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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of General Sessions

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No.: 2015-002073  
Case Nos.: 2013-GS-15-00815;  
2013-GS-15-816; and  
2013-GS-15-817

THE STATE,

Appellant,

v.

ROXANNE HUGHES,

Respondent.

Initial Brief of Respondent

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**STATEMENT OF ISSUE ON APPEAL**

**Did the Circuit Court commit an error of law in holding that a more specific statutory subsection controls over a more general statutory subsection when it dismissed the State's felony indictment with leave for the State to indict the Respondent for violations of the misdemeanor statute?**

## STATEMENT OF THE CASE

In September of 2013, the Department of Revenue obtained arrest warrants for Roxanne Hughes on three counts of felony tax evasion in violation of South Carolina Code §12-54-44(B)(1). A Colleton County Grand Jury later returned an indictment on the same counts. Prior to trial of this matter, Respondent filed a “Motion to Proceed Under a More Specific Offense Statute.” Respondent’s Motion asked the Court to dismiss the felony indictments with leave for the State to proceed under the misdemeanor subsections of S. C. Code Ann. §12-54-44(B)(3) and (5). Respondent argued that the indictments are facially invalid because they allege only misdemeanor conduct, as set forth in S.C. Code Ann. §12-54-44(B)(3) and (5). The Honorable Larry B. Hyman, Jr., Circuit Court Judge, held a hearing on Respondent’s Motion on September 28, 2015. Following arguments by the parties, the Court granted Respondent’s Motion and dismissed the indictments. The State timely filed its Notice of Appeal. This appeal followed.

## STATEMENT OF FACTS

The indictments allege that during the tax years 2009, 2010, and 2011, Respondent filed a form W-4 with her employer claiming “Exempt” status for withholding when she was in fact not exempt. (Indictments). The indictments further allege that Respondent also failed to timely file her South Carolina Individual Income Tax Return for tax years 2009, 2010 and 2011. (Indictments). The State subsequently charged Respondent with three counts of felony tax evasion pursuant to S.C. Code Ann. §12-54-44(B)(1). (Indictments). Respondent challenged the basis for the indictment filed pursuant to S.C. Code Ann. §12-54-44(B)(1), as the specific conduct alleged in the indictments is found only in in S.C. Code Ann. §12-54-44(B)(3) and (5). (Motion at 3-4).

Given the facial deficiency of the indictments, Respondent filed a “Motion to Proceed Under a More Specific Offense Statute,” and asked the Circuit Court to dismiss the indictments filed pursuant to S.C. Code Ann. §12-54-44(B)(1) with leave for the Attorney General to bring charges pursuant to S.C. Code Ann. §12-54-44(B)(3) and (5). (Transcript at 10). Respondent asked the Circuit Court to dismiss the felony indictments with leave for the State to proceed under the misdemeanor subsections, which the indictments allege Respondent violated. (Transcript at 10). The Court held a hearing on Respondent’s Motion on September 28, 2015. (Transcript at 1). Following arguments by the parties, the Court granted Respondent’s Motion. (Transcript at 10).

## ARGUMENT

**The Circuit Court did not commit an error of law in holding that a more specific statutory subsection controls over a more general statutory subsection and dismissing the State's felony indictment with leave for the State to obtain warrants for the misdemeanor violations.**

The Circuit Court correctly held that rules of statutory construction required dismissal of the felony charges against the Respondent as the more specific misdemeanor sections controlled over the more general felony section. The Circuit Court did not commit an error of law in this decision because the alleged conduct of the Respondent matches exactly the conduct set forth in S.C. Code Ann. §12-54-44(B)(3) and (5).

### STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). “On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-86 (Ct. App. 2001).

### ANALYSIS

It is well established that a specific statute controls over a more general one. Skinner v. Westinghouse Electric Corporation, 394 S.C. 428, 716 S.E. 2d 443 (2011); Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995); Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994). “General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.” Bloate v. United States, 559 U.S. 196, 130 S. Ct. 1345, L.Ed.2d 54 (2009) citing D. Ginsberg & Sons, Inc. v. Popkin, 285 U.S. 204, 208, 52 S.Ct. 322, 76 L.Ed. 704 (1932). It is also well established that penal statutes are strictly construed

against the State and in favor of the defendant. State v. Fowler, 322 S.C. 157, 470 S.E.2d 393 (Ct.App.1996).

