The Supreme Court of South Carolina

In the Matter of
James Robert Porter, Jr., Deceased.

ORDER

The Commission on Lawyer Conduct has filed a petition advising the Court that Mr. Porter passed away on January 16, 2010, and requesting the appointment of an attorney to protect Mr. Porter's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. The petition is granted.

IT IS ORDERED that Matthew J. Story, Esquire, is hereby appointed to assume responsibility for Mr. Porter's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Porter maintained. Mr. Story shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Porter's clients. Mr. Story may make disbursements from Mr. Porter's trust account(s), escrow account(s), operating account(s), and

any other law office account(s) Mr. Porter maintained that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Porter, shall serve as notice to the bank or other financial institution that Matthew J. Story, Esquire, has been duly appointed by this Court.

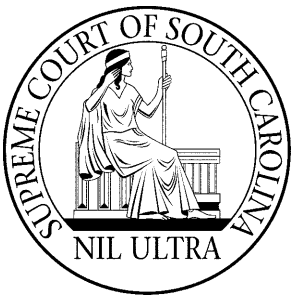
Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Matthew J. Story, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Porter's mail and the authority to direct that Mr. Porter's mail be delivered to Mr. Story's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

January 25, 2010



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 5
February 1, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Reginald Craig Sweat, Respondent.

and

The State, Petitioner,

v.

Arthur Bryant, III, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 26763
Heard November 4, 2009 – January 25, 2010

AFFIRMED AS MODIFIED

General Counsel Robert E. Bogan and Assistant General Counsel Rachel D. Erwin, both of Blythewood, for Petitioner.

Richard Pearce and Benjamin Moore, both of Aiken, for Respondents.

R. Hawthorne Barrett and Danny C. Crowe, both of Turner, Padget, Graham & Laney, of Columbia, for Amicus Curiae Municipal Association of South Carolina.

JUSTICE BEATTY: This Court granted the State's petition for a writ of certiorari to review the decision of the Court of Appeals in State v. Sweat, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008), in which the Court of Appeals interpreted section 56-5-4140 of the South Carolina Code,[1] a statute regulating the maximum gross weight of vehicles driven on South Carolina roads. We affirm as modified.

FACTUAL/PROCEDURAL HISTORY

The parties agreed to the relevant facts underlying this case. On February 14, 2006, Reginald Craig Sweat, a sanitation truck driver for the City of Aiken, was stopped and cited by a State Transport Police (STP) officer for exceeding the allowable gross weight for the three-axle sanitation truck he was driving. According to the citation, the vehicle weighed 57,100 pounds, which the officer claimed exceeded the allowable gross weight of 50,600 pounds. The 50,600 pound amount was calculated based on an initial three-axle amount of 46,000 pounds plus a ten percent scale tolerance of 4,600.

On April 10, 2006, a different STP officer stopped and cited Arthur Bryant, III, another driver for the City of Aiken, for driving the same sanitation truck in excess of the allowable gross vehicle weight. The citation indicates the vehicle weighed 56,900 pounds, which exceeded the allowable gross weight of 50,600.

At the time the STP issued the citations, section 56-5-4140 provided in relevant part:

---

[1] S.C. Code Ann. § 56-5-4140 (2006 & Supp. 2008).

(1)(a) The gross weight of a vehicle or combination of vehicles, operated or moved upon any interstate, highway or section of highway shall not exceed:
(1) Single-unit vehicle with two axles..... 35,000 lbs.
(2) Single-unit vehicle with three axles ..... 46,000 lbs.
(3) Single-unit vehicle with four axles ..... 63,500 lbs.

Except, on the interstate, vehicles must meet axle spacing requirements and corresponding maximum overall gross weights, not to exceed 63,500 lbs., in accordance with the table in (b) plus tolerances.

(4) Single unit vehicle with five or more axles ..... 65,000 lbs.

Except, on the interstate, vehicles must meet axle spacing requirements and corresponding maximum overall gross weights, not to exceed 65,000 lbs., in accordance with the table in (b) plus tolerances.

(5) Combination of vehicles with three axles ..... 50,000 lbs.
(6) Combination of vehicles with four axles ..... 65,000 lbs.
(7) Combination of vehicles with five or more axles...73,280 lbs.

The gross weight imposed upon any highway or section of highway other than the interstate by two or more consecutive axles in tandem articulated from a common attachment to the vehicle and spaced not less than forty inches nor more than ninety-six inches apart shall not exceed thirty-six thousand pounds, and no one axle of any such group of two or more consecutive axles shall exceed the load permitted for a single axle. The load imposed on the highway by two consecutive axles, individually attached to the vehicle and spaced not less than forty inches nor more than ninety-six inches apart, shall not exceed thirty-six thousand pounds and no one axle of any such group of two consecutive axles shall exceed the load permitted for a single axle.

The ten percent enforcement tolerance specified in Section 56-5-4160 applies to the vehicle weight limits specified in this section except, the gross weight on a single axle operated on the interstate may not exceed 20,000 pounds, including all enforcement tolerances; the gross weight on a tandem axle operated on the interstate may not exceed 35,200 pounds, including all enforcement tolerances; and the overall gross weight for vehicles operated on the interstate may not exceed 75,185 pounds, including all enforcement tolerances except as provided in (b).

(b) Vehicles with an overall maximum gross weight in excess of 75,185 pounds may operate upon any highway or section of highway in the Interstate System up to an overall maximum of 80,000 pounds in accordance with the following:

The weight imposed upon the highway by any group of two or more consecutive axles may not, unless specially permitted by the Department of Public Safety exceed an overall gross weight produced by the application of the following formula:

W = 500 (LN/N-1 + 12N + 36)

In the formula W equals overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in the group under consideration.

As an exception, two consecutive sets of tandem axles may carry a gross load of 68,000 pounds if the overall distance between the first and last axles of the consecutive sets of

tandem axles is 36 feet or more. The formula is expressed by the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles					
	2 axles	**3 axles**	4 axles	5 axles	6 axles	7 axles
4	35,200					
5	35,200					
6	35,200					
7	35,200					
8 and less	35,200	35,200				
more than 8	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,500	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,500	54,500	60,000		
20		51,000	55,500	60,500	66,000	
21		51,500	56,000	61,000	66,500	
22		52,500	56,500	61,500	67,000	
23		53,000	57,500	62,500	68,000	
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	75,500
28		57,000	60,500	65,500	71,000	76,500

29	57,500	61,500	66,000	71,500	77,000
30	58,500	62,000	66,500	72,000	77,500
31	59,000	62,500	67,500	72,500	78,000
32	**60,000**	63,500	68,000	73,000	78,500
33		64,000	68,500	74,000	79,000
34		64,500	69,000	74,500	80,000
35		65,500	70,000	75,000	
36		68,000	70,500	75,500	
37		68,000	71,000	76,000	
38		68,000	71,500	77,000	
39		68,000	72,500	77,500	
40		68,500	73,000	78,000	
41		69,500	73,500	78,500	
42		70,000	74,000	79,000	
43		70,500	75,000	80,000	
44		71,500	75,500		
45		72,000	76,000		
46		72,500	76,500		
47		73,500	77,500		
48		74,000	78,000		
49		74,500	78,500		
50		75,500	79,000		
51		76,000	80,000		
52		76,500			
53		77,500			
54		78,000			
55		78,500			
56		79,500			
57		80,000			

(2) Except on the interstate highway system:

(a) Dump trucks, dump trailers, trucks carrying agricultural products, concrete mixing trucks, fuel oil trucks, line trucks, and **trucks designated and constructed for special type work or use are not required to conform to the axle**

> **spacing requirements of this section. However, the vehicle is limited to a weight of twenty thousand pounds for each axle plus scale tolerances and the maximum gross weight of these vehicles may not exceed the maximum weight allowed by this section for the appropriate number of axles, irrespective of the distance between axles, plus allowable scale tolerances**.
>
> (b) Concrete mixing trucks which operate within a fifteen-mile radius of their home base are not required to conform to the requirements of this section. However, these vehicles are limited to a maximum load of the rated capacity of the concrete mixer, the true gross load not to exceed sixty-six thousand pounds. All of these vehicles shall have at least three axles each with brake-equipped wheels.
>
> (c) Well-drilling, boring rigs, and tender trucks are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to seventy thousand pounds gross vehicle weight and twenty-five thousand pounds for each axle plus scale tolerances.

S.C. Code Ann. § 56-5-4140 (2006) (emphasis added).

In conjunction, section 56-5-4160(A) states, in part: "In determining whether the limits established by Section 56-5-4130 or 56-5-4140 have been exceeded, the scaled weights of the gross weight of vehicles and combinations of vehicles are considered to be not closer than ten percent to the true gross weight, except as otherwise provided in Section 56-5-4140." S.C. Code Ann. § 56-5-4160 (A) (Supp. 2007). Additionally, the parties agreed the sanitation truck driven by the Respondents met the definition of a "truck designated and constructed for special type work" pursuant to section 56-5-4140(2)(a).

At the hearing before the magistrate, Sweat and Bryant ("Respondents") made a motion to dismiss both citations on the ground

section 56-5-4140(2)(a) permits them to operate the city's sanitation truck at a maximum gross vehicle weight of 66,000 pounds. Respondents reasoned that subsection (2)(a) constituted an exception to the general provisions of the statute which permitted each axle of the "special use" truck to carry 20,000 pounds plus a ten percent scale tolerance. Respondents also contended the reference in subsection (2)(a) to "the maximum weight allowed by this section for the appropriate number of axles, irrespective of the distance between the axles" referred to the table in section 56-5-4140(1)(b).

