

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County
Court of General Sessions

Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2024-000643

The State,

Respondent,

v.

Russell Lewis Walker,

Appellant.

INITIAL PRO. SE. BRIEF OF APPELLATE

Russell Lewis Walker
Appellate
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SC Court of Appeals

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State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998)

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State v. Owens, 346 S.C. 637, ___, 552 S.E.2d 745, 751 (2001)

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State v. Wilkes, 346 S.C. 67, 70, 550 S.E.2d 332, 333-34 (Ct. App. 2001)

Tate v. State, 345 S.C. 577, 581, 549 S.E.2d 601, 603 (2001)

Williams v. State, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991)

Statutes

S.C. Code Ann. § 16-3-600(D)(1)(a)

S.C. Code Ann. § 16-9-320(A)

S.C. Code Ann. § 17-19-10

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Other Authorities

(citing 42 C.J.S. Indictments and Informations § 113 (1991))

STATEMENT OF ISSUES ON APPEAL

- I. The State lacked allegations sufficient for indictment.
- II. The assistant solicitors were not expressly authorized by statute to prosecute the appellant without a grand jury indictment.
- III. The trial court lacked subject matter jurisdiction to hold Russell Walker to answer for an alleged crime or offense.
- IV. The trial court lacked Subject Matter Jurisdiction and Personal Jurisdiction over the appellant.

STATEMENT OF THE CASE

On April 9, 2024, appellant, Russell Lewis Walker appeared in the McCormick County courthouse, with his attorney, Derek Chiarenza, before Judge Debra R. McCaslin, for a pre-trial motion hearing. After the hearing, Mr. Chiarenza presented a plea offer to appellant in the parking lot. Appellant was preparing to return home in Edgefield County. He rejected the offer, and renewed his demand for a trial by jury. While the appellant and his attorney were gone, the State initiated an ex parte action, and as a consequence thereof, the Judge issued her April 9, 2024, order for the arrest and imprisonment of the appellant. After ruling on the ex parte action, Judge McCaslin instructed the State to tell Derek to bring appellate into the courthouse so she could imprison him. When Mr. Chiarenza returned with appellate, the Judge summarily arrested and imprisoned the appellate; notwithstanding statutory procedural due process protections. On April 10, 2024, a McCormick County Deputy delivered appellant to the courthouse in shackles and chains. On arrival appellants attorney coerced him to accept the State's offer else remain a prisoner. Appellant pled guilty to resisting arrest (S.C. Code Ann. Section 16-9-320(A)) and assault and battery second degree. He was sentenced to 268 days time served for resisting arrest. Appellant was sentenced to three years imprisonment, suspended upon the service of probation for one year, with special conditions, PTUP and completion of anger management course. Appellant was never indicted or arrested for either of the charges, and no warrants ever existed for either charge. Following the plea proceeding, Appellant again suffered Judge McCaslin's judicial usurpation under color of law, when she issued a permanent restraining order naming Russell Walker as Respondent. Assistant Solicitors Dante Esposito and Doug Fender prosecuted appellant. The date of the service of the notice of appeal is April¹ 16, 2024. This brief follows.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions by the Appellate Panel. See *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). This court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse when the decision is affected by an error of law. *Stone v. Traylor Bros.*, 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004).

The substantial evidence rule governs the standard of review in workers' compensation decisions. *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004). The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record. *Shuler v. Gregory Elec.*, 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005). An appellate court can reverse or modify the Appellate Panel's decision only if the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 619, 611 S.E.2d 297, 300 (Ct. App. 2005) (citations and internal quotation marks omitted).

I don't think this is correct.

ARGUMENTS

Did the State lack allegations sufficient for indictment?

The State lacked allegations sufficient for indictment as a matter of law. South Carolina law provides an indictment is sufficient if it "charges the crime substantially in the language . . . of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." S.C. Code Ann. § 17-19-20 (1985). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). In the instant case, the indictment fails to charge the crime substantially in the language of the common law or of the statute prohibiting the crime. In fact, the appellant would not be guilty of a criminal act if he admitted to the language of the indictment as it is written, because the act has to be done unlawfully and cause physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care . The Indictment is not even sufficient for a charge of assault and battery in the third degree, because the act has to be done unlawfully. The Indictment reads as follows,

2024-GS-19-0052, Assault and Battery §16-3-600(D)(1)(a)

That in Edgefield County, South Carolina, on or about July 20, 2021, the Defendant, Russell Lewis Walker, did offer to or attempt to injure Christina James, all in violation of Section 16-3-600(D)(1)(a), et al. Of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Here is what the statute provides,

SECTION 16-3-600. Assault and battery; definitions; degrees of offenses.

(D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:(a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted;

(E)(1) A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.