The statute at issue in this appeal is South Carolina Code §12-54-44(B). Specifically, three subsections of subsection (B) are at issue. South Carolina Code §12-54-44(B)(1) states

A person who **willfully attempts in any manner to evade or defeat a tax** or property assessment imposed by a title administered by the department or the payment of that tax or property assessment, in addition to other penalties provided by law, is guilty of **a felony** and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both, together with the cost of prosecution. (emphasis added).

South Carolina Code §12-54-44(B)(3) provides

A person required under any provision of law administered by the department and who **willfully fails to pay any estimated tax or tax**, or who is required by any provision of law or by any regulation and who **willfully fails to make a return**, keep records, or supply information, at the time or times required by law or regulation, in addition to other penalties provided by law, is guilty of **a misdemeanor** and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than one year, or both, together with the cost of prosecution. (emphasis added).

South Carolina Code §12-54-44(B)(5) states

A person required to supply information to his employer under Chapter 8, Title 12 who **willfully supplies false or fraudulent information** or who willfully fails to supply information **which would require an increase in the tax to be withheld** under Chapter 8, Title 12 is guilty of **a misdemeanor** and, upon conviction, must be fined not more than one thousand dollars, or imprisoned not more than one year, or both.” (emphasis added).

The State argues that the conduct in this case can fall under S.C. Code Ann. §12-54-44(B)(1) and S.C. Code Ann. §12-54-44(B)(3) and (5). This argument is contrary to well-established rules of statutory construction. As the State concedes, rules of statutory construction

require “when two statutes are in conflict a specific statute closely applicable to the substance of the controversy at hand controls over a more generalized provision.” Pressley v. Tupperware Long Term Disability Plan, 553 F.3d 334 (4<sup>th</sup> Cir. 2009). See also Hodges v. Rainey, 341 S.C. 79, 96-97, 533 S.E.2d 578, 587 (2000) Justice BURNETT (concurring in part, dissenting in part) citing Norman J. Singer, Sutherland Statutory Construction § 51.05 at 174 (5th ed. 1992) (“[w]here one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail ...”). In this case, the provision of S.C. Code Ann. §12-54-44(B)(1) broadly describes conduct and classifies it as a felony, while the provisions of S.C. Code Ann. §12-54-44(B)(3) and (5) specify in great detail certain patterns of conduct and classifies them as misdemeanors.

The State asserts that the specific conduct described in (B)(3) and (5) also falls under the more general umbrella of “evasion” provided for in S.C. Code Ann. §12-54-44(B)(1). South Carolina Code Ann. §12-54-44(B)(1) provides *generally* that one who willfully attempts to evade or defeat a tax is guilty of a felony. South Carolina Code Ann. §12-54-44(B)(1) seems very broad when read in isolation. However, the legislature limited its application by setting forth, in additional subsections, particular conduct, which is classified as a misdemeanor. The specific provisions at issue in this case are found in S.C. Code Ann. §12-54-44(B)(3) and (5) and describe precisely the conduct alleged in the State’s indictments.

The State’s indictments allege that Roxanne Hughes claimed she was “exempt” from withholding on a Form W4 submitted to her employer. (Indictments); (Transcript at 3 - 5). The indictments further allege this information on her Form W-4 was false. (Indictments); (Transcript at 3 - 5). This conduct, if proven, would violate S.C. Code Ann. §12-54-44(B)(5). The State also

contends in its indictments that Respondent subsequently failed to timely file a South Carolina Individual Income Tax Return for tax years 2009, 2010 and 2011.<sup>1</sup> (Indictments); (Transcript at 3 - 5). If proven, such conduct would violate S.C. Code Ann. §12-54-44(B)(3).

Instead of charging Respondent with violating these two statutory provisions, the State argues that Respondent's conduct violates S.C. Code Ann. §12-54-44(B)(1). "The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) citing State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000). The legislature's intent should be "ascertained primarily from the plain language of the statute." Morgan, at 366, 547 S.E.2d at 206.

The State's argument, carried to its logical conclusion, would lead to absurd results and does not conform to the legislature's clear intent. The statutory language at issue in this case clearly sets forth that the allegations found in the indictments result in misdemeanor charges only. However, the State argues even though certain conduct is set forth in S.C. Code Ann. §12-54-44(B)(3) or (5) and is defined as a misdemeanor, that it is not precluded from charging a person for identical conduct under S.C. Code Ann. §12-54-44(B)(1). The Circuit Court was clearly concerned about the elevation of "a single misdemeanor to felony status" for which the State did not have a response. (Transcript at 7 - 9.) Such a result is plainly absurd and cannot be what the legislature intended when it enacted specific misdemeanor subsections to limit the general felony evasion statute. See Florence County v. Moore, 344 S.C. 596, 601, 545 S.E.2d 507, 509 (2001)(The Court's "goal in construing statutes is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd").

