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

Appellate Case No. 2023-000027

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

vs.

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

[FINAL] REPLY BRIEF OF APPELLANTS

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I. The Denial of Change of Venue in a Criminal Action is Immediately Appealable.

The denial of Appellants' Motion for Change of Venue is immediately appealable as it affects a substantial right of a criminal Defendant. (R. pp. 2–9; R. pp. 16–19; R. pp. 29–31; R. pp. 46–48; R. pp. 52–54.) Respondent has cited numerous cases stating that denial of a change of venue motion is interlocutory in civil actions. Appellants do not quarrel with such as it is well established in civil cases. However, this is an appeal from a criminal action and Respondent has failed to cite any authority for their position that a denial of a criminal defendant's motion for a change of venue is interlocutory. It is Appellants' position that a denial of change of venue in a criminal action is immediately appealable as it affects a substantial right of the defendant to have a fair trial by his peers in the county in which he lives.

"…[T]he right of a defendant to have a case tried against him in the county in which he resides is a **substantial right**." (Emphasis added.) Chestnut v. Reid, 299 S.C. 305, 306, 384 S.E.2d 713, 714 (1989).

> … the defendant "submitted the affidavits of 20 prominent and respectable citizens of the county to the effect that it was impossible for him to get a fair and impartial trial in Jasper County on account of prejudice against him, the inflamed state of the public mind, and [152 S.C. 27] the popularity and influence of the prosecutor. The state offered nothing to the contrary. *** Upon the showing made, defendant was clearly entitled to a change of venue."

State v. Francis, 152 S.C. 17, 149 S.E. 348 (1929). Furthermore, S.C. Code Ann. § 22-3-920 (1976) gives a criminal defendant the statutory right to have venue changed for the trial of the action if he believes that he cannot obtain a fair trial. (R. p. 32; R. p. 76.)

Thus, in a criminal action the denial of a motion to change venue based upon an affidavit stating that the defendant cannot obtain a fair trial is immediately appealable because it affects a substantial right of the defendant. It is well settled that a criminal defendant has a constitutional right to a fair trial. In addition, S.C. Code Ann. § 22-3-920 gives the defendant a statutory right to

a fair trial and change of venue. (R. p. 32; R. p. 76.) The South Carolina Supreme Court has held in the Chestnut case that the right of a Defendant to be tried in the county in which he resides is a substantial right. Chesnut, supra, 299 S.C. at 306, 384 S.E.2d at 714. Therefore, the denial of a motion to change venue affects the criminal defendant's substantial statutory and constitutional rights and is immediately appealable.

II. Territorial Jurisdiction does not Preclude S.C. Code Ann. § 22-3-920 (1976) from Applying to Municipal Courts.

Respondent is incorrect in arguing that territorial jurisdiction precludes application to municipal courts. Municipal courts are part of the unified judicial system (R. p. 34; R. p. 78) and neither subject matter jurisdiction nor territorial jurisdiction would preclude the municipal court from transferring a case to a magistrate court in the same county. Section 22-3-920 does apply to municipal courts and transferring a municipal case to a magistrate is proper.

Specifically, S.C. Code Ann. § 14-25-5 (1976) states that "municipal courts shall be part of the unified judicial system of this State.…" and further states "[a]ny municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situate.…" The Supreme Court in State v. Blue, 264 S.C. 468, 215 S.E.2d 905 (1975), stated "[t]he jurisdiction conferred on Recorders, therefore, includes concurrent jurisdiction with magistrates to issue warrants for arrests *within the city limits* for offenses beyond their jurisdiction to try and to sit as examining courts in such cases, where the offenses are committed within the corporate limits of the city." Respondent incorrectly relies on an Attorney General opinion that states a municipal court is not part of the unified court system because that opinion predates § 14-25-5.

Municipal courts are part of the unified court system and have the authority to prosecute cases in any magistrate court within the county in which they are situated. Territorial jurisdiction applies to the municipal court's ability to issue warrants and prosecute offenses that occur within

the corporate limits of the municipality. Territorial jurisdiction is normally not applicable as to the venue in which such offenses are tried. In the present action territorial jurisdiction is not applicable because municipal courts have the statutory authority to prosecute cases which arise under its territorial jurisdiction in any magistrate court in the county and they have concurrent jurisdiction with magistrates. (R. p. 34; R. p. 78.) Thus, a change of venue to a magistrate within Horry County is proper and does not deprive the court of territorial jurisdiction. The municipal court would be deprived of territorial jurisdiction if the change of venue was to a magistrate outside of Horry County. The Respondent is incorrect in arguing that territorial jurisdiction prohibits a mandatory change of venue under S.C. Code Ann. § 22-3-920 (1976) to a magistrate court.

III. Conclusion

For all the foregoing reasons, the denial of a criminal defendant's motion for change of venue affects a substantial right of the defendant and is immediately appealable; and territorial jurisdiction does not prohibit the applicability of § 22-3-920 to municipal courts.

Respectfully submitted,

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