 927 (Ct. App. 1998), *overruled on other grounds*, (pointing out that while Attorney General Opinions are not binding precedent, they are often persuasive

³ See R. p. 27-29.

authority); see also State v. Son, 432 A.2d 947, 949 (N.J. 1981); Scheff v. Township of Maple Shade, 374 A.2d 43 (N.J. 1977).

Here, although the Legislature, in 2006, amended section (B) of S.C. Code Ann. § 56-7-15 (changing the time period for filing CDV incident reports) the Legislature did not make any changes to section (A) of the statute. Appellant submits that the absence of an amendment to section (A) of S.C. Code Ann. § 56-7-15 is strong evidence that the November 13, 2003 Attorney General opinion is consistent with legislative intent that freshly committed CDV offenses constitute offenses occurring “in the presence of the officer” under S.C. Code Ann. § 56-7-15, and that uniform traffic tickets issued for those offenses confer jurisdiction upon the magistrate court.

Finally, even if this Court rejects the above arguments, this Court should conclude that the magistrate court had jurisdiction over Respondent’s CDV case *because of* the issuance and service of the uniform traffic ticket. In State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978), the defendant was arrested via uniform traffic ticket for driving under the influence. The arresting officer arrived after the incident and did not actually see the defendant driving; however, he observed facts at the scene that led him to believe the defendant had committed the offense. Id. at 203, 246 S.E.2d at 859. On appeal, the circuit court overturned the defendant’s conviction, concluding that the traffic court was without jurisdiction because no arrest warrant was issued and served. Id.

The South Carolina Supreme Court reversed and held that, notwithstanding the lack of a warrant, the uniform traffic ticket vested jurisdiction in the magistrate court even though the officer may not have personally seen the accused commit the offense. Id. at 204, 246 S.E.2d at 860. The Supreme Court stated that, “[t]he issuance of the uniform traffic ticket merely summons the accused person to appear before a magistrate,

where he may submit any contention relative to the preservation of his rights.” See also State v. Prince, 262 S.C. 89, 91, 202 S.E.2d 645, 646 (1974) (rejecting the defendant’s contention that the magistrate court lacked jurisdiction because no arrest warrant was issued and pointing out that, under a predecessor to § 56-7-10, the service of the uniform traffic summons vests the traffic court with jurisdiction to hear and dispose of the charge for which the ticket was issued and served); Town of Hilton Head Island v. Godwin, supra; S.C. Code Ann. § 56-7-10. Accordingly, regardless of S.C. Code Ann. § 56-7-15 (A), this Court should conclude that the magistrate court in Respondent’s case acquired jurisdiction to hear and dispose of the CDV charge by virtue of the issuance and service of the uniform traffic ticket.

CONCLUSION

For the reasons discussed above, the State submits that this Court should reverse the lower courts and remand Respondent's case for trial in the magistrate court.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

CURTIS A. PAULING, III
Assistant Attorney General


CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR APPELLANT

October 25, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

APPELLANT,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Appellant** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.



CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

October 25, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

APPELLANT,


v.

JAMES ERVIN RAMSEY,

RESPONDENT.

AFFIDAVIT OF SERVICE

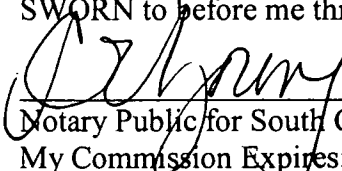
The undersigned attorney hereby certifies that the **Final Brief of Appellant** in the above-referenced case has been served by mail upon counsel for Respondent, as follows: **Christopher A. Wellborn, Esquire**, Post Office Box 10191, Rock Hill, SC 29731, this **25th day of October, 2010.**



CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 25th day of October, 2010.



Notary Public for South Carolina.

My Commission Expires: 10/28/2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

STATE OF SOUTH CAROLINA Appellant,

vs.

JAMES E. RAMSEY Respondent,

FINAL BRIEF OF RESPONDENT

CHRISTOPHER A. WELLBORN

142-C Oakland Avenue
Post Office Box 10191
Rock Hill, South Carolina 29730
(803) 366-1065

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in dismissing the Respondent's case for lack of jurisdiction where an officer arrested the Respondent for criminal domestic violence first offense by using a uniform traffic ticket for an alleged offense that was not committed in the officer's presence?

