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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2013-2014

CR-12-1393

Charles Marquis Simmons

v.

State of Alabama

Appeal from Lowndes Circuit Court
(CC-12-46)

WELCH, Judge.

Charles Marquis Simmons, a school teacher, was convicted in the Lowndes County District Court for the Class A misdemeanor of having sexual contact with a student less than 19 years old, a violation of § 13A-6-82, Ala. Code 1975. This

charge was brought pursuant to a complaint filed by the victim's mother. Simmons appealed to the circuit court for a trial de novo, and he was again convicted in the circuit court. Simmons was sentenced to 1 year in the county jail; the sentence was split, and he was ordered to serve 30 days in the county jail, followed by 1 year of probation. Simmons was ordered to pay a \$500 fine, court costs, and a \$50 crime victims compensation fund assessment.

Analysis

On appeal, Simmons argues, as he did before the commencement of his trial in the circuit court, that the circuit court lacked jurisdiction to proceed to trial and to enter a judgment of conviction against him, because, he argues, the original charging instrument was not filed in the circuit court. He correctly asserts that the charging instrument in the circuit court was an information filed, and later amended, by the district attorney after Simmons filed his notice of appeal for a trial de novo.¹

¹Simmons presents five issues on appeal, but all are based on the premise that the circuit court lacked jurisdiction to hear his case.

Rule 2.1, Ala. R. Crim. P., states that "[a]ll criminal proceedings shall be commenced either by indictment or complaint." In this case, the district court had exclusive original jurisdiction over the misdemeanor offense charged against Simmons.² Thus, a complaint was the proper charging instrument.³ Rule 30.5, Ala. R. Crim. P., states that following a conviction in the district court, "[w]hen an appeal is taken to the circuit court for a trial de novo, the trial shall be prosecuted as provided in Rule 2.2(d)." Rule 2.2(d), Ala. R. Crim. P., states that an appeal from the district court to the circuit court "shall be prosecuted in the circuit court on the original charging instrument." Rule 30.4(a), Ala. R. Crim. P., required that the complaint executed by the victim's mother be transferred to the circuit court.

²See § 12-12-32, Ala. Code 1975 (noting that "[t]he district court shall have exclusive original trial jurisdiction over prosecutions of all offenses defined by law or ordinance as misdemeanors," except for enumerated exceptions that are inapplicable here).

³"A complaint is a written statement made upon oath before a judge, magistrate, or official authorized by law to issue warrants of arrest, setting forth essential facts constituting an offense and alleging that the defendant committed the offense." Rule 2.3, Ala. R. Crim. P.

"Within fourteen (14) days after the appeal to the circuit court for trial de novo is perfected as provided by Rule 30.3(b), the clerk of the ... district court shall transmit to the clerk of the circuit court such records of the proceedings as are in the ... district court clerk's possession, including the original charging instrument."

(Emphasis added.) This was not done.

"'[A]n accusation [i.e., a charging instrument,] made in the manner prescribed by law is a prerequisite to the court's power to exercise its jurisdiction.'" Anderson v. State, 796 So. 2d 1151, 1157-1158 (Ala. Crim. App. 2000) (quoting State v. Thomas, 550 So. 2d 1067, 1070 (Ala. 1989) (emphasis added)). Thus, presentment of the charging instrument, i.e., the complaint, to the circuit court was necessary to engage the jurisdiction of the "circuit court in the case of a de novo appeal." Stoll v. State, 724 So. 2d 90, 92 (Ala. Crim. App. 1998) (A Uniform Traffic Ticket and Complaint was the formal charging instrument in Stoll.), citing Young v. City of Hokes Bluff, 611 So. 2d 401, 411-413 (Ala. Crim. App.) (Bowen, J., concurring in result), aff'd, 611 So. 2d 414 (Ala. 1992); Sanders v. City of Birmingham, 669 So. 2d 236, 238 (Ala. Crim. App. 1995). See also Rule 2.2(d), Ala. R. Crim. P., as amended effective August 1, 1997.

