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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2014-2015

CR-13-1570

Lanice Clifton Bonds

v.

State of Alabama

Appeal from Houston Circuit Court
(CC-13-1728)

PER CURIAM.

Lanice Clifton Bonds pleaded guilty to the charge of being a school employee who engaged in a sex act with a student under the age of 19 years, see § 13A-6-81, Ala. Code 1975. The Houston Circuit Court sentenced Bonds to 10 years'

imprisonment.[1] Bonds appeals his conviction and sentence. We affirm.

In October 2012, Bonds, while on duty as a school-resource officer at Dothan High School, had sex with a 16-year-old female student in his office at the school. In December 2013, Bonds was indicted for violating § 13A-6-81, Ala. Code 1975, which prohibits "a school employee [from] engaging in a sex act ... with a student under the age of 19 years." Bonds filed a motion to dismiss the indictment, alleging that because he was employed by the City of Dothan as a police officer and was paid by the City, he was not a "school employee" as that term is used in § 13A-6-81, Ala. Code 1975.

At a hearing on the motion to dismiss, Bonds presented testimony from several witnesses. Todd Weeks, the director of personnel for Dothan City Schools, testified that Bonds had not been considered an employee of Dothan City Schools; that Bonds had not been paid as a school-resource officer by Dothan City Schools; and that when Weeks was employed as a principal

[1]Bonds was also ordered to pay a $2,500 fine, a $1,000 crime-victims-compensation assessment, court costs, and restitution.

in the school system, school-resource officers were considered employees of the City and were not considered employees of the school. Weeks testified that the school system paid Bonds only if he worked, after regular school hours, providing security for school events.

Anita Walker, principal at Cloverdale Elementary School, testified that Bonds had been a resource officer at her school for two years and that during that time he had been an employee of the police department. Stan Eldridge, principal at Dothan High School, testified that Bonds had been the school-resource officer at the high school, that he had been an employee of the Dothan Police Department at that time, and that he had been paid by the Dothan Police Department.

Delvick McKay, the personnel director for the City of Dothan, testified that the City had paid Bonds as a resource officer. He also stated that school-resource officers were employed by the City of Dothan Police Department and were assigned to schools based on the police chief's recommendation.

Scott Ruddock, an officer with the Dothan Police Department who had been assigned to the school-resource

division for approximately eight years, testified that he was an employee of the Dothan Police Department and that he reported to his sergeant.

Bonds presented as an exhibit a memorandum from the Dothan Chief of Police addressing standard operating procedures for school-resource officers. That memorandum states, in relevant part, that resource officers "are obligated to the Chain of Command of the Dothan Police Department and not to the administration of the school to which they are assigned. However, they will assist the administration whenever possible." The memorandum further provided that resource officers "are first and foremost law enforcement officers. They are not school disciplinarians. In addition to being mentors to the students, [school-resource officers] will enforce the law." Finally, the memorandum states that resource officers would not "be assigned duties within the schools such as, but not limited to, lunchroom duty, bus landing duty, or hall monitor." (C. 85.)

The State presented as an exhibit an agreement between the Dothan Board of Education and the City of Dothan. This document--entitled "Agreement Between the Dothan City Board of

Education and the City of Dothan for the School Resource Officer Program" ("the agreement")--states, in relevant part: "The Dothan Police Department shall furnish law enforcement officers employed by the Department to serve as Police School Resource Officers assigned to public schools in the City of Dothan School District." (C. 77.) The agreement further states:

> "School Resource Officers shall remain employees of the Dothan Police Department and shall not be employees of the Board of Education. The Board of Education and the Police Department acknowledge that the School Resource Officers shall remain responsive to the chain of command of the Dothan Police Department."

(C. 80.)

The State presented testimony from Sgt. Ronnie Anderson, who stated that he was employed by the Dothan Police Department as a supervisor for school-resource officers. Sgt. Anderson testified that resource officers are employed by the police department and are not school employees. He said that if a police officer wants to be assigned to the resource-officer division, he must submit an application when an opening exists and be interviewed. The applicant who is selected is then assigned within the department as a resource

officer, he said. Sgt. Anderson testified that a grant involving the Dothan Board of Education and the City of Dothan was in place that provided that nine Dothan police officers would be assigned to city schools as resource officers. Under the terms of the grant, Sgt. Anderson testified, the City of Dothan paid the salaries of eight officers, and the Board of Education paid the salary of the officer assigned to PASS Academy, which was identified elsewhere in the record as an "alternative school." Finally, he testified that Bonds was not assigned to the PASS Academy.

