

**RECEIVED**

**May 03 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

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Appellate Case No. 2023-000027

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Derek Calhoun and Jacqueline Calhoun ..... *Appellants,*

vs.

State of South Carolina, by and through City of North Myrtle Beach ..... *Respondent.*

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**RECORD ON APPEAL**

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**Wright, Worley, Pope, Ekster & Moss, PLLC**  
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00002

STATE OF SOUTH CAROLINA	)	IN THE MUNICIPAL COURT
CITY OF NORTH MYRTLE BEACH	)	Case Nos. 18514EF, 2022-
City of North Myrtle Beach	)	1850166173 and 20221850166174
versus	)	ORDER
Derek and Jaqueline Calhoun,	)	
Defendants.	)	
_____	)	

On August 3, 2022, this matter came before the Court by affidavits of the Defendants seeking a Change of Venue for these and other similarly situated cases in which they are Defendants. Kenneth Moss, Counsel for the Defendants, asserted a motion was not necessary based on the requirements set out in Section 22-3-920, South Carolina Code of Laws (2015).

For the purposes of the Court's ruling, the Court, *sua sponte*, converted the Defendants' request to a Motion for Change of Venue. Further, the Court consolidated the above captioned cases for the purpose of the Court's ruling with the consent of both the City and the Defendants.

Defendants argued, pursuant to the above referenced code section (22-3-920) they need only file "an affidavit to the effect that (he) does not believe (he) can obtain a fair trial before the magistrate and setting forth the grounds for such a belief, . . ." The Defendants maintained that, although Chapter 3 of Title 22 is entitled "Jurisdiction and Procedure in Magistrates' Courts", the statute also controls Municipal Courts craving reference to Title 14 regarding the jurisdictional limits of Magistrates Courts and Municipal Courts being similar as it relates to criminal actions within their respective courts.

The City, by and through Francis A. Humphries, Jr., City Prosecutor, argued Section 22-3-920 does not apply to Municipal Courts. First, the statute in question, and the entire Title 22, deal specifically with Magistrates Courts and/or Constables. Municipal Courts are not directly referenced within the statute or this title. Second, while a change of venue between Magistrate Courts may be logistically seamless in nature, such a change of venue from Municipal Court is decidedly not. Municipal Courts are courts within a particular political subdivision and not part of the unified Magistrate Court system which operates and has jurisdiction throughout the county (a different political subdivision) in which it is situate. While both Municipal and Magistrate Courts are Summary Courts and have many similarities, they are not within the same political subdivision and the geographical limits of their jurisdiction is vastly different.

00003

After hearing argument from the Defendants and the City, as to preliminary matters, the Court rules in the following manner:

1. Defendants' affidavits requesting a change of venue from the City of North Myrtle Beach Municipal Court is a *de facto* Motion for Change of Venue; and
2. The matters captioned above are consolidated for the purpose of this *de facto* motion and the Court's ruling on the motion.

The Court finds the position of the City persuasive. The Court THEREFORE ORDERS that Defendants' Motion for Change of Venue is DENIED because the relief they seek pursuant to Section 22-3-920, Code of Laws of South Carolina (2015) is not available to them as the statute DOES NOT apply to Municipal Courts, of which the City of North Myrtle Beach Municipal Court is one.

AND IT IS SO ORDERED.

  
HONORABLE DEAN N. MUREDDU  
Judge, City of North Myrtle Beach

August 5, 2022  
North Myrtle Beach, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605002

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Respondent's appeal from the denial of his motion for a change of venue is DENIED. The decision of the municipal court is affirmed. I find that S.C. Code Ann. §22-3-920 does not apply to municipal courts. I further find that Respondent's affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/11/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State  
Of South Carolina  
**Case Number:** 2022CP2605002  
**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

The court's electronic Form 4 order denying Appellants' appeal contained several scrivener's errors. Accordingly, this AMENDED ORDER is being filed. Appellants' appeal from the denial of their motion for a change of venue is DENIED.  
The decision of the municipal court is affirmed. I find that S.C. Code Ann. §22-3-920 does not apply to municipal courts. I further find that Appellants' affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/29/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State  
Of South Carolina  
**Case Number:** 2022CP2605002  
**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605002

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Appellants' Motion for Reconsideration of the Order affirming the decision of the municipal court is DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/29/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State  
Of South Carolina  
**Case Number:** 2022CP2605002  
**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
COUNTY OF HORRY	)	Case No. 2022-CP-26-
	)	
DEREK AND JAQUELINE CALHOUN,	)	
	)	<b>NOTICE OF APPEAL</b>
Appellants,	)	From an Order of the North Myrtle
	)	Beach Municipal Court, the Honorable
vs.	)	Dean Mureddu Presiding in
	)	Case Nos. 18514EF, 2022-1850166173
	)	& 20221850166174
	)	(APPEAL OF ORDER DENYING
STATE OF SOUTH CAROLINA	)	MOTION FOR CHANGE OF VENUE)
by and through the CITY OF	)	
NORTH MYRTLE BEACH,	)	
Respondent.	)	

---

The Appellants Derek and Jaqueline Calhoun, by and through their undersigned attorneys, hereby give notice of appeal from the Order of the North Myrtle Beach Municipal Court, the Honorable Dean Mureddu Presiding, to the Circuit Court of Common Pleas, in the County of Horry.

This notice of appeal is made prior to receiving any written notice of the Order of the North Myrtle Beach Municipal Court, the Honorable Dean Mureddu presiding. The decision and order of the Honorable Dean Mureddu was announced in Court on August 03, 2022, less than thirty days prior to the within Notice of Appeal.

The appellant’s exceptions to the judgment of the magistrate are set forth as follows:

The Court denied Defendants’ timely filed affidavits seeking a change of venue pursuant to SC Code §22-3-920. Oral arguments upon Appellants’ affidavits, which the lower Court treated as defacto motions seeking change of venue, were scheduled before the Honorable Dean Mureddu on August 03, 2022.

The lower Court issued its oral decision from the bench. Appellant has not received any written Order from the Court. Upon information and belief, the Court has not yet issued a written Order.

Appellants are informed and believe the lower Court misapplied the applicable statutory law, namely SC Code §22-3-920, a copy of which is set forth below, Appellants are further informed and believes that their timely filed affidavits seeking change of venue of the trials of their cases imposed a non-discretionary and mandatory obligation that venue for the Appellants' trials would be changed. The Court, however, determined that be below listed SC Code §22-3-920 does not apply to Municipal Courts in South Carolina, of which the City of North Myrtle Beach Municipal Court is one.

**SECTION 22-3-920.** Change of venue.

Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.

Appellant therefore and respectfully request that this Court review the records and decision of the North Myrtle Beach Municipal Court, the Honorable Dean Mureddu presiding, and issue its Order requiring a change of venue for the trials of Appellants' cases.

Respectfully submitted,

**Wright, Worley, Pope,  
Ekster & Moss, PLLC**  
*Attorneys for Appellants*

North Myrtle Beach, SC

*s/ Kenneth R. Moss*

August 05, 2022

---

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Email: KennethMoss@wwpemlaw.com  
RichardSnyder@wwpemlaw.com

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 CITY OF NORTH MYRTLE BEACH )  
 MUNICIPAL COURT, )  
 RESPONDENT )  
 )  
 Versus )  
 )  
 DEREK AND JAQUELIN CALHOUN, )  
 DEFENDANTS )  
 )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO. 2022-CP26-005892  
 NMB Case No. 18514EF, 2022-016173  
 and 20221850166174  
 RETURN OF MUNICIPAL COURT


FILED  
 HORRY COUNTY  
 AUG 10 P 2:36  
 REBECCAH N. HOVIS  
 CLERK OF COURT  
 HORRY COUNTY, SC

On August 5, 2022, the Defendants, Derek and Jaqueline Calhoun, gave Notice of their Intent to Appeal from the judgment of the Municipal Court of North Myrtle Beach, in the above captioned action, to the Court of Common Pleas in the Fifteenth Judicial Circuit, County of Horry.

This appeal flows from the Municipal Court's ruling from the bench on August 3, 2022, where the Court denied Defendant's Motion to Change Venue.

After oral arguments from the Defendants and the City Prosecutor, the Court ruled Defendants were not entitled to a change of venue pursuant to Section 22-3-920, Code of Laws of South Carolina (2015) as the statute does not apply to Municipal Courts and denied the Defendants' motion. The Court held further the Defendants' request for change of venue was a *de facto* motion for change of venue and that the "requests" as to the above referenced matters are consolidated for the purpose of this *de facto* motion and the Court's ruling on the motion. The Court's order on these matters is specifically incorporated by reference and supplements this return.

