

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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NOV 09 2017

S.C. SUPREME COURT

APPEAL FROM STATE GRAND JURY
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Indictments 2017-GS-47-07, -08 & -09

John E. Courson.....Appellant,

v.

State of South Carolina..... Respondent.

NOTICE OF APPEAL

Appellant is Senator John Courson appealing from two orders of the Honorable Carmen T. Mullen entered on October 17 and 31, 2017. The orders denied Senator Courson’s Motions to Dismiss and to Alter, Amend, and Reconsider the order.

The basis of this appeal is the State’s constitutional violation of separation of powers with respect to the investigation and indictment of Senator Courson. The Attorney General of South Carolina is the only prosecutor with statewide authority as the Constitutional officer for investigation and prosecution of criminal activity. Pursuant to State Grand Jury Act, only the Attorney General or his designee is entitled to investigate and indict using the State Grand Jury without (1) an express recusal and designation or (2) a specific finding by the presiding judge of an actual conflict with actual prejudice requiring disqualification. *Pascoe v. Wilson*, 416 S.C. 628, 640-41, 788 S.E.2d 686, 693 (2016); S.C. Code Ann. § 14-7-1650(D); *see also* S.C. Const. art. V,

§ 24 (“The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record.”).

Neither the designation of Solicitor Pascoe nor the disqualification of the Attorney General has of which has occurred for a State Grand Jury investigation or indictment of Senator Courson. Thus, Solicitor Pascoe has disregarded the Constitution and the power vested in the people of South Carolina to determine who serves as the Attorney General, and the lower court’s orders have failed to protect against significant constitutional interference effectively ignoring the statutory scheme in the State Grand Jury Act by the General Assembly for exercise of this power by anyone other than the Constitutional officer. *See, e.g., Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 643, 528 S.E.2d 647, 651 (1999) (“All power is derived from the people, and all magistrates and officers of government are their agents, and at all times accountable to them.” (quoting *State ex rel. Pearson v. Hayes*, 61 N.H. 264, 329 (1881) (premised on John Locke’s theory of democracy)); *see also State v. Langford*, 400 S.C. 421, 434, 735 S.E.2d 471, 478 (2012) (“[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a significant interference by one branch of government with the operations of another branch.” (internal citation omitted)).

Further, Senator Courson’s appeal will address other issues concerning subject matter jurisdiction, the existence of common law misconduct in office and its punishment, and due process of law.

Accordingly, the Supreme Court of South Carolina is the exclusive forum for this appeal of constitutional issues.

Respectfully submitted,

Rose Mary Parham / *with permission*

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ATTORNEY FOR APPELLANT

November 9, 2017

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PROOF OF SERVICE

The undersigned hereby certifies that on November 9, 2017, she served counsel for Respondent with the *Notice of Appeal* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

David M. Pascoe
Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, SC 29116

Respectfully submitted,

Rose Mary Parham / *with permission*

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November 9, 2017

ATTORNEY FOR APPELLANT

IN THE STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA,

v.

JOHN E. COURSON,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-07

2017-GS-47-08

2017-GS-47-09

**ORDER DENYING
MOTIONS TO DISMISS**

THIS MATTER came before the Court on two Motions to Dismiss filed by Defendant John E. Courson ("Defendant"). A hearing was held October 12, 2017. Present at the hearing were David M. Pascoe, Jr., on behalf of the State, and Rose Mary Parham, counsel for the Defendant, who did not appear. Having reviewed the memoranda of law submitted by both the State and the Defendant, and considering the arguments of counsel, for the reasons set forth below, Defendant's motions are denied.

On July 20, 2017, Defendant moved to dismiss Indictment 2017-GS-47-08 on the basis that this Court lacks jurisdiction over the indictment because Misconduct in Office is not an indictable offense under the common law. Additionally, Defendant moved to dismiss Indictment Numbers 2017-GS-47-07 and 2017-GS-47-08 (collectively "Indictments") arguing 1) the elements of the offenses charged are unconstitutionally vague and violate Corson's due process rights; 2) the indictments are multiplicitous of one another; and 3) the charges violate the Eighth Amendment of the U.S. Constitution. *See* Def's Mot. to Dismiss, Jul 20, 2017.

Defendant filed a second Motion to Dismiss on August 11, 2017 wherein the Defendant moved to dismiss with prejudice all indictments against him on the basis that he is "not one of two 'redacted legislators' for which Solicitor Pascoe was designated to investigate outside his judicial

circuit" and therefore lacked subject matter jurisdiction or authority to prosecute him for these indictments. See Def's Mot. to Dismiss, Aug 11, 2017.

First Motion to Dismiss

Indictability of Common Law Misconduct

Defendant moves to dismiss Indictment 2017-GS-47-08 on the basis that Misconduct in Office is not an indictable offense under the common law. Defendant argues that a review of South Carolina jurisprudence demonstrates there is no common law offense of Misconduct in office. Conversely, a search by this Court revealed a number of cases containing indictments for the common law offense of misconduct in office. See e.g. *State v. Wilson*, 246 S.C. 580, 145 S.E.2d 20 (1965); *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (S.C. 1994); *State v. Follin*, 352 S.C. 235, 249, 573 S.E.2d 812, 819 (Ct. App. 2002); *In re McBee*, 375 S.C. 140, 650 S.E.2d 849 (2007).

