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Feb 26 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM BARNWELL COUNTY
Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No: 2024-001535

THE STATE,

Appellant,

v.

JOHN W. WILLIAMSON,

Respondent.

Appellate Case No: 2024-001542

THE STATE,

Appellant,

v.

COREY L. RIVERA,

Respondent.

Appellate Case No: 2024-001723

THE STATE,

Appellant,

v.

JASIAH M. BRABHAM,

Respondent.

Appellate Case No: 2024-001682

THE STATE,

Appellant,

v.

KESHAWN L. KELLEY,

Respondent.

Appellate Case No: 2025-000086

THE STATE,

Appellant,

v.

JERICO J. KNIGHT-HUDSON,

Respondent.

Appellate Case No: 2025-000095

THE STATE,

Appellant,

v.

SHEMAR M. DONALDSON,

Respondent.

and

Appellate Case No: 2025-000292

THE STATE,

Appellant,

v.

JONATHAN BLOCKER,

Respondent.

MOTION TO CONSOLIDATE

Appellant, the State of South Carolina, through its undersigned counsel, would respectfully move this Court to exercise its discretion to consolidate the seven above-referenced appeals into a single appeal as provided for in Rule 214, SCACR. This motion is based on the following factors: (1) each of the seven appeals stems from a single proceeding before the Honorable Courtney Clyburn-Pope that occurred over two days (July 16, 2024 and July 18, 2024) in the Barnwell

County Court of General Sessions; (2) each attorney representing each of the seven named defendants jointly incorporated and adopted the arguments of every other attorney at that joint proceeding; (3) each criminal matter resulted in a nearly identical “Order Dismissing Warrants” from Judge Clyburn-Pope that is the subject of each appeal; and (4) each appeal before this Court will involve exactly the same issues. Based on these unusual circumstances, the State asks that the seven appeals be consolidated into a single appeal for the purpose of: (1) the State preparing a single initial brief of Appellant and designation of matter; (2) the Office of Appellate Defense preparing a single initial brief of Respondents and single designation of matter; and (3) the State preparing a single appellate record based on those designations. Regardless of its ruling on the motion to consolidate, the State respectfully moves the Court to hold all time frames for the seven individual appeals or single consolidated appeal in abeyance pending its decision, and to reset all due dates for the initial brief(s) of appellant to thirty (30) days from the date of its ruling. In support of this motion, the undersigned counsel shows unto this Court as follows:

I.

John W. Williamson, Corey L. Rivera, Jasiah M. Brabham, Keshawn L. Kelley, Jericho J. Knight-Hudson, Shemar M. Donaldson, and Jonathan Blocker were each charged with one or more violations of S.C. Code § 24-7-155 (furnishing or attempting to furnish “a prisoner in any county, municipal, or multijurisdictional jail, prison camp, work camp, or overnight lockup facility with a matter declared to be contraband”). Pursuant to the terms of the South Carolina Code, this offense is a felony and may be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both. S.C. Code § 24-7-155 (2024).

II.

On July 8, 2024, Judge Clyburn-Pope issued an Administrative “Order Transferring Cases to Magistrate Court (§24-3-965)” which ordered that all pending and similarly situated defendants’ cases for violations of Section 24-7-155 be transferred to the Barnwell County magistrate court for trial. (Exhibit #1). As noted in its caption, that order was based on Section 24-3-965 of the Code which provides in part: “Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs . . . must be tried exclusively in magistrate’s court.”

III.

On July 9, 2024, following the issuance of the July 8, 2024, Order, Samuel Grimes, Esquire, counsel for defendant Corey L. Rivera, filed a written: “Motion to Dismiss or in the Alternative to Define Sentencing Range” as well as a fourteen-page “Memorandum in Support of Motion to Dismiss or in the Alternative to Define Sentencing Range” challenging the transfer of his case to magistrate’s court for trial. (Exhibit #2).

IV.

Rivera’s motion was scheduled for a hearing in the Court of General Sessions before Judge Clyburn-Pope on Tuesday, July 16, 2024. Rivera was present and was represented by Mr. Grimes. The State was represented by Deputy Solicitor David W. Miller of the Second Circuit Solicitor’s Office. At the outset of the hearing, the State advised the court that in addition to defendant Rivera, defendant John W. Williamson would also be appearing to join in the motion to dismiss and that Williamson would be represented by Derek M. Bush of the Second Circuit Public Defender’s Office. Williamson was indeed present and was represented by Mr. Bush. (Exhibit #3, p.3-p.4). The State then provided the court with a brief procedural history, explaining that in

addition to Rivera and Williamson there were a number of other similarly situated defendants from Barnwell County who also wanted to challenge the transfer to magistrate's court, but who would not be available to join in the arguments until Thursday, July 18, 2024. The State further explained that when multiple defendants attempted to challenge the transfer during an earlier status conference before Barnwell County Chief Magistrate Gantt, the parties agreed it would be best to handle their arguments in the circuit court where they could seek a consolidated ruling from Judge Clyburn-Pope. The State noted that each defendant had been indicted prior to the transfer, and that Ola A. Johnson, Esquire, and public defender Wallis Alves represented additional defendants who would be joining in the motion to dismiss on Thursday, July 18, 2024, and wished to make additional arguments on behalf of their respective clients. (Exhibit #3, p.4-p.7). Mr. Grimes largely agreed with the procedural history described and asked the court to withhold its ruling until hearing from all defendants at the conclusion of the future hearing to be held that Thursday. Judge Clyburn-Pope agreed to the request and then heard initial arguments on the joint motion to dismiss from Mr. Grimes and Mr. Bush, as well as responsive arguments from the State. (Exhibit #3, p.7-p.8; p.73).

V.