RESPECTFULLY SUBMITTED,

  
 HONORABLE DEAN N. MUREDDU  
 Municipal Judge, City of North Myrtle Beach

August 8, 2022

STATE OF SOUTH CAROLINA  
**UNIFORM TRAFFIC TICKET**

CITY OR COUNTY OF \_\_\_\_\_ VERSUS

FIRST NAME \_\_\_\_\_ MIDDLE NAME \_\_\_\_\_ LAST NAME \_\_\_\_\_

STREET AND NO. \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

1700 26th Ave North SC 29582

STATE LICENSED \_\_\_\_\_ DRIVER'S LICENSE NO. \_\_\_\_\_ CDL \_\_\_\_\_ DRI. LIC. CLASS \_\_\_\_\_

SC 103071945 YES NO: 0

VEH. LIC. NO. \_\_\_\_\_ STATE \_\_\_\_\_ MAKE OF VEH. \_\_\_\_\_ YEAR \_\_\_\_\_ COMB. VEH. \_\_\_\_\_ AUTO \_\_\_\_\_ NPSGR. VEH. \_\_\_\_\_ COMB. \_\_\_\_\_

HAZ. MT. \_\_\_\_\_ MOPED \_\_\_\_\_ MTRCYCL. \_\_\_\_\_ OTHER \_\_\_\_\_

**YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER**

NAME OF TRIAL OFFICER \_\_\_\_\_ STREET AND NO. \_\_\_\_\_

Call of Court 1014 Second Ave S

DATE OF TRIAL \_\_\_\_\_ TIME OF TRIAL \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_

6/8/03 10:00 am North Myrtle SC

VIOLATION - COURT APPEARANCE REQUIRED YES NO \_\_\_\_\_ VIOLATION SECTION NO. \_\_\_\_\_

Selling leasing goods prohibited 5-15

OWNER OF VEHICLE \_\_\_\_\_ DATE OF ARREST \_\_\_\_\_

ADDRESS OF OWNER \_\_\_\_\_ DATE OF VIOLATION \_\_\_\_\_

07/10

BAIL DEPOSITED \_\_\_\_\_ NAME OF ARRESTING OFFICER \_\_\_\_\_

none Marco T Reed

RACE \_\_\_\_\_ SEX \_\_\_\_\_ BIRTH DATE \_\_\_\_\_ HT. \_\_\_\_\_ HAIR \_\_\_\_\_ WT. \_\_\_\_\_ EYES \_\_\_\_\_

DATE BAIL REC'D. \_\_\_\_\_ BY \_\_\_\_\_

CASE BEFORE \_\_\_\_\_

MAGISTRATE \_\_\_\_\_ JURY COURT \_\_\_\_\_

CIRCUIT COURT \_\_\_\_\_ FAMILY COURT \_\_\_\_\_ FEDERAL COURT \_\_\_\_\_

NAME OF TRIAL OFFICER \_\_\_\_\_ IF DIFFERENT FROM ABOVE \_\_\_\_\_

DEFENDANT: DID NOT APPEAR \_\_\_\_\_ APPEARED \_\_\_\_\_

NOLLE PROSSED \_\_\_\_\_ DISPOSITION \_\_\_\_\_

FORFEITED BOND \_\_\_\_\_ GUILTY \_\_\_\_\_ PLED: NOLLO CONTENDERE \_\_\_\_\_

TRIAL BY: \_\_\_\_\_ TRIAL OFFICER \_\_\_\_\_ JURY \_\_\_\_\_

VERDICT OF TRIAL IF ANY: \_\_\_\_\_ DATE OF TRIAL IF ANY: \_\_\_\_\_

JAIL \_\_\_\_\_ SUSPEND \_\_\_\_\_ FINE \_\_\_\_\_ AMT. COLLECTED \_\_\_\_\_ AMT. SUSPENDED \_\_\_\_\_

COMMITTED TO \_\_\_\_\_ Vehicle Searched \_\_\_\_\_ Arrest as Result of Collision \_\_\_\_\_

CERTIFIED CORRECT \_\_\_\_\_ DATE \_\_\_\_\_

18514 EF

DRIVER'S RECORD COPY

\$500.00

FILED  
Horry County  
2007 AUG 10 P 2:36  
DOCKET NO. 20022017243

VOID  NOTES

00018

Form S-438 Rev. 08/2017

# UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA

VERSUS

CITY OF NORTH MYRTLE BEACH

INCIDENT NO. 2022-017550

AGENCY/TROOP: N MYRTLE BEACH POLICE DEPT

VIOLATOR

FIRST NAME MIDDLE NAME LAST NAME  
DEREK DANIEL CALHOUN

STREET  
1700 26TH AVE. NORTH

CITY STATE ZIP CODE  
NORTH MYRTLE BEACH SC 29582

DL STATE DRIVER'S LICENSE NO. NONE  CLASS CDL  
SC 103071945 D  YES  NO

RACE SEX BIRTH DATE HGT. WGT. HAIR EYES  
W M 05/19/1984 74 230 BLD BRO

VEH LIC NO. NONE  STATE MAKE OF VEH YEAR 16 PSGR. VEH. AUTO BICYCLE COMB. COMM. VEH.  
HAZ. MT. MOPED MTRCYCL. PEDESTRIAN OTHER

VEHICLE OWNER FIRST NAME MIDDLE NAME LAST NAME

OWNER STREET CITY STATE ZIP CODE

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

TRIAL COURT

NAME OF TRIAL COURT 26207 STREET  
NORTH MYRTLE BEACH 1015 2ND AVENUE SOUTH

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE  
08/03/2022 0900 NORTH MYRTLE SC

VIOLATION SECTION NO. VIOLATION - COURT APPEARANCE REQUIRED  
05-24(B) PLACING OBST ON BEACH

DATE OF VIOLATION TIME OF VIOL. SC POINTS B.A. LEVEL REF  
07/03/2022 0752

VIOLATION LOCATION COUNTY  
CTY 27TH AVE N & N OCEAN BLVD 26

LAT LONG CITY  
33.82820 -78.6394 NORTH MYRTLE

NAME AND RANK OF ARRESTING OFFICER SCCJA OFFICER NUMBER  
GILL T C PSO 2583-3403

BAIL DEPOSITED DATE OF ARREST BOND AMOUNT REQUESTED  
CS 07/03/2022 \$500

DATE BAIL REC'D. BY

CASE BEFORE: MAGISTRATE  MUN. COURT  CIRCUIT COURT  FAMILY COURT  FEDERAL COURT   
NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:

TRIAL BY: TRIAL JUDGE  JURY  DEFENDANT: DID NOT APPEAR  APPEARED

DISPOSITION DATE DISPOSITION: NOLLE PROSSED  GUILTY  PLED: NOLLO CONTENDERE   
FORFEITED BOND  NOT GUILTY  DETERMINED BAC:

CHARGE CONVICTED OF SAME AS ORIGINAL  SC POINTS

JAIL SUSPEND FINE AMT. COLLECTED AMT. SUSPENDED COMMITTED TO Vehicle Searched  
NO

CERTIFIED CORRECT DATE Arrest as Result of Collision  
NO

Electronic Copy - Trial Officer / Driver's Record

TICKET # 20221850166173



VOID  NOTES

00019

Form S-438 Rev. 08/2017

# UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA

VERSUS

FIRST NAME MIDDLE NAME LAST NAME  
JACQUELINE CLAIRE CALHOUN

STREET  
1700 26TH AVE NORTH

CITY STATE ZIP CODE  
NORTH MYRTLE BEACH SC 29582

DL STATE DRIVER'S LICENSE NO. NONE  CLASS CDL  
SC 103393408 D  YES  NO

RACE SEX BIRTH DATE HGT. WGT. HAIR EYES  
W F 04/19/1979 66 170 BRO BLU

VEH LIC NO NONE  STATE MAKE OF VEH YEAR 16 PSGR. VEH. AUTO BICYCLE COMM. VEH.  
HAZ. MT. MOPED MTRCYCL. PEDESTRIAN OTHER

VEHICLE OWNER FIRST NAME MIDDLE NAME LAST NAME

OWNER STREET CITY STATE ZIP CODE

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT 26207 STREET  
NORTH MYRTLE BEACH 1015 2ND AVENUE SOUTH

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE  
08/03/2022 0900 NORTH MYRTLE SC 29582

VIOLATION SECTION NO. VIOLATION - COURT APPEARANCE REQUIRED (YES) NO  
5-24(B) PLACING OBST ON BEACH

DATE OF VIOLATION TIME OF VIOL. SC POINTS B.A. LEVEL REF  
07/06/2022 0814

VIOLATION LOCATION COUNTY  
CTY 42ND AVE N & N OCEAN BLVD 26

LAT LONG CITY  
33.83218 -78.6269 NORTH MYRTLE

NAME AND RANK OF ARRESTING OFFICER SCCJA OFFICER NUMBER  
GILL T C PSO 2583-3403

BAIL DEPOSITED DATE OF ARREST BOND AMOUNT REQUESTED  
CS 07/06/2022 \$500

DATE BAIL REC'D. BY

CASE BEFORE: MAGISTRATE  MUN. COURT  CIRCUIT COURT  FAMILY COURT  FEDERAL COURT   
NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:

TRIAL BY: TRIAL JUDGE  JURY  DEFENDANT: DID NOT APPEAR  APPEARED

DISPOSITION DATE DISPOSITION: NOLLE PROSSED  GUILTY  PLED: NOLO CONTENDERE   
FORFEITED BOND  NOT GUILTY  DETERMINED BAC:

CHARGE CONVICTED OF SAME AS ORIGINAL  SC POINTS

JAIL SUSPEND FINE AMT. COLLECTED AMT. SUSPENDED COMMITTED TO Vehicle Searched  
NO

CERTIFIED CORRECT DATE Arrest as Result of Collision  
NO

Electronic Copy - Trial Officer / Driver's Record TICKET # 20221850166174



VIOLATOR  
VEHICLE  
TRIAL COURT  
VIOLATION  
OFFICER  
ARREST  
COURT INFORMATION

CITY OF NORTH MYRTLE BEACH INCIDENT NO. 2022-017984 AGENCY/TROOP: N MYRTLE BEACH POLICE DEPT

COPY

REMOVED FROM PUBLIC RECORDS  
N. ELMVIEW COURT  
NORTH MYRTLE BEACH, SC 29582

STATE OF SOUTH CAROLINA	)	IN THE FIFTEENTH JUDICIAL CIRCUIT
	)	COURT OF COMMON PLEAS
COUNTY OF HORRY	)	CASE NO: 2022-CP-26-05002
	)	
Derek and Jacqueline Calhoun,	)	
	)	
Appellants,	)	<b>PLAINTIFF’S NOTICE OF MOTION &amp;</b>
	)	<b>MOTION TO RECONSIDER</b>
v.	)	<b>ORDER OF DECEMBER 12, 2022</b>
	)	<b>DISMISSING APPELLANTS’ APPEAL</b>
State of South Carolina by and	)	
through the City of North Myrtle	)	
Beach,	)	
Respondent,	)	
_____	)	

**TO: RESPONDENT AND ITS COUNSEL:**

PLEASE TAKE NOTICE that on the tenth day hereafter, or as soon thereafter as is convenient for the Court, the Appellant, by and through its undersigned attorneys, will move before the Court of Common Pleas for Horry County, at a time to be set more than ten (10) days after this Notice, pursuant to Rules 59 and 60, *South Carolina Rules of Civil Procedure*, to reconsider this Court’s Order dated and filed on December 12, 2022. A copy of said Oder is attached hereto and incorporated herein as Exhibit A.

