THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

3414 - State v. Duncan R. Proctor #1	Pending
3415 - State v. Duncan R. Proctor #2	Pending
3416 - Widman v. Widman	Pending
3417 - Hardee v. Hardee	(2) Pending
3418 - Hedgepath v. AT&T	(2) Pending
3419 - Martin v. Paradise Cove	Pending
3420 - Brown v. Carolina Emergency	Pending
3424 - State v. Roy Edward Hook	(2) Pending
3425 - State v. Linda Thompson Taylor	Pending
3426 - State v. Leon Crosby	Pending
2001-UP-419 - Moak v. Cloud	Pending
2001-UP-430 - State v. Dale Johnson	Pending
2001-UP-455 - Stone v. Roadway Express	Pending
2001-UP-469 - James Schneider v. State	Pending
2001-UP-470 - SCDSS v. Hickson	Denied 1-9-02
2001-UP-478 - State v. Leroy Staton	Denied 1-8-02
2001-UP-493 - State v. Marcus Griffin	Pending
2001-UP-507 - Adams v. Greaves	Pending
2001-UP-513 - Industrial Tractor Co. v. Poovey	Pending
2001-UP-518 - Abbott Sign Co. v. SCDOT	Pending
2001-UP-522 - Kenney v. Kenney	Pending
2001-UP-528 - State v. Kenneth Allen Barnes	Pending

2001-UP-533 - Corbett v. The Cottages at Shipyard	Pending
2001-UP-538 - State v. Edward Mack	Pending
2001-UP-543 - Benton v. Manker	Pending
2001-UP-548 - Coon v. McKay Painting	Pending
2001-UP-550 - State v. Gary W. Woodside	Pending
2001-UP-560 - Powell v. Colleton City	Pending
2001-UP-565 - United Student Aid v. SCDHEC	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

3263 - SC Farm Bureau v. S.E.C.U.R.E.	Pending
3271 - Gaskins v. Southern Farm Bureau	Pending
3314 - State v. Minyard Lee Woody	Pending
3333 - State v. Dennis Zulfer	Granted 1-10-02
3343 - Langehans v. Smith	Pending
3344 - Henkel v. Winn	Denied 1-10-02
3346 - State v. Thomas Ray Ballington	Denied 1-10-02
3348 - Thomas v. Thomas	Pending
3351 - Chewning v. Ford Motor Co.	Pending
3352 - Ex Parte Moore v. Fairfield	Granted 1-9-02
3353 - Green v. Cottrell	Pending
3354 - Murphy v. Owens-Corning	Pending
3355 - State v. Leroy Wilkes	Granted 1-11-02

3356 - Keeney's Metal v. Palmieri	Denied 1-10-02
3358 - SC Coastal Conservation v. SCDHEC	Pending
3360 - Beaufort Realty v. Beaufort County	Pending
3364 - SCDSS v. Mrs. H and Mr. H	Denied 1-10-02
3365 - State v. Laterrance Ramon Dunlap	Pending
3367 - State v. James E. Henderson, III	Pending
3369 - State v. Don L. Hughes	Pending
3370 - Bailey v. Segars	Granted 1-10-02
3371 - State v. Curtis Gibbs #2	Granted 1-11-02
3372 - Dukes v. Rural Metro	Pending
3376 - State v. Roy Johnson #2	Pending
3380 - State v. Claude and Phil Humphries	Pending
3381 - Bragg v. Bragg	Pending
3383 - State v. Jon Pierre LaCoste	Pending
3386 - Bray v. Marathon Corporation	(2) Pending
2001-UP-016 - Stanley v. Kirkpatrick	Pending
2001-UP-123 - SC Farm Bureau v. Rabon	Granted 1-11-02
2001-UP-156 - Employer's Insurance of Wausau v. Whitaker's Inc.	Denied 1-10-02
2001-UP-159 - State v. Darnell Hunter	Denied 1-10-02
2001-UP-160 - State v. Elijah Price, Jr.	Denied 1-9-02
2001-UP-232 - State v. Robert Darrell Watson, Jr.	Pending
2001-UP-235 - State v. Robert McCrorey, III & Robert Dimitry McCrorey	Pending

