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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0947

Ex parte David Anthony Land

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama v. David Anthony Land)

Calhoun Circuit Court
(CC-18-2167)

McCOOL, Judge.

David Anthony Land petitions this Court for a writ of mandamus directing the Calhoun Circuit Court to dismiss the State's indictment

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against him. For the reasons set forth herein, we grant the petition and issue the writ.

Facts and Procedural History

In August 2018, a Calhoun County grand jury indicted Land for violating § 13A-10-11, Ala. Code 1975, which provides that "[a] person commits the crime of impersonating a peace officer if he falsely pretends to be a peace officer and does any act in that capacity." Specifically, the indictment alleged that Land "falsely pretend[ed] to be a peace officer ... by stating he had FBI undercover credentials." (Land's petition, Exhibit 1.)

Land subsequently moved to dismiss the indictment and, in support of his motion, argued that impersonating an agent of the Federal Bureau of Investigation ("FBI") does not violate § 13A-10-11. Rather, Land argued, § 13A-10-11 prohibits the impersonation of only "an employee of the State of Alabama, or a municipality or county within the State of Alabama, with the authority to maintain the public order or to make arrests." (Land's petition, Exhibit 2.) Thus, Land argued, even if the State could prove that he impersonated an FBI agent as alleged in the

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indictment, that impersonation would not violate § 13A-10-11, and, as a result, the indictment was due to be dismissed.

In response, the State argued that § 13A-10-11 prohibits the impersonation of "any public servant with the power to make arrests," which, according to the State, includes an FBI agent. (Land's petition, Exhibit 3.)

On July 8, 2020, the circuit court denied Land's motion to dismiss the indictment. In support of its ruling, the court stated that it had "reviewed the statute under which [Land] was indicted" and "agreed with the State's argument in interpreting the statute." (Land's petition, Exhibit 4.) Land timely petitioned this Court for a writ of mandamus.

Standard of Review

" "A writ of mandamus is an extraordinary remedy, and it will be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a

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substitute for appeal. Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991)."

"Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998)."

Ex parte Ward, 957 So. 2d 449, 451 (Ala. 2006).

Discussion

The sole issue in this case is whether a person violates § 13A-10-11 by impersonating an FBI agent. Answering that question requires this Court to apply well settled rules of statutory construction.

" "The touchstone of legislative construction is to ascertain and effectuate the intent of the legislature as expressed in the statute." Horn v. Citizens Hosp., 425 So. 2d 1065, 1070 (Ala. 1982) (emphasis added). " J.D.I. v. State, 77 So. 3d 610, 616 (Ala. Crim. App. 2011) (quoting Ex parte Catlin, 72 So. 3d 606, 607-08 (Ala. 2011) (Cobb, C.J., concurring specially)). That is to say, in determining the legislature's intent in enacting a statute, " "this Court should gather the intent of the legislature from the language of the statute itself, if possible." " State v. K.E.L., 315 So. 3d 1158, 1168 (Ala. Crim. App. 2020) (quoting Carroll v. State, 599 So. 2d 1253, 1264 (Ala. Crim. App. 1992), quoting in turn Pace

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v. Armstrong World Indus., Inc., 578 So. 2d 281, 283 (Ala. 1991)). Thus, "[i]n any case involving statutory construction, our inquiry begins with the language of the statute, and if the meaning of the statutory language is plain, our analysis ends there." Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005). In other words,

" ' ' ' "[i]t is this Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent is manifested in the wording of the statute ' ' ' "[I]f the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." ' ' ' ... In determining the intent of the legislature, we must examine the statute as a whole and, if possible, give effect to each section."

" ' ' "Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). Further,

" ' ' " "when determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute When the language is clear, there is no room for judicial construction"

"' "Water Works & Sewer Bd. Of Selma v. Randolph, 833 So. 2d 604, 607 (Ala. 2002).'"