**PROCEDURAL POSTURE**

This action is before this Court on appeal from the from an Order of the North Myrtle Beach Municipal Court, the Honorable Dean Mureddu Presiding in Case Nos. 18514EF, 2022-1850166173 & 20221850166174, in which Appellants’ Motions for Change of Venue pursuant to S.C. Code Ann. § 22-3-920 were denied. The lower Court denied Appellants’ timely filed affidavits seeking a change of venue pursuant to SC Code §22-3-920. Oral arguments upon Appellants’ affidavits, which the lower Court treated as defacto motions seeking change of venue,

were scheduled and heard before the Honorable Dean Mureddu on August 03, 2022. The lower Court issued its oral decision denying said motions from the bench. Appellants have not received a written Order from the Court and, upon information and belief, the lower Court to date has not issued a written Order. It is also particularly noteworthy that the very same lower Court has taken inconsistent positions as to its duty to change venue under § 22-3-920 and the statutes applicability to municipal courts.

Appellants timely filed a Notice of Appeal on August 5, 2022. On December 1, 2022 this Court heard oral arguments on this Appeal from the parties and their respective counsel. Also, before this Court were Exhibits and Affidavits filed by Appellants in support of their Motion for Change of Venue and this Appeal (attached and incorporated herein as “Exhibit B” & “Exhibit C”). After oral argument, on December 5, 2022, the Honorable Judge Kristi Curtis issued a Form 4 Order taking the matter under advisement. Then on December 12, 2022 the Honorable Judge Kristi Curtis issued a Form 4 Order dismissing Appellants’ appeal and affirming the lower Court’s Order. Exhibit A. Specifically, Judge Curtis made the following findings “Respondent's appeal from the denial of his motion for a change of venue is DENIED. The decision of the municipal court is affirmed. I find that S.C. Code Ann. §22-3-920 does not apply to municipal courts. I further find that Respondent's affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.” Exhibit A. Now come the Appellants moving for reconsideration and clarification of the December 12, 2022 Form 4 Order issued by Judge Curtis.

### **ARGUMENT**

In support of the within motion, the undersigned would show and allege that the specific findings made by this Court in the December 12, 2022 Form 4 Order were erroneous and in

contradiction of the statutory and common law of the State of South Carolina. Based on the foregoing and below Appellants respectfully ask this Court to reconsider its Form 4 Order dated December 12, 2022 dismissing this appeal.

As an initial matter the findings made in the Form 4 Order dated December 12, 2022 issued by Judge Curtis apply to the Respondent and not the Appellants. Said Order states “ Respondent's appeal from the denial of his motion for a change of venue is DENIED.” Exhibit A. This appears to be a scrivener’s error as the Appellants in this mater appealed the lower Courts denial of their motion for change of venue, not Respondent. Also, the Form 4 Order states “I further find that Respondent's affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.” Exhibit A. Again, the Form 4 Order is erroneous on its face as the Appellants in this matter are who filed the said affidavits in support of their motion for a change of venue. In addition, said Order also contains a ruling that the affidavits submitted are insufficient for disqualification of the municipal judge. It was improper for this Court to rule on disqualification of the municipal judge because it was not properly before this Court. Appellants did not argue, brief, or offer any evidence for the municipal judge to be disqualified and thus it is in error for this Court to make a ruling on an argument that was not before the Court. Respectfully, Appellants are informed and believe that this Court should reconsider and clarify its findings to identify the proper parties as to which the findings are made against.

Despite the error as to the parties sated in the preceding paragraph, Appellants further believe that the findings as seen in Exhibit A are in contradiction of South Carolina statutory and common law. S.C. Code Ann. § 22-3-920 states “Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to

apply for a change of venue or (b) **the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons.** But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.” (Bold for Emphasis Added).

It is well settled law in South Carolina that “when a party under the foregoing statutory provision has complied fully with its requirements, such party has the right to demand a change of venue therein secured; in other words, it is mandatory upon the magistrate to change the venue, and not discretionary. The statutory provision is mandatory upon all.” Bacot v. Deas, 67 S.C. 245, 45 S.E. 171 (S.C. 1903). An affidavit is sufficient and complies with § 22-3-920 if the facts stated within it were false, then the affidavit would form the basis for an indictment of perjury. See. State v. Barnett, 98 S.C. 422, 82 S.E. 795, 797 (1914); see also State v. Conkle, 64 S.C. 371, 42 S.E. 173 (1902). Therefore, if a Defendant submits an affidavit in support of a motion for change of venue that sets forth factual allegations, that if false would form a basis for perjury, then the affidavit is sufficient, and the judge must grant the motion. State v. Barnett, 98 S.C. 422, 82 S.E. 795, 797 (1914).

Furthermore, there is a plethora of authority in South Carolina that supports the Appellants’ position that § 22-3-920 applies to municipal courts and judges the same as it does magistrates. S.C. Code Ann. § 14-25-45 states “Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. **The court shall also have**

**all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates.** The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.” (Bold for Emphasis Added). The South Carolina Judicial Department has further stated in the Summary Court Bench Book that “ The powers and duties of a municipal judge are the same as those of a magistrate....” South Carolina Summary Court Bench Book, Section A(2)(g). Specifically, the Office of the Attorney General has opined that other provisions of Title 22 Chapter 3 apply to municipal Judges, “As for arrest warrants, § 22-3-710 provides that ‘[a]ll proceedings before magistrates in criminal cases shall be commenced under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.’ **This section applies to municipal judges as well. See § 14-25-45 ('Each municipal court shall ... have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates')**.” (Bold for Emphasis Added) Opinion as to whether a municipal judge may sign arrest and search warrants at his or her residence which is located outside the boundaries of the municipality over which he or she has jurisdiction. (South Carolina Office of the Attorney General, 2013). Again, in applying a provision of Title 22 Chapter 3 the Attorney General opined that “ In light of the common law and statutory rule that municipal judges have the same duties and follow the same practices prescribed for magistrates in criminal cases, we advise municipal judges to ensure that witness testimony is taken in a manner consistent with section 22-3-790 in all cases where the right to use the services of a court reporter has not been exercised by either party pursuant to section 14-25-195.” Opinion concerning the right of an individual who receives a judgment or sentence in municipal court to obtain a transcript or tape recording of the proceeding for purposes of an appeal. (South Carolina Office of the Attorney General, 2012).

Once again, the Attorney General states that the limitation on the amount of community service that magistrate may impose on a suspended sentence under § 22-3-800 is applicable to municipal judges. Specifically, “While this limitation does not appear in Section 14-25-75 which grants municipal court judges the power to impose conditions on suspended sentences, Section 14-25-45 provides that “[t]he [municipal] court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates.” This Office has previously opined that constraints placed upon the sentencing powers of magistrates are also applicable to municipal court judges as the result of the provisions of Section 14-25-45. See OP. ATTY. GEN. DATED MARCH 27, 1995. Therefore, it would be the opinion of this Office that the constraints of Section 22-3-800 regarding community service hours are also applicable to municipal court judges.” Opinion requesting “...the opinion of the SC Attorney General on the maximum time limitation that a municipal court judge can impose conditions on suspended sentences.” (South Carolina Office of the Attorney General, 2002). As further clarified by the Attorney General, “Section 22-3-930..... Such provision is applicable to criminal and civil cases before a magistrate. Such provision is also applicable to municipal court judges inasmuch as S.C. Code Ann. § 14-25-45 states that the municipal court “...shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates.” Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006).

South Carolina common law further solidifies that § 22-3-920 applies to municipal judges the same as it does magistrates, due to § 14-25-45. The Supreme Court of South Carolina implicitly

held that a motion for change of venue (ie. § 22-3-920) applies to municipal judges in the case of City of Sumter v. Owens, 188 S.E. 192, 181 S.C. 540 (S.C. 1936). In the City of Sumter case the Supreme Court heard arguments as to the sufficiency of the affidavit submitted in support of the Defendant's motion for change of venue based on his belief that he could not obtain a fair trial. The Supreme Court in City of Sumter ruled that the affidavit in that case was insufficient as it did not have factual allegations. Thereby the Supreme Court essentially held that a motion to change venue under § 22-3-920 applies to municipal courts and judges.

Here, it is clear from the extensive authority cited in the preceding paragraphs that § 22-3-920 applies to municipal courts and judges the same as it does magistrates by operation of § 14-25-45. The Supreme Court of South Carolina settled this issue in 1936 in City of Sumter v. Owens, by ruling on an appeal from the City of Sumter's Municipal Court in which its Municipal Judge denied a Defendant's motion for change of venue based on the sufficiency of the Defendant's affidavit in support of said motion. The South Carolina Attorney General has further enshrined the Supreme Court's holding by issuing numerous opinions that the powers and duties under Title 22 Chapter 3 of the South Carolina Code of Laws apply to municipal judges the same as it does magistrates. Specifically, the Attorney General has opined that Sections 22-3-930, 22-3-800, 22-3-790, and 22-3-710 all apply to municipal courts by operation of § 14-25-45. Respectfully, the lower Court nor this Court have provided any authority to support their findings that § 22-3-920 does not apply to municipal courts or judges. The lower Court simply made an oral ruling from the bench and this Court simply provided a Form 4 Order stating that said section does not apply to municipal courts and judges. Therefore, Appellants respectfully request this Court reconsider its Order dated December 12, 2022, based on the overwhelming weight of the authority in support of Appellants' position that § 22-3-920 applies to municipal courts and judges.