On Thursday, July 18, 2024, the consolidated matter was reconvened before Judge Clyburn-Pope. Defendants Jasiah Brabham and Keshaw Kelley were present, and both were represented by Ola A. Johnson, Esquire. Although it does not appear they were present, defendants Jericho J. Knight-Hudson and Shemar Donaldson were represented by Ms. Alves, and defendant Jonathan Blocker was represented by Andrew B. Farley, Esquire. As acknowledged by Judge Clyburn-Pope at the end of the hearing, all similarly situated defendants (including these three) had also joined in the motion and would consequently obtain a ruling from the court.

Deputy Solicitor Miller again appeared on behalf of the State. (Exhibit #4). At the conclusion of the hearing, the circuit court took the matter under advisement and said it would issue a ruling after getting all parties and attorneys involved. (Exhibit #4, p.12).

VI.

As individual proposed orders were submitted by the defense attorneys representing the seven defendants, Judge Clyburn-Pope issued nearly identical individual orders styled: “Order Dismissing Warrants,” orders which are now the subject of these seven pending State’s appeals. (Exhibit #5: Order(s) Dismissing Warrants). Over the course of the two-day hearing, the Court incorporated all motions, memoranda, arguments, and objections of both the State and the similarly situated defendants in the record. (Exhibit #5). The two transcripts from the joint hearings are a combined eighty-seven (87) pages long. (Exhibits Nos. 3 & 4).

VII.

The State submits that each Respondent in these cases is now represented by the South Carolina Commission on Indigent Defense’s Office of Appellate Defense. The State (Appellant) in each case is represented by the Office of the South Carolina Attorney General. The Attorney General’s Office will be preparing the Record on Appeal in each case, or if this Court grants this motion, the Record on Appeal for a single consolidated appeal.

VIII.

Combining these appeals will place the full arguments in context and will allow this Court to have a more complete and necessary understanding of the arguments presented and adopted by all parties. This request is not intended to prejudice the respondents.

IX.

WHEREFORE, the State prays that the Court grant this motion and allow for the

consolidation of these seven appeals into a one appeal for the purpose of: (1) the State preparing a single initial brief of Appellant and designation of matter; (2) the Office of Appellate Defense preparing a single initial brief of Respondents and designation of matter; and (3) the State preparing a single appellate record based on those designations. The State further prays that the Court: (1) hold all time frames for the seven individual appeals in abeyance pending its decision; (2) reset all due dates for the initial briefs or single consolidated brief(s) of appellant to thirty (30) days from the date of its ruling; and (3) for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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BY:


ATTORNEYS FOR APPELLANT

February 21, 2025
Columbia, South Carolina

EXHIBIT 1

300501
HCS-DAYS
10-Bush
10-Johnson
12-Alves

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

FILED FOR RECORD

2024 JUL 11 PM 2:19

IN THE GENERAL SESSIONS COURT
SECOND JUDICIAL CIRCUIT

RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

In Re: Transfer of Cases to Magistrate Court
for Adjudication

**ORDER TRANSFERRING CASES TO
MAGISTRATE COURT (§24-3-965)**

The Solicitor for the Second Judicial Circuit has petitioned this Court to transfer the attached cases to the magistrate court for Barnwell County pursuant to Section 24-3-965 of the South Carolina Code of Laws.

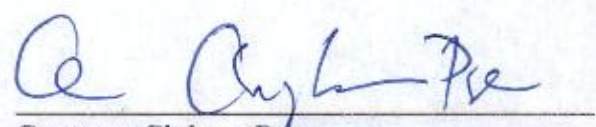
Based upon the representation of the State in its Petition, this Court finds the attached cases allege violations of §24-7-155 (Possession of Contraband by a County Inmate) that *do not* include the furnishing or possession of illegal drugs or weapons. Accordingly, pursuant to §23-3-965, these cases are exclusively triable in the magistrate's court.

This Court having considered the above referenced statute finds it proper and necessary to transfer each of the cases attached hereto to the Barnwell County magistrate's court for disposition.

Accordingly, it is hereby ordered each of the attached cases be transferred to the Barnwell County magistrate court for disposition in accordance with Section 23-3-965 of the Code of Laws of South Carolina.

The Solicitor shall report on the disposition of the transferred cases to the Chief Administrative Judge for General Sessions within one hundred eighty (180) days from the date of this order, provided, however that the expiration of the 180-day period shall not affect the ability of the magistrate court to try any cases transferred to the magistrate's court still pending at that time.

IT IS SO ORDERED.



Courtney Clyburn Pope,
Resident Judge,
Second Judicial Circuit

July 8, 2024
Aiken, South Carolina

*Vacate order by
expressed permission
by Judge Courtney Pope
Rhonda McElveen
9-4-24*