"(Quoting Ex parte Birmingham Bd. of Educ., 45 So. 3d 764, 767 (Ala. 2009).) Similarly, in Lambert v. Wilcox County Commission, 623 So. 2d 727, 729 (Ala. 1993), the [Alabama Supreme] Court stated:

"' "The fundamental rule of statutory construction is that this Court is to ascertain and effectuate the legislative intent as expressed in the statute In this ascertainment, we must look to the entire Act instead of isolated phrases or clauses ... and words are given their plain and usual meaning Moreover, ... statutes dealing with the same subject are in pari materia and should be construed together'"

"(Quoting Darks Dairy, Inc. v. Alabama Dairy Comm'n, 367 So. 2d 1378, 1380-81 (Ala. 1979).)"

"First Union Nat'l Bank of Florida v. Lee County Comm'n, 75 So. 3d 105, 111-12 (Ala. 2011). [Furthermore,]

"' "'[c]riminal statutes must be strictly construed, to avoid ensnaring behavior that is not clearly proscribed.'" United States v. Bridges, 493 F.2d 918, 922 (5th Cir. 1974).

"' "'In United States v. Boston & M. RR Co., 380 U.S. 157, 85 S. Ct. 868, 870, 13 L. Ed. 2d 728 (1965), the Supreme Court stated:

" ' ' ' ' 'A criminal statute is to be construed strictly, not loosely. Such are the teachings of our cases from United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37 [(1820)], down to this day. Chief Justice Marshall said in that case:

" ' ' ' ' 'The rule that penal laws are to be construed strictly, is, perhaps, not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department." Id., p. 95.

" ' ' ' ' 'The fact that a particular activity may be within the same general classification and policy of those covered does not necessarily bring it within the ambit of the criminal prohibition. United States v. Weitzel, 246 U.S. 533, 38 S. Ct. 381, 62 L. Ed. 872 [(1918)].'

" ' ' ' ' 'Moreover, 'one "is not to be subjected to a penalty unless the words of the statute plainly impose it[.]" Keppel v. Tiffin Savings Bank, 197 U.S. 356, 362, 25 S. Ct. 443, 49 L. Ed. 790 [(1905)]. "[W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the

harsher alternative, to require that Congress should have spoken in language that is clear and definite." United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-222, 73 S. Ct. 227, 229-230, 97 L. Ed. 260 [(1952)].' United States v. Campos-Serrano, 404 U.S. 293, 297, 92 S. Ct. 471, 474, 30 L. Ed. 2d 457 (1971)."

" "' Bridges, 493 F.2d at 923.' "

" 'Crawford v. State, 100 So. 3d 610, 615 (Ala. Crim. App. 2011).'

" 'J.D.I. v. State, 77 So. 3d 610, 616 (Ala. Crim. App. 2011).

" "' '[A]mbiguous criminal statutes must be narrowly interpreted, in favor of the accused.' United States v. Herring, 933 F.2d 932, 937 (11th Cir. 1991). '[I]t is well established that criminal statutes should not be "extended by construction."' Ex parte Evers, 434 So. 2d 813, 817 (Ala. 1983)"' D.A.D.O. v. State, 57 So. 3d 798, 802 (Ala. Crim. App. 2009) (quoting Carroll v. State, 599 So. 2d 1253, 1264 (Ala. Crim. App. 1992), aff'd, 627 So. 2d 874 (Ala. 1993)). "' 'No person is to be made subject to penal statutes by implication and all doubts concerning their interpretation are to predominate in favor of the accused. Fuller v. State, [257 Ala. 502, 60 So. 2d 202 (1952)]."' D.A.D.O., 57 So. 3d at 803 (quoting Hankins v. State, 989 So. 2d 610, 618 (Ala. Crim. App. 2007))."

Collier v. State, 212 So. 3d 268, 272-73 (Ala. Crim. App. 2015). These rules of statutory construction exist to protect the sanctity of the

separation-of-powers doctrine, which serves as the very foundation for our system of government. As the Alabama Supreme Court has stated:

" "[I]t is our job to say what the law is, not to say what it should be. Therefore, only if there is no rational way to interpret the words as stated [in a statute] will we look beyond those words to determine legislative intent. To apply a different policy would turn this Court into a legislative body, and doing that, of course, would be utterly inconsistent with the doctrine of separation of powers. See Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997)."

"Thus, only when language in a statute is ambiguous will this Court engage in statutory construction. As we stated in Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001), '[p]rinciples of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous.'"