The circuit court denied Bonds's motion to dismiss. Thereafter, Bonds entered a guilty plea to the charge, reserving his right to appeal the trial court's ruling on the motion to dismiss.

On appeal, Bonds contends that he was not a school employee as that term is used in § 13A-6-81, Ala. Code 1975. He argues, therefore, that the circuit court erred in denying his motion to dismiss.

Because this case presents a purely legal question, our standard of review is de novo. See, e.g., Acra v. State, 105 So. 3d 460, 464 (Ala. Crim. App. 2012). Further, our review of

this case is guided by the following:

> "'"In determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature." DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998).
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> > "'"'Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If 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.'"'
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> "'Blue Cross and Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).'"

Sanders v. State, 145 So. 3d 92, 95-96 (Ala. 2013) (quoting City of Prattville v. Corley, 892 So. 2d 845, 848 (Ala. 2003).

As noted above, Bonds was convicted for a violation of § 13A-6-81, Ala. Code 1975. That section provides, in relevant part:

> "(a) A person commits the crime of a school employee engaging in a sex act or deviant sexual intercourse with a student under the age of 19 years if he or she is a school employee and engages in a sex act or deviant sexual intercourse with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section."

The legislature has not specifically defined "school employee" in the context of § 13A-6-81, but § 13A-6-80 lists persons considered to be "school employees" for purposes of § 13A-6-81. Section 13A-6-80, Ala. Code 1975, provides: "For purposes of this article, school employee includes a teacher, school administrator, student teacher, safety or resource officer, coach, and other school employee" (emphasis added). Bonds concedes that he was a "resource officer." (See, e.g., Bonds's brief, p. 14 ("It cannot be disputed that [Bonds] was a school resource [sic] at Dothan High School ....").) Thus, a simple reading of § 13A-6-80 indicates that, because of his position as a "resource officer" assigned to Dothan High School, Bonds was a "school employee" under § 13A-6-81.

In addition to Bonds's concession that he was a "resource officer," the evidence presented at the hearing on the motion to dismiss consistently refers to Bonds as a resource officer or school-resource officer. Even so, Bonds urges this Court to go beyond the language of the relevant statutes and to construe that language in light of the terms of his particular employment arrangement with the Dothan Police Department. Bonds argues that the evidence from the hearing on the motion

to dismiss established that he was solely an employee of the Dothan Police Department and not of the Dothan Board of Education or Dothan High School. Under Bonds's reading of the relevant statutes, his title as a "resource officer" is irrelevant; rather, the relevant inquiry is whether the school was actually responsible for paying his wages and ultimately had the authority to control his job duties as a resource officer.[2]

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[2]As described above, the evidence Bonds offered in the circuit court in support of his reading of the relevant statutory provisions indicated the following:

- School-resource officers began as employees of the Dothan Police Department and remain employees of the Dothan Police Department;
- The police department assigned police officers to the resource-officer division within the department, and the police chief placed those resource officers in particular schools; and
- Under the agreement between the City and the Board of Education, resource officers remained obligated to their chain of command at the police department and did not report to the Board of Education or the principal of the school to which they were assigned.

We also note, however, that the agreement between the City and the Board of Education includes a provision whereby a school principal may initiate a process to dismiss the resource officer assigned to his or her school. Under this process, the police chief may seek mediation of the dispute, but "[i]f ... the problem cannot be resolved or mediated ... then the School Resource Officer shall be removed from the Program at

The first problem with Bonds's interpretation of the relevant statutes, however, is that, as noted above, his job title--"resource officer"--is specifically included in the list of persons in § 13A-6-80. The phrase "school employee includes" followed by several job titles in § 13A-6-80 indicates a nonexhaustive list of positions the legislature has declared to be "school employees" for purposes of Title 13A, Chapter 6, Article 4a. The examples listed in § 13A-6-80 include positions such as "student teacher" and "coach," which might not meet a traditional test for employment because, depending on the circumstances, those positions might be volunteer, unpaid, or ultimately not controlled by a particular school's administration.[3] Accordingly, § 13A-6-80 is a clear expression by the legislature that the term "school

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the school ...." (C. 81.)

