

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
Honorable Robin B. Stilwell, Circuit Court Judge

Case No. 2017-001777

RECEIVED

OCT 28 2019

SC Court of Appeals

Alonzo Columbus Jeter, III,

PETITIONER,

v

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO ARGUE
AGAINST PRECEDENT
RULE 217, SCACR

The Petitioner, Alonzo C. Jeter, III, pursuant to Rule 217, SCACR, hereby request to argue against precedent. Particularly, Petitioner brings before this Honorable Court, argument against this Court's ruling in the case of State v Wakefield, 323 S.C. 189, 473 S.E2d 831 (1996), as the ruling in Wakefield is relevant in the issue(s) of Petitioner's pending case and is significantly similar. Petitioner submits the following argument against this precedent case; Respectfully.

ARGUMENT

Church Playgrounds And Their Applicability To
S.C. Code Ann. §44-53-445, Proximity Statute

Procedural History of Facts

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The relevant facts in the case of State v Wakefield, 323 S.C. 189, 473 SE2d 831 (1996), are as follows:

On November 12, 1992, Everette Leon Wakefield, Jr. sold an amount of crack cocaine to an informant and agent of the South Carolina Law Enforcement Division (SLED) while at his residence at 333 Marion Street. A map of the area indicated that Macedonia Baptist Church and its playground was located approximately 500 feet away from his residence where he sold the drugs.

As a result of this sale, Wakefield was arrested on June 10, 1993. He was convicted of distribution of crack cocaine, pursuant to S.C. Code Ann. § 44-53-375 (B) (Supp. 1994), and distribution of crack cocaine within a one-half mile radius of a playground, pursuant to S.C. Code Ann. § 44-53-445 (Supp. 1995). On appeal and upon finding the charges which Wakefield was charged and convicted of so closely connected that it was necessary to review both, this Court in Wakefield, affirmed the convictions finding and ruling that Wakefield's convictions were proper because there was no question that the drug sale did occur within a one-half mile radius of Macedonia Church's playground. State v Wakefield, 323 S.C. 189, 473 SE2d 831 (1996).

ARGUMENT AGAINST PRECEDENT

As this Court made its ruling in Wakefield that the sale did occur within a one-half mile radius of Macedonia Church's playground and therefore Wakefield's conviction pursuant to S.C. Code Ann. § 44-53-445 (Supp. 1995) was proper, this Court did not consider that S.C. Code Ann. § 44-53-445 (Supp. 1995) only applies to public playgrounds.²

The statute states as follows:

It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university."

S.C. Code Ann. § 44-53-445 (Supp. 1995)

²Wakefield committed this crime on November 12, 1992, therefore section 44-53-445 of the 1976 Code, as amended by Act 579 § 2 of 1990 would have been the applicable statute. See Elmore v State, 409 S.E.2d 397 (1991); Pierce v State, 526 S.E.2d 222, 338 S.C. 139, (2000); State v Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013); State v Varner, 310 S.C. 264, 423 S.E.2d 133 (1992); Nevertheless, both statutes has the same relevant language "public" playground.

It is clear that the South Carolina legislature's intent is that the S.C. Code Ann. §44-53-445 (the proximity statute) would be only applied to and encompass "public" playgrounds and parks. Any private designations in which the Legislature intended to be encompassed by this proximity statute were specifically mentioned as the statute specifically chose to include and state within the statute's language, "a public or private elementary, middle, or secondary school, ... or a public or private college or university."

Private playgrounds and parks would be ruled out by applying the principle of "Expressio unius est exclusion alterius" which means to express or include one thing implies the exclusion of another. Brown v State, 343 S.C. 342, 540 SE2d 846 (2001).

In Brown, daycare centers, (which also would manytimes have playgrounds or parks), are not encompassed in this statute. The ruling in Brown would also mean all daycare owned property. See also State v Green, 350 S.C. 580, 567 SE2d 505 (2002), where "grounds" means all school-owned property contiguous to or surrounding the school's physical plant.