Further, common law offenses are not abrogated simply because there is a statutory offense proscribing similar conduct. *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993), reh'g denied, (Aug. 26, 1994). Rather, it is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute. *Id.* Defendant's motion to dismiss the subject indictment on this ground is therefore denied.

Indictments are Unconstitutionally Vague

Although not argued before the Court, Defendant's Motion to Dismiss argues indictments should be dismissed as "the elements of the offense charged are unconstitutionally vague and violate Courson's due process rights." See Def's Mot. to Dismiss, 1, Jul 20, 2017. "The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process

¹ Solicitor Pascoe is the Solicitor for the First circuit.



requires fair notice and proper standards for adjudication." *Curtis v. State*, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001), *cert. denied* *77 535 U.S. 926, 122 S.Ct. 1295, 152 L.Ed.2d 208 (2002), quoting *City of Beaufort v. Baker*, 315 S.C. 146, 152, 432 S.E.2d 470, 472 (1993). The constitutional standard for vagueness is the practical criterion of fair notice to those to whom the law applies. A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application. *Toussaint v. State Bd. of Med. Exam'rs*, 303 S.C. 316, 400 S.E.2d 488 (1991). One to whose conduct the law clearly applies does not have standing to challenge it for vagueness. *Id.* Accordingly, Defense's motion to dismiss the subject indictments on these grounds is denied.

Multiplicity of Indictments

Defendant also argues dismissal is proper as the elements of the offenses of common law misconduct and statutory offense of misconduct² are multiplicitous of one another. The test to determine whether multiple indictments charge the same offense or separate offenses is "whether each provision requires proof of a fact which the other does not." *Blockburger v. United States*, 284 U.S. 299, 304 (1932). A review of common law misconduct in office and the plain reading of the statute in question reveals different elements are required to prove each offense and as such, Defendant's motion to dismiss based on multiplicity is denied.

Violation of Eighth Amendment of U.S. Constitution

While not argued before the Court, Defendant's motion also argues proceeding under both indictments is violative of Defendant's Eighth Amendment rights is equally unavailing and based on the aforementioned, Defendant's motion to dismiss on this basis is also denied.

² S.C. Code Ann. § 81-1-80

Defendant's Second Motion to Dismiss

In Defendant's second motion to dismiss, Defendant argues all indictments against him should be dismissed with prejudice as Solicitor Pascoe did not have jurisdiction or authority to prosecute him for these indictments and that "at no time has there been another designation or expansion of the designated solicitor's authority beyond the redacted legislators." However, the Supreme Court in *Pascoe v. Wilson*... states "nothing in the exhibits...suggests that Pascoe's authority in the redacted legislators matter did not include all the power of the attorney general including the impaneling of a state grand jury." *Pascoe v. Wilson*, 416 S.C. 628, 788 S.E.2d 686 (2016). The question as to Solicitor Pascoe's authority beyond the two redacted legislators was not before the Court, however, the Court recognized the responsibility of authorizing a state grand jury proceeding "should only be exercise by an individual with thorough knowledge of the investigation leading up to the request for a state grand jury." *Pascoe v. Wilson*, 416 S.C. 628, 788 S.E.2d 686 (2016). For this Court to hold that Solicitor Pascoe's authority is limited solely to the two redacted legislators and therefore render him unable to pursue any other alleged wrongdoers uncovered by his investigation would lead to the absurd result the Court warned about.

For the reasons stated above, Defendant's Motions to Dismiss are hereby denied.

IT IS SO ORDERED.



Carmen Tevis Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

10 - 17, 2017

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IN THE STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA,

v.

JOHN E. COURSON,

Defendant.

INDICTMENT NUMBERS:

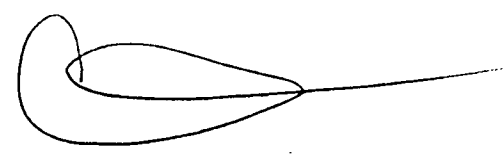
2017-GS-4704
2017-GS-47-08
2017-GS-47-09

**ORDER DENYING DEFENDANT'S
MOTION TO ALTER, AMEND, AND
RECONSIDER RULING AND WRITTEN
ORDER**

THIS MATTER comes before the Court by way of a Motion to Alter, Amend and Reconsider filed by Defendant John E. Courson, by and through his counsel, Rose Mary Parham, Esq. The Motion was filed on October 27, 2017, in response to this Court's Order dated October 17, 2017, denying Defendant's Motion to Dismiss dated July 20, 2017.

Upon consideration of the record in this matter, Defendant's Motion to Alter, Amend and Reconsider is respectfully **DENIED**.¹

IT IS SO ORDERED.



CARMEN TEVIS MULLEN
Presiding Circuit Court Judge

October 31, 2017

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; *Pollard v. City of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).