In response, the State asserted the reference in subsection (2)(a) to the "maximum weight allowed by this section" referred to section 56-5-4140(1)(a)(2), which limited the gross weight of the three-axle, sanitation truck to 46,000 pounds plus ten percent scale tolerances.

In two summary orders, the magistrate found Respondents were guilty of exceeding the allowed gross weight for the sanitation truck.

On appeal, the circuit court reversed the convictions and remanded the cases for entry of a not guilty verdict. In so ruling, the circuit court concluded the statutory exception of subsection (2)(a) limited a special use truck to a maximum gross weight of 20,000 pounds per axle plus scale tolerances. The circuit court specifically rejected the State's interpretation of the statute, finding such a reading would contravene the statutory construction rule that a court must follow a specific provision over general language in the statute. Thus, "applying the specific statutory provisions . . . for a garbage truck, as a vehicle constructed for a special type of work, means it can weigh in at up to 22,000 pounds per axle."

Subsequently, the circuit court denied the State's motion for reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. In the order, the circuit court judge reiterated the prior ruling and clarified that "[s]ection 56-5-4140(2)(a) is the applicable specific statutory exception to the general gross weight limits contained in 56-5-4140(1)(a)(2)." The court concluded that subsection (2)(a) meant that the sanitation truck was permitted a weight of 20,000

pounds per axle plus scale tolerances, not to exceed the maximum gross weight allowed by the table in subsection (1)(b).

The State appealed the circuit court's order to the Court of Appeals. In a unanimous decision, the Court of Appeals affirmed the order of the circuit court. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008). Emphasizing the application of the rules of statutory construction, the Court of Appeals found:

> Subsection (1)(a) sets the general per-axle standard for vehicles in South Carolina. Subsection (2)(a) provides a different standard for specific types of vehicles when they are not operated on the interstate highway system. Subsection (2)(a) does precisely what an exception is intended to do: it identifies a category to which the general rule does not apply.

Id. at 383, 665 S.E.2d at 654.

In terms of explanation, the Court of Appeals determined the phrase in subsection (2)(a) "maximum gross weight of these vehicles may not exceed the maximum weight allowed by this section" referred to section 56-5-4140 as whole which includes the formula and table in subsection (1)(b). Id. at 383, 665 S.E.2d at 655 (emphasis added). The Court of Appeals noted the "maximum allowable weight for a three-axle vehicle under subsection (1)(b) is 80,000 total pounds," which represents the largest allowable weight found anywhere in section 56-5-4140. Id. Ultimately, the Court of Appeals concluded "[s]pecial use vehicles can exceed the general rule requirements of subsection (1)(a), but the exception in no event allows those vehicles to surpass the maximum figures found in subsection (1)(b)." Id. at 383-84, 665 S.E.2d at 655.

In rejecting the State's position, the Court of Appeals stated "[t]he State's proposed interpretation, which elevates subsection (1)(a) over all others and effectively renders subsection (2)(a) meaningless, flies in the face of the plain language of the statute." Id. at 384-85, 665 S.E.2d

at 655. The Court of Appeals believed that if the General Assembly intended subsection (2)(a) to be an exception only as to tandem axle vehicles, as the State averred, the General Assembly could have included language expressly limiting the nature of the exception contained in subsection (2)(a). Id. at 384, 665 S.E.2d at 655.

As the final part of its analysis, the Court of Appeals rejected the State's policy argument that the circuit court's interpretation would authorize the operation of grossly overweight vehicles. Id. at 385, 665 S.E.2d at 655. The Court of Appeals found the State had not demonstrated that affirming the circuit court's decision would adversely affect the state's roads or public safety. The Court of Appeals explained that under subsection (1)(b), the maximum total weight of a vehicle is 80,000 with a ten percent scale tolerance of 8,000. Id. Thus, the Court of Appeals believed there was no merit to the State's fear that drivers could operate vehicles weighing more than 100,000 pounds on South Carolina's roads. Id.

Extending its policy analysis, the Court of Appeals concluded that public policy considerations supported the circuit court's interpretation given the General Assembly "obviously determined there was a legitimate reason to create separate, higher weight allowances for special use vehicles." Id. The Court of Appeals found that one purpose for the special category was to "permit larger loads in order to limit the trips these vehicles are required to make." Id. at 385, 665 S.E.2d at 655-56. In creating the exception, the Court of Appeals believed the General Assembly "recognized that sanitation trucks and other special use vehicles are designed and built to handle heavier loads safely to reduce the number of trips per truck." Id. at 385, 665 S.E.2d at 656.

This Court granted the State's petition for a writ of certiorari to review the decision of the Court of Appeals.

DISCUSSION

In challenging the decision of the Court of Appeals, the State raises the following five arguments:

1. The Court of Appeals erroneously presumed that the Legislature intended to radically increase the maximum gross vehicle weights of the special work or use vehicles of section 56-5-4140(2)(a) rather than recognize a moderate increase only as to tandem axle weight limitation. This holding, in turn, violates the Equal Protection clause.

2. The Court of Appeals inappropriately used section 56-5-4140(1)(b) from which it established a single, maximum gross vehicle weight for all the special use vehicles of section 56-5-4140(2)(a).

3. The Court of Appeals failed to give deference to the state agency's well-considered interpretation of a statute, which the agency was charged with enforcing.

4. The Court of Appeals' interpretation of section 56-5-4140(2)(a) leads to an absurd result when reconciling it with section 56-5-4140(2)(b), thus, making section 56-5-4140(2)(b) meaningless surplusage.

5. The Court's interpretation is in conflict with 2008 legislation amending section 56-5-4140.

Although the State raises five separate arguments,[2] we believe a decision in this case involves a single question: What is the maximum

[2] With respect to the State's equal protection challenge and reference to subsection (2)(b), we find these arguments were not properly preserved for this Court's review. A review of the Appendix reveals that neither the trial court nor the appellate courts ruled on these issues. See Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."); Kiawah Prop. Owners Group v. Pub. Serv. Comm'n of South Carolina, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (finding an issue raised for the first time in a petition for rehearing was not preserved).

allowable weight for vehicles designated and constructed for special use or work under section 56-5-4140?

In answering this question, it is necessary to consider the following rules of statutory construction.

"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." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). 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. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and

will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). Even so, an administrative construction "affords no basis for the perpetuation of a patently erroneous application of the statute." Monroe v. Livingston, 251 S.C. 214, 217, 161 S.E.2d 243, 244 (1968).

Applying the above-outlined rules to section 56-5-4140, we agree with the ultimate conclusion of the Court of Appeals. As will be discussed, we find the Court of Appeals correctly interpreted the statute at issue with the exception of one minor finding.

In analyzing the specific provisions of section 56-5-4140, it is essential to consider the overall purpose of this statutory scheme. This type of statute has "at least two purposes, namely, the protection of the highway and highway structures and the protection of other highway users from the hazard of vehicles which may be less than manageable by reason of overloading." J. A. Bryant, Jr., Annotation, Automobiles: Construction and Operation of Statutes or Regulations Restricting the Weight of Motor Vehicles or Their Loads, 45 A.L.R.3d 503, 508 (1972 & Supp. 2009) (discussing state cases involving the construction and operation of statutes or regulations restricting generally the weight of motor vehicles or their loads).

With this purpose in mind, it is apparent that the General Assembly enacted section 56-5-4140 to regulate the maximum weight of vehicles that traverse South Carolina roads in an effort to protect the infrastructure of the state road system and to protect individuals travelling on these roads.

We believe the General Assembly effectuated this purpose in section 56-5-4140 by establishing the maximum weight for all classifications of vehicles. As seen in subsection (1)(a), the General Assembly created the general standard for all vehicles. Recognizing that weight may be more evenly distributed when the number of axles

increases,[3] the General Assembly provided for increased weight amounts in direct proportion to the number of axles on a vehicle.

Subsection (1)(b) is a logical progression of this reasoning. In keeping with the purpose of the statute in conjunction with the weight distribution principle, the General Assembly set forth a table in (1)(b) which provides corresponding maximum weight loads dependent upon the number of axles and the spacing of these axles. In other words, the load of a vehicle may progressively increase with the addition of axles and the extension of the distance between these axles.

However, a driver may not exceed the maximum allowable weight limit merely by adding axles and increasing the distances between these axles. Cognizant of the maximum weight that a road could withstand, the General Assembly specifically limited the maximum weight for any vehicle to 80,000 pounds plus a ten percent scale tolerance of 8,000 pounds. As indicated by the table, the only vehicles authorized to transport the maximum 88,000 pound load are those with four to seven axles.

Although the General Assembly set an ultimate weight limit of 88,000 pounds, it created exceptions to the axle-spacing requirements of subsections (1)(a) and (1)(b). These exceptions recognize that certain vehicles are uniquely constructed to withstand greater weight despite having the identical number of axles as another vehicle. Thus, vehicles that satisfy the criteria of these exceptions should not be subject to the general weight restriction standards established by subsection (1)(a).

