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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

MOTION TO CERTIFY THE CASE TO THE SOUTH CAROLINA SUPREME COURT AND MOTION TO EXPEDITE

Petitioner, through undersigned counsel, would respectfully show unto this Court as follows:

Introduction

The decision of the Court of Appeals in this case will have an enormous and far-reaching adverse impact upon criminal prosecutions in this State. Most significantly, the prosecution of criminal domestic violence cases will be severely hampered by this decision. In essence, the Court of Appeals has removed from the hands of law enforcement the authority to bring criminal domestic violence ("CDV") and other cases in magistrate and municipal courts through the usual mechanism[1] of the uniform traffic ticket.

[1] Such a procedure is almost nine years old. The Attorney General, in an Opinion dated November 13, 2003 (2003WL22862788), advised the Sheriff of Dorchester County that the uniform traffic ticket "serves as a valid charging document to give the magistrate and municipal courts jurisdiction over the charge of criminal domestic violence .... So long as the officer has probable cause to believe that the offense of criminal

Instead, the Court of Appeals now requires that such CDV and other cases, such as shoplifting, be initiated through an arrest warrant unless the offense is actually committed in the officer's presence. Such reasoning disregards this Court's "freshly committed" precedents, and ignores this Court's earlier Order in this very case, *requiring that the matter proceed to trial.* Tragically, three years later, the disposition ordered by this Court has not been implemented and no trial has ever occurred. Because thousands of CDV and other cases of every variety are now at risk, certification by this Court, in order to resolve this matter quickly, once and for all, is thus essential.

I.

Respondent was issued a uniform traffic ticket on February 18, 2006, charging him with first-offense CDV. Respondent's motion to dismiss for lack of probable cause was heard before a York County magistrate on August 14, 2006. The magistrate granted Respondent's request for a preliminary hearing and, following this hearing, concluded that there was no probable cause and dismissed the charge. 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. This Court subsequently certified the case pursuant to Rule 204(b), SCACR. On February 9, 2009, this 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). After noting that "[t]he CDV charge was within the magistrate's jurisdiction,"

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domestic violence has been freshly committed, the officer may make the charge by way of the Uniform Traffic Ticket and such Ticket bestows jurisdiction upon the magistrate or municipal court over the case." (citing in support State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) and S.C. Code Ann. Section 16-25-70(A)). While that opinion is certainly not binding upon this Court, it well illustrates that the uniform traffic ticket is firmly established in the prosecution of CDV cases.

this Court remanded the case to the magistrate "for summary disposition." Id at 377-78, 673 S.E.2d at 429.

Thereafter, the case was scheduled for a jury trial on July 8, 2009. However, notwithstanding this Court's order that this case proceed to trial, a magistrate judge heard and granted Respondent's motion to dismiss for lack of jurisdiction. The State appealed to the circuit court on July 16, 2009. A hearing was held before the Honorable John C. Hayes, III, on October 27, 2009. Judge Hayes affirmed the magistrate's dismissal for lack of jurisdiction by order dated November 6, 2009. The State timely served and filed a notice of appeal.

On June 6, 2012, the South Carolina Court of Appeals issued an opinion finding that S.C. Code § 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 the officer." The Court of Appeals rejected the State's argument that, pursuant to well-settled South Carolina Supreme Court law, the "in the presence of the officer" requirement is satisfied where the offense is "freshly committed." The Court of Appeals also rejected the State's argument that the legislature clearly intended that a uniform traffic ticket be used to commence judicial proceedings in cases of freshly committed CDV offenses, instead finding that "the principle of statutory construction that penal statutes are to be strictly construed against the State defeats the State's argument." Finally, the Court of Appeals rejected the State's argument that the South Carolina Supreme Court already concluded, in the previous appeal of this case, that the magistrate did have jurisdiction over this case notwithstanding the fact that the CDV charge was issued on a uniform traffic ticket.

II.

Pursuant to S.C. Code § 14-8-210 and Rule 204, SCACR, Petitioner respectfully seeks certification of this case for review by the South Carolina Supreme Court.[2] Under Rule 204, SCACR, "[c]ertification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance." Petitioner respectfully submits certification is appropriate in this case because the Court of Appeals' opinion reversed well-settled South Carolina Supreme Court law and has broad, sweeping implications on **thousands** of currently-pending magistrate and municipal court cases across the state. Until this Court finally decides the issue in this case, law enforcement personnel, prosecutors, and judges all over the state will be in a quandary regarding the proper way to proceed with pending CDV and other types of cases wherein a uniform traffic ticket was issued for a freshly-committed offense. Petitioner submits that, due to the far-reaching implications of the Court of Appeals' opinion in this case, and due to the fact that time is of the essence in this matter of significant public interest, certification by this Court is warranted so that this issue can be finally resolved in an expeditious fashion.

III.

Due to the significance of the issue raised and the widespread impact of the Court of Appeals' opinion in this case, Petitioner respectfully submits that this appeal merits the grant of certification and transfer of jurisdiction to the Supreme Court.[3]

WHEREFORE, Petitioner respectfully requests that this Court certify this criminal appeal for consideration by the South Carolina Supreme Court for all purposes

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[2] Petitioner submits that, under Rule 204(b), SCACR, this Court may certify the case because, although the Court of Appeals has issued an opinion, it has not *finally* determined the case since the Court has not yet ruled upon a petition for rehearing. The State does intend to file a petition for rehearing in the Court of Appeals.