Barnwell County Contraband Cases

Barnwell Adult

07/09/2024 - 07/09/2024

Cases to be Transferred for Trial
Status Conference: 7/9/2024 @ 11:00

Selection Criteria: Event Code: TFC Sort By: Defendant Name

Pros Id ALL

Defendant	Indictment	Event Date	LE Case #	Offense	Violation Date	Arresting Agy	Officer	Pros	Defense Attorney	Warrant #
Blocker, Jonathan William Eugene	2024GS0600199	07/09/2024 12:00 am	23-08-03873	Prisoners Contraband, furnish or poss. county or municipal prisons prohibited	06/21/2023	Barnwell Sheriff's Office	Gannells, Timothy R	Miller, David		2023A0610400205
Status: PNDG	Arrest Date: 08/18/2023	Age: 312								
Brabham, Jashan Maleek	2024GS0600112	07/09/2024 12:00 am	23-06-03005	Prisoners Contraband, furnish or poss. county or municipal prisons prohibited	06/21/2023	Barnwell Sheriff's Office	Kienholz, Noah C	Miller, David	Johnson, Oia A	2023A0610400137
Status: PNDG	Arrest Date: 07/07/2023	Age: 354								
Donaldson, Shemar McKay	2024GS0600198	07/09/2024 12:00 am	23-07-03427	Prisoners Contraband, furnish or poss. county or municipal prisons prohibited	07/17/2023	Barnwell Sheriff's Office	Kienholz, Noah C	Miller, David	Alves, Wallis April	2023A0610400176
Status: PNDG	Arrest Date: 07/21/2023	Age: 340								
	2024GS0600197	07/09/2024 12:00 am	230803885	Prisoners Contraband, furnish or poss. county or municipal prisons prohibited	08/17/2023	Barnwell Sheriff's Office	Gannells, Timothy R	Miller, David		2023A0610400220
Status: PNDG	Arrest Date: 09/07/2023	Age: 294								
Kelley, Keshawn Lamar	2024GS0600204	07/09/2024 12:00 am	23-06-03005	Prisoners Contraband, furnish or poss. county or municipal prisons prohibited	06/21/2023	Barnwell Sheriff's Office	Kienholz, Noah C	Miller, David	Johnson, Oia A	2023A0610400135
Status: PNDG	Arrest Date: 07/07/2023	Age: 354								

Defendant	Judgment	Event Date	I.E. Case #	Offense	Violation Date	Arresting Agt	Officer	Pros	Defense Attorney	Warrant #
Knight-Hudson, Jericho Jeremiah	2024GS0600200	07/09/2024 23:07:03427		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	07/17/2023	Barnwell Sheriff's Office	Klenholz, Noah C.	Miller, David	Alvex, Wallis April	2023A0610400175
Status: PNDG	Arrest Date: 07/21/2023	Age: 340								
Status: PNDG	Arrest Date: 06/10/2024	Age: 17		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	06/07/2024	Barnwell Sheriff's Office	Arbogast, Charles E.	Miller, David	Alvex, Wallis April	2024A0610400205
Penley, Jeffery Lewis	2024GS0600210	07/09/2024 21:09:04173		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	08/25/2023	Barnwell Sheriff's Office	Galarza, German	Staggs, Layla	Johnson, Oia A.	2023A0610400230
Status: PNDG	Arrest Date: 09/09/2023	Age: 290								
Status: PNDG	Arrest Date: 09/09/2023	Age: 290		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	09/02/2023	Barnwell Sheriff's Office	Galarza, German	Staggs, Layla	Johnson, Oia A.	2023A0610400231
Rivera, Cory Lamont	2024GS0600208	07/09/2024 23:09:04173		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	08/25/2023	Barnwell Sheriff's Office	Galarza, German	Staggs, Layla	Grimes, Samuel B.	2023A0610400221
Status: PNDG	Arrest Date: 09/09/2023	Age: 290								
Status: PNDG	Arrest Date: 09/09/2023	Age: 290		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	08/31/2023	Barnwell Sheriff's Office	Galarza, German	Staggs, Layla	Grimes, Samuel B.	2023A0610400233
Status: PNDG	Arrest Date: 09/09/2023	Age: 290								
Status: PNDG	Arrest Date: 09/09/2023	Age: 290		Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibited	08/26/2023	Barnwell Sheriff's Office	Galarza, German	Staggs, Layla	Grimes, Samuel B.	2023A0610400234
Status: PNDG	Arrest Date: 09/09/2023	Age: 290								

Defendant	Indictment#	Event Date	LE Case #	Offense	Violation Date	Arresting Agt	Officer	Pros	Defense Attorney	Warrant #
Rivera, Corey Lamont	2024CS0600205	07/09/2024 12:00 am	23-09-04198	Arrest to Furnish Contraband to County Inmate	09/02/2023	Barnwell Sheriff's Office	Gabarra, German	Stagg, Leigh	Grimes, Samuel B.	2023A0610400235
Status: PNDG	Arrest Date: 09/09/2023	Age: 290								
Williamson III, John Wilson	2024CS0600203	07/09/2024 12:00 am	23-05-02119	Prisoners Contraband, furnish, or poss. county or municipal persons prohibited	05/01/2023	Barnwell Sheriff's Office	Gannells, Timothy R	Muller, David	Bush, Derek Mitchell	2023A0610400084
Status: PNDG	Arrest Date: 05/01/2023	Age: 422								
	2024CS0600202	07/09/2024 12:00 am	23-07-03427	Prisoners Contraband, furnish, or poss. county or municipal persons prohibited	07/17/2023	Barnwell Sheriff's Office	Klenholz, Noah C	Muller, David	Bush, Derek Mitchell	2023A0610400174
Status: PNDG	Arrest Date: 07/21/2023	Age: 340								

Total Cases for All Selected: 16

EXHIBIT 2

100
Grimes

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

STATE OF SOUTH CAROLINA

vs.

COREY LAMONT RIVERA

DEFENDANT

IN THE COURT OF GENERAL SESSIONS

SECOND JUDICIAL CIRCUIT

Warrant Nos.: 2023A0610400221

2023A0610400233

2023A0610400234

2023A0610400235

RHONDA D. McKEEN
CLERK
BARNWELL COUNTY, S.C.

2024 JUL -9 PM 12:18

FILED FOR RECORD

MOTION TO DISMISS OR IN THE
ALTERNATIVE TO DEFINE SENTENCING
RANGE

Defendant was arrested on September 9, 2023, and charged with furnishing contraband to a prisoner in violation of S.C. Code §24-7-155 on the above-referenced warrants. Defendant, by and through undersigned counsel, herein moves to dismiss the above-referenced warrant on the grounds below. In support of this motion Defendant alleges the following on information and belief:

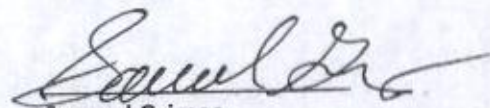
1. The warrants in this matter were filed on September 12, 2023, with the Clerk of Court of General Sessions in Barnwell County.
2. The warrants in this case remain pending in the Court of General Sessions in Barnwell County.
3. The defense has been made aware by email from Deputy Solicitor Miller that the State has sought for the Magistrate of Barnwell County to hold a status conference in this matter for the purpose of scheduling a trial of this case and similarly situated

cases as well as to hear arguments despite the fact that no charges are pending in magistrate court related to this case.