We are not to be understood as requiring anything contrary to Ex parte Seymour, 946 So. 2d 536 (Ala. 2006), which holds that defects in an indictment have no affect on the circuit court's subject-matter jurisdiction. We are asserting that the filing of the proper charging instrument was required for the jurisdiction belonging to the circuit court to attach. See generally, State v. Thomas, 550 So. 2d 1067, 1072 (Ala. 1989) ("The jurisdiction of the juvenile court would attach only after a petition had been properly filed with the intake officer, and the court had conducted a preliminary inquiry to determine whether the child was within the jurisdiction of the court." (footnote omitted)).

Moreover, an information is not a substitute for a complaint or indictment. An information is used by the prosecution to allow a willing defendant to enter a guilty plea following the filing of a complaint, but before the grand jury returns an indictment. Specifically, the legislature in § 15-15-20.1, Ala. Code 1975, authorized the use of an information as the charging instrument for non-capital felony offenses that were commenced by a complaint and where the defendant has also given notice that he or she seeks to enter

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a guilty plea before an indictment is returned. See § 15-15-21, Ala. Code 1975, and Rule 2.2(e), Ala. R. Crim. P.

Conclusion

In the absence of a proper charging instrument, the circuit court could not exercise its jurisdiction over Simmons's appeal. Accordingly, Simmons's conviction and sentence rendered and imposed by the circuit court are void and due to be set aside. This cause is remanded for the circuit to proceed consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and Kellum and Burke, JJ., concur. Joiner, J., dissents , with opinion.

JOINER, Judge, dissenting.

I respectfully dissent from this Court's decision declaring Simmons's conviction void because the decision is in conflict with Ex parte Seymour, 946 So. 2d 536 (Ala. 2006), and Stegall v. State, 628 So. 2d 1006 (Ala. Crim. App. 1993).

The majority opinion states:

"Simmons argues ... that the circuit court lacked jurisdiction to proceed to trial and to enter a judgment of conviction against him, because ... the

original charging instrument was not filed in the circuit court."⁴

___ So. 3d at ___ (emphasis added). The majority opinion concludes that "[i]n the absence of a proper charging instrument, the trial court could not exercise its jurisdiction over Simmons's appeal." ___ So. 3d at ___. The failure to file a proper charging instrument in the circuit court, however, did not divest the circuit court of jurisdiction over Simmons's case.

This Court in Stegall addressed the failure to properly file a "solicitor's complaint" in the circuit court on an appeal from a district-court conviction for a trial de novo. In Stegall, Stegall argued that "because the 'solicitor's complaint' was not filed until 22 days after [Stegall] filed a notice of appeal to the circuit court, the circuit court lacked jurisdiction to try his case and that the case therefore should have been dismissed." 628 So. 2d at 1007. This Court held that "[t]he filing of a solicitor's complaint is not a jurisdictional prerequisite to an appeal to the circuit court for a trial de novo." Id. at 1008. In other

⁴As discussed below, I read Simmons's argument differently than does the majority opinion.

words, the circuit court's jurisdiction over an appeal from district court for a trial de novo is not determined by whether a charging instrument is filed.

Our holding in Stegall, although decided approximately 13 years before Seymour, is consistent with Seymour. In Seymour, the Alabama Supreme Court explained:

"Jurisdiction is '[a] court's power to decide a case or issue a decree.' Black's Law Dictionary 867 (8th ed. 2004). Subject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ("By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought." (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L. Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United States v. Cotton, 535 U.S. 625, 630-31, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) (subject-matter jurisdiction refers to a court's 'statutory or constitutional power' to adjudicate a case). In deciding whether Seymour's claim properly challenges the trial court's subject-matter jurisdiction, we ask only whether the trial court had the constitutional and statutory authority to try the offense with which Seymour was charged and as to which he has filed his petition for certiorari review."

946 So. 2d at 538.

Thus, to determine whether the Lowndes Circuit Court had jurisdiction over Simmons's case, our only inquiry is "whether the [circuit] court had the constitutional and statutory

authority to try the offense with which [Simmons] was charged." Seymour, supra.

