



ALAN WILSON
ATTORNEY GENERAL

March 9, 2017

Thomas Limehouse, Legal Counsel
Office of the Governor
State House
1100 Gervais Street
Columbia, SC 29201

Dear Mr. Limehouse:

You have requested our opinion as to whether the crime of domestic violence 2nd degree constitutes a “crime of moral turpitude” for purposes of the Governor’s suspension power pursuant to Art. VI, § 8 of the State Constitution. By way of background, you note that “this question has not been squarely addressed by the Supreme Court of South Carolina.” It is our opinion that a court would most likely conclude that domestic violence 2nd degree is a crime of moral turpitude.

Law/Analysis

In Op. S.C. Att’y Gen., 2015 WL 2148106 (April 24, 2015), we discussed the question of what constitutes a “crime of moral turpitude” at some length, stating as follows:

Our Supreme Court has defined a crime of moral turpitude as “an act of baseness, vileness, or depravity in the private and social duties that man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” Smith v. Smith, 194 S.C. 247, 9 S.E.2d 584, 589 (1940); see also State v. Drakeford, 290 S.C. 338, 340, 350 S.E.2d 391, 392 (1986); State v. Morris, 289 S.C. 294, 296, 345 S.E.2d 477, 478 (1986); State v. Yates, 280 S.C. 29, 37, 310 S.E.2d 805, 810 (1982), overruled by State v. Torrence, S.C., 280 S.C. 29, 310 S.E.2d 805 (1982); State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263, 263 (1978). Opinions of our Office on the subject of moral turpitude have consistently recognized the same. See, e.g., Op. S.C. Att’y Gen., 2014 WL 2538230 (May 12, 2014); Op. S.C. Att’y Gen., 2007 WL 655616 (Feb. 5, 2007); Op. S.C. Att’y Gen., 1998 WL 61843 (Jan. 27, 1998). Moreover, “moral turpitude implies something immoral in itself, regardless of whether it is publishable by law as a crime.” State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263 (1978) (citing 58 C.J.S. *Morals* at 1203). Behavior that is primarily self-destructive typically does not involve moral turpitude, which requires a breach of duty to society and one’s fellowman. State v. Major, 301 S.C. 181, 184, 391 S.E.2d 235, 237 (1990). Thus, it follows that while all crimes involve some degree of social irresponsibility, not every crime is one that involves moral turpitude. State v. LaBarge, 275 S.C. 168, 172, 268 S.E.2d 278, 280 (1980).

“In determining whether a crime is one involving moral turpitude, the Court focuses primarily on the duty to society and fellow man which is breached by the commission of a crime.” State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 906, 908 (1987), overruled on other grounds by State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990). Furthermore, it has been concluded that “[m]ost offenses found to involve moral turpitude . . . seem to include some sort of dishonest behavior” McAninch and Fairey, The Criminal Law of South Carolina, 45 (3rd ed. 1996); see also State v. Hall, 306 S.C. 293, 295, 411 S.E.2d 441, 442 (Ct. App. 1991) (quoting the above in its analysis of whether first offense driving under the influence and resisting arrest were crimes of moral turpitude).

We have not previously addressed the issue of whether an indictment for domestic violence 2nd degree constitutes a “crime of moral turpitude” for purposes of Art. VI, § 8. This provision of the State Constitution authorizes the Governor to suspend “[a]ny officer of the State or its political subdivisions except members and officers of the Legislative and Judicial branches, who has been indicted by a Grand Jury for a crime of moral turpitude. . . .” Section 16-25-20(A) makes it unlawful to:

- (1) cause physical harm or injury to a person’s own household member; or
- (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

Subsection (C) further states:

- (C) A person commits the offense of domestic violence in the second degree if the person violates subsection (A) and:
 - (1) moderate bodily injury to the person’s own household member results or the act is accomplished by means likely to result in moderate bodily injury to the person’s own household member;
 - (2) the person violates a protection order and in the process of violating the order commits domestic violence in the third degree;
 - (3) the person has one prior conviction for domestic violence in the past ten years from the current offense; or
 - (4) in the process of committing domestic violence in the third degree one of the following also results:
 - (a) the offense is committed in the presence of, or while being perceived by, a minor;

- (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
- (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
- (d) the offense is committed by impeding the victim's breathing or air flow; or
- (e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.

Domestic violence in the second degree is a lesser-included offense of domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

Assault and battery in the second degree pursuant to Section 16-3-600 (D) is a lesser-included offense of domestic violence in the second degree as defined in this subsection.

Domestic violence 2nd degree is an offense within the jurisdiction of the Court of General Sessions. Based upon the Indictment, it appears that the Defendant is alleged to fall within §16-25-20(A) [cause physical harm or injury to household member] and § 16-25-20(C)(1) [moderate bodily injury to person's household member]. The term "household member" is defined in § 16-25-10(3) to include a spouse, former spouse, persons who have a child in common or a male or female who are cohabiting or formerly have cohabited.