In addition, it is clear from the record in this case, as well as the statutory and common law of South Carolina that Appellants filed sufficient affidavits in support of their motion for change of venue. The law requires that the Defendant moving for change of venue must submit an affidavit alleging facts as to why he/she may not obtain a fair trial and the facts contained therein, if false, would support a basis for perjury. It is further settled that when a sufficient affidavit is filed it is mandatory that the magistrate or municipal judge must grant the motion to change venue. Here, Appellants have clearly filed affidavits with facts that, if false, would form a basis for perjury. Here, Appellants filed affidavits in support of their motion for change of venue, in which they allege that “that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us...” Exhibit C, ¶ 5. Appellants further alleged “based upon my direct conversations with Public Safety officers of North Myrtle Beach and with the City Attorney for North Myrtle Beach that the City Attorney was directly involved in the decision to issue me a citation and was personally involved in giving either direct or relayed orders to North Myrtle Beach Public Safety personnel because stopping my company and I were a ‘top priority for the city’.” Exhibit C ¶ 6.

Here, it is clear that if Appellants allegations, that based on their direct conversations with Public Safety Officers of the City of North Myrtle Beach and the City Attorney that stopping their company was a top priority, were false, then they said statements could form a basis for perjury. Furthermore, if Appellants factual allegations that the Mayor and City Attorney have taken a personal interest in their case were false, said allegations could form a basis for perjury. Therefore, it is clear from the Appellants’ affidavits in support of their motions for change of venue that the factual allegations contained therein are sufficient to comply with § 22-3-920 and thus it is mandatory for the municipal judge to grant the motion.

**CONCLUSION**

For all the foregoing reasons, Appellants respectfully moves that the Court reconsider its Order dated December 12, 2022.

**Wright, Worley, Pope, Ekster & Moss, PLLC**  
*Attorneys for the Appellants*

December 21, 2022  
N. Myrtle Beach, SC

*s/ Kenneth R. Moss*

---

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STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605002

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Respondent's appeal from the denial of his motion for a change of venue is DENIED. The decision of the municipal court is affirmed. I find that S.C. Code Ann. §22-3-920 does not apply to municipal courts. I further find that Respondent's affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/11/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State  
Of South Carolina  
**Case Number:** 2022CP2605002  
**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

SC Code 22-3-920 Change of venue (South Carolina Code of Laws  
(2019 Edition))

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SECTION 22-3-920. Change of venue.

Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.

HISTORY: 1962 Code Section 43-131; 1952 Code Section 43-131; 1942 Code Sections 274, 946; 1932 Code Sections 274, 946; Civ. P. '22 Section 230; Cr. P. '22 Section 42; Civ. P. '12 Section 97; Cr. C. '12 Section 42; Civ. P. '02 Section 88; Cr. C. '02 Section 33; R. S. 29; 1887 (19) 787; 1896 (22) 12, 13.

**SECTION 14-25-45.** Powers, duties, and jurisdiction of municipal courts.

Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

HISTORY: 1980 Act No. 480, eff January 1, 1981.

Editor's Note

This section contains provisions dealing with matters formerly dealt with by Section 14-25-970.

offense driving under suspension (S.C. Code Ann. §56-1-460(d); and forgery, no dollar amount involved (S.C. Code Ann. § 16-13-10(C)). In addition, S.C. Code Ann. § 22-3-545 provides that magistrates may hear cases transferred from general sessions, the penalty for which does not exceed one year imprisonment or a fine of \$5,500, or both, upon petition by the solicitor and agreement by the defendant. Magistrates have civil jurisdiction when the amount in controversy does not exceed \$7,500. (S.C. Code Ann. § 22-3-10). In addition, magistrates are responsible for setting bail, conducting preliminary hearings, and issuing arrest and search warrants. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrate courts are summary. (S.C. Code Ann. § 22-3-730).

#### **g. The Municipal Courts**

The council of each municipality may establish, by ordinance, a municipal court to hear and determine all cases within its jurisdiction. Such courts are part of the unified judicial system. It should be noted, however, that a municipality may, upon prior agreement with county governing body, prosecute its cases in magistrate court, in lieu of establishing its own municipal court. In addition, the council may establish, by ordinance, a municipal court, and contract with the county governing authority for the services of a magistrate to serve as its municipal judge. The Chief Justice, pursuant to his/her powers as administrative head of the unified judicial system, would, in turn, delegate authority to the Chief Summary Court Judge of the county to assign a specific magistrate as municipal judge.

Municipal courts have jurisdiction over cases arising under ordinances of the municipality, and over all offenses which are subject to a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both, and which occur within the municipality. Some traffic and criminal statutes grant the summary courts greater jurisdiction. These statutes will specify that the magistrate court can try cases with a higher penalty provision. Examples include, but are not limited to, domestic violence third degree (S.C. Code Ann. § 16-25-20(D)(1); third offense driving under suspension (S.C. Code Ann. §56-1-460(d); and forgery, no dollar amount involved (S.C. Code Ann. § 16-13-10(C)). In addition, S.C. Code Ann. § 22-3-545 provides that municipal courts may hear cases transferred from general sessions, the penalty for which does not exceed one year imprisonment or a fine of \$5,500, or both, upon petition by the solicitor and agreement by the defendant. **The powers and duties of a municipal judge are the same as those of a magistrate, with regard to criminal matters; however, municipal courts have no civil jurisdiction.**

The term of a municipal judge is set by the council of the municipality, but cannot exceed four years. Municipal Judges appointed on or after May 24, 2004, must be appointed for a set term of not less than two years but not more than four years. Section 14-25-15(A) states, "Each municipal judge must be appointed by the council to serve for a term set by the council of not less than two years but not more than four years and until his successor is appointed and qualified. His compensation must be fixed by the council."

**Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006)**

**Office of the Attorney General, State of South Carolina**

**March 15, 2006**

The Honorable B. Lee Miller  
Municipal Court  
Post Office Box 40  
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you referenced the following situation:

An individual, who resides in another county in South Carolina, is visiting Greenwood and is a witness to a crime within the city limits of Greenwood. A subpoena is issued to the individual pursuant to S.C. Code Ann. § 22-3-930 prior to the individual returning to his home county.

You have asked whether if the individual fails to appear in court, can a rule to show cause be issued? If a rule to show cause is issued and properly served on the individual who resides in another county, if that individual fails to appear pursuant to the subpoena, can a bench warrant be issued for contempt?

Section 22-3-930 states:

Any magistrate, on the application of a party to a cause pending before the magistrate, must issue a summons citing any person whose testimony may be required in the cause and who resides in the county to appear before the magistrate at a certain time and place to give evidence. This summons must be served in a manner such that it is received by the witness at least one day before his attendance is required. If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550. (emphasis added).



**Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006)**

Such provision is applicable to criminal and civil cases before a magistrate. Such provision is also applicable to municipal court judges inasmuch as S.C. Code Ann. § 14-25-45 states that the municipal court "...shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates."

In interpreting Section 22-3-930, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Pursuant to Section 22-3-930, a municipal judge may only issue a subpoena to an individual "who resides in the county" to appear in court and testify. In my opinion, such provision would be inapplicable to an individual who resides in another county and is merely visiting the county from which the subpoena is issued. A prior opinion of this office dated June 10, 1980 construed Section 22-3-920 to conclude that magistrates "do not have wide powers to compel testimony" and would not have the authority to subpoena a state agency outside their county.

Therefore, in my opinion, a municipal judge would not be authorized to issue a rule to show cause to an individual who resides in a county other than that of the municipal judge and who fails to appear in court pursuant to a subpoena issued by that municipal judge. Therefore, it would be improper to issue a bench warrant in such circumstances.

Sincerely,

/s/

Charles H.  
Senior Assistant Attorney General

Richardson

REVIEWED AND APPROVED BY:



**Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006)**

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/s/ \_\_\_\_\_

Robert  
Assistant Deputy Attorney General

D.

Cook

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NMB MUNICIPAL COURT

STATE OF SOUTH CAROLINA )  
)  
)  
COUNTY OF HORRY )  
)  
)  
STATE OF SOUTH CAROLINA, )  
)  
)  
vs. )  
)  
)  
Derek Daniel Calhoun, )  
)  
)  
Defendant, )  
\_\_\_\_\_ )

IN NORTH MYRTLE BEACH  
MUNICIPAL COURT  
CRIMINAL ACTION No. 18514EF  
**AFFIDAVIT OF DEFENDANT IN  
SUPPORT OF MOTION  
TO CHANGE VENUE**

PERSONALLY APPEARED BEFORE ME, the undersigned, Derek Daniel Calhoun, who being duly sworn, deposed and stated as follows:

1. I am Derek Daniel Calhoun; I am over the age of eighteen (18) years; and I am competent to make the within affidavit.
2. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.
3. Those other matters stated herein are matters of which I have personal knowledge.
4. I have given this affidavit in support of my motion seeking a change of venue for the trial of my case.
5. My motion is based upon my belief that a fair and impartial trial cannot be had in the North Myrtle Beach Municipal Court, where both the presiding judge and the prosecutor assigned to my case are employed by the City of North Myrtle Beach.
6. I am informed and believe that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us and also my conversations with others.
7. I am informed and believe, based upon my direct conversations with Public Safety officers of North Myrtle Beach and with the City Attorney for North Myrtle Beach that the City Attorney was directly involved in the decision to issue me a citation and was personally involved in giving either direct or relayed orders to North Myrtle Beach Public Safety personnel because stopping my company and I were a "top priority for the city."

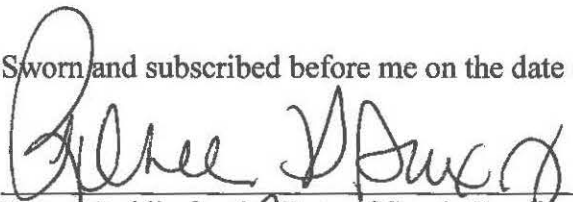
- 8. I am informed and believe that I cannot receive a fair and impartial trial of my case in the North Myrtle Beach Municipal Court.
- 9. I am informed and believe that pursuant to SC Code § 22-3-920 this Court is obliged to transfer my case and all documentation to the nearest magistrate not disqualified from hearing the case.