The State agrees that Respondents, at the time of citations, were operating trucks "constructed for special type work or use," which placed the sanitation truck squarely within the exception created in

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[3] See Federal Highway Administration, U.S. Department of Transportation, Bridge Formula Weights, January 1994, at 14 (discussing Bridge Formula and recognizing that allowable weight for vehicles depends on the number of axles a vehicle has and the distance between those axles).

subsection (2)(a). As previously stated, subsection (2)(a) states that this type of vehicle is:

> not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to a weight of twenty thousand pounds for each axle plus scale tolerances and the maximum gross weight of these vehicles may not exceed the maximum weight allowed by this section for the appropriate number of axles, irrespective of the distance between axles, plus allowable scale tolerances.

S.C. Code Ann. § 56-5-4140(2)(a) (2006). By the plain terms of the statute, special use trucks may carry a load weight of 20,000 pounds per axle plus a ten percent scale tolerance. As the statute states, this authorized increase in load weight for special use vehicles is not without limitation. By drafting the last sentence in subsection (2)(a), the General Assembly deliberately "capped" the maximum allowable weight of these vehicles at an amount directly proportional to the number of axles, irrespective of the distance between the axles.

We find the Court of Appeals correctly determined that this maximum weight restriction is calculated by referencing the table in (1)(b) and, not the general standards provided in (1)(a).

Assuming that the General Assembly purposefully created exceptions to weight restrictions for uniquely constructed vehicles, then it would be nonsensical to assess their maximum weight limits using the standards applicable to "regular" vehicles. See Dickinson v. Cahoon, 144 So. 345 (Fla. 1932) (analyzing state statute regulating weight and speed of motor vehicles and concluding that Legislature intended to create a separate classification of certified vehicles for the purpose of regulation, supervision, and added taxation). Because special use vehicles are constructed to take advantage of increased weight limits, their weight loads should not be restricted to those of all general vehicles. To do so would completely eliminate the exception created in subsection (2)(a). See Commonwealth v. Clyde, 448 A.2d 1093, 1095 (Pa. Super. Ct. 1982) (affirming dismissal of charges of

operating an overweight construction vehicle where General Assembly "found it necessary to totally exempt such a vehicle from the size and weight restriction"), appeal dismissed as improvidently granted, 467 A.2d 1287 (Pa. 1983).

In view of our interpretation of section 56-5-4140, we hold the sanitation truck driven by Respondents did not exceed the maximum allowable weight. Reading subsection (2)(a) in conjunction with the table in (1)(b), the three-axle vehicle was authorized to weigh 66,000 pounds. This amount represents a calculation of 20,000 pounds per axle with a ten percent scale tolerance of 6,000 pounds. Significantly, the manufacturing information on the door jam of the sanitation truck indicates that the vehicle can sustain a weight limit of 66,000 pounds.

However, unlike the Court of Appeals, we conclude 66,000 pounds is the maximum weight for the three-axle sanitation truck not 80,000 pounds plus a ten percent weight tolerance. A review of the table in (1)(b) reveals that only vehicles with four to seven axles may carry an 88,000 pound maximum load.

Finally, we note that the General Assembly has twice amended section 56-5-4140 subsequent to the decision of the Court of Appeals. As the State points out in its fifth argument, the General Assembly amended section 56-5-4140 in 2008.[4] The State contends this amendment indicates that "the legislature is inclined to grant only modest increases in gross vehicle weights through amendments." Additionally, the State claims if the Legislature intended the Court of

[4] The 2008 amendment redesignated subsection (A), and added the following two provisions relating to enforcement tolerances:

> (2) Enforcement tolerance is fifteen percent for a vehicle or trailer transporting unprocessed forest products or only on noninterstate routes.
>
> (3) Enforcement tolerance is fifteen percent for a vehicle or trailer transporting sod only on noninterstate routes.

Act No. 234, 2008 S.C. Acts 2143, 2147.

Appeals' interpretation of subsection (2)(a) there would be no reason to provide unprocessed forest products hauler's vehicles with an increased scale tolerance given they would be already entitled to a maximum weight of 88,000 pounds.

We find this amendment is inapposite and does not affect the disposition of the instant case. First, the amendment provided nonsubstantive changes in that it renumbered certain provisions of section 56-5-4140. Second, the amendment increased the scale tolerance for two specific vehicles, those that transport unprocessed forest products and those that transport sod, using a "vehicle or trailer." Because the General Assembly did not revise the provision with respect to special use vehicles, we disagree with the State that this amendment is indicative of the legislative intent.

We would also note that this year the General Assembly amended section 56-5-4140(2)(a), the subsection at issue in this case.[5] Because this amendment became effective after the STP officer issued Respondents' citations, we find, and the State conceded, that this amendment would not be applicable to facts of the instant case. Accordingly, we express no opinion as to the import of this amendment in future cases involving the statute at issue.

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[5] The 2009 amendment to 56-5-4140(B)(1), which became effective on June 2, 2009, provides:

> Dump trucks, dump trailers, trucks carrying agricultural products, concrete mixing trucks, fuel oil trucks, line trucks, and trucks designated and constructed for special type work or use are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to a weight of twenty thousand pounds for each axle plus scale tolerances and the maximum gross weight of these vehicles may not exceed the maximum weight allowed **by subsection (A)(1)** for the appropriate number of axles, plus allowable scale tolerances.

Act No. 60, 2009 S.C. Acts ____ (emphasis added).

CONCLUSION

Although a state agency's enforcement of a statute is usually afforded deference, we find the STP incorrectly interpreted section 56-5-4140. Considering the purpose of section 56-5-4140 within the context of the rules of statutory construction, we find subsection (2)(a) was promulgated to exempt uniquely designed special use vehicles from the general weight restrictions in subsection (1)(a). Because the maximum allowable weight for a special use vehicle is "capped" at 88,000 pounds, the exception does not permit Respondents to operate the sanitation truck with unlimited amounts of weight. Thus, the exception claimed by Respondents is legitimate and does not defeat the underlying purpose of the statute to protect the infrastructure of the roadways and those travelling on these roadways.

Based on the foregoing, we hold the Court of Appeals correctly interpreted section 56-5-4140. Therefore, we affirm its decision. However, to the extent the Court of Appeals erred in finding that the table in subsection (1)(b) permitted the three-axle sanitation truck to carry a maximum weight of 80,000 plus a ten percent scale tolerance, we modify its decision to correct this error.[6]

Accordingly, the decision of the Court of Appeals is

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[6] In our view, Justice Pleicones misreads section 56-5-4140(1)(b). Section 56-5-4140(b) does not limit its application to tandem axles. Instead, it merely includes an exception for tandem axles. More specifically, section 56-5-4140(1)(b) sets forth a formula to be used in computing the allowable weight of "any group of two or more consecutive axles." If this phrase referred to tandem axles, then there would be no need to create an exception to the formula's application for "tandem axles" in the next paragraph.

As for the maximum allowable weight, we agree that the language of section 56-5-4140(2)(a) is somewhat contradictory. However, it is clear that the section states in part that "the maximum gross weight of these vehicles may not exceed the maximum weight allowed by this section for the appropriate number of axles . . . plus allowable scale tolerances." Thus, 80,000 pounds plus an 8,000 pound scale tolerance equals 88,000 pounds.

AFFIRMED AS MODIFIED.

WALLER, ACTING CHIEF JUSTICE, and Acting Justices James E. Moore and Timothy Martin Cain, concur. PLEICONES, J., concurring in a separate opinion.

JUSTICE PLEICONES: I concur in the majority's decision which affirms the Court of Appeals' decision reversing the citations issued to the respondents. I write separately, however, because I believe S.C. Code Ann. § 56-5-4140(1)(b) is irrelevant to our decision as the sanitation truck did not have tandem axles. The relevant provision, in my view, is § 56-5-4140(2)(a). The dump truck was of a "special type," and had three axles. Accordingly, its maximum weight was 66,000 pounds pursuant to that section.[7]

Moreover, I disagree with the majority that a vehicle can ever exceed 80,000 pounds under the statute. In my view, (2)(a) allows 20,000 pounds per axle up to the maximum allowed under either (1)(a) or (1)(b), plus scale tolerances. The ten percent tolerance permitted under (1)(a) is capped at 75,185, and no scale tolerance is permitted under (1)(b), which sets a maximum weight of 80,000 pounds regardless of the number of tandem axles. I therefore disagree with the majority that a vehicle could lawfully weigh 88,000 pounds under (1)(b).

[7] 3 axles x 20,000 pounds + 6,000 pounds (10% scale tolerance).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Spectre, LLC, Respondent,

v.

South Carolina Department of Health and Environmental Control, League of Women Voters of Georgetown County, South Carolina Wildlife Federation, League of Women Voters of South Carolina, South Carolina Coastal Conservation League, and League of Women Voters of Charleston Areas, Appellants.

Appeal from the Administrative Law Court
John McLeod, Administrative Law Court Judge

Opinion No. 26764
Heard October 21, 2009 – Filed February 1, 2010

REVERSED

Chief Counsel Elizabeth Applegate Dieck and Staff Attorney Davis Whitfield-Cargile, both of SC DHEC, of North Charleston, General

Counsel Carlisle Roberts, of SC DHEC, of Columbia, Evander Whitehead, of Haynsworth Sinkler Boyd, of Florence, and David E. Shipley, of University of Georgia School of Law, of Athens, GA, all for Appellant SC DHEC.

