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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from York County
The Honorable John C. Hayes, III, Circuit Court Judge
Opinion No. 4983 (S.C. Ct. App. filed June 6, 2012)
Appellate Case No. 2012-213017

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JAMES ERVIN RAMSEY,

RESPONDENT.

BRIEF OF PETITIONER

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ISSUE PRESENTED

The Court of Appeals erred in affirming the dismissal of Respondent's case where officers charged Respondent via a uniform traffic ticket pursuant to S.C. Code Ann. § 56-7-15(A) for a freshly-committed criminal domestic violence offense.

STATEMENT OF THE CASE

Respondent was issued a uniform traffic ticket in York County 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 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 in 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. 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 court for trial. (See R. p. 29).

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 circuit court, and 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 in the Court of Appeals. On June 6, 2012, the Court of Appeals affirmed the magistrate court's dismissal of the charge for lack of jurisdiction.

See State v. Ramsey, 398 S.C. 275, 727 S.E.2d 429 (2012). The State submitted a Petition for Rehearing on June 20, 2012, and the Petition was denied on August 27, 2012. The State submitted its Petition for Writ of Certiorari on September 26, 2012. Respondent filed a Motion to Dismiss on October 12, 2012. The State filed a Return to the Motion to Dismiss on October 17, 2012. This Court denied Respondent's Motion to Dismiss by Order dated October 23, 2012. Respondent then filed his Return to the Petition for Writ of Certiorari on November 19, 2012. On March 20, 2013, this Court granted the State's Petition for Writ of Certiorari to review the Court of Appeals' opinion. This Brief of Petitioner follows.

ARGUMENT

The Court of Appeals erred in affirming the dismissal of Respondent's case where officers charged Respondent via a uniform traffic ticket pursuant to S.C. Code Ann. § 56-7-15(A) for a freshly-committed criminal domestic violence offense.

Background

More than nine years ago, the South Carolina Attorney General issued an opinion regarding the use of a uniform traffic ticket ("UTT") as a charging document for criminal domestic violence ("CDV") offenses that do not occur in the presence of officers but are "freshly committed." See S.C. Atty. Gen. Op. dated November 13, 2003 (2003 WL 22862788). Citing in support S.C. Code § 56-7-10 and § 56-7-15, as well as State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980), State v. Mims, 263 S.C. 45, 208 S.E.2d 288 (1974), and State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978), the opinion concluded as follows:

It is our opinion that the Uniform Traffic Ticket serves as a valid charging document to give the magistrate's and municipal court jurisdiction over a charge of criminal domestic violence. A Uniform Traffic Ticket may be used to charge an alleged perpetrator of criminal domestic violence even if the investigating law enforcement officer arrives on the scene after the offense has been committed. So long as the officer has probable cause to believe that the offense of criminal 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.

S.C. Atty. Gen. Op. dated November 13, 2003 (2003 WL 22862788). Since the issuance of this Attorney General Opinion, the UTT has become firmly established as a charging document in the prosecution of freshly-committed CDV offenses and other freshly-committed magistrate-level offenses.

The Court of Appeals' decision in Respondent's case effectively put an end to this longstanding procedure, since its decision removed from the hands of law enforcement

the authority and discretion to charge offenders with freshly-committed CDV and other offenses in magistrate and municipal courts through the usual mechanism of the UTT. Since the issuance of the Court of Appeals' opinion, radical changes have had to be made regarding the procedures used to charge defendants with freshly-committed magistrate-level offenses. Under the previous UTT system, officers had discretion to either serve a UTT without making an arrest or to arrest the offender if the circumstances warranted. Now, officers no longer have the discretion to issue a UTT and, instead, are required to make custodial arrests of each and every offender, transport him to the county jail, proceed with the booking process, and secure an arrest warrant from a magistrate judge. While the offender is incarcerated in the county jail, the county must house the offender and provide medical treatment if necessary. The offender then must remain incarcerated until a bond hearing is conducted and a judge releases him.

The above procedural changes triggered by the Court of Appeals' opinion in this case have had a substantial impact on the prosecution of CDV cases in particular but have also affected the prosecution of other freshly-committed magistrate-level offenses. Significantly, since the Court of Appeals' opinion effectively eliminated the longstanding practice of granting discretion to law enforcement officers as to whether to issue a UTT instead of automatically arresting the offender, the resulting procedural changes will ultimately culminate in a great expenditure of time and resources by the government – time and resources already in markedly short supply.

Underlying Facts in Respondent's Case

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 first-offense CDV, and a UTT 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 § 56-7-15(B). (See R. p. 3-8).