**Further Affiant sayeth naught.**

July 19, 2022

  
 \_\_\_\_\_  
 Derek Daniel Calhoun

Sworn and subscribed before me on the date above written

  
 \_\_\_\_\_  
 Notary Public for the State of South Carolina  
 Printed Name: Renee A Bayley  
 My Commission expires: 12-18-27

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF HORRY )  
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 STATE OF SOUTH CAROLINA, )  
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 )  
 vs. )  
 )  
 Derek Daniel Calhoun, )  
 )  
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 Defendant, )  
 )  
 \_\_\_\_\_ )

IN NORTH MYRTLE BEACH  
 MUNICIPAL COURT  
 CRIMINAL ACTION No. 20221850166173  
**AFFIDAVIT OF DEFENDANT IN  
 SUPPORT OF MOTION  
 TO CHANGE VENUE**

**FILED**  
 JUL 20 2022

NMB MUNICIPAL COURT

PERSONALLY APPEARED BEFORE ME, the undersigned, Derek Daniel Calhoun, who being duly sworn, deposed and stated as follows:

1. I am Derek Daniel Calhoun; I am over the age of eighteen (18) years; and I am competent to make the within affidavit.
2. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.
3. Those other matters stated herein are matters of which I have personal knowledge.
4. I have given this affidavit in support of my motion seeking a change of venue for the trial of my case.
5. My motion is based upon my belief that a fair and impartial trial cannot be had in the North Myrtle Beach Municipal Court, where both the presiding judge and the prosecutor assigned to my case are employed by the City of North Myrtle Beach.
6. I am informed and believe that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us and also my conversations with others.
7. I am informed and believe, based upon my direct conversations with Public Safety officers of North Myrtle Beach and with the City Attorney for North Myrtle Beach that the City Attorney was directly involved in the decision to issue me a citation and was personally involved in giving either direct or relayed orders to North Myrtle Beach Public Safety personnel because stopping my company and I were a "top priority for the city."

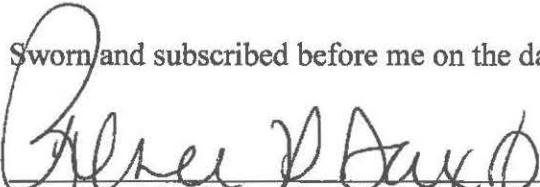
- 8. I am informed and believe that I cannot receive a fair and impartial trial of my case in the North Myrtle Beach Municipal Court.
- 9. I am informed and believe that pursuant to SC Code § 22-3-920 this Court is obliged to transfer my case and all documentation to the nearest magistrate not disqualified from hearing the case.

**Further Affiant sayeth naught.**

July 19, 2022

  
 \_\_\_\_\_  
 Derek Daniel Calhoun

Sworn and subscribed before me on the date above written

  
 \_\_\_\_\_  
 Notary Public for the State of South Carolina  
 Printed Name: Renee N. Baxley  
 My Commission expires: 12-18-27

STATE OF SOUTH CAROLINA )  
 )  
 )  
 COUNTY OF HORRY )  
 )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 vs. )  
 )  
 )  
 Jacqueline Claire Calhoun, )  
 )  
 )  
 Defendant, )  
 \_\_\_\_\_ )

IN NORTH MYRTLE BEACH  
 MUNICIPAL COURT  
 CRIMINAL ACTION No. 20221850166174  
 AFFIDAVIT OF DEFENDANT IN  
 SUPPORT OF MOTION  
 TO CHANGE VENUE

**FILED**  
 JUL 20 2022

**NMB MUNICIPAL COURT**

PERSONALLY APPEARED BEFORE ME, the undersigned, Jacqueline Claire, who being duly sworn, deposed and stated as follows:

1. I am Jacqueline Claire; I am over the age of eighteen (18) years; and I am competent to make the within affidavit.
2. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.
3. Those other matters stated herein are matters of which I have personal knowledge.
4. I have given this affidavit in support of my motion seeking a change of venue for the trial of my case.
5. My motion is based upon my belief that a fair and impartial trial cannot be had in the North Myrtle Beach Municipal Court, where both the presiding judge and the prosecutor assigned to my case are employed by the City of North Myrtle Beach.
6. I am informed and believe that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us and also my conversations with others.
7. I am informed and believe, based upon my direct conversations with Public Safety officers of North Myrtle Beach and with the City Attorney for North Myrtle Beach that the City Attorney was directly involved in the decision to issue me a citation and was personally involved in giving either direct or relayed orders to North Myrtle Beach Public Safety personnel because stopping my company and I were a "top priority for the city."

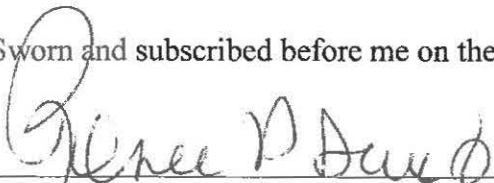
- 8. I am informed and believe that I cannot receive a fair and impartial trial of my case in the North Myrtle Beach Municipal Court.
- 9. I am informed and believe that pursuant to SC Code § 22-3-920 this Court is obliged to transfer my case and all documentation to the nearest magistrate not disqualified from hearing the case.

**Further Affiant sayeth naught.**

July 19, 2022

  
 \_\_\_\_\_  
 Jacqueline Claire Calhoun

Sworn and subscribed before me on the date above written

  
 \_\_\_\_\_  
 Notary Public for the State of South Carolina  
 Printed Name: Renee N Bayley  
 My Commission expires: 12-18-27

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

\_\_\_\_\_  
APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

\_\_\_\_\_  
Case No. 2022-CP-26-05002  
\_\_\_\_\_

Derek Calhoun and Jacqueline Calhoun,.....Appellants,

vs.

State of South Carolina, by and through City of North Myrtle Beach,.....Respondent.

\_\_\_\_\_  
NOTICE OF APPEAL  
\_\_\_\_\_

Derek Calhoun and Jacqueline Calhoun, by and through their undersigned attorneys, appeal three Form Orders of the Honorable Kristi F. Curtis, the first dated December 12, 2022 denying Appellants’ Motion for Change of Venue and Dismissing the Appeal, the second dated December 29, 2022 denying Appellants’ Motion for Reconsideration ;and the third dated December 29, 2022 amending scrivener’s errors and confirming the denial of Appellants appeal. Copies of the Orders against which this appeal is made are attached hereto as Exhibits A, B, and C respectively, and made part of this Notice by reference.

[Signature Page to Follow]

**Wright, Worley, Pope, Ekster & Moss, PLLC**  
*Attorneys for the Appellant*

*s/Kenneth R. Moss*

January 6, 2023  
North Myrtle Beach, SC

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Kenneth R. Moss, Esquire, SC Bar No. 15520  
Richard L. Snyder, Esquire, SC Bar No. 105192  
628A Sea Mountain Highway  
North Myrtle Beach, SC 29582  
Tel: 843/ 281-9901/ Fax: 843/ 281-9903  
KennethMoss@wwpemlaw.com  
RichardSnyder@wwpemlaw.com

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605002

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Respondent's appeal from the denial of his motion for a change of venue is DENIED. The decision of the municipal court is affirmed. I find that S.C. Code Ann. §22-3-920 does not apply to municipal courts. I further find that Respondent's affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/11/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2022 DECEMBER 12 2:14 PM - HOBBS - COMMON PLEAS - CASE#2022CP2605002



Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State  
Of South Carolina  
**Case Number:** 2022CP2605002  
**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605002

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Appellants' Motion for Reconsideration of the Order affirming the decision of the municipal court is DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/29/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

ELECTRONICALLY FILED - 2022 Dec 29 12:04 PM - Horry - COMMON PLEAS - CASE#2022CP2605002

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2022 Dec 09 12:04 PM - Horry - COMMON PLEAS - CASE#2022CP2605002



Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State Of South Carolina

**Case Number:** 2022CP2605002

**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605002

Derek Calhoun et al  
PLAINTIFF(S)

North Myrtle Beach City Of State Of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

The court's electronic Form 4 order denying Appellants' appeal contained several scrivener's errors. Accordingly, this AMENDED ORDER is being filed. Appellants' appeal from the denial of their motion for a change of venue is DENIED.  
The decision of the municipal court is affirmed. I find that S.C. Code Ann. §22-3-920 does not apply to municipal courts. I further find that Appellants' affidavit submitted to the municipal court does not constitute sufficient grounds for either a change of venue or disqualification of the municipal judge.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/29/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2022 Dec 09 12:40 PM - Horry - COMMON PLEAS - CASE#2022CP2605002



Horry Common Pleas

**Case Caption:** Derek Calhoun , plaintiff, et al VS North Myrtle Beach City Of State  
Of South Carolina  
**Case Number:** 2022CP2605002  
**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

State of South Carolina )  
 ) Court of Common Pleas  
County of Horry ) 2022-CP-26-05002

Derek Calhoun, et al.

v.

Transcript of Record

City of North Myrtle Beach

December 1, 2022  
Sumpter, South Carolina

B E F O R E:

The Honorable Kristi Curtis, Judge.

A P P E A R A N C E S:

Kenneth R. Moss, Esq.  
Attorney for the Plaintiffs

Francis A. Humphries, Jr., Esq.  
Attorney for the Defendant

Erica Wolfe, CDLT-274  
Transcriber



1 THE COURT: The next case on my docket is Derek Calhoun  
2 v. North Myrtle Beach. Looks like Mr. Moss and Mr. Humphries.

3 MR. MOSS: Yes, Your Honor. It's actually --

4 MR. HUMPHRIES: Yes, ma'am.

5 MR. MOSS: It's actually Derek and Jacqueline Calhoun.  
6 There're two parties.

7 THE COURT: I'm sorry. Say that again.

8 MR. MOSS: There are actually two appellants: Derek and  
9 Jacqueline Calhoun.

10 THE COURT: Okay.

11 MR. MOSS: Husband and wife.

12 THE COURT: Oh, am I reading this correctly? This is an  
13 appeal from the denial of a motion to change venue?

14 MR. MOSS: That's correct, Your Honor.

15 THE COURT: And Mr. Moss, you're representing the  
16 appellants?

17 MR. MOSS: Yes, Your Honor.

18 THE COURT: Okay. Glad to hear from you.

19 MR. MOSS: All right. I'll try to make this very quick  
20 in respect of the Court's tight schedule, but the case centers  
21 around code section 22-3-920. And for the benefit of  
22 argument, I'd like to share on my screen. This is a copy of  
23 the statute.