James S. Chandler and Amy E. Armstrong, both of South Carolina Environmental Law Project, for Appellants League of Women Voters of South Carolina, et al.

Ellison D. Smith, IV and Stanley E. Barnett, both of Smith, Bundy, Bybee & Barnett, of Mt. Pleasant, and James B. Richardson, Jr., of Columbia, for Respondent.

Christopher Holmes, of Mt. Pleasant, for Amicus Curiae The S. C. Tourism & Land Counsil, Christopher Kaltman DeScherer, of Southern Environmental Law Center, of Charleston, for Amicus Curiae Waccamaw Riverkeeper, and Kerry L. Murphy, of Mays, Foster, Gunter & Murphy, of Columbia, for Amici Curiae SC Landowners Association, Home Builders Association of SC and the SC Association of Realtors.

JUSTICE PLEICONES: Respondent Spectre, LLC's (Spectre) request for a stormwater/land disturbance permit so that it may fill 31.76 acres of freshwater wetlands in Horry County was denied by the South Carolina Department of Health and Environmental Control (DHEC). The Administrative Law Court (ALC) determined that the permit must issue as a matter of law. Because we find that DHEC properly exercised its authority under the Coastal Zone Management Act (CZMA) in denying the permit request, we now reverse.

FACTS

I. CZMA and CMP

As part of the CZMA, passed in 1978, DHEC was required by statute to develop a comprehensive coastal management program (CMP) for the "coastal zone," an area defined as Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown counties. See S.C. Code Ann. § 48-39-80. In developing the CMP, DHEC was required to develop a system whereby it was authorized to review all State and federal permits for compliance with the CMP. Id. DHEC developed the plan and promulgated it in accordance with procedures set forth in the CZMA. Based on its interpretation of S.C. Code Ann. § 48-39-80, DHEC conducted what is in essence a consistency review for every state and federal permit application to determine compliance with the CMP.

II. The Spectre site

Spectre sought to develop 62.93 acres in Horry County for commercial and retail purposes. As part of the plan, Spectre proposed to fill 31.76 acres of isolated freshwater wetlands and applied to DHEC for a stormwater/land disturbance permit, as required by S.C. Code Ann. §§ 48-14-10, et seq., and S.C. Reg. 72-305. DHEC denied Spectre's application because it found the project inconsistent with various provisions of the CMP, including the following provision:

> 1) In the coastal zone, [Office of Ocean and Coastal Resource Management] review and certification of permit applications for commercial buildings will be based on the following policies:
>
> b) Commercial proposals which require fill or other permanent alteration of salt, brackish or freshwater wetlands will be denied unless no feasible alternatives exist and the facility is water-dependent. Since these wetlands are valuable habitat for wildlife

> and plant species and serve as hydrologic buffers, providing for storm water runoff and aquifer recharge, commercial development is discouraged in these areas. The cumulative impacts of the commercial activity which exists or is likely to exist in the area will be considered.

Spectre filed a request for review by the DHEC Board as allowed by S.C. Code Ann. § 44-1-60(E) (2006). Spectre argued, *inter alia*, that (1) the land in question is not subject to the requirements of the CMP, (2) the CMP is not enforceable as it is not a valid regulation promulgated and approved by the General Assembly in accordance with the South Carolina Administrative Procedures Act (APA), and (3) there is no statutory or regulatory authority for DHEC to deny a stormwater permit based on alleged inconsistency with the CMP.[1]

The DHEC Board unanimously affirmed the denial based entirely on the policy review of the permit, i.e., the proposal was inconsistent with the CMP. The Board rejected Spectre's argument that the CMP is unenforceable because it was not promulgated as a regulation pursuant to the APA. Applying the CMP, the Board found that the proposed project contravened numerous provisions and that DHEC properly denied the application since Spectre did not show an alternative analysis, that there were no feasible alternatives to the amount of fill, or an overriding public interest in the project.

Spectre appealed to the ALC which reversed the Board and concluded Spectre is entitled to the permit as a matter of law. The ALC concluded (1) the CMP policies by their own terms do not apply to the property in question, (2) the CMP is not enforceable as it is not a valid regulation promulgated in compliance with the APA, and (3) as Spectre was in compliance with the stormwater regulations, the permit must issue by operation of law.

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[1] The League of Women Voters of Georgetown County and the League of Women Voters of South Carolina filed a motion to intervene in the proceedings. The Board granted their motion and they are parties to this appeal.

DHEC and Intervenors appealed to the Court of Appeals. On DHEC's motion, this Court issued an order transferring the case from the Court of Appeals.

ISSUES

I. Did the ALC err in finding that the CMP, by its own terms, does not apply to the property in question?

II. Did the ALC err in finding that, even if the CMP purports to apply to the property in question, it is unenforceable because it was not promulgated in accordance with the APA?

DISCUSSION

I. Did the ALC err in finding that the CMP, by its own terms, does not apply to the property in question?

The ALC found that the CMP, by its own terms, does not apply to the property in question. We disagree.

The CMP was published in the State Register in 1978 in response to the General Assembly's statutory instruction to DHEC to develop a program for the South Carolina coastal zone. See S.C. Code Ann. § 48-39-80. The "coastal zone" was defined to include all lands and waters in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown counties. See S.C. Code Ann. § 48-39-10. The ALC cites two portions of the CMP as limiting its jurisdiction.

First, the ALC noted the following passage:

> In addition to the extensive areas of salt and brackish marsh within the critical areas along the South Carolina coastline, the State's coastal zone also contains over 60,000 acres of fresh-

> water marshes. These wetlands further up the creeks and rivers, beyond the reach of saltwater at high tides, have great diversity of plant species. They play a vitally important role in contributing nutrients to the waters which eventually reach the estuarine system (the critical areas). Fresh-water marsh areas are active filters for improving water quality, and since they are linked with the downstream system, they affect water quality in the critical areas. The fresh-water marshes are important flood buffers and also function in maintenance of salinity levels in downstream estuaries.

The ALC found the phrase "since they are linked with the downstream system" to be a limitation on the reach of the CMP and concluded the program applied "only to contiguous wetlands," i.e., those connected to saltwater and not to isolated wetlands like those located on the Spectre site.

The ALC next noted that the CMP was amended in 1993 through a set of "refinements," which he found expanded the applicability of the CMP. The refinements included the following:

> The Corps of Engineers is mandated by Federal law to delineate wetlands. Once delineated by the Corps of Engineers, Coastal Council[2] manages the wetlands through the policies contained in Chapter III of the State's Coastal Zone Management Program document.

Based on the above language, the ALC noted that "[d]espite the clear language of Section III-73(e) of the CMP limiting its application to those wetlands 'linked with the downstream system' of coastal rivers and creeks, the Coastal Council began to regulate any wetland which was subject to the jurisdiction and regulation by [sic] the Army Corps" under the Clean Water

[2] The Coastal Council was abolished July 1, 1994 and the responsibility for administration of the Coastal Zone Management Act was transferred to the Office of Ocean and Coastal Resource Management (OCRM) in DHEC. See 1993 Act No. 181.

Act. However, the United States Supreme Court in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 121 S.Ct. 675, 531 U.S. 159, 148 L.Ed.2d 576 (2001) (SWANCC), held that the Clean Water Act does not extend to bodies of water not adjacent to open water, thereby severely limiting the jurisdiction of the Army Corps of Engineers. The ALC noted that as a result of the SWANCC decision "DHEC lost the ability to review federal permit applications for projects involving isolated wetlands" like the Spectre site.[3]

Because the site Spectre proposes to develop is unconnected to open water and is not subject to the jurisdiction of the Army Corps of Engineers, the ALC concludes that the CMP does not apply to the site. We find the ALC's interpretation inconsistent with the CMP when read as a whole.

Chapter II of the CMP sets forth the broad scope of the program as follows:

> The scope of the coastal management program and of the Coastal Council's authority is based on definitions of the geographic areas and specific resources which must be considered in development of this program. Two types of management authority are granted in two specific areas of the State. The Council has direct control through a permit program over critical areas, which are defined as coastal waters, tidelands, beaches and primary ocean-front sand dunes. Direct permitting authority is specifically limited to these critical areas. Indirect management authority of coastal resources is granted to the Council in counties containing one or more of the critical areas. This area is called the coastal zone and consists of the following counties along the South Carolina coast: Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper. The coastal zone includes coastal waters and submerged bottoms seaward to the State's jurisdictional limits as well as the lands and waters of the eight coastal counties.

[3] We note that federal permits are not at issue in this case.

The Spectre property is part of the coastal zone but is not located in a critical area. The CMP next provides the following explanation of the program policies:

> On the following pages are the Resource Policies for each of the identified Activities Subject to Management. A brief statement of findings describes why each activity is of coastal management concern. These policies are organized in three separate sections:
>
> 1) Policies for the coastal zone, including that portion outside the critical area in which the Coastal Council has indirect authority (review and certification).
> 2) Policies for the critical areas, where the Coastal Council has direct permit authority. . . .
> 3) Recommended or enhancement policies which are endorsed by the Coastal Council.
>
> Policies 1) and 2) are those which the Coastal Council is authorized to enforce through the authority of the coastal program and the S.C. Coastal Management Act of 1977. These policies are highlighted in the text with a bold outline along the margins.

Because the Spectre site is located in the coastal zone but outside of a critical area, section 1) applies.

