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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 13, 2003

The Honorable Ray Nash
Sheriff, Dorchester County
212 Deming Way
Summerville, South Carolina 29483

Dear Sheriff Nash:

You have requested an opinion "on the issue of whether a Uniform Traffic Ticket [may] be used as the charging document at the time an arrest is made for the offense of Criminal Domestic Violence." By way of background, you state the following:

There has been some discussion on this issue in reference to 56-7-15 (using a uniform traffic ticket to arrest when an offense is committed in the presence of a law enforcement officer), and we are requesting a ruling so that charges may be properly brought and successfully prosecuted. Many criminal domestic violence arrests are made on the scene after they are freshly committed (though not committed in the officers' presence), and the officers on the scene effecting the arrest are charging the subjects on a uniform traffic ticket.

Law / Analysis

The Uniform Traffic Ticket is provided for at Section 56-7-10 et seq. Section 56-7-10 makes the UTT applicable to "all traffic offenses" as well as a number of additional offenses expressly enumerated. Such Section further provides that "[t]he service of the uniform traffic ticket shall vest all traffic, recorder's and magistrate's courts with jurisdiction to hear and dispose of the charge for which the ticket was issued and served."

While § 56-7-10 enumerates those specific offenses in addition to traffic offenses for which a Uniform Traffic Ticket may be written, such does not, however, end the inquiry as to whether the UTT may be written for the offense of criminal domestic violence. Section 56-7-15, as most recently amended by Act No. 92 of 2003, further provides as follows:

(A) The uniform traffic ticket, established under the provisions of Section 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 magistrate's court and municipal court. A law enforcement agency

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processing an arrest made pursuant to this section must furnish such information to the State Law Enforcement Division as required in Chapter 3 of Title 23.

(B) An officer who effects an arrest, by use of a uniform traffic ticket, for violation of Chapter 25 of Title 16, must subsequently complete and file an incident report within fifteen days of the issuance of the ticket.

Your question concerns the offense of criminal domestic violence. Section 16-25-30 provides that "[a]ny person who violates Section 16-25-20 is guilty of the misdemeanor of criminal domestic violence and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days." Criminal domestic violence under § 16-25-30 is thus a magistrate's court offense. See, § 22-3-550.

Therefore, the first issue is whether a Uniform Traffic Ticket may be used as the charging document for the offense of criminal domestic violence. Of course, the primary goal of statutory interpretation is to ascertain the intent of the General Assembly State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In determining the meaning of a statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). When the terms of a particular statute are clear and unambiguous, the literal meaning should be applied. Duke Power Co. v. S.C. Tax Comm., 292 S.C. 64, 354 S.E.2d 902 (1987).

Applying these rules of construction, we have thus stated that "[i]t appears from a literal reading of the terms of [§ 56-7-15] ... the General Assembly has ... also provided for the use of the uniform traffic ticket for any offense which falls within the jurisdiction of magistrate's court and municipal court when the offense is committed in the presence of a law enforcement officer. Op. S.C. Atty. Gen., Op. No. 90-48 (August 17, 1990). Further, we commented therein as follows:

[a]lthough ... [§ 56-7-15] does not contain specific language to the effect that service of the ticket vests those courts [magistrate and municipal courts] as does S.C. Code Ann. § 56-7-10, the two statutes, when read [in] pari materia would indicate that jurisdiction would vest without the necessity of an arrest warrant. 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); Fishburne v. Fishburne, 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). ...

Thus, the Uniform Traffic Ticket could be used as a proper charging document for any offense within the jurisdiction of magistrate's and municipal court – including criminal domestic violence. Such a ticket would thereby give our summary courts jurisdiction over these offenses in the same way as an arrest warrant would do so. While § 56-7-15 requires that the particular offense – in this instance, CDV – must be one within the jurisdiction of magistrate's or municipal court,¹ any such offense may be written utilizing the Uniform Traffic Ticket and the ticket would give such summary court jurisdiction over the matter.

This conclusion is supported by the recent enactment of the Domestic Violence Prevention Act of 2003. See, Act No. 92 of 2003. Section 56-7-15 was amended as part of that Act to add Subsection (B). Subsection (B) states that “[a]n officer who effects an arrest, by use of a uniform traffic ticket, for a violation of Chapter 25 of Title 16, must subsequently complete and file an incident report within fifteen days of the issuance of the ticket.” (emphasis added). Of course, the offense of criminal domestic violence is included in Chapter 25 of Title 16. Therefore, the General Assembly has made it clear that the Uniform Traffic Ticket may be used to charge for the offense of criminal domestic violence. Such ticket would properly serve as the charging document to give the magistrate's and municipal court jurisdiction over this offense.