[3] Petitioner has attached copies of the previous Supreme Court opinion, the Court of Appeals' opinion, and the final briefs in this case. (See Attachments A-D). The record on appeal will be provided upon request.

pursuant to S.C. Code Ann. § 14-8-210 and Rule 204, SCACR. The State also respectfully requests that this Court expedite consideration of this motion for the reasons discussed above, including the great number of cases being charged and prosecuted daily in South Carolina that could be greatly impacted.

Respectfully submitted,

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June 8, 2012

ATTACHMENT A

PREVIOUS SUPREME COURT OPINION

IV.

[8] Construing the language of section 47–3–110, and discerning legislative intent, we hold that a person injured by a dog may pursue a claim against the owner of the dog when the injury occurs while the dog is in the care or keeping of another. The Legislature has made a policy decision to hold dog owners strictly liable when the dog bites or otherwise attacks a person who is lawfully on the premises, except when the injured person provoked the attack. The Legislature has further statutorily imposed liability on those who assume the care or keeping of a dog. The grant of summary judgment in favor of the Anderson County Sheriff's Office is reversed and the matter is remanded to the circuit court for trial.

REVERSED AND REMANDED.

TOAL, C.J., WALLER and BEATTY, JJ., concur. PLEICONES, J., concurs in the holding.

381 S.C. 375

The STATE, Appellant,

v.

Jimmy RAMSEY, Respondent.

No. 26595.

Supreme Court of South Carolina.

Heard Oct. 8, 2008.

Decided Feb. 9, 2009.

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

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 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 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.

381 S.C. 378

In the Matter of Former Calhoun Falls Municipal Court Judge Clinton J. HALL, II, Respondent.

No. 26597.

Supreme Court of South Carolina.

Heard Jan. 21, 2009.

Decided Feb. 9, 2009.

Background: Judicial disciplinary proceeding was instituted.

Holdings: The Supreme Court held that:

(1) judge's failure to satisfy his responsibilities concerning his continuing legal education (CLE) obligations and to petition Supreme Court for reinstatement following his suspension before resuming his judicial duties violated multiple professional rules, and

(2) judge's misconduct warranted public reprimand.

Public reprimand.

ATTACHMENT B

COURT OF APPEALS' OPINION

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. § 56-7-15(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 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.

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[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").

[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).

ATTACHMENT C

APPELLANT'S FINAL BRIEF

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

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AUTHORITIES CITED

Cases:

Statutes

Other Authorities:

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

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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

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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

CHRISTINA J. CATOE
Assistant Attorney General

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

Notary Public for South Carolina.
My Commission Expires: 10/28/2014

ATTACHMENT D

RESPONDENT'S FINAL BRIEF

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

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ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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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 statue 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.

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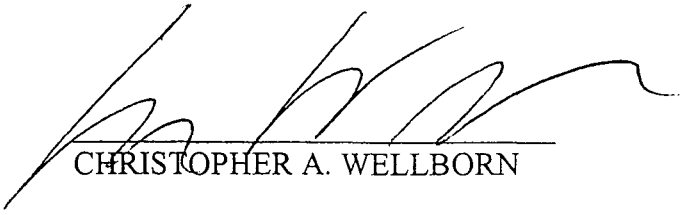
[1] Respondent has filed a Motion to Strike Matters referred to in the Appellant's Brief that are not a part of the record and therefore not properly before this Court.

CONCLUSION

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

Respectfully submitted,



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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,

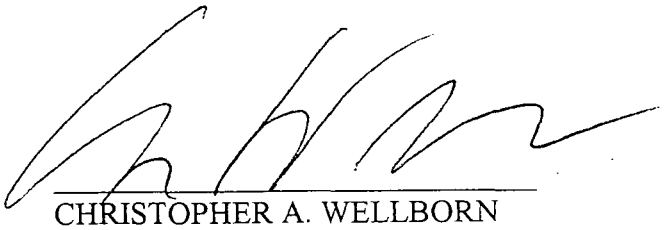
vs.

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.**



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

CHRISTOPHER A. WELLBORN

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

Anne W. Weeks

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

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
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S.C. Supreme Court

Appeal from York County

The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Motion to Certify the Case to the South Carolina Supreme Court and Motion to Expedite** in the above-referenced case has been served by United States mail upon counsel for Respondent, as follows: **Christopher A. Wellborn, Esquire**, Post Office Box 10191, Rock Hill, SC 29731, this **8th** day of **June, 2012.**

CHRISTINA J. CATOE
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ALAN WILSON
ATTORNEY GENERAL

June 8, 2012

VIA HAND-DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State of South Carolina v. James Ervin Ramsey
Appeal from York County

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the State's **Motion to Certify the Case to the South Carolina Supreme Court and Motion to Expedite** and **Proof of Service** in the above-referenced appeal.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General

CJC/

cc: The Honorable Jenny A. Kitchings, Clerk, South Carolina Court of Appeals
The Honorable Kevin S. Brackett, Solicitor, Sixteenth Judicial Circuit
Christopher A. Wellborn, Esquire
Victim Services