As the majority opinion explains, Simmons, a school teacher, was charged with having sexual contact with a student under the age of 19 years, see § 13A-6-82, Ala. Code 1975, a Class A misdemeanor. Simmons was convicted, as charged, in the Lowndes District Court, and he appealed that conviction to the Lowndes Circuit Court.

"Under the Alabama Constitution, a circuit court 'shall exercise general jurisdiction in all cases except as may be otherwise provided by law.' Amend. No. 328, § 6.04(b), Ala. Const. 1901"

Seymour, 946 So. 2d at 538.

Circuit courts have "exclusive original jurisdiction of all felony prosecutions and of misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same incident as a felony charge." § 12-11-30(2), Ala. Code 1975. Because Simmons was charged with a misdemeanor offense that did not arise from the same incident as a felony, the Lowndes Circuit Court did not have original jurisdiction over the offense. Although the circuit court did not have original jurisdiction over Simmons's case, the circuit court had the statutory authority

to exercise jurisdiction over Simmons's appeal of his district-court conviction to the circuit court for a trial de novo. See § 12-11-30(3), Ala. Code 1975 ("The circuit court shall have appellate jurisdiction of ... criminal ... cases in district court Appeals to the circuit court shall be tried de novo, with or without a jury, as provided by law.").

Although the majority concludes that "[i]n the absence of a proper charging instrument, the trial court could not exercise its jurisdiction over Simmons's appeal," ___ So. 3d at ___, Stegall and Seymour make it clear that the filing of a charging instrument in the circuit court on an appeal from a district-court conviction is not a jurisdictional prerequisite to a conviction in the circuit court. Under Seymour and Stegall, the charging instrument is not what confers jurisdiction upon the circuit court; instead, it is the Alabama Constitution and statutes that confer jurisdiction.

Moreover, despite the majority opinion's characterization of Simmons's argument, Simmons's brief on appeal--although not a model of clarity--does not appear to raise a claim alleging that the circuit court did not have subject-matter

jurisdiction over his case because the complaint originally filed in district court, upon which he was charged and convicted, was not filed in the circuit court. Simmons, instead, appears to argue that the circuit court lacked subject-matter jurisdiction over his case because, he says, the State changed the charging instrument from a complaint to an information without alleging in the information a specific factual basis for the "sexual contact."

Before trial, Simmons argued to the circuit court that the information filed by the State differed from the complaint filed in district court. Specifically, Simmons argued that the complaint filed in district court alleged that the "sexual contact" between Simmons and the victim was described as "kissing" and that the information filed in the circuit court did not also state that "kissing" was the basis for the sexual contact in this case. In other words, Simmons argued that the State attempted to broaden the factual basis by which it could prove sexual contact by omitting "kissing" as the basis for the sexual contact.

Simmons contends in his brief on appeal that the State did so because, he says, the State

"[r]ealiz[ed] [it] could never make a criminal case on the original complaint, and knowing, too, that original complaint merely recited kissing as the criminal conduct alleged against Simmons, the State had to devise a scheme to institute a new charging instrument."

(Simmons's brief, p. 18.) Simmons's argument is grounded in his belief that "kissing" is insufficient to sustain a conviction for having sexual contact with a student under the age of 19 years under § 13A-6-82, Ala. Code 1975.

Although Simmons correctly asserts that the information filed in the circuit court omitted "kissing" as the factual basis for the offense, Simmons was not prejudiced by this omission because, as the State explained before the hearing, the State intended to prove the offense at trial in the circuit court in the same manner as it did in the district court--specifically, by establishing that "kissing" was the sexual contact between Simmons and the victim. (R. 103.) A review of the transcripts in this case--the record on appeal includes both the district court trial and the circuit court trial--establish that the State's evidence in the circuit court was materially the same as its evidence in the district court.

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Thus, because Simmons was convicted on the same evidence in both the district and the circuit court, Simmons suffered no prejudice related to his claim regarding the "changing" of the charging instrument. See Rule 45, Ala. R. App. P.

Accordingly, I respectfully dissent.