Ex parte Ankrom, 152 So. 3d 297, 410 (Ala. 2013)(quoting Ex parte Pfizer, Inc., 746 So. 2d 960, 964 (Ala. 1999), quoting in turn DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 276 (Ala. 1998)). With these principles in mind, we turn to the sole issue in this case.

Section 13A-10-11, which is codified in Chapter 10, Article 1, of the Alabama Criminal Code, provides that "[a] person commits the crime of

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impersonating a peace officer if he falsely pretends to be a peace officer and does any act in that capacity." Determining who constitutes a "peace officer" for purposes of § 13A-10-11 requires us to look to the definitions that are applicable to Chapter 10, Article 1, which the legislature has provided in § 13A-10-1, Ala. Code 1975.

Section 13A-10-1(5), Ala. Code 1975, defines a "peace officer," as that term is used in § 13A-10-11, as "[a]ny public servant vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes."

Section 13A-10-1(7), Ala. Code 1975, defines a "public servant" as "[a]ny officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function." (Emphasis added.)

Section 13A-10-1(2), Ala. Code 1975, defines "government," as that term is used in Chapter 10, Article 1, as "[t]he state, county, municipality, or other political subdivision thereof, including public county and city boards of education, the youth services department district, the Alabama

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Institute for Deaf and Blind, and all educational institutions under the auspices of the State Board of Education." (Emphasis added.)

When read together, the definitions in § 13A-10-1, by their plain language, indicate that a "peace officer," for purposes of § 13A-10-11, is limited to only an officer or employee of the state, a county, a municipality, or other political subdivision thereof who is vested with a duty to maintain public order or to make arrests for crimes. In other words, a "peace officer" in the context of § 13A-10-11 does not include an officer or employee of the federal government, even if that person is vested with a duty to maintain public order or to make arrests for crimes.

Accordingly, construing the plain language of the applicable statutes strictly and narrowly, as we must, we hold that a person does not violate § 13A-10-11 by impersonating an FBI agent. To hold otherwise would contravene the rules of statutory construction that require us to give effect to the plain language of statutes and to construe criminal statutes strictly

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and narrowly in order "to avoid ensnaring behavior that is not clearly proscribed" therein.¹ Collier, 212 So. 3d at 273 (citations omitted).

Although the plain language of §13A-10-1 excludes FBI agents from the scope of § 13A-10-11, the State argues that our statutory interpretation will "lead to absurd results in defiance of the intent of the legislature." (State's brief at 4.) See Pruitt v. Oliver, [Ms. 1190297, January 29, 2021] ___ So. 3d ___, ___ (Ala. 2021) (noting that, "'[i]f a literal construction would produce an absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute, such a construction is to be avoided'" (quoting City of Bessemer v. McClain, 957 So. 2d 1061, 1075 (Ala. 2006))). Specifically, the State argues that it is absurd to conclude that the legislature "thought it was perfectly fine to pretend to be an FBI agent ..., but not okay to pretend to be a local constable." (State's brief at 6.) Contrary to the State's contention, it appears to this Court that the legislature did in fact intend to exclude FBI agents and other federal peace officers from the scope of § 13A-10-11.

¹We note that impersonating an FBI agent is, however, a federal crime. See 18 U.S.C.A. § 912.

As noted, determining whether an FBI agent is a "peace officer" for purposes of § 13A-10-11 requires this Court to consult several definitions in § 13A-10-1. Ultimately, however, the answer to that question hinges on the legislature's definition of "government," which, for purposes of the crimes codified in Chapter 10, Article 1, the legislature has limited to only "[t]he state, county, municipality, or other political subdivision thereof." § 13A-10-1(2). For other crimes, however, the legislature has defined "government" more broadly to include not only local governments within Alabama but also the departments, agencies, and subdivisions of the United States, i.e., the federal government. See § 13A-8-1(6), Ala. Code 1975 (defining "government," in pertinent part, as "[t]he United States, any state or any county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing"). Thus, it is obvious that the legislature knew how to draft the definition of "government" in § 13A-10-1(2) to include the federal government if it had been the legislature's intent to do so. See Ex parte Jackson, 614 So. 2d 405, 407 (Ala. 1993) (noting, by comparing statutory language, that it was obvious the