(A) For purposes of this section:

(2) "Moderate bodily injury" means physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care. South Carolina courts have held that the sufficiency of an indictment "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315

(1991). We look first to the statutory history, mindful that it is the Legislature, not this court, that is responsible for defining a crime under a penal statute. Moreover, we are bound to construe section 56-5-2930 strictly against the State. See Williams v. State, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991) (It is a well-settled rule of statutory construction that penal statutes are strictly construed against the State and in favor of the defendant.).

Were the assistant solicitors expressly authorized by statute to prosecute the appellant without a grand jury indictment?

The assistant solicitors were not expressly authorized by statute to prosecute the appellant without a grand jury indictment, because there is no statute in the South Carolina Code that expressly authorizes the prosecution of Russell Lewis Walker for resisting arrest and assault and battery second degree. Furthermore, the appellant did not appear in proceedings before a police court or magistrate, nor proceedings before a courts martial. However, the South Carolina Code, does expressly provide pursuant to statute that no person shall be held to answer for an alleged crime or offense in any court, unless upon indictment by a grand jury. (S.C. Code Ann. § 17-19-10) Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)).

Did the trial court lack subject matter jurisdiction to hold Russell Walker to answer for an alleged crime or offense?

The South Carolina Circuit Court 11, lacked Subject Matter Jurisdiction to hold Russell Walker to answer for an alleged crime or offense. By rule of law, pursuant to statute, Russell Walker was unlawfully held to answer for an alleged crime or offense on April 10, 2024. The South Carolina Circuit Court 11, of McCormick County, South Carolina, is not a court of competent jurisdiction in South Carolina.

**Did the trial court lack Subject Matter Jurisdiction
and Personal Jurisdiction over the appellant?**

The trial court lacked Subject Matter Jurisdiction and Personal Jurisdiction over the appellant, Russell Lewis Walker, in the Court of General Sessions, County of McCormick. The court did not have competent jurisdiction keep him in bondage and hold his freedom at bay, particularly dependant on his very specific responses during an involuntary freedom conversation with the court's presiding judicial officer, Judge Debra R. McCaslin. While acting in her official capacity under color of law, Judge McCaslin judicially usurped jurisdiction and assumed a faux judicial title. The Eleventh Judicial Circuit does not have a Chief Administrative Judge, which is not the same as a Chief Judge for Administrative Purposes. State of South Carolina, County of McCormick, lacks personal jurisdiction over appellant in The Court of General Sessions, which lacked subject matter jurisdiction. Notwithstanding all of this, Debra R. McCaslin, acting as a Chief Administrative Judge, Eleventh Judicial Circuit, executed an order for the false arrest and imprisonment of the appellant, on April 9, 2024, in her Order which read, "Defendant is to be held at the McCormick County Jail until April 10, 2024." This unlawful action was taken for the sole purpose of causing the appellant to be held to answer in a court for an alleged crime or offense, notwithstanding an indictment by a grand jury.

CONCLUSION

The appellant's conviction should be vacated. What Judge Debra R. McCaslin did to the appellee was a felonious criminal action akin to kidnapping, conspiracy to kidnap, false arrest, false imprisonment, extortion, and the intentional infliction of extreme mental cruelty. And due to her actions and the conspiratory actions of the assistant solicitors and appellant's own attorney too, this court should bar the prosecution from reopening charges the State chose to nolle prosequi. Appellant was not indicted by a Grand Jury. I didn't have an opportunity to research the statute. All I had was shackles, chains, a dog at home that hadn't been fed, or let outside to relieve itself, and my attorney, who was telling me that I would be in jail for years to come if I rejected the State's offer. I couldn't possibly be expected to intelligently waive presentment, especially considering the fact that I didn't even know what that meant or the consequences of waiving presentment under the duress of unlawful imprisonment. The appellant's convictions should be vacated. The subject matter jurisdiction of a court is fundamental. "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court." Brown v. State, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001) (citation omitted). The action of a court, regarding a matter as to which it has no jurisdiction, is void. State v. Funderburk, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972). Duress consists in any illegal imprisonment, Shlensky v. Shlensky, 369 Ill. 179, 15 N.E.2d 694, 698; The Heider v. Unicum case provides, to establish duress, there must be a threat of wrongful imprisonment or criminal prosecution, accompanied by circumstances¹ indicating immediate execution of the