Additionally, you note that “many criminal domestic violence arrests are made on the scene after they are freshly committed (though not committed in the officers' presence), and the officers on scene effecting the arrest are charging the subjects on a uniform traffic ticket.” This question is answered by Op. S.C. Atty. Gen., May 21, 1997. There, we addressed the question of whether a Uniform Traffic Ticket would serve as a valid charging document in magistrate's or municipal court in lieu of an arrest warrant for the offense of shoplifting where the offense has been freshly committed when the officer arrives at the scene. In that instance, we noted that

... our Supreme Court has recognized on several occasions 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.” State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980). In Martin, the Court referenced S.C. Code Ann. Sections 17-13-30, 23-13-60 (deputy sheriffs may arrest without warrant for any freshly committed crime), 23-5-40 (highway patrolman possess same powers of arrest as deputy sheriffs) and State v.

¹ Of course, certain domestic violence offenses are beyond the jurisdiction of summary courts and are General Sessions offenses. See, § 16-25-40 (repeat offenders); § 16-25-65 (CDV of a high and aggravated nature).

Sims, 16 S.C. 486 ("upon fresh and immediate pursuit") in reaching this conclusion. There, a State Highway Patrolman was deemed to have sufficient basis to arrest without a warrant for the misdemeanor offense of DUI because when the officer arrived at the scene, based upon the facts within his observation, it was evident that "the crime had been freshly committed." 268 S.E.2d at 107. The Court cited with approval the language contained in State v. Mims, 263 S.C. 45, 208 S.E.2d 288, where it was 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." Subsequently, in State v. Clark, 277 S.C. 333, 287 S.E.2d 143 (1982), the Court applied this same principle to an arrest by a municipal police officer. See also, State v. Refford, 276 S.C. 657, 281 S.E.2d 471 (1981). Thus, where the law enforcement officer possesses probable cause that the misdemeanor was freshly committed, an arrest without warrant for such offense is valid.

Applying these general principles, as well as the language of § 56-7-15, we thus concluded:

... where an officer has probable cause to believe that a misdemeanor offense (such as shoplifting) has been "freshly committed" and subsequently serves a Uniform Traffic Ticket upon the defendant for such offense, such would be sufficient to give a magistrate or municipal court jurisdiction to hear the offense. This conclusion is consistent with the case of State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978) where the Court held with respect to a citation for a traffic offense (Section 56-7-10), that "the issuance of a uniform traffic ticket vests jurisdiction in the traffic court, even though the officer may not have personally seen the accused person commit the offense with which he is charged." While Section 56-7-15 requires that the offense be committed in the officer's "presence," I believe that where there is probable cause to believe the misdemeanor was "freshly committed," Section 56-7-15's "presence" requirement is met for purposes of vesting the magistrate or municipal court with jurisdiction through the use of the Uniform Traffic Ticket.

Of course, I would caution that the offense must truly have been "freshly committed" based upon all the facts and circumstances. Moreover, where a warrant can be obtained prior to trial such would obviously be the safest course. Nevertheless, even where a warrant cannot be obtained and a Uniform Traffic Ticket is written for an offense which has been freshly committed, I believe that such ticket would serve as the charging document and would give the summary court jurisdiction.

The same reasoning would apply in the situation involving criminal domestic violence. If the offense has been "freshly committed" when the officer arrives on the scene, such would constitute

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“in the presence of the law enforcement officer” for purposes of § 56-7-15. Accordingly, assuming the facts so warrant, the officer could charge the offender with criminal domestic violence through the vehicle of the Uniform Traffic Ticket and such would serve as a valid charging document for purposes of vesting the magistrate or municipal court with jurisdiction over the charge. See also, § 16-25-70(A) and (B).²

Conclusion

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.

Yours very truly,



Henry McMaster

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² Section 16-25-70(A) provides that “[a] law enforcement officer may arrest, with or without warrant, a person at the person’s place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20(A) or (E), or 16-25-65 even if the act did not take place in the presence of the officer.” (emphasis added). Subsection (B) contains the same basic language. While the provisions of the Uniform Traffic Ticket (§§ 56-7-10 and -15) are controlling as to when the Ticket may be used as a proper charging document the foregoing provisions support the idea that the General Assembly did not envision that an arrest warrant would be necessary to serve as a charging document involving criminal domestic violence in a situation involving a “freshly committed offense.”