

That based upon the record before the Court I hereby make the following

FINDINGS OF FACT:

1. That per the stipulations of the parties, it is undisputed that on or about March 20, 2009, the Defendant, James Osment, was riding a moped in Cherokee County, South Carolina, along a public highway while under the influence of alcohol.
2. That per the stipulations of the parties, the Defendant was driving a moped as defined by the provisions of S.C. Code Ann. §56-5-165.
3. That as the Defendant was proceeding along the public highway, on a moped, Lt. Tim Clark of the Cherokee County Sheriff's Office signaled the Defendant to stop by means of a flashing blue light. That the Defendant failed to stop after being signaled to stop by a flashing blue light. That once Lt. Clark was able to position his vehicle in such a manner as to prevent the continued flight of the Defendant, the Defendant came to a stop and was arrested and charged with the offenses of Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750).

4. That following his arrest, the Defendant was subsequently indicted by the Grand Jury for Cherokee County for the offenses of Driving Under the Influence (S.C. Code Ann. §56-5-2930), on Indictment No. 2009-GS-11-609 (UTT No. 65048 ET), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750), on Indictment No. 2009-GS-11-611 (UTT No. 65050 ET).

That based upon the above stated findings of fact, I hereby make the following

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the parties, as well as jurisdiction of the subject matter before the Court; and that venue is properly in Cherokee County, South Carolina.

2. That the above stated findings of fact in this order contain all of the stipulations of the parties as to the facts of this case, such that no other factual determinations have been made by the Court. That the State and the Defense have both framed the same legal question to the Court, which both parties agree will be dispositive of the cases before the Court, and that is:

"Is a moped (as defined by S.C. Code Ann. §56-5-165), a 'motor vehicle' for purposes of prosecuting the offenses of Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750)?"

For the reasons stated below, this Court finds as a matter of law, that a "moped" is not a "motor vehicle" for purposes of prosecuting the offenses of Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750).

3. That as has been noted above, the Defendant was indicted for Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750). Both offenses are codified under Chapter 5, of Title 56. Both offenses require as an element of the offense that the accused must be driving a "motor vehicle". 1

4. That the term "motor vehicle" is defined by the provisions of S.C. Code Ann. §56-5-130, which reads as follows:

§56-5-130. Motor vehicle.

Every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, is a "motor vehicle". [Emphasis added].

HISTORY: 1962 Code § 46-212; 1952 Code § 46-212; 1949 (46) 466; 1985 Act No. 528, §6.

1 The pertinent provisions of S.C. Code Ann. §56-5-2930 state that "It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol..." [Emphasis added]. Similarly, The pertinent provisions of S.C. Code Ann. §56-5-750 state that "In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement officer by means of a siren or flashing light." [Emphasis added].

As noted in the above stated findings of fact, the State has stipulated that the Defendant was driving a moped. 2

Because the provisions of S.C. Code Ann. §56-5-130, expressly except mopeds as being motor vehicles, as a matter of law the Defendant could not be charged with violations of Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750), while driving a moped.

5. That the State has put forward two arguments why the Defendant may be charged with Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750), while driving a moped.

The first argument by the State that the Defendant may be charged for the said offenses while driving a moped is that the 2008 Amendments to Title 56, which took effect on February 10, 2009, amended the definition of "motor vehicle". Although in 2008,

2 The provisions of S.C. Code Ann. §56-5-165, define a "moped" as follows:

§56-5-165. Moped, defined.

Notwithstanding the provisions of Section 56-5-160 [definition for bicycle], every cycle with two pedals to permit propulsion by human power or without pedals and with a motor of not more than fifty cubic centimeters which produces not to exceed two brake horsepower and which is not capable of propelling the vehicle at a speed in excess of thirty miles per hour on level ground is a moped. If an internal combustion engine is used, the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

HISTORY: 1986 Act No. 528, §9; 1991 Act No. 94, §3.

