

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ABBEVILLE )

IN THE COURT OF GENERAL SESSIONS

**RECEIVED**  
**Sep 14 2021**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA )  
 )  
 )  
vs. )  
KRISTY O. DAVIS )  
 )  
Defendant )  
\_\_\_\_\_ )

ORDER AS TO MOTION FOR NEW TRIAL  
2020-GS-01-00439

The Defendant timely filed a Motion for New Trial.

The Defendant was convicted on August 13, 2021 for the lesser-included offense of Domestic Violence Third Degree. She was indicted for the offense of Domestic Violence High and Aggravated Nature.

This Order will confirm and/or supplement what was put on the record during trial.

At the outset of trial, the Defendant objected to the case going forward and moved for a dismissal based upon the fact that the Domestic Violence statute defining "Household Member" does not include couples of the same sex. See Section 16-25-10. The Defendant and the victim are both females and were residing together in the same household at the time of the offense. The Defendant moved for a directed verdict at the end of the State's case based upon the same argument and renewed this Motion at the close of the evidence in the case. The Court at trial relied on the case of Doe v. State, 421 S.C. 490 (2017) in denying the Defense Motions and allowed the trial to proceed forward. The Court once again relies on Doe, supra in denying this Motion for a New Trial. Each argument raised by the Defense will be addressed here:

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I. The plain language of the Domestic Violence Statute excludes un-married same-sex couples who do not have a child in common from the definition of household member.

It certainly is not in dispute that 16-25-10 has not been amended to include un-married same-sex couples and without Doe there is no question the State in this case would not have been able to go forward on the Domestic Violence charge. However, since this Court is relying heavily on Doe, this Court will set forth the applicable holdings, rulings, and analysis found therein:

a. While the Doe Court dealt with a Family Court Order of Protection (Protection from Domestic Abuse Act), it was specifically clear that its rulings also applied to Domestic Violence cases (Domestic Violence Reform Act). It held unconstitutional the disparate treatment afforded to same-sex couples who were living together or had lived together as opposed to other couples in the current definition of "Household Member."

b. The Doe Court, after finding Sections 16-25-10(3) and 20-4-20(b) unconstitutional, then stated that the Family Court "may not utilize these statutory provisions to prevent those in similar same-sex relationships from seeking an order of protection." The clear implication here is that a criminal court is likewise prevented from relying on the current definition of "Household Member" in domestic violence situations.

c. The Doe Court further stated that "we decline to invalidate the ACTS (emphasis added) in their entirety. Such decision would result in grave consequences for victims of domestic



violence. To leave these victims unprotected for any length of time would be a great disservice to the citizens of South Carolina."

d. Finally, Doe relied on an Iowa case which held a parentage statute unconstitutional on the same grounds as Doe and quoted from the Iowa case "Accordingly, instead of striking...from the Iowa code, we will preserve it as to married opposite-sex couples and require the [Iowa Department of Public Health] to apply the statute to married lesbian couples."

In effect, the Doe court judicially amended the statutes concerning the definition of "Household Member" to include same-sex couples.

II. The Equal Protection Clause cannot be used to expand the definition of household members when the statute is penal in nature:

The Doe Court carefully analyzed the constitutional issues of equal protection and due process, and this Court is not going to make any rulings contrary to what the Doe Court held.

Also, both the Domestic Violence Reform Act and Protection from Domestic Abuse Act are both penal in nature. There are criminal penalties involved for violations under both Acts. To suggest otherwise would involve a faulty reading of the statutes.

III. Defendant respectfully submits that the Court erred in expanding the statutory language in its jury instruction.

The Court crafted its jury instruction, concerning the definition of "Household Member", based upon the Doe case. This Court did not violate the doctrine of separation of powers. It simply followed the directives of the South Carolina Supreme Court.

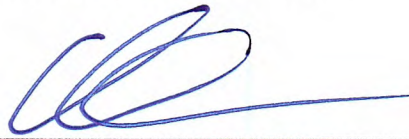
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IV. Defendant respectfully submits that a new trial should be granted based upon the Courts limitation on the Defendant's right to present a full and complete defense.

The Defense wanted to argue in closing the statutory definition of "Household Member" which excludes same-sex couples. To allow the Defense to argue at closing something that our state Supreme Court previously found to be unconstitutional would have, without question, constituted reversible error.

The Defendant's Motion for New Trial is respectfully denied.

SO ORDERED.



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DONALD B. HOCKER  
CIRCUIT COURT JUDGE

Laurens, South Carolina  
Date: 9-14-21