While our opinions have not yet addressed the question of whether the crime of domestic violence 2nd degree constitutes a crime of moral turpitude, a number of other jurisdictions have dealt with the question generally. In Morelli v. Ashcroft, 100 Fed. Appx. 620, 621-22 (9th Cir.

2014), for example, the Ninth Circuit concluded that “. . . we agree with the district court that the BIA (Board of Immigration Appeals) did not err when it treated a crime of domestic violence against a cohabitant as a crime of moral turpitude.” Morelli cited in support of this conclusion Grageda v. U.S. INS, 12 F.3d 919, 922 (9th Cir. 1993), which had held that inflicting injury upon one’s spouse severely to cause a “traumatic condition” is “an act of baseness or depravity contrary to accepted moral standards.”

And, in People v. Rodriguez, 5 Cal. App. 4th 1398, 7 Cal. Repr. 495 (1992), the Court held that the crime of inflicting corporal injury upon a spouse or cohabitant is a crime of moral turpitude. There, the Court’s reasoning was as follows:

[t]o violate section 273.5 the assailant must, at the very least, have set out, successfully to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect stability and safety, and in which the victim for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it willfully, and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.

5 Cal. App. 4th at 1402, 7 Cal. Repr. at 497. Thus, in the California Court of Appeals’ view, it is the breach of the “special relationship” of the couple through the infliction of injury by one upon the other which marks the crime as one of “moral turpitude.” See also People v. Burton, 243 Cal. App. 4th 129, 135, 136, 196 Cal. Repr. 392, 398, 399 (2015) [purpose of statute is to “afford greater protection to intimate partners” and that “we agree with the California courts that have previously addressed this issue that a violation of Section 273.5 is a crime of moral turpitude as a matter of law.”]

While, as you indicate, the South Carolina Supreme Court has not squarely addressed this question, there are strong indications the Court would conclude that domestic violence 2nd degree constitutes a crime of moral turpitude. In Re Laguiere is a good example. There, in an attorney disciplinary proceeding, in which the attorney was publicly reprimanded, the Supreme Court noted that the attorney in question had admitted that he violated several rules of professional conduct following his plea of guilty for criminal domestic violence. One of the Rules which Respondent admitted to have violated was Rule 8.4(c) (professional misconduct for a lawyer to engage in conduct involving moral turpitude).

Moreover, In Re Berry, 345 S.C. 463, 549 S.E.2d 254 (2001), also involved a disciplinary action. Respondent was accused of numerous violations of the Rules of Professional Responsibility, including having pled guilty to the offense of criminal domestic violence, as well as several narcotics offenses. The Court noted that these criminal offenses (including domestic violence) had been found by the Panel to constitute “convictions of serious crimes as defined by Rule 2 of Rule 413, as well as crimes of moral turpitude.” (emphasis added). The Court disbarred the Respondent as “the appropriate sanction in similar cases involving multiple acts of

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misconduct, including criminal violations.” One of the cases cited by the Court was In Re Courtney, 342 S.C. 617, 538 S.E.2d 652 (2000) which had concluded that Respondent Courtney had violated, among other Rules, Rule 8.4(c), relating to conduct involving moral turpitude. Thus, it can reasonably be assumed that the Court in In Re Berry implicitly affirmed the recommendation of the Panel regarding the conviction of criminal domestic violence as one involving moral turpitude.

In the present situation the Indictment states:

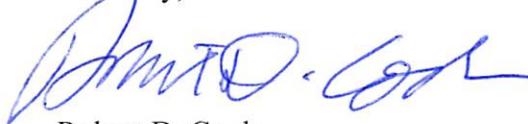
That Mohsen A. Baddourah did in Richland County on or about June 29, 2016 cause physical harm or injury to a household member, CARRIE RHETT, or did offer or attempt to cause physical harm or injury to a household member, CARRIE RHETT, with apparent present ability under circumstances reasonably creating fear of imminent peril by striking CARRIE RHETT with a car door an act likely to result in moderate bodily injury, in violation of Section 16-25-20 (A-D), S.C. Code of Laws, 1976, as amended.

Thus, the Indictment alleges conduct which falls within §§’s 16-25-20(A) and (C)(1)’s ambit. Based upon the foregoing authorities, in our opinion, the Indictment alleges sufficiently a “crime of moral turpitude” for purposes of Article VI, § 8.

Conclusion

It is our opinion that the crime of domestic violence 2nd degree is a “crime of moral turpitude” for purposes of the Governor’s suspension power provided in Article VI, § 8 of the South Carolina Constitution. We address herein only domestic violence 2nd degree and no other domestic violence offenses or any other offense.

Sincerely,



Robert D. Cook
Solicitor General