the General Assembly amended the provisions of S.C. Code Ann. §56-1-10, which altered some definitions as to certain types of vehicles, and specifically removed the moped exception in the definition of "motor vehicle", the introductory sentence to S.C. Code Ann. §56-1-10, expressly qualifies its application to Title 56, "For the purposes of this title, unless otherwise indicated, the following words, phrases and terms are defined as follows....." [Emphasis added]. The provisions of S.C. Code Ann. §56-5-110, which is the definitional article (Article 3) of Chapter 5, does "otherwise indicate" and expressly states:

§56-5-110. Generally

For the purposes of this chapter the words, phrases and terms defined in this article shall have the meanings thereby attributed to them. [Emphasis added]

HISTORY: 1962 Code § 46-201; 1952 Code § 46-201; 1949 (46) 466.

The 2008 amendments to Title 56 did not amend the definitional provisions of Article 3, Chapter 5, of Title 56. Specifically, the provisions of S.C. Code Ann. §56-5-130, were not amended by the 2008 legislation, such that a "motor vehicle" still does not include a moped. Therefore, a person driving a moped cannot be charged with any offense under Chapter 5, of Title 56, which makes a certain act criminal while driving a "motor vehicle".

The second argument advanced by the State why the Defendant may be charged for the said offenses while driving a moped is that under the reasoning in State v. Singleton, 319 S.C. 312, 460 S.E.2d 573 (1995), a person may be charged with Driving Under the Influence. The entirety of the Supreme Court opinion in State v. Singleton, as it relates to the issue now before this Court, reads:

Singleton was convicted under the DUI statute, which makes it unlawful for a person to drive any vehicle while under the influence of alcohol and/or drugs. S.C. Code §56-5-2930 (1991). The provisions of Chapter 5 of Title 56 govern the operation of mopeds on the public highways and streets, S.C. Code Ann. §56-5-50 (Supp. 1994). Accordingly, we conclude the General Assembly intended the DUI statute to embrace the driving of a moped and the trial judge did not err in charging that a moped is a vehicle as contemplated by the DUI statute.

State v. Singleton, 319 S.C. 312, 460 S.E.2d 573, 575 (1995).

Essential to the Supreme Court's conclusion in State v. Singleton, is that the General Assembly intended the Driving Under the Influence statute to embrace the driving of a moped, i.e., that a moped was a "vehicle" within the meaning of the statute. The term "vehicle" has a separate and distinct meaning from the term "motor vehicle". The provisions of S.C. Code Ann. §56-5-120, define a "vehicle" as follows:

§56-5-120. Vehicle.

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks, is a "vehicle."

HISTORY: 1962 Code § 46-211; 1952 Code § 46-211; 1949 (46) 466.

After State v. Singleton, was decided in 1995, the General Assembly amended the provisions of S.C. Code Ann. §56-5-2930 in 1998, which restricted the application of the law to "motor vehicles". As noted above, the provisions of S.C. Code Ann. §56-5-130 specifically except mopeds as being defined as "motor vehicles" for prosecutions under Chapter 5, of Title 56.

Accordingly, because a moped is not a "motor vehicle," a person driving a moped under the influence cannot be charged with a violation of S.C. Code Ann. §56-5-2930, or §56-5-750. This does not mean that the provisions of Chapter 5 Title 56 do not continue to govern the operation of mopeds on the public highways and streets of the State, as required by S.C. Code Ann. §56-5-50, but rather when a statute provides as an element of the offense that the driver must be driving a "motor vehicle" to be guilty of the offense, that such statute cannot be applied against the driver


of a moped. Thus, other statutory offenses in Chapter 5, of Title 56, which apply to "vehicles" as opposed to "motor vehicles" e.g., Reckless Driving (S.C. Code Ann. §56-2-2920), Reckless Homicide, (S.C. Code Ann. §56-5-2910), may still be used to prosecute violators driving a moped.