Standard of Review

Statutory interpretation is a question of law, and this Court is free to decide matters of law with no particular deference to the lower court. Jennings v. Jennings, 401 S.C. 1, 4, 736 S.E.2d 242, 243 (2012). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Id. (citation omitted). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Id. at 351, 688 S.E.2d at 575 (citation omitted). "Courts will reject a statutory interpretation which would lead to a

¹ Respondent was also arrested for first-degree burglary, but that offense was later dismissed following a preliminary hearing.

result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” Id. at 351, 688 S.E.2d at 576 (citation omitted).

Discussion

S.C. Code § 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 § 56-7-10, enacted subsequently, carved out several exceptions in which a UTT 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. S.C. Code § 56-7-10. S.C. Code Ann. § 56-7-15 further 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 commence judicial proceedings against defendants who commit any magistrate-level offense “in the presence of” an officer. See Bayly v. State, 397 S.C. 290, 296, 724 S.E.2d 182, 184-85 (2012).

In its opinion, the Court of Appeals agreed with the State that the issuance of a UTT for a first-offense CDV committed in the presence of a law enforcement officer properly vests the magistrate court with jurisdiction to hear and dispose of the case. See State v. Ramsey, 398 S.C. 275, 279-80, 727 S.E.2d 429, 431-32 (Ct. App. 2012) (citing Bayly v. State, 397 S.C. 290, 724 S.E.2d 182 (2012)). However, the court found that S.C. Code § 56-7-15(A) did not authorize the use of a uniform traffic ticket to commence judicial proceedings against Respondent in this case because the offense was not actually

“committed in the presence of the officer.” Id. at 280, 727 S.E.2d at 432. 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.” Id. at 280-81, 727 S.E.2d at 432. The State submits that the Court of Appeals erred.

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) (emphasis added). This 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 State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978); Fradella v. Town of Mount Pleasant, 325 S.C. 469, 474-75, 482 S.E.2d 53, 56 (Ct. App. 1997). The court in State v. Martin further found that, “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.

These cases, in conjunction with the relevant statutes, including S.C. Code § 23-13-60, S.C. Code § 16-25-20, S.C. Code § 16-25-70(A) & (B), and S.C. Code § 56-7-15, support that an officer’s direct observation of the immediate aftermath of a freshly committed offense satisfies the “in the presence of the officer” requirement.

Accordingly, when 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 CDV offense in Respondent’s case was freshly committed, as the Court of Appeals agreed; therefore, the Court of Appeals should have concluded that the UTT issued to Respondent for CDV served as a valid charging document for purposes of commencing judicial proceedings in the magistrate court.

In addition, as mentioned previously, the South Carolina Attorney General issued an opinion in 2003 stating his belief that a UTT may be used as a charging document for CDV offenses that are not committed in the presence of the officers but are “freshly committed.” See S.C. Atty. Gen. Op. dated November 13, 2003 (2003 WL 22862788); see also 1990 S.C. Op. Atty. Gen. No. 90-48; S.C. Atty. Gen. Op. dated May 21, 1997; S.C. Atty. Gen. Op. dated June 12, 1998; S.C. Atty. Gen. Op. dated September 23, 2003; S.C. Atty. Gen. Op. dated August 7, 2008; S.C. Atty. Gen. Op. dated May 2, 2012. The General Assembly is presumptively aware of the 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); State v. Smith, 330 S.C. 237, 240-41, 498 S.E.2d 648, 650 (Ct. App. 1998) (citing to an Attorney General opinion and following its reasoning); 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 authority); see also State v. Son, 432 A.2d 947, 949 (N.J. 1981) (“The absence of any amendment to a statute following an Attorney General's formal opinion strongly suggests that the views expressed therein were consistent with legislative intent.”) (citation omitted); Twinbrook Swimming Pool Corp. v. Comptroller of Treasury, Admissions Tax Division, 274 Md. 88, 94-95, 333 A.2d 49, 53 (1975) (“In reenacting the statute during the years which have intervened, the General Assembly has impliedly acquiesced in the correctness of the construction placed on it by the Attorney General.”); Gomez v. Jackson Hewitt, Inc., 427 Md. 128, 170, 46 A.3d 443, 469 n36 (2012) (“The Legislature is presumed to be aware of the Attorney General's statutory interpretation and, in the absence of enacting any change to the statutory language, to acquiesce in the Attorney General's construction.”).