24 And in relevant part, if you're in -- Title 22 is for  
25 magistrates and constables. There's no question that's what

1 the statutory title is. And it doesn't refer expressly to  
2 municipal courts in Title 22, but in Title 22 it does say,  
3 whenever in a case of the court of a magistrate, in relevant  
4 part, the prosecutor or accused in a criminal case can file  
5 with the magistrate issuing the warrant or summons an  
6 affidavit of the effect that he does not believe that he can  
7 get a fair trial, the papers shall -- shall be turned over to  
8 the nearest magistrate not disqualified from hearing the cause  
9 in the county. We believe this statute applies to the North  
10 Myrtle Beach Municipal Court, indeed to all municipal courts.

11 A little bit of history -- in another case that's  
12 unrelated, back in April of 2021, I had a client who was  
13 charged with a citation in North Myrtle Beach. And he filed  
14 the same affidavit that's described in this document, and the  
15 North Myrtle Beach Municipal Court Judge Mureddu decided that  
16 this statute did apply to municipal courts, but he denied the  
17 motion based upon his understanding of the required showing  
18 for a change in venue motion in the Court of General Sessions.

19 We appealed that ruling on behalf of this unrelated  
20 client, and that decision in the municipal court was reversed.  
21 But in 2021, the municipal court took the position that this  
22 did apply to North Myrtle Beach Municipal Court. And at that  
23 time, Attorney Humphries was prosecuting that case before the  
24 municipal court, and he took the position, much like he takes  
25 in this case, that this statute does not apply to municipal

1 courts.

2 Well, in this case, a year later in August of 2022, Judge  
3 Mureddu, for the municipal court, denied the Calhoun's motion,  
4 which really wasn't a motion. It was an affidavit pursuant to  
5 this statute, but he called it a motion. He denied it and  
6 made a finding that this statute does not apply to municipal  
7 courts, because it was in Title 22 and not in Title 14, where  
8 the municipal courts are created.

9 We still submit to the Court in this appeal that this  
10 statute does apply, and for that, I have several authorities.  
11 We don't have a clear case that tells us either way, but we do  
12 have a few things, and --

13 THE COURT: Well, let me ask you, Mr. Moss, was your beef  
14 with a particular magistrate or with that municipality?

15 MR. MOSS: I want to be very clear on this, and I have  
16 been in the Magistrate Court. I do not have a beef with Judge  
17 Mureddu or with Fran Humphries. I've worked with both of them  
18 for many, many years, and they're both very skilled lawyers,  
19 and they both have done this for a lot of decades. But they  
20 both work in North Myrtle Beach municipal government.

21 And in two occasions, one in 2021 and one in 2022, I have  
22 clients who are adverse to the North Myrtle Beach City  
23 Council. And we have reason to believe the North Myrtle Beach  
24 City Council and City Manager have been involved in more than  
25 is appropriate in the criminal prosecutions of these cases.

1 And so for that reason, these are the only two cases where  
2 I've ever had a client assert this statute as the basis for  
3 getting a change in venue from the North Myrtle Beach  
4 Municipal Court.

5 I have a lot of clients that have cases in the North  
6 Myrtle Beach Municipal Court, and again, I have no personal  
7 animosity or concern about these two judges. But I have  
8 clients who suspect interference by city council and city  
9 management in the prosecution of their cases in an  
10 inappropriate way. And they have good reason to believe that,  
11 based upon council witnesses. And so we relied on this  
12 statute to seek a change in venue.

13 In 2021, the Court agreed this applied to municipal  
14 courts. In 2022, the Court decided it does not apply to  
15 municipal courts. The only guidance we've found in  
16 authorities of ours, in Title 14, which is the title that  
17 creates the authority for municipalities to create municipal  
18 courts, it provides in 14-25-45 that the Court -- this is the  
19 municipal court -- shall also have all such powers, duties,  
20 and jurisdiction in criminal cases made under state law and  
21 conferred upon magistrates. And so it does link the  
22 magistrate court to Title 22 in this statute.

23 This statute section out of Title 14 also appears in the  
24 following authority, which is part of the Summary Court Bench  
25 Book published on the S.C. Court's website. And it provides

1 in the Summary Court Bench Book the same thing, --that the  
2 powers and duties of a municipal judge are the same as those  
3 of a magistrate with regard to criminal matters. However,  
4 municipal courts have no civil jurisdiction.

5 We believe these two authorities --

6 THE COURT: Did you submit the affidavit? I don't see  
7 the affidavit.

8 MR. MOSS: We did submit the affidavit to the municipal  
9 court and --

10 THE COURT: I'm talking about in the record on appeal.  
11 Because here's where I'm coming from: My feeling is that, if  
12 you have a specific disqualification that you think a judge  
13 needs to recuse himself or herself or if you have a feeling  
14 that, because of the nature of your particular case, because  
15 of either publicity or something along those lines, that you  
16 are requesting a change of venue, then that's one issue.

17 If you just don't like City of North Myrtle Beach and  
18 don't think you can ever get a fair shake in that  
19 municipality, and so you want all of your cases to be  
20 transferred to another jurisdiction because you think, just  
21 generally, those judges are not amenable to folks when the  
22 City's on the other side, then I don't think that that is a  
23 proper motion for change of venue or for some  
24 disqualification.

25 MR. MOSS: I understand --

1 THE COURT: I guess what I would say is, also, there's  
2 got to be some grounds -- assuming everything you're telling  
3 me -- that this statute applies to municipal courts, there's  
4 got to be some basis, I would think, or cited in the affidavit  
5 as to why you're asking for it. It cannot be that, if I ask  
6 for it to be changed, the fact that I asked means you have to  
7 change it.

8 I mean, I personally --

9 MR. MOSS: In this case --

10 THE COURT: -- have never denied -- if somebody asked me  
11 to recuse myself, I'm out. I generally am not going to try to  
12 split hairs, but there's got to be some basis. And so I just  
13 don't --

14 MR. MOSS: Candidly --

15 THE COURT: -- see the affidavit. In the record that  
16 I've got in front of me, I'm not seeing it.

17 MR. MOSS: Candidly, I have to look and see if it's in  
18 there, but --

19 And also candidly, your analysis of it is very similar to  
20 what Judge Mureddu's analysis was in the 2021 case that was  
21 reversed. And what you're suggesting are common law  
22 principles that we've -- that evolved in the circuit court and  
23 Court of General Sessions, but that is not what Title 22 and  
24 what the relevant statute says.

25 The relevant statute says if the defendant or prosecutor

1 does not believe he can obtain a fair trial before a  
2 magistrate which sets forth the grounds of such belief, the  
3 papers shall be turned over to the nearest magistrate. This  
4 is -- I read this as obligatory. Judge --

5 THE COURT: So if I submit an affidavit and I say I don't  
6 like female judges and I don't think they're going to give me  
7 a fair shake -- I just don't like women, now I've got to send  
8 this case to somewhere else? Or I don't like redheads, or I  
9 just don't like this venue.

10 MR. MOSS: Well, in the strictest meaning --

11 THE COURT: Does that say I've got to transfer your case?

12 MR. MOSS: In the strictest reading of the statute, the  
13 answer would be yes, but those particular circumstances were  
14 not relevant in this case.

15 The affidavits that were submitted by my client provided  
16 expressly that they thought that they couldn't get a fair  
17 trial because of the interference with the city council and  
18 city administration in the prosecution. So that is the reason  
19 that these particular clients have been -- the Calhouns and  
20 one other have felt like they couldn't get a fair trial in  
21 North Myrtle Beach Municipal Court, which is funded and hired  
22 and supervised by the North Myrtle Beach City Council. It  
23 really does erode the respect of these defendants for the  
24 forum.

25 And the way I read 22-3-920, it doesn't require the

1 showing that you would have to make, perhaps, in the Court of  
2 General Sessions. When you look at the other authorities, one  
3 being the Summary Court Bench Book, it provides, in my  
4 opinion, that that statute does apply, because it incorporates  
5 the duties of the municipal judge are the same as those of a  
6 magistrate.

7       When you then go to -- the only other authority I could  
8 find was the opinion of the attorney general from South  
9 Carolina back in '06. And while this attorney general's  
10 opinion is not directly on point with 22-3-920 -- this  
11 attorney general's opinion pertains to 22-3-930, which is  
12 another magistrate court statute that's related to subpoenas  
13 but not to change opinion. But it's in the same title and  
14 chapter as the statute that we're referring to. In this  
15 particular attorney general's opinion, the attorney general  
16 also opined that the provision is also applicable to municipal  
17 courts in as much as S.C. 14-25-45 states municipal courts  
18 shall have all the powers and duties conferred upon  
19 magistrates.

20       So these are the authorities that we think clearly  
21 establish that this statute does apply to municipal courts.  
22 And the particular finding that we appeal in this case is not  
23 whether or not the affidavits were sufficient. The particular  
24 finding in Judge Mureddu's order was that the court therefore  
25 orders the defendant's motion for change of venue is denied

1 because the relief they seek pursuant to 22-3-920 is not  
2 available to them, as the statute does not apply to municipal  
3 courts, of which the City of North Myrtle Beach Municipal  
4 Court is one.

5 So the appeal that we're asserting is the municipal court  
6 has made a finding that this statute does not apply to  
7 municipal courts, when the bench book implies that it does. I  
8 think it expressly states that it does. The attorney  
9 general's opinion from '06 states that it does, and South  
10 Carolina 14-25-45, we believe, states that it does.

11 And that's why we lodged the appeal. And I think that  
12 the specific elements of my clients' affidavit are irrelevant  
13 to the appeal because the municipal court has determined that  
14 the statute doesn't apply to the municipal court.