The CMP then provides the following passage, enclosed in bold outline:

1) In the coastal zone, OCRM review and certification of permit applications for commercial buildings will be based on the following policies:

b) Commercial proposals which require fill or other permanent alteration of salt, brackish or freshwater wetlands will be denied unless no feasible alternatives exist and the facility is water-dependent. Since these wetlands are valuable habitat for wildlife and plant species and serve as hydrologic buffers, providing for storm water runoff and aquifer recharge, commercial development is discouraged in these areas. The cumulative impacts of the commercial activity which exists or is likely to exist in the area will be considered.

(1) Linked with the downstream system

The provision cited by the ALC as limiting jurisdiction is found in Section XII of the CMP, entitled "Activities in areas of special resource significance." The introduction explains the section's purpose:

> The following types of areas in the South Carolina coastal zone have been identified through the resource inventory efforts of the Coastal Council and its staff as being unique and either environmentally fragile or economically significant to the coastal area and the State. . . . Because of this sensitivity and their role as an integral part of the coastal ecosystem, alterations in these areas are likely to have direct effects on the critical areas. Because of their value and characteristics the Coastal Council employs the *additional* resource policies presented in this section in review and certification of any permits associated with an activity in one of these areas. This is done in an effort to protect the value of the critical areas and of all coastal resources. The applicable policies for the individual activity which is proposed, as well as the general guidelines for evaluation of all projects are *also* considered by the Council and its staff in permit and project reviews in these areas.

(emphasis added). The reference to wetlands as "linked with the downstream system" follows.

Though the particular portion cited by the ALC seems to address only wetlands linked to the downstream system, there is nothing to indicate that it is meant to overrule the broader language used earlier in the CMP. To the contrary, given the language emphasized in the above section, the best reading of Section XII is that the policies were meant to complement, rather than limit, policies set out earlier in the CMP. We therefore disagree with the ALC that the above passage limits the application of the CMP to those wetlands linked with the downstream system of coastal rivers and creeks.

(2) Delineated by the Army Corps of Engineers

We further disagree with the ALC as to the effect of the 1993 refinements. In finding that the CMP is inapplicable to the property in question, the ALC cited the following language as limiting application of the CMP policies to wetlands over which the Army Corps has jurisdiction: "Once delineated by the Corps of Engineers, Coastal Council manages the wetlands through the policies contained in Chapter III of the State's Coastal Zone Management Program."

The passage cited by the ALC, considered in context, does not support the ALC's interpretation. The passage provides as follows:

> The South Carolina Coastal Council is required by both State and Federal law to review projects in the State's coastal zone which require State and Federal permits to determine if the project is consistent with the Coastal Zone Management Program. To provide incentive for developers to approach wetland management on a comprehensive basis, and to provide some flexibility when developing adjacent to wetlands, the Coastal Council uses a wetland master planning concept as stated below. . . . Wetland master planning is applied to all projects undergoing consistency certification in the coastal zone, including Section 404 wetland permits issued by the Army Corps of Engineers. The Corps of Engineers is mandated by Federal law to delineate

> wetlands. Once delineated by the Corps of Engineers, Coastal Council manages the wetlands through the policies contained in Chapter III of the State's Coastal Zone Management Program document.

Again, we find nothing to overrule the broad language regarding jurisdiction set forth in the original version of the CMP. In fact, the first sentence cited above seems to reaffirm the expansive application of the CMP: "The South Carolina Coastal Council is required by both State and Federal law to review projects in the State's coastal zone which require State and Federal permits to determine if the project is consistent with the Coastal Zone Management Program." This paragraph addresses the consistency review which includes, but is not limited to federal permits, and the sentences cited by the ALC follow the phrase "including Section 404 wetland permits issued by the Army Corps of Engineers." Therefore, the language regarding delineation merely expounds on consistency review of federal permits, rather than imposing a limitation on the consistency review of state permits.

Moreover, even reading the sentences cited by the ALC as imposing a limitation on review of state permits, the ALC erroneously reads into the term "delineate" a requirement that the Army Corps of Engineers have jurisdiction over the land in question. In our view, one part of the language cited above deals with the scope of the project and the other with mapping. The term "delineate" is defined in part as "to indicate by lines drawn in the form or figure of : represent by sketch, design, or diagram." Webster's Third Int'l Dictionary 597 (2002). Under the ALC's own finding, the property in question contains a wetland delineated by the Army Corps of Engineers. Consequently, application of the CMP is proper.

Following the SWANCC decision, DHEC promulgated an emergency regulation pursuant to S.C. Code Ann. § 1-23-130. A statement accompanying the emergency regulation included the following: "The SWANCC decision held that the Corps does not have jurisdiction over isolated wetlands and therefore removed the Department's opportunity to issue water quality and coastal zone consistency certifications for activities in

those areas." Admittedly, this statement appears to concede that DHEC lacks statutory authority to apply the CMP to isolated freshwater wetlands located in the coastal zone. As explained below, we believe DHEC misread SWANCC when it promulgated this regulation.

The SWANCC decision affected the ability of the federal government to require permits for filling isolated wetlands. SWANCC, 121 S.Ct. 675, 531 U.S. 159, 148 L.Ed.2d 576. However, as noted above, federal jurisdiction is not essential to consistency review. Under S.C. Code Ann. § 48-39-80, DHEC possessed authority to review both federal and state permits for consistency. Though certain DHEC documents overlook the agency's authority to review state permits, statements by agency employees alone may not abrogate the authority granted by statute. See City of Rock Hill v. South Carolina Dep't of Health and Envtl. Control, 302 S.C 161, 165, 394 S.E.2d 327, 330 (1990) (noting that DHEC, as a creature of statute, possesses only those powers specifically delineated); Carolina Nat. Bank v. State, 60 S.C. 465, 38 S.E. 629, 633 (1901) (officer could not vary authority granted by statute).

We find that the ALC erred in finding that the CMP, by its own terms, does not apply to the site in question in the instant case. The language of the CMP sets forth broad jurisdiction over the coastal zone, thereby supporting DHEC's interpretation of the CMP as applicable to the Spectre site.

II. Did the ALC err in finding that, even if the CMP purports to apply to the property in question, it is unenforceable because it was not promulgated in accordance with the APA?

The ALC found that the CMP is not enforceable as it is not a regulation passed in accordance with the APA. We disagree.

The ALC noted that the CMP, as promulgated by DHEC, is not a regulation under South Carolina law. DHEC does not dispute this finding.[4] The APA provides the following:

> "Regulation" means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force and effect of law.

S.C. Code Ann. § 1-23-10(4) (2008). According to the ALC, because the CMP was not issued as a regulation, it does not have the force and effect of law and consequently, DHEC may not enforce it. We find that there is no requirement that the CMP be promulgated as an APA regulation.

As noted, the General Assembly enacted the CZMA which required DHEC to "develop a comprehensive coastal management program, and thereafter have the responsibility of enforcing and administering the program in accordance with the provisions of this chapter and any rules and regulations promulgated under this chapter." S.C. Code Ann. § 48-39-80. The statute further provides that, in developing the program, DHEC shall "[d]evelop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." Id. The CZMA set out specific procedures DHEC must follow in enacting the CMP, which included statewide hearings and public review of DHEC documents. See S.C. Code Ann. § 48-39-90(A), (B). After conducting the hearings and considering input from interested parties, the statute required DHEC to submit the final version of the CMP to the Governor and General Assembly for approval. See S.C. Code Ann. § 48-39-90(C). After review and approval by the Governor and General Assembly, "the proposed plan shall become the final management plan for the State's coastal zone." S.C. Code Ann. § 48-39-90(D).

[4] DHEC does argue that the CMP is the equivalent of a regulation but does not contend that it was passed in accordance with APA procedures.

DHEC developed the CMP and promulgated it in accordance with the requirements of S.C. Code Ann. § 48-39-90. Respondent argues, and the ALC found, that DHEC's compliance with § 48-39-90 is insufficient to create an enforceable plan.

(1) Consistency Review

The ALC found that DHEC consistency review required by § 48-39-80(B)(11) is to be governed, not by the CMP itself, but by separate regulations DHEC would create and promulgate in accordance with the APA. The ALC noted:

> There is nothing in the [CZMA] or the CMP implying that regulations for the consistency certification process are to be promulgated in the CMP document itself. In fact, in the Legal Authorities section of the CMP, at p.V-1 and 2, entitled "Authority Outside Critical Areas," it says "All agencies currently exercising regulatory authority in the coastal zone shall administer such authority in accordance with the provisions of this act and the rules and regulations promulgated thereunder." [citation omitted]. This language can only refer to coastal zone consistency certification by the agency of state permits in the coastal counties. The CMP document itself, therefore, contemplated promulgation of regulations governing certification as well as regulations governing critical areas.

Spectre also advances this view and cites the case of Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council, 306 S.C. 488, 413 S.E.2d 13 (1992), for the proposition that where an agency is authorized to promulgate certain regulations, it may not impose requirements by other means. We find Captain's Quarters inapplicable as it involved a specific statutory directive for DHEC to publish final rules and regulations, unlike the instant case. Id. at 490-491, 413 S.E.2d at 14.