Here, three years after issuance of the 2003 opinion of the South Carolina Attorney General, the legislature enacted amendments to section (B) of S.C. Code § 56-7-15 but made *no changes* to section (A) of that statute. The legislature's decision not to amend section (A) of S.C. Code § 56-7-15 demonstrates that the November 13, 2003 Attorney General opinion is consistent with legislative intent that a freshly-committed CDV is committed “in the presence of the officer” for purposes of S.C. Code § 56-7-15. Compare State v. McKnight, 352 S.C. 635, 649, 576 S.E.2d 168, 175 (2003) (“There is a presumption that the legislature has knowledge of previous legislation, as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”) (citations omitted).

Additionally, section (B) of S.C. Code § 56-7-15 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. Since section (B) specifically references CDV offenses, it is clear that section (A) of § 56-7-15 contemplates the use of a UTT for a first-offense CDV. See Bayly v. State, 397 S.C. 290, 294, 724 S.E.2d 182, 184 (2012); S.C. Code § 16-25-20; § 22-3-550. Significantly, although it is rare that a person commits an act of CDV directly in front of a police officer, it is quite common for officers to arrive on the scene of a freshly-committed CDV. This further supports that the legislature intended to adopt the Attorney General's November 13, 2003 opinion and allow the UTT to be utilized to commence proceedings against an offender for a freshly-committed CDV offense. See, e.g., In re Manigo, 398 S.C. 149, 157, 728 S.E.2d 32, 36 (2012) (if applying the plain language of a statute would lead to an absurd result, the court will interpret the words in such a way as to escape the absurdity).

The Court of Appeals should have adopted the above reasoning rather than summarily concluding that “the principle of statutory construction that penal statutes are to be strictly construed against the State defeats the State’s argument.” State v. Ramsey, 398 S.C. 275, 282, 727 S.E.2d 429, 433 (2012). The State submits that this conclusion was particularly erroneous because no “penal statute” is at issue in this case.² See Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (“When a statute is *penal in nature*, it must be strictly construed against the State and in favor of the defendant.”)

² Even if a penal statute had been at issue in this case, the Court of Appeals erred by concluding this was dispositive. See State v. Dawkins, 352 S.C. 162, 166, 573 S.E.2d 783, 785 (2002) (even though penal statutes are to be strictly construed against the State, the principles of construction certainly allow the court to consider a statute as a whole and to interpret its words in light of the context and purpose of the whole statute, and in light of the object and policy of the law); see also State v. Sweat, 386 S.C. at 350, 688 S.E.2d at 575 (“All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”).

(citation omitted) (emphasis added); see also Black's Law Dictionary, 1421 (7th Ed. 1999) (defining "penal statute" as "[a] law that defines an offense and prescribes its corresponding fine, penalty, or punishment"). The statutes involved in this case merely address the issue of when an officer may use a UTT to commence proceedings in the magistrate court. See S.C. Code § 56-7-10; § 56-7-15. Therefore, the Court of Appeals erred in summarily rejecting the State's arguments regarding statutory construction, and erred in concluding that the UTT issued to Respondent did not commence judicial proceedings in the magistrate court.³

³ Notably, in its opinion from the previous appeal of this case, this Court stated that Respondent's "CDV charge was within the magistrate's jurisdiction" and remanded the case to the magistrate for trial. (See R. p. 27-29). This statement came after this Court had already noted that Respondent "was issued a uniform traffic ticket for CDV first offense." (R. p. 27). Compare Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Services, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) ("As this Court's precedent expressly provides, lack of subject matter jurisdiction in a case may not be waived and ought to be taken notice of by an appellate court.").

CONCLUSION

For all the foregoing reasons, the State submits that the decision of the Court of Appeals should be reversed and Respondent's CDV case should be remanded to the magistrate court for trial.

Respectfully submitted,

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Attorney General

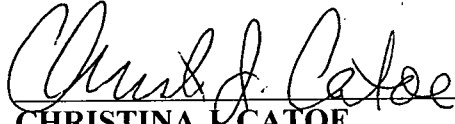
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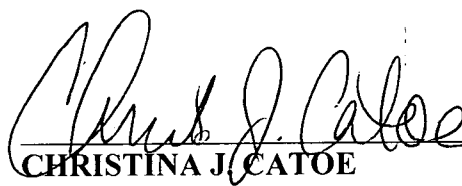
v.

JAMES ERVIN RAMSEY,

RESPONDENT.

PROOF OF SERVICE

The undersigned attorney hereby certifies that the **BRIEF OF PETITIONER** 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 19th day of **April, 2013**.



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