6. That it is the intent of the Court that the State should be permitted to appeal the Court's ruling, should the State desire to seek appellate review of this matter. In the strictest sense, no witness or jury has been sworn, and therefore no jeopardy has attached in this matter. Finch v. United States, 433 U.S. 676, 97 S.Ct. 2909, 53 L.Ed.2d 1048 (1977) (in bench trials jeopardy attaches with swearing of witness); Crist v. Bertz, 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978) (in jury trials jeopardy attaches with swearing of the jury). That given that the right of the State to appeal is limited when directly appealing from the final disposition of a case, procedurally, this Court deems that the proper procedural mechanism to permit the State to pursue any appeal is to quash the indictments against the Defendant for the reasons stated in this order. State v. Young, 30 S.C. 399, 9 S.E. 355 (1889); State v. Bouknight, 55 S.C. 353, 33 S.E. 451 (1899); State v. Johnson, 76 S.C. 39, 56 S.E. 544 (1907).

THEREFORE IT IS HEREBY ORDERED:

- A. That because a moped as defined by the provisions of S.C. Ann. §56-5-130, is not a motor vehicle within the meaning of S.C. Ann. §56-5-150, the Defendant cannot be prosecuted, as a matter of law, for violations of S.C. Ann. §56-5-2930, and §56-5-750, which each require as an element of the offense that the offender be driving a "motor vehicle". Therefore, as a matter of law the Defendant cannot be charged or convicted for the said offenses. Accordingly, the indictments against the Defendant, Driving Under the Influence (S.C. Code Ann. §56-5-2930), on Indictment No. 2009-GS-11-609 (UTT No. 65048 ET), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750), on Indictment No. 2009-GS-11-611 (UTT No. 65050 ET), are hereby quashed.

AND IT IS SO ORDERED.



J. DERHAM COLE
Judge, Seventh Judicial Circuit

Spartanburg, South Carolina

March 11, 2010.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

Indictment Nos: 2009-GS-11-609 (DUI)
2009-GS-11-611 (FTS)

STATE OF SOUTH CAROLINA,)
)
)

vs.)

STIPULATION OF THE PARTIES

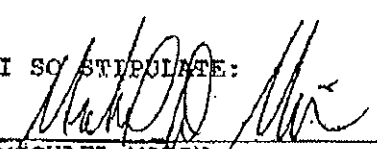
JAMES CARL OSMENT,)
)
)
Defendant.)

BRANCOY V. OSMENT
2009 APR 15 12:19

That the parties, as evidenced by their signatures below, do hereby stipulate to the following facts:

1. That on or about March 20, 2009, the Defendant, James Carl Osment, was driving a moped in Cherokee County, South Carolina, along a public highway while under the influence of alcohol. That on the said date, as the Defendant was driving a moped along a public highway, Lt. Tim Clark of the Cherokee County Sheriff's Office signaled the Defendant to stop by means of a flashing blue light. That the Defendant failed to stop after being signaled to stop by a flashing blue light. That once Lt. Clark was able to position his vehicle in such a manner as to prevent the continued flight of the Defendant, the Defendant came to a stop and was arrested and charged with the offenses of Driving Under the Influence (S.C. Code Ann. §56-5-2930), and Failure to Stop When Signaled (S.C. Code Ann. §56-5-750).
2. That the Defendant was driving a moped as defined by the provisions of S.C. Code Ann. §56-5-165.

I SO STIPULATE:


MICHAEL MORIN
Assistant Solicitor

I SO STIPULATE:


TRENT N. PRUETT
Attorney for the Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

Indictment Nos: 2009-GS-11-609 (DUI)
2009-GS-11-611 (FTS)

STATE OF SOUTH CAROLINA,)

vs.)

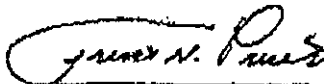
CERTIFICATE OF SERVICE
BY MAIL

JAMES CARL OSMENT,)

Defendant.)

I hereby certify that on March 16, 2010, I deposited in the United States Mail, postage prepaid, the "Order Quashing Indictments" in the above captioned matter, issued by Judge J. Daxham Cole, addressed to the following:

**Cherokee County Solicitor's Office
Cherokee County Courthouse
Attention: Assistant Solicitor Michael Morin
Floyd Baker Blvd.
Gaffney, South Carolina 29340**



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March 16, 2010