The playground in which Wakefield was convicted of the proximity criminal offense under S.C. Code Ann. §44-53-445 (Supp. 1995), was not a "public" playground but was rather a private playground as it was owned by and on the property of Macedonia Baptist Church. As Macedonia Baptist Church is a private establishment, so is the playground "private"

which belongs to the Church and is therefore on Church's property.

Ex parte Conger, 163 Tex. 505, 357 SW2d 740 (1962) - A denominational church is a private institution, and while building and maintenance of religious institutions are in the public interest and may be said to promote public welfare they lie without domain of public uses and purposes; Prince v Massachusetts, 64 Sct 438 (); Churches are private structures; St. James African Methodist Episcopal Church v Baltimore & O. R. Co., 114 Md. 442, 79 A. 35 (1911) - The cemetery was private because it belonged to the church; State v Vanderberg, 25 Or. App. 811, 550 P2d 1248 (1976) - Church is private property; Rhine v First Baptist Dallas Church, 2016 WL 6471941, - Plaintiff, Tracy Rhine, was on Church's property which was private property; State v Gregg, 2 Hill (SC) 387, 20 S.C. L. 387 (1834) - The way to a church is a private and not a public one; Kelley v St. Bartholomew's Episcopal Church, 2008 WL 3889872, - Defendants are a private church; Richardson v F.B.I., 2011 WL 1428968 - Conduct at churches is private conduct; First Congregational Church of Harwich v Eldredge, 2017 WL 3581629 - Cemetery property under church's control is private property; Victory Baptist Temple, Inc. v Industrial Com'n of Ohio, 2 Ohio App. 3d 418, 442 NE2d 819 (1982) - Victory Baptist Temple admits that it is a private corporation; Cologne v Westfarms Associates, 192 Conn. 48, 469 A.2d 1201 (1984) - Property does not

lose its private character merely because public is generally invited to use it for designated purposes.

Therefore the private playground owned by and on the property of Macedonia Baptist Church, wherein Wakefield was convicted of proximity criminal conviction was not encompassed under the proximity statute.

To further show the intention and significance of the Legislature's specifically encompassing only "public" playgrounds and parks, compare to the language in 21 U.S.C.A. § 860 which states in relevant portion:

"Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility..."

21 U.S.C.A. § 860

As this Code of Laws does not distinct between a "public" or "private" playground, Congress chose to reveal its intent by by defining the term "playground" and included its definition in the same subsection of § 860. 21 U.S.C.A. § 860(e)(1) states:

"The term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the

public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swing sets and teeter boards.

21 U.S.C.A. § 860(e)(1)

See U.S. v Samuseva, 175 Fed. Appx. 916 (2006) - Aala Park was a "playground" within the meaning of § 860; U.S. v Horsley, 56 F3d 50 (1995) - A posted sign which said, "This is not a public playground. Play at your own risk," to support his position that Jordan Park was not a public playground. However, the conviction of distribution or manufacturing in or near schools, colleges, park, playgrounds, was held; U.S. v West, 671 F3d 1195 (2012) - Public park near where defendant engaged in illicit drug activity contained the three "separate apparatus" necessary to constitute a "playground"; U.S. v Parker, 30 F3d 542 (1994) - Mere surface paved with blacktop is not an "apparatus intended for the recreation of children" for purposes of the definition of "playground".

In South Carolina's Code of Laws § 44-53-445, the Legislature specifically intended that the playgrounds which would be encompassed under the proximity statute would only be "public" playgrounds. A Church's playground, as in Wakefield, is not a

public playground and is therefore not encompassed in the proximity statute.

Legislation restricting or impairing a fundamental right is subject to 'strict scrutiny' in determining its constitutionality. Hamilton v Board of Trustees, 282 S.C. 519, 523, 319 S.E.2d 717, 720 (Ct. App. 1984).

As Churches are private, its playground has no name other than as in Wakefield, Macedonia Baptist Church, there would be not any way that a person would know that such playground is public, arguendo. See S.C. Code Ann. § 44-53-445(B)(1):

For a person to be convicted of an offense pursuant to [the proximity statute], the person must:

(1) have knowledge that he is, on, or within a one-half mile radius of the grounds of... a public playground or park.