4. The defense has been made aware by email from Deputy Solicitor Miller that the Magistrate of Barnwell County intends to hold status conferences for this case and similarly situated cases on July 9, 2024, at the Barnwell Magistrate Court despite the fact that no charges are pending in magistrate court.
5. The defense has been made aware of the position of the State by email from Deputy Solicitor Miller this matter is “only prosecutable in magistrate court” and that they intend to prosecute the case in magistrate court.
6. The defense has been made aware by phone call with Deputy Solicitor Miller on June 24, 2024, that the State intends to keep the charges pending in Barnwell County General Sessions Court but try those same cases in Barnwell County Magistrate Court without any charges pending in that court.
7. **The State’s flawed position is that these charges must remain pending in general sessions court and subject to the supervision of the circuit court judge but be tried in magistrate court. Further, the State’s position is that the charges tried in magistrate court are felonies, and if convicted, Defendant and other defendants would be subject to a penalty of imprisonment for not less than a year and not more than ten years as well as a fine of not less than one thousand dollars nor more than ten thousand dollars.**
8. Pursuant to §24-3-965, where a Defendant is charged with “furnishing contraband, other than weapons or illegal drugs...[the case] must be tried exclusively in magistrates court.”

9. The warrants in this matter do not allege what type of contraband Defendant is alleged to have furnished. However, the evidence provided to the defense centers around vape pens.
10. Pursuant to §24-3-965 and §24-7-155, the type of contraband dictates which court has jurisdiction to hear a case. General Sessions court has jurisdiction over cases involving weapons and illegal drugs. Magistrates Court has jurisdiction over cases involving any other type of contraband.
11. That placing Defendant in jeopardy of trial in one court while the only charging documents are pending in a separate court is a violation of Defendant's due process.
12. That proceeding in the manner proposed by the State would make it unclear which remedies can be sought in which court.

Based upon the foregoing as well as the supporting memorandum, Defendant requests that the Court dismiss the above-referenced warrants as the Court is without jurisdiction to hear the matter. If the Court does not dismiss the warrants, the Defendant would seek a ruling on the applicable sentencing range for the charges.



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July 9, 2024

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

STATE OF SOUTH CAROLINA

vs.

COREY LAMONT RIVERA

DEFENDANT

IN THE COURT OF GENERAL SESSIONS

SECOND JUDICIAL CIRCUIT

**Warrant Nos.: 2023A0610400221
2023A0610400233
2023A0610400234
2023A0610400235**

**MEMORANDUM IN SUPPORT OF MOTION
TO DISMISS OR IN THE ALTERNATIVE TO
DEFINE SENTENCING RANGE**

STATUTES

S.C. Code § 24-7-155:

Furnishing or possessing contraband in county, municipal, or multijurisdictional jail, prison camp, work camp, or overnight lockup facility prohibited; penalty.

It is unlawful for a person to furnish or attempt to furnish a prisoner in any county, municipal, or multijurisdictional jail, prison camp, work camp, or overnight lockup facility with a matter declared to be contraband. It is unlawful for an inmate of a facility to possess a matter declared to be contraband. Matters considered contraband within the meaning of this section are those which are designated as contraband and published by the Department of Corrections as Regulation 33-1 of the Department of Corrections and this regulation must be displayed in a conspicuous place available and visible to visitors and inmates at the facility. The facility manager of a local detention facility, with the approval of the sheriff or chief administrative officer as appropriate, may

designate additional items as contraband. Notice of the additional items must be displayed with Regulation 33-1.

A person violating the provisions of this section is guilty of a felony and, upon conviction, must be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both.

HISTORY: 1979 Act No. 20, Section 1; 2010 Act No. 237, Section 60, eff June 11, 2010.

Effect of Amendment

The 2010 amendment rewrote the section.

S.C. Code § 24-3-965:

Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate under the jurisdiction of the Department of Corrections or to an inmate in a county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility, and the possession of contraband, other than weapons or illegal drugs, by an inmate under the jurisdiction of the Department of Corrections or by an inmate in a county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility must be tried exclusively in magistrates court. Matters considered contraband within the meaning of this section are those which are designated as contraband by the Director of the Department of Corrections or by the local facility manager.

HISTORY: 2000 Act No. 376, Section 3; 2010 Act No. 237, Section 38, eff June 11, 2010.

Effect of Amendment

The 2010 amendment rewrote the section.

STATUTORY INTERPRETATION

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Pittman, 373 S.C. 527, 561 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32 (2008). A statute's language must be construed in light of the intended purpose of the statute. Id. at 33. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

"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." Pittman, 373 S.C. at 561. However, the statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339 (2010). Accordingly, "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmaker."

"The statute must be interpreted with realistic circumstances and rationales in mind." State v. Elwell, 396 S.C. 330, 336 (Ct. App. 2011). Courts will reject an interpretation of a statute leading to an absurd result clearly unintended by the legislature. See Unisun Ins. Co. v Schmidt, 339 S.C. 362, 368 (2000); Ray Bell Constr. Co. v. Sch. Dist. Of Greenville County, 331 S.C. 19,

26 (1998)(“However plain the ordinary meaning of the words used in the statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature...”)

