

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF GENERAL SESSIONS

THE HONORABLE PERRY GRAVELY
CASE NO. 2019-GS-42-6787

RECEIVED

Mar 17 2021

The State of South Carolina,

Appellant

SC Court of Appeals

versus

John Gilbert Ludwig, Jr.,

Respondent.

NOTICE OF INTENT TO APPEAL

The Appellant appeals the Order of the Honorable Perry Gravelly, dated March 10, 2021 in which the Respondent was seeking to Quash the Indictment and the Order of the Honorable Perry Gravelly, dated March 10, 2021 in which the Respondent was seeking to Dismiss the Indictment.



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Date: March 16, 2021

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

The State of South Carolina,

vs.

John Gilbert Ludwig, Jr.,

Defendant.

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

Indictment #: 2019-GS-42-6787

RECEIVED
ORDER

Mar 17 2021

SC Court of Appeals

The above captioned matter was before the court on the Defendant's motion to dismiss per S.C. Code Ann. § 16-9-380. This motion was filed on February 5, 2021. The hearing was conducted by WebEx on March 3, 2021 per the S.C. Supreme Court's directives on hearings during the COVID-19 Pandemic. Present at the hearing were the Defendant, James Bannister and Marcelo Torricos, attorneys for the Defendant, and Robert Coler, representing the 7th Circuit Solicitor's Office due to a conflict. All parties consented to the hearing being held by WebEx.

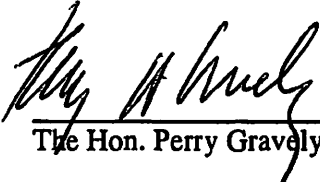
Based on the arguments of counsel, the documents submitted to the court, and other information gathered, the court makes the following conclusions of law and findings of fact:

1. The Defendant in the case was originally charged with a violation of S.C. Code Ann. §16-17-430 (Unlawful Communication) on April 24, 2019 for allegedly threatening the alleged victim over the telephone.
2. The State later indicted and charged the Defendant with an additional violation pursuant to S.C. Code Ann. § 16-9-340 (Intimidation of a Court Official) on December 4, 2019.

Based on the warrant and the indictment, the factual basis for this second charge is the same factual basis alleged in the first charge.

3. The Defendant correctly concludes that S.C. Code Ann. § 16-9-340 (Intimidation of a Court Official) has statutorily limited applications. Those limitations are contained in S.C. Code Ann. § 16-9-380.
4. S.C. Code Ann. § 16-9-380 states that, “[i]f any other statute of this State more specifically describes and prohibits the conduct also prohibited in this article and provides penalties, that statute shall govern and no prosecution may be instituted under this article.”
5. Based on the record before the court, the court finds that S.C. Code Ann. §16-17-430 (Unlawful Communication) is in fact another “statute of this State” that “more specifically describes and prohibits the conduct” and “provides penalties.”
6. As such, S.C. Code Ann. §16-17-430 (Unlawful Communication) shall govern the prosecution of this matter and the indictment numbered 2019-GS-42-6787 (Intimidation of an Official of any Court) shall be dismissed

IT IS SO ORDERED.



The Hon. Perry Gravelly

_____ Greenville _____, SC

March 10, 2021.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

The State of South Carolina,

vs.

John Gilbert Ludwig, Jr.,

Defendant.

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

Indictment #: 2019-GS-42-6787

ORDER

This matter is before the Court on the Motion of the Defendant to Quash the Indictment. Specifically, the Defendant asserts that the Indictment fails to allege facts that constitute a crime pursuant to the charged statute, § 16-9-340. The hearing was conducted by WebEx on March 3, 2021, per the S.C. Supreme Court's directives during the COVID-19 Pandemic. Present at the hearing were the Defendant, James Bannister and Marcelo Torricos, attorneys for the Defendant, and Robert Coler, representing the 7th Circuit Solicitor's Office as conflict counsel. All parties consented to the hearing held by WebEx.

Based on the Court's own review of the record, submitted memoranda, and argument of counsel, the Court makes the following findings of fact and conclusions of law.

1. The Indictment alleges a violation of S.C. Code § 16-9-340. This Code section states:

It is unlawful for a person by threat or force to:

- (1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or
- (2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

2. The Indictment alleges that the Defendant's conduct intimidated or impeded "William H. Rhodes, who is an officer of the court." The phrase "officer of the court" is not



contained in S.C. Code § 16-9-340 (1).¹ However, the phrase “official of any court” is within the statute. The Defendant asserts that there is a difference between the phrase “officer of the court” and “official of any court.” And, if there is a legal difference, “officer of the court” is not in the list of protected persons.

3. Our courts have held it is proper to look at other statutes to ascertain legislative intent. *Abell v. Bell*, 229 S.C. 1, 5, 91 S.E.2d 548, 550 (1956) (holding that it is proper, too, in seeking the legislative intent, to consider cognate legislation).
4. The phrase “officer of the court” appears in the following statutes: S.C. Code § 23-3-75 (SLED administrative subpoena to utility); S.C. Code § 17-30-125 (SLED administrative subpoena to common carriers); S.C. Code § 29-3-780 (foreclosure and land sale); S.C. Code § 39-15-1170 (action to enjoin use of registered mark); S.C. Code 41-13-5 (defining employer); S.C. Code § 19-1-180 (admissibility of child statement); S.C. Code § 15-39-870 (judicial sales as to innocent purchasers); S.C. Code § 41-10-10 (definition of employer); and S.C. Code § 16-3-20 (aggravating circumstances permitting death penalty). This list is not exhaustive.
5. While the phrase “official of any court” does not appear in the body of any statute other than S.C. Code § 16-9-340, the phrase “court official”, however, does. Of note, “court official” appears in the title to § 16-9-340. The phrase also appears in the following statutes: S.C. Code § 14-1-235 (appointing attorney representation); S.C. Code § 23-3-120 (reporting criminal data); S.C. Code § 56-1-800 (certified copies of convictions); S.C. Code § 17-22-1010 (expungement records); S.C. Code § 22-5-930 (expungement records); S.C. Code § 40-39-90 (pawnbroker records); S.C. Code § 56-5-750

¹ The Court notes that the indictment does not allege the elements of S.C. Code § 16-9-340(2) (“impeding administration of justice in any court”).

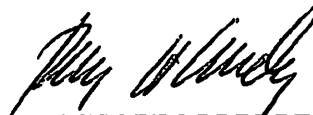


(expungement records); S.C. Code § 34-11-90 (expungement records); S.C. Code § 16-1-90 (crimes classified as felonies).

6. Because the Court is being asked to interpret a statute that is penal in nature, the Court is mindful that it must construe the statute strictly. *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).
7. Based on the foregoing, the Court is constrained to find that the phrase “officer of the court” and “official of any court” have different statutory meanings. And, therefore, there is a legal difference between the meaning of “officer of the court” and “official of any court.” The indictment specifically denotes the complainant as an “officer of the court” which is not listed in S.C. Code § 16-9-340(1). As such, the indictment fails to allege a crime pursuant to this section as currently drafted.
8. Finally, the Court is also cognizant of the fact that the dismissal of this indictment for facial defects does not prohibit the State from seeking a properly worded indictment in the event that the complainant does, in fact, fit the definitional requirements of the statute.

WHEREFORE the Defendant seeks an Order from the Court quashing the indictment for the many reasons stated above.

IT IS SO ORDERED.



The Hon. Perry Gravelly

Greenville, SC

March 10, 2021.