2001-UP-248 - Thomason v. Barrett	Pending
2001-UP-261 - San Souci Owners Association v. Miller	Pending
2001-UP-292 - Franzello v. Bankhead	Denied 1-10-02
2001-UP-298 - State v. Charles Henry Bennett	Pending
2001-UP-300 - Robert L. Mathis, Jr. v. State	Pending
2001-UP-304 - Jack McIntyre v. State	Pending
2001-UP-321 - State v. Randall Scott Foster	Pending
2001-UP-322 - Edisto Island v. Gregory	Pending
2001-UP-323 - Goodwin v. Johnson	Pending
2001-UP-324 - State v. John Williams, III	Pending
2001-UP-335 - State v. Andchine Vance	Pending
2001-UP-344 - NBSC v. Renaissance Enterprises	Pending
2001-UP-355 - State v. Gavin V. Jones	Pending
2001-UP-360 - Davis v. Davis	Pending
2001-UP-364 - Clark v. Greenville County	Pending
2001-UP-368 - Collins Entertainment v. Vereen	Pending
2001-UP-374 - Boudreaux v. Marina Villas Association	Pending
2001-UP-377 - Doe v. The Ward Law Firm	Pending
2001-UP-384 - Taylor v. Wil Lou Gray	Pending
2001-UP-385 - Kyle & Associates v. Mahan	Pending
2001-UP-389 - Clemson v. Clemson	Pending
2001-UP-391 - State v. Jerome Hallman	Pending
2001-UP-393 - Southeast Professional v. Companion Property & Casualty	Pending

2001-UP-397 - State v. Brian Douglas Panther (2) Pending

2001-UP-398 - Parish v. Wal-Mart Stores, Inc. Pending

2001-UP-399 - M.B. Kahn Construction v. Three Rivers Bank Pending

2001-UP-401 - State v. Keith D. Bratcher Pending

2001-UP-403 - State v. Eva Mae Moss Johnson Pending

2001-UP-409 - State v. David Hightower Pending

2001-UP-421 - State v. Roderick Maurice Brown Pending

2001-UP-425 - State v. Eric Pinckney Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Tommy Walls, Appellant.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 25396
Heard October 24, 2001 - Filed January 14, 2002

AFFIRMED

Assistant Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Robert E. Bogan, and Assistant Attorney General Melody J. Brown, of Columbia, and Solicitor Thomas E. Pope, of York, for respondent.

JUSTICE MOORE: Appellant appeals his conviction under the South Carolina Sex Offender Registry Act (the Act), S.C. Code Ann. § 23-3-400 to -530 (Supp. 2000), claiming an *ex post facto* violation. We affirm.

FACTS

Appellant was convicted in 1973 on the charge of assault with intent to ravish, and sentenced to three years imprisonment. In 1998, he was serving time on an unrelated conviction. Prior to his release, the Department of Corrections notified appellant, in verbal and written form, that he was required to register as a sex offender under the Act as a result of his 1973 conviction.[1] Appellant was given two forms: (1) a pre-registry form, signed and dated by appellant, advising him of the registration requirement; and (2) a pre-registry form requesting addresses where he planned to be. Appellant did not register as required.[2] Following a bench trial, appellant was

---

[1]S.C. Code Ann. § 23-3-440(1) (Supp. 2000) provides that prior to an offender being released from the Department of Corrections, the Department must "notify the sheriff of the county where the offender intends to reside and SLED that the offender is being released . . ." Further, the Department must "provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within twenty-four hours of his release." The Department also must "obtain descriptive information of the offender, including a current photograph prior to release."

[2]S.C. Code Ann. § 23-3-450 provides:

> The offender shall register with the sheriff of the county in which he resides. To register, the offender must provide information as prescribed by SLED. . . . A copy of this information must be kept by the sheriff's department. . . . An

convicted for failing to register, and was sentenced to ninety days in prison.[3]

ISSUE

Does the Act violate the *ex post facto* clause?

DISCUSSION

When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution. State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001).