In our view, the language of § 48-39-80 supports DHEC's view that the General Assembly meant the CMP policies themselves to be enforceable in the consistency review of state and federal permits. As noted above, § 48-39-80 requires DHEC to develop a comprehensive coastal management program which it will enforce "in accordance with this chapter and any rules and regulations promulgated under this chapter." S.C. Code Ann. § 48-39-80. Though § 48-39-80 specifically requires DHEC to "[p]rovide a *regulatory system* which the department shall use in providing for the orderly and beneficial use of the critical areas," it requires only that DHEC "[d]evelop a *system*" for reviewing state and federal permit applications in the coastal zone for CMP consistency. S.C. Code Ann. § 48-39-80(A), (B)(11) (emphasis added). Had the General Assembly intended to require DHEC to promulgate regulations, it could have so specified. Moreover, the stringent requirements for enactment of the CMP, as outlined above, suggest that the General Assembly did not believe it was meant to be an unenforceable document.

Spectre also argues that the case of Responsible Economic Development v. South Carolina Dep't of Heath and Environmental Control, 371 S.C. 547, 641 S.E.2d 425 (2007), may be interpreted as barring DHEC's consistency review of stormwater permits. We find Responsible Economic Development distinguishable from the instant case as the Court noted specifically that:

> [r]elevant to this appeal, the regulations of the Pollution Control Act . . . and the regulations of the Stormwater Act . . . do not reference each other and are authorized by different enabling acts. In the absence of statutory authorization to apply the two acts and their corresponding regulations to each other, the regulations of the Pollution Control Act do not apply to the Stormwater Act or its regulations.

Id. at 553, 641 S.E.2d at 428. The instant case differs from Responsible Economic Development because § 48-39-80 provides explicit statutory authorization to apply the CMP to state permits. When a state stormwater permit is sought, DHEC is authorized to enforce the CMP.

For the above reasons, we disagree with the ALC's determination that the General Assembly intended for the promulgation of separate regulations to govern consistency certification.

(2) Effect of APA

The ALC also holds that because DHEC employs the CMP policies like regulations, they must be promulgated in accordance with the APA before they may be enforced. In essence, the ALC holds that S.C. Code Ann. § 1-23-10(4), which provides that "[p]olicy or guidance issued by an agency other than in a regulation does not have the force and effect of law," repealed the enactment procedure set forth in S.C. Code Ann. § 48-39-90. Consequently, because the CMP did not comply with the APA, the CMP is not enforceable. We disagree. The General Assembly created a separate and more rigorous procedure for promulgation of the CMP and, because DHEC acted in accordance with the specified procedure, the plan is valid.

"Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement." Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141-42, 628 S.E.2d 38, 41 (2006), citing Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them. Id., citing City of Rock Hill v. South Carolina DHEC, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990). Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. Wilder v. South Carolina Hwy. Dep't, 228 S.C. 448, 90 S.E.2d 635 (1955); see also Wooten ex rel. Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (a specific statutory provision prevails over a more general one).

Section 48-39-90 constitutes a specific enactment procedure for the CMP with more rigorous requirements than those in the APA. Under the APA, proposed regulations go into effect 120 days after they are submitted to the appropriate House and Senate Committees upon publication in the State Register unless they are affirmatively vetoed by the legislature. See S.C. Code Ann. § 1-23-120(D). In contrast, § 48-39-90 requires that the General Assembly and Governor affirmatively approve of the CMP before it is effective. See S.C. Code Ann. § 48-39-90.

This reading better comports with the history of the CZMA and APA. The two acts were passed in the same year. See 1977 Act No. 123; 1977 Act No. 176. The General Assembly was fully aware of the APA and in fact references it in the CZMA, directing the Coastal Council to promulgate rules and regulations addressing critical areas in accordance with the APA. See S.C. Code Ann. § 48-39-130(B) (2008). The General Assembly would not have established the rigorous enactment requirements of the CMP if it believed that the subsequent enactment of the APA would render it ineffective.

We find that the ALC erred in holding that, because the CMP was not promulgated in accordance with the APA, it is unenforceable. The CMP was enacted in accordance with the specific procedures set forth by the General Assembly in § 48-39-90 and, consequently, is valid and enforceable.

CONCLUSION

We find that the ALC erred in finding that the CMP, by its own terms, does not apply to the property in question and in finding that the CMP is not enforceable. Consequently, the ALC erred in finding that the stormwater permit must issue by operation of law. We therefore reverse the ALC.

TOAL, C.J., WALLER, BEATTY and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Randy Charles Elders, Appellant.

Appeal from Richland County
James W. Johnson, Jr., Circuit Court Judge

Opinion No. 4648
Heard December 9, 2009 – Filed January 28, 2010

AFFIRMED

Robert William Mills, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Deborah R.J. Shupe, and Solicitor Warren Blair Giese, all of Columbia, for Respondent.

GEATHERS, J: Randy Elders appeals his convictions for armed robbery, assault and battery of a high and aggravated nature, and two counts of kidnapping, arguing that the trial court erred by admitting certain photographs and knives into evidence. Elders further contends that the trial court erred in failing to grant his motion for a directed verdict with respect to his kidnapping charges. Specifically, he claims that, because he had previously pled guilty to carjacking, the Double Jeopardy Clause barred the State from charging him with kidnapping for the same incident. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

Elders and his girlfriend, Christina Hall, were arrested and indicted for crimes that occurred on the evening of April 17, 2005. At approximately 7:30 p.m. that evening, Dwight Riggs and his wife Kathryn were returning home from church when they stopped at the Bi-Lo grocery store on Garners Ferry Road in Columbia, South Carolina. Mrs. Riggs went into the store, and Mr. Riggs remained in the car. As he waited for his wife, Mr. Riggs was approached by a woman he had never seen before. The woman asked Mr. Riggs to give her and her male companion a ride to Mike's Produce Market, which was located a short distance away on Garners Ferry Road. Mrs. Riggs returned to the car and sat down in the front passenger seat. The woman, along with her male friend, got into the back seat of the car, with the man sitting directly behind Mrs. Riggs. Mr. Riggs drove to Mike's Produce Market and pulled into the parking lot.

Upon their arrival, the male passenger placed a knife to Mrs. Riggs' neck and told Mr. Riggs to "keep going straight." According to Mrs. Riggs, the knife had a "little hump" on it and a blade that was about six to eight inches long. Instead of complying with the man's orders, Mr. Riggs grabbed both of the man's hands and pulled him out of the car. A struggle ensued on the pavement outside of the car, and Mr. Riggs was stabbed in the wrist and the chest. The man subsequently broke away from Mr. Riggs and ran over to Mrs. Riggs, who had exited the car. The man proceeded to tackle Mrs. Riggs and take her purse. In doing so, he broke Mrs. Riggs' toe and scraped her arm and knee. The man and the woman then left the scene in the Riggses' car.

The police later determined that the man and woman were Elders and Hall. In connection with the incident, Elders was indicted for one count of armed robbery, two counts of assault and battery with intent to kill (ABIK), one count of carjacking, and two counts of kidnapping. Prior to trial, Elders informed the trial court that he wanted to plead guilty to the carjacking charge and the ABIK charge involving Mr. Riggs. The State objected, arguing that the guilty pleas would hinder its ability to present a cogent case regarding the other four charges. After hearing arguments on both sides, the trial court allowed Elders to plead guilty to both the carjacking charge and the ABIK charge concerning Mr. Riggs.

At trial, the State offered into evidence a photograph of Mr. Riggs that showed the injuries he had sustained. Elders objected to the admission of the photograph, arguing that it was prejudicial and inflammatory because it showed Mr. Riggs in the hospital, attached to medical equipment. The trial court concluded that the photograph was no more prejudicial than other photographs of Mr. Riggs that were admitted without objection and consequently admitted the photograph into evidence.

Additionally, later in the trial, the State offered a photograph of Mrs. Riggs that showed the injuries to her knee. Because it depicted Mrs. Riggs in a wheelchair, Elders objected to the admission of the photograph, arguing that it, like the photograph of Mr. Riggs, was prejudicial and inflammatory. After reviewing the photograph, the trial court overruled Elders' objection.

Thereafter, the State offered four knives that were found by the police on April 19, 2005 (two days after the crimes occurred) in Elders' belongings at the home of Elders' friend, Chris Smith.[1] Three of the knives were pocketknives that were found in Elders' suitcase. The fourth knife, which was found in Elders' shoe, was a switch blade with bears emblazoned on the handle. Elders objected to the admission of the knives, contending that they

[1] On the evening before the knives were discovered, Elders went over to Smith's house and spent the night there.

were irrelevant because none of them were used during the commission of the crimes. Over Elders' objection, the trial court admitted the knives into evidence.

At the conclusion of the State's case in chief, Elders moved for a directed verdict with respect to his kidnapping charges. Elders argued that charging him with kidnapping after he had pled guilty to carjacking constituted double jeopardy. The trial court denied Elders' motion.

The jury subsequently found Elders guilty of armed robbery and two counts of kidnapping. Additionally, with respect to the ABIK charge involving Mrs. Riggs, the jury found Elders guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). The trial court sentenced Elders to twenty years' imprisonment for the carjacking conviction, fifteen years' imprisonment for the ABIK conviction,[2] thirty years' imprisonment for the armed robbery conviction, thirty years' imprisonment for each of the two kidnapping convictions, and ten years' imprisonment for the ABHAN conviction.[3] This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err by failing to direct a verdict on Elders' kidnapping charges?

