

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2015-000431

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MAR 14 2019
SC Court of Appeals

THE STATE,

Appellant,

vs.

JOHN KENNETH MASSEY, JR.,

Respondent.

MOTION TO DEPUBLISH

On February 27, 2019, this Court issued a published opinion affirming the circuit court judge's pre-trial dismissal of a facially-valid indictment for first-degree burglary based on the purported insufficiency of the evidence the State intended to introduce during trial. State v. Massey, Op. No. 5630 (Ct. App. filed Feb. 27, 2019) (Shearouse Adv. Sh. No. 9 at 103). In affirming the circuit court judge's pre-trial dismissal of the indictment, this Court held the State's argument that the circuit court judge lacked authority to quash the facially-valid indictment pre-trial was "argue[d] for the first time on appeal" and "[t]herefore, . . . unpreserved." Despite finding the State's argument that the circuit court judge lacked authority to quash the indictment based on the sufficiency of the evidence was not preserved for this Court's review, this Court then went on to address the merits of the judge's lawless ruling on the sufficiency of the evidence. Contemporaneously with the filing of this motion, Appellant, the State, has petitioned for rehearing pursuant to Rule 221(a), SCACR.

Significantly, both our Supreme Court and this Court have already expressly found that a circuit court judge does not have the authority to quash a facially-valid indictment pre-trial based on the sufficiency of the evidence. See State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998) (“[A] trial court generally has **no power** to dismiss a properly drawn indictment issued by a properly constituted grand jury before trial unless a statute grants that power to the court.” (emphasis added)); State v. Garrett, 305 S.C. 203, 206, 406 S.E.2d 910, 911 (Ct. App. 1991) (“A motion to quash an indictment addresses the sufficiency of the indictment, not the sufficiency of the State’s evidence.”), overruled on other grounds by State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993). Despite the settled law on that subject, this Court’s published opinion as written affirms the circuit court judge’s lawless decision to quash a facially-valid indictment pre-trial based on sufficiency of the evidence grounds after reaching the merits of the issue solely due to an issue preservation finding. Under those unique circumstances, the State respectfully submits this opinion should be depublished based on a significant likelihood that it can only serve to confuse the bench and bar. Specifically, the opinion could be misconstrued as suggesting circuit court judges in our state can quash a facially-valid indictment—just as the circuit court judge did in Massey’s case—since this Court affirmed the circuit court judge’s ruling doing just that. See Mack v. Lott, 415 S.C. 22, 23, 780 S.E.2d 761 (2015) (directing depublishation for the benefit of the bench and bar due to an arguable lack of clarity on an issue). Accordingly, the State submits depublishation is warranted.

WHEREFORE, the State prays this Court will depublish the opinion in Massey’s case and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

KEVIN S. BRACKETT
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March 14, 2019

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA
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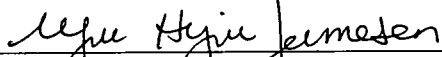
SC Court of Appeals

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Appellant's Motion to Depublish on Respondent by depositing two copies of the same in the interagency mailbox addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense – Appellate Division
PO Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of March, 2019.


MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. John Kenneth Massey, Jr. – Appellate Case No. 2015-000431

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Appellant's Motion to Depublish, along with proof of service, for filing in the above-referenced criminal appeal.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
S.C. Bar Number 100108

MHJ/
Enclosures

cc: David Alexander, Esquire
Victim Advocacy Division