[3]The dissenting opinion cites § 13A-6-83, Ala. Code 1975, in support of its reading of "school employee" in § 13A-6-80. We do not read § 13A-6-83, however, as necessarily limiting or qualifying the nonexhaustive list of positions included as "school employees" in § 13A-6-80. Section 13A-6-80 specifically includes positions--such as "student teacher"--that are not, so far as we are aware, subject to being "placed on paid administrative leave" or subject to disciplinary action under the specific statutory provisions mentioned in § 13A-6-83. Cf. § 16-22-4.1, Ala. Code 1975 (requiring certain insurance coverage for both personnel "employed by a local board of education and student teachers").

employee" in Title 13A, Chapter 6, Article 4a, is not limited to those persons who meet a traditional, technical definition of employment by a school's administration, such as the definition Bonds urges upon this Court.[4] As the Alabama Supreme Court has stated:

> "'In another context, this Court explained that the

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[4]The dissenting opinion states that "[i]n its analysis on this point, the majority has strayed far afield from what it acknowledges is the obligation of this Court -- to look to the plain meaning of the words in a statute." ___ So. 3d at ___ (Welch, J., dissenting). Further, the dissent states:

> "[T]he majority acknowledges that employment has a traditional, i.e., plain, meaning, and then it expands the meaning to such a point that it allows virtually anyone to be placed under the umbrella of school employment, including persons over whom the school has no authority whatsoever. Not only has the majority needlessly defined a term that already has a plain and ordinary meaning, the definition it crafts is unreasonable.
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> "If the legislature had intended to include volunteers and those persons over whom a school's administration had no authority, among others, within the purview of the statute defining school employees, it could have included express language to that effect, but it did not."

Id. Our reading of the statute, however, "look[s] to the plain meaning of the words in [the] statute," including the word "including" and, immediately following that word, the nonexhaustive list of positions the legislature has declared to be "school employees" for purposes of Title 13A, Chapter 6, Article 4a.

> word "'including' is not to be regarded as limitational or restrictive, but merely as a particular specification of something to be included or to constitute a part of some other thing." Sims v. Moore, 288 Ala. 630, 635, 264 So. 2d 484, 487 (1972) (emphasis added). "'Including' is not a word of limitation, rather it is a word of enlargement, and in ordinary significance also may imply that something else has been given beyond the general language which precedes it." Id. (emphasis added)."

Bon Harbor, LLC v. United Bank, 53 So. 3d 82, 93 (Ala. 2010) (quoting Southeastern Meats of Pelham, Inc. v. City of Birmingham, 895 So. 2d 909, 913 (Ala. 2004)). Cf. Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 132 (2012) ("[T]he word include does not ordinarily introduce an exhaustive list ....").

The second problem with Bonds's interpretation is that it renders § 13A-6-80 unnecessary. If a "school employee" is simply a "school employee," we question why the legislature would deem it necessary to provide examples in § 13A-6-80. Cf. § 13A-1-6, Ala. Code 1975 ("All provisions of this title shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law, including the purposes stated in Section 13A-1-3."); see also Hatcher v. Diggs, 76 Ala. 189, 193 (Ala. 1884) ("Some effect must be allowed to every word, or phrase, and such

interpretation adopted, if reasonable, that no word or phrase will be repugnant to any other provision, or be unnecessary and superfluous. Says Lord Coke: 'The good expositor makes every sentence have its operation to suppress all the mischiefs; he gives effect to every word in the statute; he does not construe it so that any thing should be vain and superfluous, nor yet makes exposition against express words.'").

Adopting Bonds's interpretation--and rendering § 13A-6-80 superfluous--would lead to yet another problem: Thwarting a manifest purpose of § 13A-6-81. Section 13A-1-3, Ala. Code 1975, provides: "The general purposes of the provisions of this title are: (1) To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual and/or public interests ...." At a minimum, § 13A-6-81 seeks to prevent those persons holding positions of authority or influence at a school from having sex with students. Here, the evidence indicated that Bonds had been a resource officer at multiple schools. He wore his police uniform to his job at the school and worked at special school

events.[5] He even had an office at the school--where he took the victim in this case and had sex with her on his desk.[6] Bonds's reading of the relevant statutes would thwart their

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[5]In this regard, the "Agreement Between the Dothan City Board of Education and the City of Dothan for the School Resource Officer Program" stated:

> "Police School Resource Officers will reaffirm their roles as law enforcement officers by wearing their uniforms unless doing so would be inappropriate for scheduled school activities. The uniform will also be worn at events where it will enhance the image of the Officers and their ability to perform their duties."

(C. 79.)

[6]The "Agreement Between the Dothan City Board of Education and the City of Dothan for the School Resource Officer Program" required the following:

> "The Board of Education shall provide to the full-time School Resource Officer of each school the following materials and facilities, which are deemed necessary to the performance of the School Resource Officer's duties:
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> "A. Access to an air-conditioned and properly lighted private office, which shall contain a telephone, to be used for general business purposes.
>
> "....
>
> "C. A desk with drawers, a chair, a work table, filing cabinet, and office supplies."