2. Did the trial court err by admitting the photographs of Mr. Riggs and Mrs. Riggs into evidence?

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[2] As noted above, Elders is not appealing his carjacking conviction or his ABIK conviction.

[3] At sentencing, the trial court appeared to indicate that the last four of Elders' sentences were to run concurrently to the first two, thus effectively giving Elders a thirty-five year sentence. However, according to the State's brief, *all* of Elders' sentences were set to run concurrently. For the purposes of this appeal, it is unnecessary for us to resolve this apparent discrepancy.

3. Did the trial court err by admitting the four knives into evidence?

STANDARD OF REVIEW

I. Directed Verdict

When reviewing the denial of a motion for a directed verdict, an appellate court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004). This court will reverse a trial court's ruling on a directed verdict motion if no evidence supports the trial court's decision or the ruling is controlled by an error of law. Howard v. Roberson, 376 S.C. 143, 148-49, 654 S.E.2d 877, 880 (Ct. App. 2007).

II. Admission of Evidence

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). An abuse of discretion occurs where the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id. at 429-30, 632 S.E.2d at 848. Prejudice exists when there is "a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." State v. Martucci, 380 S.C. 232, 248, 669 S.E.2d 598, 606 (Ct. App. 2008).

Where a review of the whole record establishes that an error is harmless beyond a reasonable doubt, the conviction should not be reversed. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). "Error is harmless beyond a reasonable doubt where it did not contribute to

the verdict obtained." State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006). "[I]n order to conclude that the error did not contribute to the verdict, the Court must 'find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.'" Lowry v. State, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) (quoting Yates v. Evatt, 500 U.S. 391, 403 (1991)).

LAW/ANALYSIS

I. Directed Verdict

Elders contends that the trial court erred by failing to grant his motion for a directed verdict with respect to his kidnapping charges. He argues that the Double Jeopardy Clause precluded his being convicted of both kidnapping and carjacking. We disagree.

The Double Jeopardy Clauses of the United States and South Carolina Constitutions protect citizens from being twice placed in jeopardy of life or liberty for the same offense. See U.S. Const. amend. V ("No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb . . ."); S.C. Const. art. I, § 12 ("No person shall be subject for the same offense to be twice put in jeopardy of life or liberty . . ."). More specifically, "[t]he Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense." Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999). In both multiple punishment and successive prosecution cases, double jeopardy claims are evaluated under the "same elements" test set forth in Blockburger v. United States, 284 U.S. 299 (1932).[4]

Pursuant to Blockburger, "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each

[4] Stevenson, 335 S.C. at 198, 516 S.E.2d at 437; State v. Easler, 327 S.C. 121, 132, 489 S.E.2d 617, 623 (1997).

provision requires proof of a fact which the other does not." Blockburger, 284 U.S. at 304; see also State v. Hall, 280 S.C. 74, 76 n.1, 310 S.E.2d 429, 430 n.1 (1983). Under the Blockburger test, a defendant may be convicted of two separate crimes arising from the same conduct without being placed in double jeopardy where his conduct "consists of two 'distinct' offenses." State v. Pace, 337 S.C. 407, 417, 523 S.E.2d 466, 471 (Ct. App. 1999) (quoting State v. Moyd, 321 S.C. 256, 258, 468 S.E.2d 7, 9 (Ct. App. 1996)); accord Hall, 280 S.C. at 77, 310 S.E.2d at 431; State v. Steadman, 216 S.C. 579, 589, 59 S.E.2d 168, 173 (1950); State v. Lewis, 321 S.C. 146, 148, 467 S.E.2d 265, 266 (Ct. App. 1996).[5]

Here, the kidnapping statute and the carjacking statute each require proof of a fact that the other one does not. In order to convict a defendant of kidnapping, the State is required to prove that the defendant: (i) unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away any other person by any means whatsoever; (ii) without authority of law. S.C. Code Ann. § 16-3-910 (2003).[6] In contrast, to convict a defendant of carjacking, the State must prove that the defendant: (i) took, or attempted to

[5] Blockburger notwithstanding, a court may conclude that there is no double jeopardy violation even if the "same elements" test is met where the legislature clearly intends multiple punishments for a single act. Stevenson, 335 S.C. at 198 n.4, 516 S.E.2d at 437 n.4 (citing Missouri v. Hunter, 459 U.S. 359 (1983)). Importantly, the Double Jeopardy Clause does not limit the legislature's power to impose sentences for a given crime, but rather acts as a restraint on courts and prosecutors. Brown v. Ohio, 432 U.S. 161, 165 (1977); Hall, 280 S.C. at 77, 310 S.E.2d at 431.

[6] Under South Carolina law, a defendant may be convicted of kidnapping even when the kidnapping is merely incidental to another crime. See Hall, 280 S.C. at 77-78, 310 S.E.2d at 431-32 (1983); State v. East, 353 S.C. 634, 636-38, 578 S.E.2d 748, 750 (Ct. App. 2003). However, there is a caveat to this rule; where the defendant has been sentenced for murder, the kidnapping statute prohibits the trial court from separately sentencing the defendant for kidnapping. S.C. Code Ann. § 16-3-910 (2003); State v. Livingston, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984).

take, a motor vehicle from another person; (ii) by force and violence or by intimidation; (iii) while the person was operating the vehicle or while the person was in the vehicle. S.C. Code Ann. § 16-3-1075(B) (2003). Thus, whereas the kidnapping statute requires proof that the defendant "unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away any other person by any means whatsoever," the carjacking statute does not require such proof. Conversely, the carjacking statute requires the State to prove that the defendant "took, or attempted to take, a motor vehicle from another person," which is not required to prove kidnapping. Therefore, because kidnapping and carjacking each contain an element that the other does not, we hold that the trial court did not err by denying Elders' motion for a directed verdict on his kidnapping charges.

II. Admission of Photographs

Next, Elders argues that the trial court erred by admitting into evidence the photograph of Mr. Riggs in the hospital, attached to medical equipment, and the photograph depicting Mrs. Riggs in a wheelchair. Specifically, Elders contends that the photographs were inflammatory and that they were introduced solely to arouse the passions and prejudices of the jury. We disagree.

"The relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." Martucci, 380 S.C. at 249, 669 S.E.2d at 607. Ordinarily, it is not an abuse of discretion to admit photographs that corroborate testimony. State v. Hambright, 310 S.C. 382, 388, 426 S.E.2d 806, 809 (Ct. App. 1992). However, "[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions." State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997).

A. Photograph of Mr. Riggs

Here, we conclude that the trial court did not err by admitting the photograph of Mr. Riggs. The photograph showed the puncture wound to Mr. Riggs' chest, as well as abrasions to the outside of his hand, and therefore corroborated Mr. Riggs' testimony regarding his struggle with Elders and the injuries he sustained as a result. Additionally, because the photograph showed that Mr. Riggs had been stabbed, it was relevant to the armed robbery charge in that it tended to demonstrate that Elders was armed with a knife or similar weapon on the evening the crimes occurred.[7]

Thus, because the photograph had significant probative value, the present case is readily distinguishable from the two cases relied upon by Elders: State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999) and State v. Livingston, 327 S.C. 17, 488 S.E.2d 313 (1997). In each of those two cases, the South Carolina Supreme Court ruled that the trial court erred by admitting a photograph of the crime victim because the photograph had no probative value. See Langley, 334 S.C. at 648, 515 S.E.2d at 100 (concluding that photograph of murder victim was "not relevant to proving the guilt of appellant" because it was introduced solely to distance victim from drug dealing occurring near murder scene and to neutralize testimony by the State's witnesses regarding victim's drug use); Livingston, 327 S.C. at 20, 488 S.E.2d at 314 (finding that photograph of felony DUI victim taken shortly before her death was "irrelevant to any matter in issue"). Here, the photograph of Mr. Riggs was relevant to establishing Elders' guilt and therefore Langley and Livingston are inapposite to the present case. See State v. Bennett, 369 S.C. 219, 228-29, 632 S.E.2d 281, 286-87 (2006) (finding that hospital photographs introduced to show the extent of the injuries suffered by ABHAN victims were "easily distinguishable" from the photographs in Langley and Livingston due to their highly probative nature).

[7] Although the armed robbery charge was brought in connection with the theft of Mrs. Riggs' purse, Elders' struggle with Mr. Riggs occurred shortly before Mrs. Riggs' purse was taken.

Furthermore, while the photograph may have aroused some sympathy among the jury, we conclude that the photograph was not unduly prejudicial. The photograph was similar to other photographs that depicted Mr. Riggs' injuries and that were admitted without objection. Additionally, while the photograph showed Mr. Riggs in the hospital, connected to medical equipment, Mr. Riggs testified without objection that he spent several hours in the hospital after the incident. Therefore, we hold that the trial court did not err by failing to exclude the photograph on the basis that it was too inflammatory.

Nonetheless, Elders appears to suggest that it was improper to admit the photograph given that Elders had, prior to trial, pled guilty to the ABIK charge relating to Mr. Riggs. However, during the pre-trial arguments about Elders' guilty pleas, Elders' counsel stated that the defense would not object to the State's presenting any of the evidence that the State would have introduced on the two charges to which Elders desired to plead guilty. Additionally, as noted above, the photograph was relevant to the armed robbery charge. Accordingly, we hold that the trial court properly admitted the photograph of Mr. Riggs.