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<sup>1</sup> Respondent has filed these returns and paid the outstanding balances at the Motion hearing. Transcript at 14 - 15.

In S.C. Code Ann. §12-54-44(B)(1), the legislature enacted a general evasion statute for conduct classified as felonious. In §12-54-44(B)(3) and (5), the legislature designated certain specific conduct and classified it as a misdemeanor. Respondent's alleged conduct in this case falls squarely within the conduct that the legislature specifically categorized and designated as a misdemeanor. Courts have consistently held a specific statute controls over a more general one. Skinner, 394 S.C. 428, 716 S.E. 2d 443; Atlas Food Sys. & Servs., 319 S.C. 556, 462 S.E.2d 858; Mims, 312 S.C. 311, 440 S.E.2d 357. As the State failed to indict the Respondent pursuant to the more specific statutes, the State's indictments were facially deficient and the Circuit Court did not err in dismissing them.

The State also argues pursuant to State v. Austin, that “[u]nder South Carolina law, distinct criminal offenses may arise from a single act.” 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)(emphasis added). Key to this holding is the term “distinct.” In Austin, the Court determined that a robbery charge and a larceny charge could both go to the jury. Robbery and larceny are distinct criminal offenses found in different chapters of the South Carolina Code of Laws. In further support of this argument, the State cites to State v. Pace, 337 S.C. 407, 523 S.E.2d 466 (Ct. App. 1999). Pace stands for the same proposition that a single act can result in multiple distinct criminal offenses in that case forgery and insurance fraud. Forgery and insurance fraud are also found in different chapters of the Code of Laws and are distinct in their elements. Pace and Austin have no application in this case because the offenses alleged in this matter are found in the same subsection of the same enactment and deal with identical subject matter.

Finally, the State asks that the Court look to federal law in interpreting S.C. Code Ann. §12-54-44(B)(1). The State's argument is without merit because statutory interpretation is only

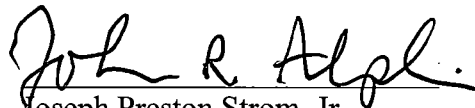
necessary when a statute is ambiguous. “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” Paschal v. State Election Com’n, 317 S.C. 434, 436, 454 S.E.2d 890, 891 (1995) citing Miller v. Doe, 312 S.C. 444, 441 S.E.2d 319 (1994). The Court continued “[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning.” Id. citing Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993). The Court goes on to instruct Courts that they “cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute’s scope.” Id. citing Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993). The Court does not reach statutory interpretation in this case because S.C. Code Ann. §12-54-44(B)(1), (3) and (5) are clear and unambiguous. This is especially true in this criminal case as penal statutes are strictly construed against the State and in favor of the defendant. Fowler, 322 S.C. 157, 470 S.E.2d 393. The Court correctly enforced the plain meaning of the statutes and did not get into impermissible statutory interpretation.

### Conclusion

Rules of statutory construction dictate that, based upon the facts alleged in the indictments, Respondent should have been charged under S.C. Code Ann. §12-54-44(B)(3) and (5). As such, the felony indictments were properly dismissed with leave for the State to file misdemeanor charges pursuant to those sections. The specific allegations in this case—the provision of false and fraudulent information on a form submitted to an employer, and the willful failure to file a return—are *specifically* dealt with in subsections (B)(3) and (B)(5) of the same enactment under which Defendant was charged. Despite the fact that the conduct in this case matches S.C. Code Ann. §12-54-44(B)(3) and (B)(5) exactly, the State indicted Respondent

under the more general provision found in S.C. Code Ann. §12-54-44(B)(1). Rules of statutory construction require a different result. Because Respondent's alleged conduct is addressed with particularity in a later provision of the same enactment under which Ms. Hughes was indicted, the more specific statutes control. As a result, the Circuit Court did not err in ruling that the more specific statutes control and dismissing the indictments. Therefore, the Order of the Circuit Court should be Affirmed.

RESPECTFULLY SUBMITTED this 8th of June, 2016



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