"A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." State v. Sweat, 386 S.C. 339, (2010) *quoting In re Decker*, 322 S.C. 215, 219 (1995)

“When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.” Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342 (2001)(emphasis added). Criminal Statutes must be strictly construed against the State and in favor of the defendant. State v. Castineria, 341 S.C. 619, 625-26 (Ct. App. 2000)

JURISDICTION

With regard to jurisdiction **only**, § 24-3-965 is clear and unambiguous – charges involving weapons or illegal drug contraband are prosecuted in general sessions court and charges involving all other types of contraband are prosecuted in magistrate court. There can be no other interpretation, nor is any other interpretation necessary because the meaning of the statute is clear and unambiguous. *See Pitmann*, Supra.

The warrants in this matter do not allege a particular type of contraband. They are ambiguous on their face and the State would not be allowed to proceed to trial on such ambiguity. Reserving that issue, Defendant recognizes that the State must analyze the available evidence and choose the allegations on which to proceed. **It is not for a defendant to define**

the prosecutions allegations. Should the prosecution pursue allegations of contraband involving a weapon or illegal drugs they will be limited to pursuing the matter in the court of general sessions. §24-3-965. If the prosecution alleges an item of contraband that is not a weapon or illegal drugs, the magistrates court will have “exclusive jurisdiction” of the case. Id.

Subject matter jurisdiction is the power of a court to hear and determine cases of a general class to which the proceedings in question belong. State v. Adams, 354 S.C. 361, 373 (Ct. App. 2003). Lack of subject matter jurisdiction is fundamental may not be waived. Id. The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. State v. Brown, 351 S.C. 522 (Ct. App. 2022).

The State informs Defendant that they intend to have a trial of this case in magistrates court while the warrants are pending in general sessions court and no warrants are pending in magistrates court. The State acknowledges that their allegations will not involve weapons or illegal drug contraband. Therefore, the court of general sessions has no subject matter jurisdiction. S.C. Const. Art. 5 §11. “The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, *except those cases in which exclusive jurisdiction shall be given to inferior court*, and shall have such appellate jurisdiction as provided by law.”(emphasis added).

The trial courts within the unified judicial system are a construct of our South Carolina Constitution and are limited to authority and jurisdiction as provided by the Legislature. See Id.; S.C. Ch. 14 Art. 5 (Powers and Jurisdiction of Courts and Judges). No statute provides authority

or jurisdiction for the court of general sessions to maintain pending charging documents for a charge without its jurisdiction.

The State points to §22-3-545 (transfer court) as support for its contention that the court of general sessions can maintain such warrants and “supervisory control” of such cases. However, there is a clear distinction between ‘transfer court’ – a court created by statute with specific jurisdiction to resolve certain cases in the jurisdiction of the court of general sessions and magistrates court – a court created by the South Carolina Constitution and which has **exclusive jurisdiction** over certain cases. Moreover, indictments for cases in transfer court are actually on the transfer court docket and not the docket for the court of general sessions as the State proposes is appropriate here. The Legislature created clear and delineated authority and jurisdiction regarding transfer court in § 22-3-545. The State proposes the Legislature must have intended to impliedly create similar authority here through vague language that mentions no such authority. This proposition conflicts with just about all of the rules of statutory interpretation.

There is simply no support for the contention that these charges should be pending in the court of general sessions. The State has indicated that they do not intend to indict these charges for allegations involving weapons or illegal drugs. Therefore, it is appropriate for the Court to dismiss the above-referenced warrants as they are pending on the docket for the court of general sessions and the Court is without jurisdiction to hear them.

ALTERNATIVE ISSUE

The State further contends that the penalty for an offense under §24-7-155 which is in the exclusive jurisdiction of the magistrates court pursuant to §24-3-965, is not less than one year nor more than ten years and a fine of not less than one thousand dollars nor more than ten

thousand dollars. This flawed contention similarly contradicts the rules of statutory interpretation and defies legislative intent.

By contrast to the jurisdiction issue above, this examination requires the Court to conduct statutory interpretation. The statute is not explicit in what sentencing range applies when a charge is in the exclusive jurisdiction of the magistrates court so the Court must apply the rules of statutory interpretation to determine the applicable sentence range.

The Defense argues herein that by indicating the less severe class of contraband cases “must be tried exclusively in magistrates court” the Legislature intended to limit the penalty for those offenses to the general exclusive jurisdiction of the magistrates court¹ – not more than 30 days nor more than \$100 fine.

VAGUENESS:

§ 24-3-965 begins “Notwithstanding² the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155,...”. This introductory phrase includes a string of statutes to be ‘notwithstanding’. This nonspecific reference creates the problem that leads to misinterpretation by the State. The reference to so many other statutes, each with multiple provisions, is the

¹ S.C. Code §22-3-540

Magistrates shall have exclusive jurisdiction of all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, except cases in which an offense within the jurisdiction of a magistrate is included in the charge of an offense beyond his jurisdiction or when it is permissible to join a charge of an offense within his jurisdiction with one or more of which the magistrate has no jurisdiction. Magistrates shall have concurrent but not exclusive jurisdiction in the excepted cases. The provisions of this section shall not be construed so as to limit the jurisdiction of any magistrate whose jurisdiction has been extended beyond that stated above.

² Notwithstanding – Without being prevented by (something): Despite
The Britannica Dictionary

source of the vagueness in this statute. How is one to tell which provisions of which statutes are to be excepted? The vagueness requires the Court to necessarily interpret the statute.

When interpreting the statute, the Court must give the statute “a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmaker.” Scott, Supra.