15 THE COURT: Okay.

16 MR. MOSS: It's a pretty simple issue, and I mean,  
17 there's a lot more to the saga between these parties that's  
18 not relevant. There's district court litigation over in  
19 Florence about legality and constitutionality of ordinances  
20 not relevant to this appeal.

21 But what is relevant is the court's finding that this  
22 statute doesn't apply to municipal courts. We assert that it  
23 does. There's no common law case that tells us definitively.

24 THE COURT: Mr. Moss, I don't see your affidavit anywhere  
25 in the filings. So if you'll take a look while I'm hearing

1 from Mr. Humphries --

2 MR. MOSS: I'll do that.

3 THE COURT: Thank you.

4 All right. Mr. Humphries, yes, sir?

5 MR. HUMPHRIES: Hey. Good afternoon.

6 This statute doesn't apply to municipalities. This  
7 statute or Title 22 makes no direct reference to municipal  
8 courts. None, whatsoever. And the authorities, or what Mr.  
9 Moss says are authorities, that would indicate that this  
10 statute would somehow apply to municipal courts simply says  
11 that they've got the same powers in terms of criminal cases,  
12 in terms of jurisdiction, jurisdiction limits.

13 It says nothing about whether or not this statute is  
14 applicable to municipal courts. If the legislature had  
15 intended for this statute to be applicable to municipal  
16 courts, they would've said so. And there's a good reason for  
17 it.

18 Number one, magistrate courts are within the same  
19 political subdivision. That is the county, right? And cases  
20 can move between these magistrates pretty seamlessly because  
21 they're in a unified system of judges. They're all part of  
22 one political subdivision. Municipalities are a separate  
23 political subdivision altogether.

24 And Judge, I'm with you on the statute. I have a hard  
25 time -- I was in general sessions for a really long time, and

1 we had change-of-venue motions every time I tried a capital  
2 case. I know what the rules are on changing venue. If I saw  
3 this statute, I'd be, that can't possibly be true. But if it  
4 is true, it's true because it's a seamless transfer from one  
5 magistrate to another within the county. It's the same  
6 system. It is not so seamless when it comes to municipalities  
7 because, again, they are a separate political subdivision.  
8 And it is not seamless.

9 This statute doesn't apply. If it did apply, they would  
10 say it applies. So the judge's ruling is correct.

11 Now, the reference to the judge's prior ruling on a  
12 separate case is not instructive here. It's certainly not  
13 precedential. This is the Court's ruling. It does not apply  
14 for the reasons I have given you, and so he's not entitled to  
15 a change of venue based on that statute.

16 The real answer is this: When we get to trial in North  
17 Myrtle Beach, if he can't seat a fair and impartial jury, he's  
18 entitled to a change of venue. But up until that point,  
19 pursuant to the case law and the rules related to change of  
20 venue, he is not.

21 So that's the City's position. We'd ask you to affirm  
22 the municipal court judge.

23 THE COURT: Well, Mr. Humphries, do you have any  
24 objection to Mr. Moss supplementing with the --

25 MR. HUMPHRIES: So I don't. I mean, I've seen the

1 affidavits, and essentially the affidavits say, I don't think  
2 I can get a fair trial, which -- okay.

3       They exist. The judge took those into consideration. He  
4 just simply ruled that that statute -- this particular statute  
5 does not apply to municipal courts. And there are very good  
6 reasons why it shouldn't apply to municipal courts.

7       THE COURT: Mr. Moss? Sir --

8       MR. MOSS: Your Honor, I did not file the affidavits,  
9 evidently. I still don't think they're relevant to the issue  
10 on appeal, but I'll be happy to provide them if Your Honor  
11 would like to see them. And I mean, it's a real simple issue.

12       THE COURT: Well, I mean, it's up to you. It's your  
13 case, so certainly, I'm not going to force you to, but --

14       MR. MOSS: I'm happy to supplement the record --

15       THE COURT: -- I just think it would be relevant.

16       MR. MOSS: -- for the benefit of completeness, but the  
17 issue is whether or not this statute applies to municipal  
18 courts. And I certainly won't mind sending the affidavits.  
19 I'll file them today.

20       And this really doesn't get to the heart of the issue,  
21 but just for the Court's overall knowledge, there are a number  
22 of cases -- there's about 50 citations, because my client's  
23 business was alleged to have violated a city ordinance that  
24 was an amendment to an ordinance that was amended after their  
25 business was created.

1           And so what we did, with the cooperation of Mr. Humphries  
2 and with Judge Mureddu, is we took three of the citations and  
3 he ruled on them. And this appeal was based on three of those  
4 citations. The municipal court's holding in abeyance the  
5 other cases until we get some direction on this. I think  
6 we've worked together very well to present this narrow issue  
7 to the Court for this appeal.

8           And I'll supplement the record, but my reading of the  
9 statute is the grounds are not to be evaluated by the Court  
10 when determining whether or not to change the venue. I read  
11 it as an obligatory statute if the affidavit's filed. But  
12 whether or not the statute applies to municipal court is the  
13 issue to be answered.

14           THE COURT: Okay. Thank you.

15           MR. HUMPHRIES: Thank you.

16           MR. MOSS: Thank you. Would you like me to send those by  
17 email or just e-file them?

18           THE COURT: Mr. Moss, if you would like to e-file them,  
19 that's fine. I'm not ordering you to do it. If you don't  
20 think it's relevant, then I guess that's up to you.

21           MR. MOSS: Very well. Thank you for your time.

22           THE COURT: Thank you.

23           MR. HUMPHRIES: Thank you, Judge.

24           (End of Transcript of Record)

25

CERTIFICATE OF TRANSCRIBER

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State of South Carolina )  
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County of Horry )

I, ERICA WOLFE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 1st day of December 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 4, 2023

*Erica Wolfe*  
Erica Wolfe, CDLT-274  
Transcriber

**FILED**

JUL 20 2022

**NMB MUNICIPAL COURT**

STATE OF SOUTH CAROLINA )  
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 COUNTY OF HORRY )  
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 STATE OF SOUTH CAROLINA, )  
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 vs. )  
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 Derek Daniel Calhoun, )  
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 Defendant, )  
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 \_\_\_\_\_ )

IN NORTH MYRTLE BEACH  
 MUNICIPAL COURT  
 CRIMINAL ACTION No. 18514EF  
 AFFIDAVIT OF DEFENDANT IN  
 SUPPORT OF MOTION  
 TO CHANGE VENUE

ELECTRONICALLY FILED - 2022 Dec 01 5:30 PM - HORRY - COMMON PLEAS - CASE#2022CP2605002

PERSONALLY APPEARED BEFORE ME, the undersigned, Derek Daniel Calhoun, who being duly sworn, deposed and stated as follows:

1. I am Derek Daniel Calhoun; I am over the age of eighteen (18) years; and I am competent to make the within affidavit.
2. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.
3. Those other matters stated herein are matters of which I have personal knowledge.
4. I have given this affidavit in support of my motion seeking a change of venue for the trial of my case.
5. My motion is based upon my belief that a fair and impartial trial cannot be had in the North Myrtle Beach Municipal Court, where both the presiding judge and the prosecutor assigned to my case are employed by the City of North Myrtle Beach.
6. I am informed and believe that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us and also my conversations with others.
7. I am informed and believe, based upon my direct conversations with Public Safety officers of North Myrtle Beach and with the City Attorney for North Myrtle Beach that the City Attorney was directly involved in the decision to issue me a citation and was personally involved in giving either direct or relayed orders to North Myrtle Beach Public Safety personnel because stopping my company and I were a "top priority for the city."

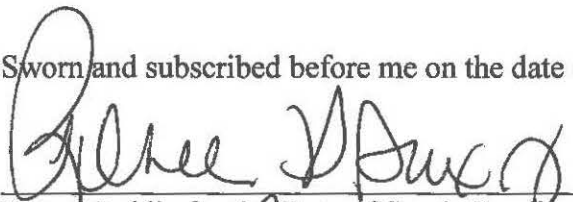
- 8. I am informed and believe that I cannot receive a fair and impartial trial of my case in the North Myrtle Beach Municipal Court.
- 9. I am informed and believe that pursuant to SC Code § 22-3-920 this Court is obliged to transfer my case and all documentation to the nearest magistrate not disqualified from hearing the case.

**Further Affiant sayeth naught.**

July 19, 2022

  
 \_\_\_\_\_  
 Derek Daniel Calhoun

Sworn and subscribed before me on the date above written

  
 \_\_\_\_\_  
 Notary Public for the State of South Carolina  
 Printed Name: Renee A Bayley  
 My Commission expires: 12-18-27

STATE OF SOUTH CAROLINA )  
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 COUNTY OF HORRY )  
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 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 vs. )  
 )  
 Derek Daniel Calhoun, )  
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 )  
 Defendant, )  
 )  
 \_\_\_\_\_ )

IN NORTH MYRTLE BEACH  
 MUNICIPAL COURT  
 CRIMINAL ACTION No. 20221850166173  
**AFFIDAVIT OF DEFENDANT IN  
 SUPPORT OF MOTION  
 TO CHANGE VENUE**

**FILED**  
 JUL 20 2022

**NMB MUNICIPAL COURT**


PERSONALLY APPEARED BEFORE ME, the undersigned, Derek Daniel Calhoun, who being duly sworn, deposed and stated as follows:

1. I am Derek Daniel Calhoun; I am over the age of eighteen (18) years; and I am competent to make the within affidavit.
2. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.
3. Those other matters stated herein are matters of which I have personal knowledge.
4. I have given this affidavit in support of my motion seeking a change of venue for the trial of my case.
5. My motion is based upon my belief that a fair and impartial trial cannot be had in the North Myrtle Beach Municipal Court, where both the presiding judge and the prosecutor assigned to my case are employed by the City of North Myrtle Beach.
6. I am informed and believe that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us and also my conversations with others.
7. I am informed and believe, based upon my direct conversations with Public Safety officers of North Myrtle Beach and with the City Attorney for North Myrtle Beach that the City Attorney was directly involved in the decision to issue me a citation and was personally involved in giving either direct or relayed orders to North Myrtle Beach Public Safety personnel because stopping my company and I were a "top priority for the city."