(C. 80.)

purpose, and we reject it. Cf. Scalia & Garner, Reading Law 63 ("A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored. ... The presumption against ineffectiveness ensures that a text's manifest purpose is furthered, not hindered.").

The judgment of the circuit court is affirmed.

AFFIRMED.

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

WELCH, Judge, dissenting.

Lanice Clifton Bonds was convicted following a guilty plea of the charge of being a school employee who engaged in a sex act with a student under the age of 19 years. § 13A-6-81, Ala. Code 1975. Bonds, a Dothan police officer, was on duty as a school-resource officer at Dothan High School when he had sex with a 16-year-old female student in his office. Bonds filed a motion to dismiss the indictment, alleging that, because he was employed by the City of Dothan as a police officer and paid by the City, he was not a "school employee" as that term is used in § 13A-6-81, Ala. Code 1975. When the trial court denied the motion to dismiss, Bond entered a guilty plea and reserved the right to raise the issue on appeal. The majority affirms Bonds's conviction and sentence.

The majority has correctly summarized the evidence presented at the hearing on the motion to dismiss. I agree that this case presents a question of law and that our review is de novo.

The relevant statutes are found in Chapter 6, Article 4A of the Criminal Code, "Sexual Offenses by School Employees Involving a Student."

Section 13A-6-80, Ala. Code 1975, provides:

> "For purposes of this article, school employee includes a teacher, school administrator, student teacher, safety or resource officer, coach, and other school employee."

Section 13A-6-81 provides, in relevant part:

> "(a) A person commits the crime of a school employee engaging in a sex act or deviant sexual intercourse with a student under the age of 19 years if he or she is a school employee and engages in a sex act or deviant sexual intercourse with a student, regardless of whether the student is male or female."

After considering those provisions, the majority holds, that "a simple reading of § 13A-6-80 indicates that, because of his position as a 'resource officer' assigned to Dothan High School, Bonds was a 'school employee' under § 13A-6-81." ___ So. 3d at ___. It is at this point, and for the reasons that follow, that the majority and I part ways.

A. All the evidence presented at the hearing established unequivocally that Bonds was an employee of the Dothan Police Department and not an employee of the Dothan Board of Education. The exhibits submitted by both parties established that school-resource officers began as employees of the Dothan Police Department and that they remain employees of the Dothan Police Department. The police officers are assigned to the

resource-officer division within the department, and they are placed in particular schools by the police chief. By the terms of the agreement between the City of Dothan and the Board of Education, resource officers remained obligated to their chain of command at the police department and do not report to the Board of Education or the principal of the school to which they were assigned. The testimony from witnesses confirmed that the foregoing principles as provided in the documents were applied in practice.

Bonds's assignment as a resource officer to Dothan High School did not somehow convert him from an employee of the police department into a school employee. Without that conversion, which is not supported by a plain reading of the statute, there is no basis for affirming the conviction.

The majority appears to have adopted the line of reasoning propounded by the prosecutor at the hearing on Bonds's motion to dismiss, which was, essentially, that § 13A-6-80 provides that any resource officer performing his or her duties at a school necessarily is a school employee. This argument ignores the plain meaning of the words in the statute, which limit the scope of the statute to school

employees. Section 13A-6-80 gives examples of the categories of school employees who are governed by the statutes, including coaches, teachers, resource officers, and other employees of the school. Section 16-1-44.1(a), Ala. Code 1975, provides: "A local board of education may employ persons as school security personnel or contract with a local chief of police or sheriff to employ school resource officers." Thus, a resource officer employed by the school would be considered a school employee. However, the testimony and documents here established that the Dothan Board of Education did not hire Bonds or any of its resource officers; rather, the Board contracted with the City of Dothan for officers: "The Dothan Police Department shall furnish law enforcement officers employed by the Department to serve as Police School Resource Officers assigned to public schools in the City of Dothan School District." (C. 77.) Bonds was always an employee of the police department, and his assignment to serve as a resource officer at the high school did not change his status as an employee of the police department.

Nonetheless, the majority states that the nonexhaustive

list of employee positions set out in § 13A-6-80 includes positions that "might not meet a traditional test for employment because, depending on the circumstances, those positions might be volunteer, unpaid, or ultimately not controlled by a particular school's administration." ___ So. 3d at ___. Therefore, the majority continues, the term, "school employee" "is not limited to those persons who meet a traditional, technical definition of employment by a school's administration, such as the definition Bonds urges upon this Court." ___ So. 3d at ___. In its analysis on this point, the majority has strayed far afield from what it acknowledges is the obligation of this Court -- to look to the plain meaning of the words in a statute.