LEGISLATIVE INTENT:

The State would have the Court believe that the Legislature intended to create two separate classes of offenses involving contraband: one involving weapons and illegal drugs, and one involving all other contraband, which must be tried in separate courts but which are all subject to the same penalty. The Court must ask why would the Legislature intend for that result. If both classes of offenses are subject to the same penalty, then why two separate courts? If the classes of offenses must be tried in separate courts, then why the same penalty? If one class is obviously more problematic than the other, then why the same penalty? What purpose would there be in creating two classes of offenses? And What purpose would be solved by giving the magistrate court exclusive jurisdiction over the lesser of two evils if both are subject to the same punishment? Absolutely none. There is no logical reason to support this contention. **The Court may not adopt an interpretation that leads to such an absurd result. See Unisun Ins. Co. v Schmidt, Supra.**

The legislature did not intend for people charged with the less severe class of offenses to be subject to the same penalty but lose Constitutional and statutory protections afforded to those with more severe offenses. The inmate who possesses a gun receives the right to a preliminary

hearing³, the protection of the grand jury⁴, the larger jury pool afforded by statute⁵, a jury of 12 peers⁶ instead of six, juror exemptions provided by statute⁷, the ability to see the jury pool in person⁸, a presiding judge who must have been an attorney for at least eight years⁹, discovery disclosure requirements¹⁰, and a jury pool from the entire county¹¹, **while the inmate who possesses an unauthorized envelope or rubber band loses all of these constitutional and statutory protections - but is subject to the same penalty?** What possible legislative purpose would this accomplish? The State's proposed interpretation makes no sense whatsoever, and it conflicts with any attempt to achieve a just prosecution of these offenses.

Why would the legislature want the less severe class of offenses tried exclusively in magistrates court? That is the seminal question of interpreting this statute. The answer is simply and understandably this: because they are less severe in nature and may be tried in magistrate court to expedite a resolution. *See* S.C. Code § 22-3-740 **"All proceedings before magistrates shall be summary or with only such delay as a fair and just examination of the case requires."** (emphasis added). The less severe offenses can be dealt with in magistrate court more speedily and without the delay required for more serious felony offenses.

³ S.C. Code §22-5-320

⁴ S.C. Const. Art. I § 11 Presentment or indictment. **No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed**, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide. (Emphasis added) *contra* S.C. Code §22-3-710

⁵ S.C. Code § 22-3-530, §14-7-130, §14-7-260

⁶ *See* S.C. Code §22-3-545(B)(1),

⁷ S.C. Code §14-7-1110

⁸ S.C. Code §14-7-190

⁹ S.C. Const. Art. V § 15

¹⁰ S.C. Code §22-3-730, SCRMC *contra* SCRCF

¹¹ S.C. Code §14-7-130

What did the legislature intend by placing the less severe class of contraband cases within the exclusive jurisdiction of the magistrates court? **Did the legislature intend to create the first and only ten year felony offense triable in magistrates court?**

To determine this, the Court must determine the meaning of “Notwithstanding¹² the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155,...”. What part of §24-7-155 is being excepted? Pursuant to Sweat *supra*, one of the provisions of §24-7-155 must be excepted in order to prevent an interpretation that renders the introductory phrase superfluous. There are only two provisions of the statute. The first provision creates the offense. The second provision creates the penalty. If the Court excepts the first provision, then there is no crime. That is obviously not the intention of the legislature. The legislature MUST have intended to except the second provision – the penalty provision. This makes the most logical sense and is consonant with the purpose of prosecuting less severe contraband cases more quickly in magistrates court. See Sweat, *supra*.

The Court can look to the legislative history (ATTACHMENT A) for guidance in determining the intent. In this instance, Senate Bill 1008 was introduced and had its first reading on January 11, 2000. At that time, S1008 made no mention whatsoever of §24-3-965 or any contraband related matter. S 1008 only included a single statute dealing with the offense of Driving Under Suspension. In all three readings before the Senate sent the bill to the House the bill did not contain §24-3-965. On May 31, 2000, §24-3-965 was added as an amendment to the bill which appeared already set for ratification. It was read a second time on May 31, a third time on June 1 and then sent back to the Senate the same day. Another section of the bill was

¹² Notwithstanding – Without being prevented by (something): Despite
The Britannica Dictionary

amended and concurred to by the House on June 1, 2000 and the bill was finished. It is illogical to conclude that the legislature intended to create the first and only ten year felony offense prosecutable in magistrates court by adding it as a piggyback amendment to an already moving bill on the eve of its passing.

By contrast, in the same bill where it regards the offense of Driving Under Suspension, the Legislature also mandated exclusive jurisdiction in the magistrates court but specifically specified some sentence ranges that would not otherwise be within the exclusive jurisdiction of the magistrates court. Those sentence ranges were enumerated specifically **because** they would not otherwise be within the exclusive jurisdiction of the magistrates court. And despite the increase in jurisdiction for those Driving Under Suspension cases, none of that increased jurisdiction exceeded a 90 day maximum sentence. In this same bill, the magistrates court was specifically not given jurisdiction over Driving Under Suspension offenses with penalties that have minimum sentences or with ranges that exceed 90 days. The Court can conclude that because the legislature wanted to increase the exclusive jurisdiction of the magistrates court for the Driving Under Suspension – they felt it was necessary to specifically articulate the sentence ranges.

The Court can further conclude that the legislature did not intend to give the magistrates court exclusive jurisdiction over a felony offense with a minimum sentence of 1 year and maximum of 10 years because in that same bill they were unwilling to give the magistrates court exclusive jurisdiction over offenses that carried only a ten day minimum sentence with a thirty day maximum sentence.

Likewise, in no instance has the Legislature provided for the magistrates court to have jurisdiction over a felony offense. By contrast, the most extensive jurisdiction that the Legislature has allowed in magistrates court comes from S.C. Code §16-13-10(C) wherein the Legislature provided jurisdiction in magistrates court for a specific subset of less severe forgery offenses. And in that instance, an offense that was otherwise a felony was specifically made a misdemeanor with a reduced sentence range that was also specified. This is a drastic contrast to the interpretation proposed by the State which would give magistrates court jurisdiction over a ten year felony only by vague reference. And importantly, §16-13-10(c) does not reference the term “exclusive” in granting this exceptional jurisdiction.