threat. Judge McCaslin's order was executed indicating immediate execution of the threat. The circuit court did not have subject matter jurisdiction to hear a guilty plea unless: (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser included offense of the crime charged in the indictment. *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). The appellant was imprisoned unlawfully. Appellant did not waive indictment voluntarily or intelligently, or freely. Appellant only plead guilty because he had no other options. Appellant pled in exchange for his freedom. The coercion from appellant's attorney removed all hope for an alternative. The threat of further imprisonment was imminent. The plea was not voluntarily or freely made. The waiver of presentment and venue were not voluntarily made. The failure to include an element of a statutory offense in the body of an indictment will not invalidate the indictment if specific reference to the statute is made in the body of the indictment. *State v. Owens*, 346 S.C. 637, ___, 552 S.E.2d 745, 751 (2001). However, a reference to the statute in the caption does not validate an invalid indictment. The caption of an indictment is not a part of the finding of the grand jury. *State v. Lark*, 64 S.C. 350, 353, 42 S.E. 175, 176-77 (1902). Rather, it is the body of the indictment that is controlling. If the body specifically states the essential elements of the crime and is otherwise free from defect, a defect in the caption will not invalidate the indictment. *Tate v. State*, 345 S.C. 577, 581, 549 S.E.2d 601, 603 (2001). However, because the caption is not part of the indictment, a designation in the caption cannot enlarge or diminish the offense charged in the body of the indictment. See State v. Wilkes, 346 S.C. 67, 70, 550 S.E.2d 332, 333-34 (Ct. App. 2001) (citing 42 C.J.S. Indictments and Informations § 113 (1991)). Notice and a hearing before revoking probation, which can be analogized¹ to bond revocation *Gagnon v. Scarpelli*,

411 U.S. 778 (1973) A bond revocation hearing typically required that the appellant be given notice and an opportunity to be heard. The sudden initiation of this hearing in the appellant's absence was a violation of his procedural rights. The State's engagement with the judge ex parte, (without the appellant or his attorney present) raises significant due process concerns. Ex parte communications are generally prohibited as they can undermine the fairness of the judicial process. A judge must be impartial and ex parte communications can violate due process rights (Tumey v. Ohio, 273 U.S. 510 (1927)). The summary arrest and imprisonment of the appellant upon his voluntary return to court, without proper procedural safeguards, constituted a violation of due process rights. Due process requires that individuals be given fair procedures and an opportunity to contest the actions taken against them. Appellant's attorney's statement that the only path to freedom was to accept a plea deal was interpreted as coercion. For a plea to be valid, it must be made voluntarily and without undue pressure. The procedural due process requires, the need for fair procedures and an opportunity to contest actions Mathews v. Eldridge, 424 U.S. 319 (1976). Pleas must be made without coercion Brady v. United States, 397 U.S. 742 (1970). Color of Law refers to actions taken by government officials within the bounds of their lawful authority. When officials misuse their power, they are still considered to be acting under color of law. Judicial usurpation of due process under color of law refers to situations where a judge or judicial officer abuses their authority, acting in a way that deprives an individual of their constitutional rights, particularly the right to due process. This can occur when a judge makes decisions or takes actions that exceed their lawful powers, often in a manner that is unfair or biased, and does so under the guise of legal authority. Due process is a constitutional guarantee under the Fourteenth Amendment that ensures fair ¹ procedures when the government burdens or

deprives an individual of life, liberty, or property. Due process requires notice and an opportunity to be heard. The requirement of state action to establish a violation of the Fourteenth Amendment and the concept of action under color of state law for § 1983 claims *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). Taking property under color of state law constitutes a Fourteenth Amendment violation if an established state procedure was used *Parratt v. Taylor*, 451 U.S. 527 (1981): .

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2024-000643

The State,

Respondent,

v.

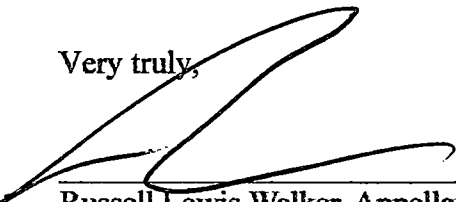
Russell Lewis Walker,

Appellant.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(2), and Rule 262(c)(2), SCACR, the undersigned does hereby certify a true copy of a Motion to Correct the Hearing Transcript, has been served on SC Court Administration, Transcript Challenge, 1220 Senate St. Suite 200, Columbia, S.C. 29201, and a true copy of the same and a Motion for an Extension of Time have been served upon Mark Farthing, Esquire, by U.S. mail, to Mark Reynolds Farthing, S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, with sufficient first class postage attached, this 27th day of August, 2024.

Very truly,


Russell Lewis Walker, Appellate
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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

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27th
August 2024

Jenny Abbott Kitchings
Clerk
P.O. Box 11629
Columbia, South Carolina, 29211

Re: Motion to Correct the Hearing Transcript and Motion for an Extension of Time
Case No: 2024-000643
Dear Ms. Kitchings, Clerk

I am writing to respectfully request that you file my motions in case number 2024-000643. I have enclosed one original and one copy of each motion and certification that I have served the other party. I have also enclosed a self addressed stamped envelope. I am requesting that you please file the original and certify the copy and return the certified copy to me in the self addressed stamped envelope.

Thank you



Russell Lewis Walker

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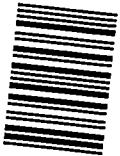
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