B. Photograph of Mrs. Riggs

Similarly, we conclude that the trial court did not err by admitting the photograph of Mrs. Riggs. Like the photograph of Mr. Riggs, the photograph of Mrs. Riggs was probative without being overly prejudicial. It showed the injuries to Mrs. Riggs' knee and thus corroborated her testimony that her knee had been injured when Elders grabbed her purse from her. Additionally, the photograph was relevant to both the ABIK charge with respect to Mrs. Riggs and the armed robbery charge. Moreover, although the photograph showed Mrs. Riggs in a wheelchair, we do not find that the photograph was inflammatory. Other photographs of Mrs. Riggs' injuries were admitted without objection. Therefore, we hold that the photograph of Mrs. Riggs was properly admitted.

III. Admission of Knives

Finally, Elders argues that the trial court erred by admitting into evidence the four knives that were found in Elders' belongings at the time he was arrested. Specifically, Elders claims that the knives were calculated to arouse the sympathy or prejudice of the jury and that they were irrelevant given that none of them were used during the crimes in question.

"Evidence which is not relevant is not admissible." Rule 402, SCRE.[8] Additionally, even relevant evidence should be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir.1993)).

Here, there is considerable evidence in the record demonstrating that the knives were not used in the commission of the crimes.[9] Additionally, none of the witnesses specifically testified that the knives were similar to the knife used to commit the crimes. Thus, evidence that the knives were found in Elders' belongings two days after the crimes occurred tended to prove not that Elders committed the crimes in question, but rather that he was the sort of person who might commit such crimes. Accordingly, in light of the negligible probative value of the knives, as well as the danger of unfair

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[8] "Relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

[9] Mr. Riggs provided express testimony to that effect. Additionally, the State's expert in DNA analysis testified that he conducted a "very sensitive" screening test on the knives to determine the presence of blood and that he found no blood on the knives.

prejudice created by their admission, we hold that the knives should have been excluded pursuant to Rule 403, SCRE.

Nonetheless, although admitting the knives was error, we find that the error was harmless in light of the overwhelming evidence of Elders' guilt. Both Mr. Riggs and Mrs. Riggs identified Elders as the person who put the knife to Mrs. Riggs' neck, who fought with Mr. Riggs, and who stole the Riggses' car and Mrs. Riggs' purse. Additionally, testimony by Hall corroborated the Riggses' testimony regarding Elders' involvement in the crimes. Moreover, Chris Smith and his mother, Dawn Smith, both testified that Elders confessed to stealing a car. In addition, the officer who arrested Elders a couple of days after the crimes occurred testified that he observed scratch marks on Elders' arms, hands and face, as well as a bandage on Elders' wrist, thus buttressing the testimony by Hall and the Riggses regarding the struggle between Elders and Mr. Riggs. Furthermore, a cigarette butt containing DNA that matched Elders' DNA was found in the Riggses' car, as was Elders' jacket. Finally, because Elders' guilty pleas were made shortly before the trial commenced, the jury was aware of the fact that Elders had pled guilty to carjacking and ABIK with respect to Mr. Riggs. Based on the foregoing, we are convinced beyond a reasonable doubt that the admission of the knives did not contribute to the jury's verdict and that reversal of Elders' convictions is therefore not warranted. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

CONCLUSION

We hold that the trial court did not err by denying Elders' motion for a directed verdict with respect to his kidnapping charges. We also conclude that the trial court did not abuse its discretion by admitting the challenged photographs of Mr. and Mrs. Riggs. Although we find that the trial court erred by admitting the four knives, we deem the error harmless. Accordingly, Elders' convictions are

AFFIRMED.

HUFF, J., and GOOLSBY, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Tracey Sims, as Guardian for Emma G., a minor child under the age of eighteen (18), Appellant,

v.

Dewey V. Gregory, Jr., Respondent.

Appeal From Dorchester County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 4649
Heard October 13, 2009 – Filed January 28, 2010

AFFIRMED

Grahame E. Holmes, Ronnie L. Crosby, and Matthew V. Creech, all of Walterboro, for Appellant.

Thomas Milligan, of Mt. Pleasant, for Respondent.

SHORT, J: Tracy Sims, as guardian for Emma G., a minor child under the age of 18, appeals from the trial court's grant of summary judgment for Dewey Gregory in an action arising from a car accident. The trial court held (1) South Carolina law does not allow an alleged violation of a seatbelt law to be used as evidence of negligence, and (2) the injuries to the minor child were not caused by any negligence on part of Gregory but were caused by negligence of a third party. We affirm.

FACTS

This case arises from an automobile accident that occurred in Summerville, South Carolina. Gregory was driving his daughter, Emma G., home from school when the accident occurred. Stephen Welch crossed the center line on Highway 17A and struck Gregory's automobile head-on. As a result of the accident, Emma G. suffered a brain injury. Sims, Emma G.'s mother, filed suit against Gregory on the ground that Gregory failed to properly restrain Emma G. prior to the collision.

Gregory filed a motion for summary judgment arguing Emma G. was properly restrained, and even if she was not, South Carolina law does not allow the violation of a seatbelt law to be used as evidence of negligence. Additionally, Gregory argued the accident was caused by the intervening negligence of a third party, Welch. In support of his position, Gregory submitted an affidavit, stating Emma G. was properly restrained at the time of the collision.

In response, Sims submitted an affidavit, claiming Gregory told her Emma G. was not properly restrained at the time of the accident because Emma G. was wearing only her lap belt and did not have on her shoulder harness. Additionally, Sims submitted an affidavit from her counsel, stating that Emergency Medical Services records indicated Emma G. was wearing only her lap belt at the time of the accident.

The trial court granted Gregory's motion, holding Gregory was not negligent in causing the accident, the accident was solely the fault of a third

party, and South Carolina law does not recognize or allow a cause of action for a violation of the seatbelt statute. This appeal followed.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, this court applies the same standard of review as the circuit court under Rule 56, SCRCP. Cowburn v. Leventis, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Id. To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Id.

LAW/ANALYSIS

In granting summary judgment, the trial court ruled South Carolina law does not allow a violation of a seatbelt law to be used as evidence of negligence. We agree.

In 1989, the General Assembly passed a statute requiring all drivers and occupants of motor vehicles to use safety belts. S.C. Code Ann. § 56-5-6520 (Supp. 2008). The mandatory seatbelt law states, "[t]he driver and every occupant of a motor vehicle . . . must wear a fastened safety belt. . . . The driver is charged with the responsibility of requiring each occupant seventeen years of age or younger to wear a safety belt or be secured in a child restraint system. . . ." Id. Simultaneously, the General Assembly refused to allow the use of evidence in a civil action showing that a driver or occupant of a motor vehicle failed to use a safety belt. S.C. Code Ann. § 56-5-6540(C) (Supp. 2008). Specifically, section 56-5-6540(C), which delineates the penalties for a violation of the mandatory seatbelt law, states, "[a] violation of this article is not negligence per se or contributory negligence, and is not admissible as evidence in a civil action."

The cardinal rule of statutory construction is to determine and give effect to the intent of the legislature. Charleston County Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The best evidence of legislative intent is the text of the statute. Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002) (internal quotations and citations omitted). If the terms of the statute are clear, the court must apply those terms according to their literal meaning. City of Columbia v. Am. Civil Liberties Union of S.C., Inc., 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996).

In the present case, section 56-5-6540(C) clearly states a violation of the mandatory seatbelt law cannot be used as evidence in a civil action to show that a driver or occupant of a motor vehicle failed to use a safety belt. Even if we assume Gregory violated the seatbelt law by failing to ensure Emma G. was wearing her safety belt, section 56-5-6540(C) precludes any evidence of Gregory's alleged violation to be used in a civil trial to show he failed to restrain Emma G. See Clark v. Cantrell, 332 S.C. 433, 451, 504 S.E.2d 605, 614-15 (Ct. App. 1998) ("[Section 56-5-6540(C)] precluded the use of evidence in a civil action showing that a driver or occupant of a motor vehicle failed to wear a safety belt."). The language of the statute is clear, and as such, we must give effect to that language, and conclude the trial court properly granted summary judgment in favor of Gregory.

Nonetheless, Sims argues her claims of common law negligence would survive even after the enactment of sections 56-5-6520 and 56-5-6540. We disagree.

The South Carolina Supreme Court has held that absent a statutory duty, there was no common law duty to wear a safety belt. Keaton v. Pearson, 292 S.C. 579, 580, 358 S.E.2d 141, 141 (1987). In Keaton, our supreme court stated it was the province of the General Assembly to impose a duty to wear a safety belt. Id. Our General Assembly accepted this invitation, and two years after the Keaton decision enacted the mandatory

safety belt law. Clark, 332 S.C. at 451 n.11, 504 S.E.2d at 615 n.11. The only duty to wear a safety belt is statutory. As such, Sims' argument fails.[1]

CONCLUSION

Accordingly, the trial court's decision is

AFFIRMED.

WILLIAMS and GEATHERS, JJ., concur.

[1] Both parties argue about the application of section 56-5-6460. This section states, "[a] violation of this article shall not constitute negligence, per se, contributory negligence nor be admissible as evidence in any trial of any civil action." However, this section only applies to children five years or younger. S.C. Code Ann. § 56-5-6410 (Supp. 2008). At the time of the accident, Emma G. was seven years old. Thus, section 56-5-6460 is inapplicable to this case.