S.C. Code Ann. § 44-53-445(B).

Martin v Lloyd, 700 F.3d 132 (2012) - Where a statute imposes criminal penalties, the standard of certainty is higher, and the statute can be invalidated on its face as unconstitutionally vague under Due Process Clause even if it could conceivably have some valid application; Berry v State, 381 S.C. 630, 675 S.E.2d 425 (2009) - In construing a criminal statute, courts are guided by the Rule

of Lenity - the principle that any ambiguity must be resolved in favor of the accused.


However, the statute clearly states that it is applicable to "public" playgrounds. Kerr v State, 547 SE2d 494 (1985) - When the terms of the statute are clear and unambiguous, the court must apply them accordingly to their literal meaning, without resort to subtle or forced construction to limit or expand the statute's operation; Hughes v Edwards, 265 SC 529, 220 SE2d 231 (1975) - Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning; State v Blackmon, 403 SE2d 660, 662 (1991) - The primary rule of statutory construction is that the Court must ascertain the intention of the legislature.

Simply put, the private playground which belongs to and was on the grounds of Macedonia Church, was not and is not encompassed in the proximity statute. Therefore Wakefield's conviction of such was an error.

CONCLUSION

Wherefore, because of the above argument against precedent, Petitioner seeks that the ruling in Wakefield to the extent of the proximity ruling, be abrogated and not be considered valid

precedent case in these regards.

Respectfully submitted, 

Alonzo C. Jeter, III
PETITIONER/prose

Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

This 21st day of October, 2019
at Enoree, South Carolina.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
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Alonzo Columbus Jeter, III,

PETITIONER,

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alonzo C. Jeter, III, hereby certify that I have served a copy of the MOTION TO FILE LESS THAN REQUIRED AMOUNT, SUPPLEMENTAL APPENDIX II, NOTICE OF RESERVATION OF OBJECTION TO MOTION TO REOPEN THE PCR RECORD, REQUEST FOR ADMISSION, CITATION OF SUPPLEMENTAL AUTHORITIES, MOTION TO ARGUE AGAINST PRECEDENT, upon the Respondent by placing the same inside of a postage prepaid envelope and placing said envelope in the hands of Tiger River Correctional Institutions' mail room personnel on this 24 day of October, 2019, for mailing via the United States Mail, addressed as follows: Vann Henry Gunter, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

Sworn and Subscribed before me
this 24 day of October, 2019

Legi. [Signature]
Notary Public for South Carolina
My Commission Expires: March 24, 2021

s/ [Signature]

Alonzo C. Jeter, III, #282902
PETITIONER/Prose

Tiger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

October 21, 2019

Alonzo C. Jeter, III
Tyger River Correctional Institution
U-7-101/#282902
200 Prison Road
Enoree, SC 29335

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

RE: Alonzo C. Jeter, III v State of South Carolina
Appellate Case No. 2017-001777


Dear Ms Kitchings:

For filing in the above referenced PCR appeal, please find enclosed Motion To File Less Than Required Amount, Supplemental Appendix II, Notice of Reservation of Objection To Motion To Reopen The PCR Record, Request For Admission, Citation of Supplemental Authorities, Motion To Argue Against Precedent, and Certificate of Service for the same.

Please also find, enclosed, one (1) copy additional of the same along with a self-addressed stamped envelope. Please return to me by way of this file-stamped copies of these said documents.

Thank you for your assistance in this matter.

Sincerely,


Alonzo C. Jeter, III
PETITIONER/Prose

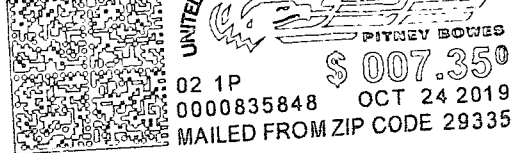
CC: Van Henry Gunter, Jr., Esquire
FILE

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SC Court of Appeals

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Tyger River Correctional Institution
U-7-101/#282902
200 Prison Road
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The Honorable Jenny A. Kitchings
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