

Cite as 2010 Ark. 387

**SUPREME COURT OF ARKANSAS**

No. CR10-339

DONNA MCCORMICK and LEE  
CATER

APPELLANTS

VS.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** October 21, 2010

APPEAL FROM THE MISSISSIPPI  
COUNTY CIRCUIT COURT,  
NOS. CR08-117 & CR08-116 (CT),  
HON. CINDY THYER, JUDGE,

AFFIRMED.

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**JIM HANNAH, Chief Justice**

Donna McCormick and Lee Cater appeal the decision of the Mississippi County Circuit Court denying their motions to suppress evidence. Appellants entered conditional pleas of guilty under Arkansas Rule of Criminal Procedure 24.3 and now seek review of the denial of their motions. Appellants filed a motion to certify this case to the supreme court, and that motion was granted. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1), (5), and (6).

On January 7, 2008, a confidential informant told the Mississippi County Sheriff's Department that he or she could make a buy of Xanax from the residence where appellants lived. The informant was instructed to make the buy and did so. Based on the buy and the drugs obtained, law enforcement sought and obtained a search warrant from District Judge Mike Gibson of the Osceola District Court of Mississippi County. Mississippi County is

divided into two districts, the Osceola district, and the Chickasawba district. While the search warrant was issued by Judge Gibson presiding in the Osceola district, the house searched was in the Chickasawba district.

Prescription drugs and a firearm were seized in the search. Appellants were charged with multiple counts of possession of a controlled substance with intent to deliver and felon in possession of a firearm. Multiple motions to suppress were filed by appellants alleging that the search warrants were void ab initio because Judge Gibson was without authority to issue a search warrant for the search of a location outside the jurisdiction of his court.<sup>1</sup> Appellants first argued that because Judge Gibson was not appointed as a criminal magistrate pursuant to Arkansas Rule of Criminal Procedure 1.8, he did not have the jurisdiction to issue the search warrant in this case. The circuit court rejected this argument. The appellants next argued that Arkansas Code Annotated section 16-17-929 (Supp. 2007) specifically provides that a district judge may not exercise jurisdiction outside the district in which he or she presides, and, therefore, a district judge may not issue a search warrant to be executed outside the district over which he or she presides. The circuit court rejected appellants' argument, finding that Arkansas Code Annotated section 16-82-201(a) (Repl. 2005) specifically provides that "any judicial officer" may issue a search warrant.

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<sup>1</sup>We note that a similar issue of whether District Court Judge Gibson had authority to issue a search warrant is also presented in *Wagner v. State*, 2010 Ark. 389, 368 S.W.3d 914, handed down simultaneously with this case. However, the arguments made and authorities relied on by the parties in the proceedings in the circuit court and on appeal differ in each case, and this accounts for the distinctions between the opinions on this issue.

Appellants assert that Rule 1.8 precluded Judge Gibson from issuing the search warrant. We are thus presented with a question of statutory interpretation. It is for this court to decide the meaning of a statute or rule. *Singleton v. State*, 2009 Ark. 594, at 2, 357 S.W.3d 891, 893.

The basic rule of statutory construction is to give effect to the intent. *Id.* We construe a statute just as it reads, giving words their ordinary and usually accepted meaning in common language, and if the language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation. *Id.*

Arkansas Rule of Criminal Procedure 1.8(a) provides that when conditions set in the Rule are met, the administrative judge of a judicial circuit may appoint a district judge to act as a criminal magistrate who holds jurisdiction coextensive to that of the circuit judges in the judicial circuit. Appellants argue that this means only a district judge who is appointed as a criminal magistrate has jurisdiction to issue search warrants. However, Rule 1.8(d) provides that “[n]othing in this order shall affect the authority of a district court judge to perform the duties described in subsection (b) or otherwise permitted by these Rules or other law.” The duties described in subsection (b) are the duties that a “criminal magistrate may perform.” *See* Ark. R. Crim. P. 1.8(b). Subsection (b)(i) provides that a criminal magistrate may “issue a search warrant pursuant to Rule 13.1.” Therefore, under Rule 1.8(d) a district judge may issue a search warrant. There is no merit to the argument that Rule 1.8 controls and Judge Gibson was without authority to issue the search warrant.

Appellants also assert that section 16-17-929 is dispositive in showing that Judge Gibson lacked jurisdiction to issue the search warrant. They rely on section 16-17-929(d),

which provides that the “jurisdiction of each district court established under subsection (a) of this section shall be limited to the judicial district in which the court is located.” Ark. Code Ann. § 16-17-929(d) (Repl. 2007). Subsection (a) splits Mississippi County into the Osceola district and the Chickasawba district. Ark. Code Ann. § 16-17-929(a) (Repl. 2007). Section 16-17-929 was part of a legislative scheme designed to provide a division of duties in the various judicial circuits as amendment 80 was implemented and positions of full-time district judges were created. In counties such as Mississippi, one district judge holds a full-time position and the other a part-time position. The circuit court found, and we agree, that section 16-17-929 is silent with respect to which judicial officers may issue search warrants, and that section 16-82-201(a) specifically authorized that “any judicial officer” in this state may issue a search warrant. *See Brenk v. State*, 311 Ark. 579, 847 S.W.2d 1 (1993).

Appellants also argue that the circuit court erred in denying the motions to suppress because the subsequent passage of amendment 80 to the Arkansas Constitution and Act 663 of 2007 overruled *Brenk*. This argument was not made or ruled on in the trial court; therefore, it cannot be addressed on appeal. *See Gwin v. Daniels*, 357 Ark. 623, 184 S.W.3d 28 (2004). *Brenk* sets out the current law. Under section 16-82-201(a), any judicial officer in this state may issue a search warrant. The decision of the circuit court denying the motions to suppress is affirmed.