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legislature "knew how to draft a statute to" effectuate its intent). Therefore, the fact that the federal government is excluded from the scope of § 13A-10-1(2) suggests that the legislature intended to exclude FBI agents and other federal peace officers from the scope of § 13A-10-11, and "[i]t is not proper for a court to read into the statute something which the legislature did not include although it could have easily done so." "State v. Blane, 985 So. 2d 384, 387 (Ala. 2007) (quoting City of Pinson v. Utilities Bd. of Oneonta, 986 So. 2d 367 (Ala. 2007), quoting in turn Noonan v. East-West Beltline, Inc., 487 So. 2d 237, 239 (Ala. 1986)). See also Ex parte Jackson, 614 So. 2d at 407 ("The judiciary will not add that which the Legislature chose to omit."). "[I]f our holding today is not what the Legislature intended, it can amend [§ 13A-10-1(2)]." Ex parte Sawyer, 892 So. 2d 898, 902 (Ala. 2004) (quoting Ex parte Alabama Dep't of Mental Health & Mental Retardation, 723 So. 2d 11, 13 (Ala. 1998)). However, unless and until the legislature takes that step, it appears to this Court that the legislature did not intend for § 13A-10-11 to criminalize the impersonation of an FBI agent or other federal peace officers. See Collier, 212 So. 3d at 273 (noting that, to criminalize conduct,

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the legislature must "have spoken in language that is clear and definite" (citations omitted)).

We acknowledge the State's alternative argument that this Court has already "implicitly rejected Land's limited interpretation of 'government' in [Habel v. State, 268 So. 3d 651 (Ala. Crim. App. 2018)]." (State's brief at 6.) As a threshold matter, we note that Habel was a plurality opinion and thus carries little, if any, precedential value. See Ex parte Discount Foods, Inc., 789 So. 2d 842, 845 (Ala. 2001) ("The precedential value of the reasoning in a plurality opinion is questionable at best."). Regardless, Habel does not contain the implicit holding championed by the State. The issue in Habel was whether "submitting a sworn affidavit to a law-enforcement official during a criminal investigation constitutes an 'official proceeding' as that term is defined in § 13A-10-100, Ala. Code 1975." Habel, 268 So. 3d at 660. In support of her appeal, the appellant argued that the term "official proceeding" did not include a criminal investigation but, instead, was limited "to 'actual proceedings -- i.e., grand jury, preliminary hearing, trial, ethics hearings -- places where one would be sworn to testify." Id. (citation to appellant's

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brief omitted). Thus, Habel was concerned only with determining what constitutes an "official proceeding" because that was the specific argument presented to this Court, and Habel's plurality holding is properly interpreted as addressing only that specific argument. Therefore, Habel does not support the State's argument that the definition of "government" in § 13A-10-1(2) includes the federal government. Indeed, such a holding would have directly conflicted with the plain language of § 13A-10-1(2) and thus would have been incorrect.

Conclusion

The allegation in the State's indictment against Land is that he impersonated an FBI agent in an alleged violation of § 13A-10-11. Because we hold that a person does not violate § 13A-10-11 by impersonating an FBI agent, the State can prove no set of facts in this case under which Land can be convicted. Thus, Land has demonstrated that he has a clear legal right to dismissal of the indictment against him, and an appeal is not an adequate remedy for the circuit court's failure to dismiss the indictment. See Ex parte Jackson, 614 So. 2d at 408 (holding that the petitioner was entitled to a writ of mandamus directing the

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dismissal of the indictment against him because, given the Alabama Supreme Court's interpretation of the statute under which the petitioner was charged, the State could "prove no set of facts under which [the petitioner] could be convicted"; thus, "to allow the prosecution under this indictment to proceed to a jury verdict would result in a disruption of the criminal justice system"). Accordingly, we grant Land's petition and direct the circuit court to dismiss the indictment against him.

PETITION GRANTED; WRIT ISSUED.

Kellum and Cole, JJ., concur. Windom, P.J., and Minor, J., concur in the result.