The United States and South Carolina Constitutions specifically prohibit the passage of *ex post facto* laws. State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993) (citing U.S. Const. art. 1, § 10; S.C. Const. art. 1, § 4). For a law to fall within *ex post facto* prohibitions, two critical elements must be present. First, the law must be retroactive so as to apply to events occurring before its enactment. Second, the law must disadvantage the offender affected by it. State v. Wilson, supra. See also Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (*ex post facto* violation occurs when a

---

> offender shall not be considered to have registered until all information prescribed by SLED has been provided to the sheriff.

The offender is required to register annually for life, and must re-register when moving within the same county, to another county, or to another state. S.C. Code Ann. § 23-3-460 (Supp. 2000).

[3]S.C. Code Ann. § 23-3-470 (Supp. 2000) provides that if a person is convicted for a first offense of failing to register, that person will be guilty of a misdemeanor and will be imprisoned for a mandatory period of ninety days, no part of which will be suspended nor probation granted.

AFFIRMED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

---

cert. denied 529 U.S. 1053, 120 S.Ct. 1554, 146 L.Ed.2d 460 (2000); Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997), cert. denied sub nom. Stearns v. Gregoire, 523 U.S. 1007, 118 S.Ct. 1191, 140 L.Ed.2d 321 (1998); Lanni v. Engler, 994 F. Supp. 849 (E.D. Mich. 1998); Patterson v. State, 985 P.2d 1007 (Alaska App. 1999); State v. Noble, 829 P.2d 1217 (Ariz. 1992); Kellar v. Fayetteville Police Dep't, 5 S.W.3d 402 (Ark. 1999); Jamison v. People, 988 P.2d 177 (Colo. App. 1999); State v. Kelly, 770 A.2d 908 (Conn. 2001); People v. Malchow, 739 N.E.2d 433 (Ill. 2000); State ex rel. Olivieri v. State, 779 So.2d 735 (La.), cert. denied, __ U.S. __, 121 S.Ct. 2566, 150 L.Ed.2d 730, (2001); State v. Manning, 532 N.W.2d 244 (Minn. App. 1995); State v. Costello, 643 A.2d 531 (N.H. 1994); People v. Langdon, 685 N.Y.S.2d 877 (N.Y.A.D. 1999); State v. Burr, 598 N.W.2d 147 (N.D. 1999); Commonwealth v. Gaffney, 733 A.2d 616 (Pa. 1999); Meinders v. Weber, 604 N.W.2d 248 (S.D. 2000); Kitze v. Commonwealth, 475 S.E.2d 830 (Va. 1996), cert. denied, 522 U.S. 817, 118 S.Ct. 66, 139 L.Ed.2d 28 (1997); State v. Ward, 869 P.2d 1062 (Wash. 1994); Snyder v. State, 912 P.2d 1127 (Wyo. 1996).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Thomas Kennedy, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Richland County
John W. Kittredge, Circuit Court Judge

Opinion No. 25397
Heard December 12, 2001 - Filed January 14, 2001

AFFIRMED

Assistant Appellate Defender Tara S. Taggart, of S.C. Office of Appellate Defense, of Columbia, for petitioner.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Senior

Assistant Attorney General Charles H. Richardson, and Solicitor Warren B. Giese, all of Columbia, for respondent.

PER CURIAM: We granted a writ of certiorari to review the Court of Appeals's decision in State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). We now affirm pursuant to Rule 220(b), SCACR. *See* Rule 404(b), SCRE; State v. Brazell, 289 S.C. 42, 344 S.E.2d 611 (1986) (speedy trial issue).

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

of a witness may be shown and considered in determining the credit to be accorded his testimony.'" State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) (quoting State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976)).

Appellant sought to expose Peterson's possible bias and prejudice by asking Peterson what the crimes were with which he was charged. Because of the number of charges pending against Peterson and the severity of the potential sentences, we find the evidence was probative on the issue of bias and should have been admitted. There was the substantial possibility Peterson would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case. The excluded evidence had "a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity" of Peterson's testimony, State v. Jones, *supra*. Therefore, under these circumstances, we find the trial court committed error under Rule 608(c) by improperly limiting the scope of appellant's cross-examination.