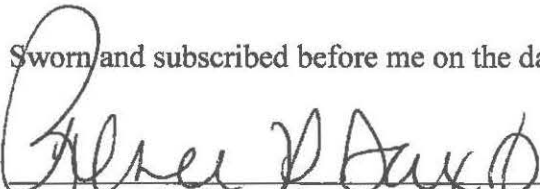
- 8. I am informed and believe that I cannot receive a fair and impartial trial of my case in the North Myrtle Beach Municipal Court.
- 9. I am informed and believe that pursuant to SC Code § 22-3-920 this Court is obliged to transfer my case and all documentation to the nearest magistrate not disqualified from hearing the case.

**Further Affiant sayeth naught.**

July 19, 2022

  
 \_\_\_\_\_  
 Derek Daniel Calhoun

Sworn and subscribed before me on the date above written

  
 \_\_\_\_\_  
 Notary Public for the State of South Carolina  
 Printed Name: Renee N. Baxley  
 My Commission expires: 12-18-27

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 vs. )  
 )  
 Jacqueline Claire Calhoun, )  
 )  
 Defendant, )  
 \_\_\_\_\_ )

IN NORTH MYRTLE BEACH  
 MUNICIPAL COURT  
 CRIMINAL ACTION No. 20221850166174  
 AFFIDAVIT OF DEFENDANT IN  
 SUPPORT OF MOTION  
 TO CHANGE VENUE

**FILED**  
 JUL 20 2022

**NMB MUNICIPAL COURT**

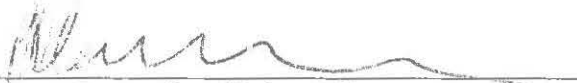
PERSONALLY APPEARED BEFORE ME, the undersigned, Jacqueline Claire, who being duly sworn, deposed and stated as follows:

1. I am Jacqueline Claire; I am over the age of eighteen (18) years; and I am competent to make the within affidavit.
2. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.
3. Those other matters stated herein are matters of which I have personal knowledge.
4. I have given this affidavit in support of my motion seeking a change of venue for the trial of my case.
5. My motion is based upon my belief that a fair and impartial trial cannot be had in the North Myrtle Beach Municipal Court, where both the presiding judge and the prosecutor assigned to my case are employed by the City of North Myrtle Beach.
6. I am informed and believe that the City Attorney and the Mayor of the City of North Myrtle Beach have taken a personal interest in the outcome of my case, as has been indicated to me in direct conversations between us and also my conversations with others.
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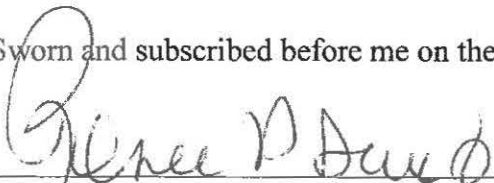
- 8. I am informed and believe that I cannot receive a fair and impartial trial of my case in the North Myrtle Beach Municipal Court.
- 9. I am informed and believe that pursuant to SC Code § 22-3-920 this Court is obliged to transfer my case and all documentation to the nearest magistrate not disqualified from hearing the case.

**Further Affiant sayeth naught.**

July 19, 2022

  
 \_\_\_\_\_  
 Jacqueline Claire Calhoun

Sworn and subscribed before me on the date above written

  
 \_\_\_\_\_  
 Notary Public for the State of South Carolina  
 Printed Name: Renee N Bayley  
 My Commission expires: 12-18-27

SC Code 22-3-920 Change of venue (South Carolina Code of Laws  
(2019 Edition))

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SECTION 22-3-920. Change of venue.

Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.

HISTORY: 1962 Code Section 43-131; 1952 Code Section 43-131; 1942 Code Sections 274, 946; 1932 Code Sections 274, 946; Civ. P. '22 Section 230; Cr. P. '22 Section 42; Civ. P. '12 Section 97; Cr. C. '12 Section 42; Civ. P. '02 Section 88; Cr. C. '02 Section 33; R. S. 29; 1887 (19) 787; 1896 (22) 12, 13.

**SECTION 14-25-45.** Powers, duties, and jurisdiction of municipal courts.

Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

HISTORY: 1980 Act No. 480, eff January 1, 1981.

Editor's Note

This section contains provisions dealing with matters formerly dealt with by Section 14-25-970.

offense driving under suspension (S.C. Code Ann. §56-1-460(d); and forgery, no dollar amount involved (S.C. Code Ann. § 16-13-10(C). In addition, S.C. Code Ann. § 22-3-545 provides that magistrates may hear cases transferred from general sessions, the penalty for which does not exceed one year imprisonment or a fine of \$5,500, or both, upon petition by the solicitor and agreement by the defendant. Magistrates have civil jurisdiction when the amount in controversy does not exceed \$7,500. (S.C. Code Ann. § 22-3-10). In addition, magistrates are responsible for setting bail, conducting preliminary hearings, and issuing arrest and search warrants. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrate courts are summary. (S.C. Code Ann. § 22-3-730).

#### **g. The Municipal Courts**

The council of each municipality may establish, by ordinance, a municipal court to hear and determine all cases within its jurisdiction. Such courts are part of the unified judicial system. It should be noted, however, that a municipality may, upon prior agreement with county governing body, prosecute its cases in magistrate court, in lieu of establishing its own municipal court. In addition, the council may establish, by ordinance, a municipal court, and contract with the county governing authority for the services of a magistrate to serve as its municipal judge. The Chief Justice, pursuant to his/her powers as administrative head of the unified judicial system, would, in turn, delegate authority to the Chief Summary Court Judge of the county to assign a specific magistrate as municipal judge.

Municipal courts have jurisdiction over cases arising under ordinances of the municipality, and over all offenses which are subject to a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both, and which occur within the municipality. Some traffic and criminal statutes grant the summary courts greater jurisdiction. These statutes will specify that the magistrate court can try cases with a higher penalty provision. Examples include, but are not limited to, domestic violence third degree (S.C. Code Ann. § 16-25-20(D)(1); third offense driving under suspension (S.C. Code Ann. §56-1-460(d); and forgery, no dollar amount involved (S.C. Code Ann. § 16-13-10(C). In addition, S.C. Code Ann. § 22-3-545 provides that municipal courts may hear cases transferred from general sessions, the penalty for which does not exceed one year imprisonment or a fine of \$5,500, or both, upon petition by the solicitor and agreement by the defendant. **The powers and duties of a municipal judge are the same as those of a magistrate, with regard to criminal matters; however, municipal courts have no civil jurisdiction.**

The term of a municipal judge is set by the council of the municipality, but cannot exceed four years. Municipal Judges appointed on or after May 24, 2004, must be appointed for a set term of not less than two years but not more than four years. Section 14-25-15(A) states, "Each municipal judge must be appointed by the council to serve for a term set by the council of not less than two years but not more than four years and until his successor is appointed and qualified. His compensation must be fixed by the council."

**Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006)**

**Office of the Attorney General, State of South Carolina**

**March 15, 2006**

The Honorable B. Lee Miller  
Municipal Court  
Post Office Box Judge  
Greenwood, South Carolina 29648 40

Dear Judge Miller:

In a letter to this office you referenced the following situation:

An individual, who resides in another county in South Carolina, is visiting Greenwood and is a witness to a crime within the city limits of Greenwood. A subpoena is issued to the individual pursuant to S.C. Code Ann. § 22-3-930 prior to the individual returning to his home county.

You have asked whether if the individual fails to appear in court, can a rule to show cause be issued? If a rule to show cause is issued and properly served on the individual who resides in another county, if that individual fails to appear pursuant to the subpoena, can a bench warrant be issued for contempt?

Section 22-3-930 states:

Any magistrate, on the application of a party to a cause pending before the magistrate, must issue a summons citing any person whose testimony may be required in the cause and who resides in the county to appear before the magistrate at a certain time and place to give evidence. This summons must be served in a manner such that it is received by the witness at least one day before his attendance is required. If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550. (emphasis added).



**Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006)**

Such provision is applicable to criminal and civil cases before a magistrate. Such provision is also applicable to municipal court judges inasmuch as S.C. Code Ann. § 14-25-45 states that the municipal court "...shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates."

In interpreting Section 22-3-930, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Pursuant to Section 22-3-930, a municipal judge may only issue a subpoena to an individual "who resides in the county" to appear in court and testify. In my opinion, such provision would be inapplicable to an individual who resides in another county and is merely visiting the county from which the subpoena is issued. A prior opinion of this office dated June 10, 1980 construed Section 22-3-920 to conclude that magistrates "do not have wide powers to compel testimony" and would not have the authority to subpoena a state agency outside their county.

Therefore, in my opinion, a municipal judge would not be authorized to issue a rule to show cause to an individual who resides in a county other than that of the municipal judge and who fails to appear in court pursuant to a subpoena issued by that municipal judge. Therefore, it would be improper to issue a bench warrant in such circumstances.

Sincerely,

/s/

Charles H.  
Senior Assistant Attorney General

Richardson

REVIEWED AND APPROVED BY:



**Opinion questioning whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. (South Carolina Office of the Attorney General, 2006)**

---

/s/ \_\_\_\_\_

Robert  
Assistant Deputy Attorney General

D.

Cook

ELECTRONICALLY FILED - 2022 Dec 01 5:30 PM - Horry - COMMON PLEAS - CASE#2022CP2605002  
ELECTRONICALLY FILED - 2022 Dec 21 4:42 PM - Horry - COMMON PLEAS - CASE#2022CP2605002



**RECEIVED**

**May 03 2023**

**SC Court of Appeals**

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

**Wright, Worley, Pope, Ekster & Moss, PLLC**  
*Attorneys for the Appellants*

---

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*Co-Counsel for the Appellants*  
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Telephone No.: 980/ 297-9627

North Myrtle Beach, SC  
May 02, 2023