When it examines the plain meaning of the words of the statute in the initial portion of its analysis, the majority concludes that "a simple reading of § 13A-6-80 indicates that, because of his position as a 'resource officer' assigned to Dothan High School, Bonds was a 'school employee' under § 13A-6-81," ___ So. 3d at ___ (emphasis added). The majority goes beyond the simple reading of the plain language of the statute and construes the statute in light of the facts of this case.

It is in this unnecessary and impermissible judicial construction that the majority concludes that, when the Alabama Legislature used the term, "school employee," it did not intend to limit the scope of the statute to those who meet the traditional definition of employment. In that passage, alone, the majority acknowledges that employment has a traditional, i.e., plain, meaning, and then it expands the meaning to such a point that it allows virtually anyone to be placed under the umbrella of school employment, including persons over whom a school's administration has no authority whatsoever. Not only has the majority needlessly defined a term that already has a plain and ordinary meaning, but also the definition it crafts is unreasonable.

If the legislature had intended to include, among others, volunteers and those persons over whom the school had no authority within the purview of the statute defining school employees, it could have included express language to that effect, but it did not.

> "It is this Court's responsibility to give effect to the legislative intent whenever that intent is manifested. State v. Union Tank Car Co., 281 Ala. 246, 248, 201 So.2d 402, 403 (1967). When interpreting a statute, this Court must read the statute as a whole because statutory language

> depends on context; we will presume that the Legislature knew the meaning of the words it used when it enacted the statute. Ex parte Jackson, 614 So.2d 405, 406-07 (Ala. 1993). Additionally, when a term is not defined in a statute, the commonly accepted definition of the term should be applied. Republic Steel Corp. v. Horn, 268 Ala. 279, 281, 105 So.2d 446, 447 (1958). Furthermore, we must give the words in a statute their plain, ordinary, and commonly understood meaning, and where plain language is used we must interpret it to mean exactly what it says. Ex parte Shelby County Health Care Auth., 850 So.2d 332 (Ala. 2002)."

Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003).

The majority acts beyond its authority when it reads such language into the statute.

B. The majority fails to give effect to the express limitation in the statute of the persons subject to its prohibition when it states that Bonds's interpretation of the statute would thwart the purpose of the statute because, it says, "[a]t a minimum, § 13A-6-81 seeks to prevent those persons holding positions of authority or influence at a school from having sex with students." ___ So. 3d at ___. Once again, after stating that the words of the statute have a plain meaning, the majority then expands the meaning of the term, "school employee" so broadly that it introduces a level

of vagueness that does not exist in the plain and ordinary words of the statute. Although the majority does not define "positions of authority or influence," it concludes that Bonds was such a person because, it says, he "had been a resource officer at multiple schools. He wore his police uniform to his job at the school and worked at special school events. He even had an office at the school ...." ___ So. 3d ___. Although each of those statements is true, they do not somehow converge in such a way as to indicate that Bonds, an employee of the Dothan Police Department, became an employee of the school. More importantly, the plain words in this statute demonstrate that the Alabama Legislature intended to punish school employees who engage in sexual conduct with students. That purpose is not thwarted when someone who is not a school employee is not prosecuted under the statute.

C. "Because the meaning of statutory language depends on context, a statute is to be read as a whole." Ex parte Jackson, 614 So. 2d 405, 406 (Ala. 1993). However, the majority fails to acknowledge or discuss the final subsection of the statute, § 13A-6-83, Ala. Code 1975, which provides:

> "A school employee charged with the crime of engaging in a sex act or deviant sexual intercourse

> with a student or the crime of having sexual contact with a student may be placed on paid administrative leave while the charge is adjudicated. Upon the adjudication of the charge, further disciplinary action may be taken in accordance with the Teacher Tenure Act, Chapter 24 of Title 16, the Teacher Accountability Act, Chapter 24B of Title 16, or the Fair Dismissal Act, Article 4 of Chapter 26 of Title 36, whichever is applicable."

Disciplinary actions following a charge against a school employee for committing a sex act with a student are governed by school-board policies and by statutes. Here, the police department conducted the investigation of the allegations that Bonds engaged in a sex act with the student, the police department escorted him to his house so that he could retrieve his police-issued equipment and return it to the department, and he was relieved of this departmental duties. If Bonds had been a school employee, he would have been subject to the procedures in § 13A-6-83 instead. Bonds was not disciplined or dismissed by the Board of Education because he was not a school employee.

In summary, under the plain meaning of the statute, Bonds was not a school employee. He should not have been prosecuted under this statute, and the trial court erred when it denied his motion to dismiss. As a result, his conviction should be

reversed. Therefore, I dissent.