However, the trial court's error of limiting the scope of appellant's cross-examination is harmless. *See* State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985) (trial errors are harmless where they could not reasonably have affected result of trial). The State's case against appellant was strong without resorting to Peterson's testimony. For example, appellant's fingerprints were found on the headboard of the victim's bed. Further, the victim's mother testified when she informed appellant the victim was out of town on the day of the attack, appellant responded that he had told her not to go out of town. Finally, appellant approached two officers, who were at his home for questioning, with his hands "out in front of him" and spontaneously confessed, "I did it, I assaulted [the victim]."

Accordingly, while the trial court erred by limiting appellant's cross-examination of Peterson, the error was harmless because the error could not reasonably have affected the result of trial. *See* State v. Mitchell, *supra*.

AFFIRMED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

STILWELL, J.: Paul A. Rice appeals his convictions for trafficking in crack cocaine and conspiracy to traffic in crack cocaine, arguing his prosecution was barred by S.C. Code Annotated section 44-53-410 (1985). We affirm.

BACKGROUND

A federal grand jury indicted Rice on charges that he possessed crack cocaine with the intent to distribute and that he conspired with others to do the same. After a district court dismissed the charges with prejudice for a violation of the Speedy Trial Act, the State Grand Jury indicted him on these charges which evolve from the same facts as the federal indictments.[1] A jury convicted Rice as charged and he was sentenced to two concurrent twenty-five year terms.

DISCUSSION

Rice argues that under section 44-53-410, the dismissal of his federal charges barred his prosecution in state court. Although he did not raise this issue in the trial court he asserts we may address it because it involves subject matter jurisdiction. See Brown v. State, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001) (issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal). We conclude the statute in question does not involve subject matter jurisdiction and thus Rice's issue is not preserved for our review.

Section 44-53-410 is entitled "Prosecution in another jurisdiction shall be bar to prosecution" and provides:

> If a violation of this article is a violation of a Federal law or the law of another state, the conviction or acquittal under Federal law or the

[1] Earlier state charges stemming from the same alleged conduct were nolle prossed at the onset of the federal prosecution.

appropriately with regard to the contested annexation and to minimize expenditures that might later prove to be unnecessary if the annexation eventually fell through.[16] Only when the required notice is given does an aggrieved party have leave to initiate a lawsuit, which must be filed within the ninety-day limitations period.

Because Appellants' failure to file the statutorily required notice with the city clerk and the clerk of court is an absolute bar to their action to contest the annexation, we do not address the other issues on appeal.

AFFIRMED.

HUFF and STILWELL, JJ., concur.

---

[16] See Hite, 220 S.C. at 66, 66 S.E.2d at 430 ("[A]nnexation issues should be decided without undue delay, so that the town officials would be advised whether the affected area would become a part of the municipality. Many questions connected with municipal government, including that of taxation, would need to be known with reasonable promptness.").

of Winnsboro v. Wiedeman-Singleton.[2] According to that definition, "[i]ndemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party."[3]

But that is only one form an indemnity may take. Parties may choose other forms of compensation in which a first party shall be liable to pay a second party for a loss or damage the second party might incur. A definition given to the term "indemnity contract" suggests other forms:

> A contract between two parties whereby the one undertakes and agrees to indemnify the other against loss or damage arising from some contemplated act on the part of the indemnitor, or from some responsibility assumed by the indemnitee, or from the claim or demand of a third person, that is, to make good to him such pecuniary damage as he may suffer.[4]

Moreover, in a recent case, the Texas Supreme Court similarly defined the term "indemnity agreement" to mean:

> A collateral contract or assurance, by which one person engages to secure another against an anticipated loss or to prevent him from being damnified by the legal consequences of an act or forbearance on the part of one of the parties or of some third person.[5]

The contract provision in issue reads in pertinent part:

---

[2] 303 S.C. 52, 398 S.E.2d 500 (Ct. App. 1990).

[3] Id. at 56, 398 S.E.2d at 502.

[4] Black's Law Dictionary 910 (4th ed. 1968) (emphasis added).

[5] Dresser Industries, Inc. v. Page Petroleum, Inc., 853 S.W.2d 505, 508 (Tex. 1993) (emphasis added).