STATEMENT OF THE CASE

The Respondent was arrested and charged with criminal domestic violence first offense on February 18, 2006, by use of a uniform traffic ticket (Ticket No. 53259DM). This matter was scheduled for trial on July 8, 2009 before the Honorable Johnny H. Grayson, Magistrate for Clover Township. At the commencement of the trial, the Respondent moved to have the charge dismissed for lack of jurisdiction which was granted by Magistrate Grayson. The State appealed to the York County Circuit Court and Magistrate Grayson's ruling was affirmed by the Honorable John C. Hayes, III, on November 6, 2009. The State has appealed.

ARGUMENT

The State's position, in sum, blurs the distinction between arrest and jurisdiction. The Respondent concedes that a person may be arrested with or without a warrant or with or without a ticket. However, an arrest in and of itself does not confer jurisdiction on a particular court. Town of Honea Path v. Wright, 194 S.C. 461, 9 S.E.2d 924 (1940). Furthermore, S.C. Code § 22-3-710 states that "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."

The General Assembly has created an exception to the warrant requirement for certain offenses, See S.C. Code § 56-7-10. However, criminal domestic violence is not one of the offenses listed as an exception. The State asserts that such an exception is created by S.C. Code § 56-7-15 which states that "the uniform traffic ticket, established pursuant to the provisions of § 56-7-10, 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 the magistrate's court and municipal court." This statute simply follows our long held view that officers can not arrest and charge someone for misdemeanor offenses committed outside their presence absent a specific exception pursuant to S.C. Code § 56-7-10.

In its brief, the Appellant has cited State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980); and State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978). These cases are not applicable to the issue on appeal in this case. Both Martin and Biehl involve charges of

driving under the influence which is a traffic offense and for which a uniform traffic ticket clearly conveys jurisdiction to the magistrate's court pursuant to S.C. Code § 56-7-10.

In sum, the plain language of S.C. Code § 56-7-15 in its plain and ordinary meaning, without result to forced construction tells us that an officer may use a uniform traffic ticket to arrest a person for a violation committed in their presence. This means the officer has to see or hear the offense actually happen, not hear about it after the fact. The factual record in this case does not reflect that the officer who wrote the ticket actually saw or heard anything happen.¹ Therefore, although he could arrest the Respondent without a warrant, the Magistrate properly ruled that he did not have jurisdiction to hear the charge absent such a warrant. The officer had the option of seeking a warrant prior to arresting the Respondent or arresting the Respondent and subsequently seeking a warrant. Neither option was exercised.

¹

Respondent has filed a Motion to Strike Matters referred to in the Appellant's Brief that are not a part of the record and therefore not properly before this Court.

CONCLUSION

For the reasons discussed above, the Respondent submits that this Court should affirm the lower courts.

Respectfully submitted,



CHRISTOPHER A. WELLBORN

Post Office Box 10191
Rock Hill, South Carolina 29731
(803) 366-1065

ATTORNEY FOR RESPONDENT

November 2, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

Appellant,

vs.

JAMES ERVIN RAMSEY,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.



CHRISTOPHER A. WELLBORN
Post Office Box 10191
Rock Hill, South Carolina 29731
(803) 366-1065

ATTORNEY FOR RESPONDENT

November 2, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA, Appellant,

vs.

JAMES ERVIN RAMSEY, Respondent.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served by mail upon counsel for Appellant **this 2nd day of November, 2010**, as follows:

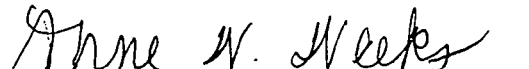
Christina J. Catoe., Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.


CHRISTOPHER A. WELLBORN

Post Office Box 10191
Rock Hill, South Carolina 29731
(803) 366-1065

SWORN to before me the 2nd day of November, 2010


Notary Public for South Carolina
My Commission Expires: 09/19/2019