Finally, because this statute is penal in nature, it must be strictly construed in favor of the Defendant. Castineria, supra. Despite the logical failings of the interpretation proposed by the State, if the Court was to conclude that there was more than one reasonable interpretation of this statute – the Court **must** adopt the interpretation that favors the Defendant. The interpretation that favors the Defendant in this matter is the one which limits the maximum penalty for the offense to be the limit of general exclusive jurisdiction of the magistrates court - 30 days or \$100.

OTHER INSTRUCTIVE SOURCES:

On the date §24-3-965 became law, SC Court Administration issued a new CDR code citing §24-3-965 as the penalty statute. *See* (ATTACHMENT B). That CDR code was used for prosecution of non-weapon or drug contraband cases in the magistrates court until its expiration in 2016. This very offense was treated as a 30 day maximum penalty misdemeanor from the date of its inception until more than a decade and a half later. Moreover, the Defense is unable to find

anything coinciding with the expiration of CDR code 3322 in 2016 that would explain its expiration. Court Administration employees were unaware of the reason for the expiration. §24-3-965 has not been amended since its creation. Additionally, the Defense was unable to find any case law that would explain the expiration of CDR code 3322. It appears that the expiration of CDR code 3322 was extrajudicial in nature.

Further, in 2019, the Court of Appeals was confronted with issues regarding §24-3-965 such as whether it was lesser included offense of §24-7-155, “in allowing the jury to determine whether the confiscated item in question was a weapon in order to allow enhanced sentencing,” and whether a defendant was “improperly sentenced [] because it used the statutory range from § 24-7-155, under which he was indicted, rather than that of § 24-3-965.” State v. Grier, 427 S.C. 107, 116-118 (Ct. App. 2019) (ATTACHMENT C). While the Court in Grier determined the relevant issues here were not preserved for review, it is instructive to note that the Court did specifically discuss a separate sentencing range for §24-7-155 and offenses under §24-3-965. Id. at 118. Also, the Court referred to “enhanced sentencing” for weapons offenses. Id. at 117. Grier’s contention was that the jury should have been able to consider whether the item was a weapon or not so that he could possibly have been subject to a lower sentencing range. Id. **Although the Court did not directly decide the present issue, it is highly instructive that the Court in Grier did not indicate that the sentence range was the same whether the contraband item was a weapon or not – in fact, it appears to accept the opposite.**

On January 10, 2022, House bill H. 3189 (ATTACHMENT D) was introduced in the legislature in an apparent effort to combat the growing concern of cell phone use by inmates. H. 3189 includes a proposed statute § 24-3-975 which makes a specific class of contraband cases that involve cell phone possession. The crime of possessing a cell phone would be a

misdemeanor with a maximum penalty of three years imprisonment. If, as the State proposes, cell phone contraband possession is currently a 10 year felony, why would the legislature consider reducing the penalty to address the growing concern? It is apparent that the Legislature does not believe that all contraband cases are 10 year felony cases and did not intend for them to be when drafting § 24-3-965.

CONCLUSION

§ 24-3-965 is clear on its face as to the issue that exclusive jurisdiction of these matters lies in the magistrates court if the State is alleging an item of contraband that is not illegal drugs or weapons. Therefore, the Court must dismiss this matter as it is without jurisdiction to hear these cases.

§ 24-3-965 is vague as to what penalty range is applicable for offenses which are subject to exclusive magistrate court jurisdiction. The only interpretation of § 24-3-965 which complies with the rules of statutory interpretation, results in a fair interpretation consonant with its purpose, and which is construed in favor of the Defendant is that the legislature did NOT intend to increase the penalty provision of exclusive jurisdiction of the magistrates court for this offense. Therefore, the maximum penalty for this offense is the same as the general exclusive jurisdiction of the magistrates court – 30 days or \$100.

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July 9, 2024

South Carolina Legislature

June 27, 2024, 03:24:49 pm

Session 113 - (1999-2000)

S*1008 (Rat #0407, Act #0376 of 2000) General Bill, By Holland and Hutto

Summary: Motor vehicles, drivers licenses, suspension, DUS, DUI; Courts, magistrates, general sessions; Contraband, Prisoners

A BILL TO AMEND SECTION 56-1-460, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PENALTIES FOR DRIVING WHILE A LICENSE HAS BEEN CANCELED, SUSPENDED, OR REVOKED, SO AS TO PROVIDE MAGISTRATE COURTS WITH EXCLUSIVE JURISDICTION IN ALL CASES INVOLVING DRIVING UNDER SUSPENSION EXCEPT THOSE CASES WHERE THE SUSPENSION RESULTED FROM A CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND TO INCREASE PENALTIES; TO AMEND SECTION 22-3-545, AS AMENDED, RELATING TO THE TRANSFER OF CERTAIN CASES FROM GENERAL SESSIONS COURT, SO AS TO PROVIDE THE CHIEF ADMINISTRATIVE CRIMINAL COURT JUDGE RETAINS SUPERVISION OVER THE TRANSFERRED CASES; AND TO ADD SECTION 24-3-965, SO AS TO PROVIDE THE OFFENSES OF PROVIDING CONTRABAND, OTHER THAN WEAPONS OR ILLEGAL DRUGS, TO PRISONERS AND OF POSSESSION OF CONTRABAND, OTHER THAN WEAPONS OR ILLEGAL DRUGS, BY PRISONERS MUST BE TRIED EXCLUSIVELY IN THE MAGISTRATE'S COURT.-AMENDED TITLE