> [Laurens County Hospital] will indemnify and hold [EMS] . . . harmless from and against any and all claims, actions, liability, or expenses (including judgments, court costs, and reasonable attorney fees) caused by or resulting from allegations of negligent or wrongful acts or omissions of hospital employees, servants, or agents. Upon notice by [EMS], [Laurens County Hospital] will resist and defend and at its own expense, and by counsel reasonably satisfactory to [EMS], such claim or action.

The general rules that govern the construction and interpretation of other contracts also apply to the construction and interpretation of a contract of indemnity.[6] As with other contracts, the principal question focuses on the intent of the parties. Their intention is determined from the language used in the contract. If that language is clear and unambiguous, it must be given its plain and usual meaning.[7] A contract of indemnity will cover all losses that reasonably appear to have been within contemplation of the parties.[8]

Looking at the clear and unambiguous language of the contract or agreement here, we are satisfied the parties intended Laurens County Hospital to indemnify EMS and save it harmless from losses suffered by EMS at the hands of hospital employees where the losses resulted from their negligent or wrongful acts or omissions. The term "expense," which the contract uses, means "the laying out or expending of money" and includes "loss."[9] The theft of funds is a "laying out of money" or "loss" in anybody's book. Noticeably absent from the indemnity agreement is any language limiting the expenses or

---

[6] Campbell v. Beacon Mfg. Co., 313 S.C. 451, 438 S.E.2d 271 (Ct. App.1993).

[7] 42 C.J.S. Indemnity § 9a, at 88 (1991).

[8] Id. § 13, at 93.

[9] In re Bates' Will, 152 Misc. 627, 629 (N.Y. Sur. 1934).

losses for which Laurens County Hospital would be obligated to compensate EMS to only those resulting from third-party claims.

Laurens County Hospital also faults the trial court with granting summary judgment. It claims an issue of fact existed regarding whether EMS's "own negligence contributed to or allowed the damage to occur." This contention manifestly lacks merit. The clear and unambiguous language of the indemnity agreement does not condition the liability of Laurens County Hospital for losses on anything related to EMS's negligent actions or inactions. Any negligence on the part of EMS would not lessen the obligation of Laurens County Hospital to "indemnify and hold [EMS] . . . harmless from . . . expenses . . . caused by . . . [the] wrongful acts . . . of [h]ospital employees . . . ."[10]

AFFIRMED.

HEARN, C.J., and HUFF, J., concur.

---

[10] See United States v. Hollis, 424 F.2d 188, 190 (4th Cir. 1970) ("The courts have consistently enforced contractual indemnity provisions placing ultimate liability upon an indemnitor, even where the indemnitee's fault also contributed to the loss.").

GOOLSBY, J.: This action concerns an automobile accident that occurred on April 11, 1997. Alice Mae Pilgrim served a summons and complaint on Yvonne Wardlaw Miller almost three years later on March 24, 2000. The next day, Miller took the suit papers to an attorney, who advised her to take them to her insurance company. She did so, delivering the suit papers promptly to an agent for Allstate Insurance Company.

For reasons yet to be explained, Allstate failed to file a timely answer. Pilgrim obtained an entry of default on May 17, 2000. Miller thereafter moved for relief pursuant to Rule 55(c), SCRCP. The trial court refused to lift the entry of default.[1] At a subsequent damages hearing, the trial court awarded Pilgrim $50,000 in actual damages and denied Miller's motion to set aside the default judgment under Rule 60(b)(1), SCRCP, or, in the alternative, to grant her a new trial.

The order denying Miller's Rule 55(c) motion states, "No specific reason was offered for the lack of response to the Summons and Complaint" and "[i]t is the finding of this Court that the Court has been presented with no reason to set aside this Default." The order denying Miller's Rule 60(b)(1) motion states, "[neither] the defendant nor the insurer offered any explanation for the failure to answer the Complaint." Miller appeals. We reverse.[2]

The dispositive issue here is whether the trial court abused its discretion in not setting aside an entry of default. As Professor James F. Flanagan, the

---

[1] The grant or denial of a Rule 55(c) motion is not directly appealable. Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988).

[2] Because oral argument would not aid the court in resolving the issue on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.