01/11/00	Senate	Introduced and read first time SJ-57
01/11/00	Senate	Referred to Committee on Judiciary SJ-57
02/02/00	Senate	Committee report: Favorable Judiciary SJ-10
02/03/00	Senate	Read second time SJ-25
02/09/00	Senate	Read third time and sent to House SJ-35
02/10/00	House	Introduced and read first time HJ-7
02/10/00	House	Referred to Committee on Judiciary HJ-7
03/01/00	House	Committee report: Favorable with amendment Judiciary HJ-3
03/07/00	House	Recommitted to Committee on Judiciary HJ-27
05/25/00	House	Committee report: Favorable with amendment Judiciary HJ-1
05/31/00	House	Amended HJ-14
05/31/00	House	Read second time HJ-17
06/01/00	House	Read third time and returned to Senate with amendments HJ-21
06/01/00	Senate	House amendment amended SJ-80
06/01/00	Senate	Returned to House with amendments SJ-80
06/01/00	House	Concurred in Senate amendment and enrolled HJ-70
06/08/00		Ratified R 407
06/14/00		Signed By Governor
07/07/00		Effective date 06/14/00
07/07/00		Copies available
07/07/00		Act No. 376

ATTACHMENT A

South Carolina General Assembly
113th Session, 1999-2000

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Bill 1008

Current Status

Bill Number: 1008
Ratification Number: 407
Act Number: 376
Type of Legislation: General Bill GB
Introducing Body: Senate
Introduced Date: 20000111
Primary Sponsor: Holland
All Sponsors: Holland and Hutto
Drafted Document Number: l:\s-jud\bill\holland\jud0076.dhh.doc
Date Bill Passed both Bodies: 20000601
Date of Last Amendment: 20000601
Governor's Action: S
Date of Governor's Action: 20000614
Subject: Motor vehicles, drivers licenses,
suspension, DUS, DUI; Courts, magistrates,
general sessions; Contraband, Prisoners

History

Body	Date	Action Description	Com	Leg Involved
-----	20000711	Act No. A376		
-----	20000614	Signed by Governor		
-----	20000608	Ratified R407		
<u>House</u>	20000601	Concurred in Senate amendment, enrolled for ratification		
<u>Senate</u>	20000601	House amendments amended, returned to House with amendment		
<u>House</u>	20000601	Read third time, returned to Senate with amendment		
-----	20000601	Scrivener's error corrected		
<u>House</u>	20000531	Amended, read second time		
<u>House</u>	20000525	Committee report: Favorable with amendment	25 HJ	
<u>House</u>	20000307	Recommitted to Committee	25 HJ	
<u>House</u>	20000301	Committee report: Favorable with amendment	25 HJ	
<u>House</u>	20000210	Introduced, read first time, referred to Committee	25 HJ	
<u>Senate</u>	20000209	Read third time, sent to House		
<u>Senate</u>	20000203	Read second time		
-----	20000203	Scrivener's error corrected		
<u>Senate</u>	20000202	Committee report: Favorable	11 SJ	
<u>Senate</u>	20000111	Introduced, read first time, referred to Committee	11 SJ	

Versions of This Bill

Revised on February 2, 2000 - Word format
Revised on February 3, 2000 - Word format
Revised on March 1, 2000 - Word format
Revised on May 25, 2000 - Word format
Revised on May 31, 2000 - Word format
Revised on June 1, 2000 - Word format
Revised on June 1, 2000-A - Word format

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A376, R407, S1008)

AN ACT TO AMEND SECTION 56-1-460, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PENALTIES FOR DRIVING WHILE A LICENSE HAS BEEN CANCELED, SUSPENDED, OR REVOKED, SO AS TO PROVIDE MAGISTRATE COURTS WITH EXCLUSIVE JURISDICTION IN ALL CASES INVOLVING DRIVING UNDER SUSPENSION EXCEPT THOSE CASES WHERE THE SUSPENSION RESULTED FROM A CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND TO INCREASE PENALTIES; TO AMEND SECTION 22-3-545, AS AMENDED, RELATING TO THE TRANSFER OF CERTAIN CASES FROM GENERAL SESSIONS COURT, SO AS TO PROVIDE THE CHIEF ADMINISTRATIVE CRIMINAL COURT JUDGE RETAINS SUPERVISION OVER THE TRANSFERRED CASES; AND TO ADD SECTION 24-3-965, SO AS TO PROVIDE THE OFFENSES OF PROVIDING CONTRABAND, OTHER THAN WEAPONS OR ILLEGAL DRUGS, TO PRISONERS AND OF POSSESSION OF CONTRABAND, OTHER THAN WEAPONS OR ILLEGAL DRUGS, BY PRISONERS MUST BE TRIED EXCLUSIVELY IN THE MAGISTRATE'S COURT.

Be it enacted by the General Assembly of the State of South Carolina:

Increased penalties; jurisdiction in magistrate's court; exception

SECTION 1. Section 56-1-460 of the 1976 Code, as last amended by Act 459 of 1996, is further amended to read:

"Section 56-1-460. (A)(1) Except as provided in subitem (2), a person who drives a motor vehicle on any public highway of this State when his license to drive is canceled, suspended, or revoked must, upon conviction, be punished as follows:

- (a) for a first offense, fined two hundred dollars or imprisoned for thirty days, or both;
- (b) for a second offense, fined five hundred dollars or imprisoned for sixty consecutive days, or both; and
- (c) for a third and subsequent offense, imprisoned for not less than ninety days nor more than six months, no portion of which may be suspended by the trial judge.

Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, an offense punishable under this subitem must be tried exclusively in magistrate's court.

(2) A person who drives a motor vehicle on any public highway of this State when his license has been suspended or revoked pursuant to the provisions of Section 56-5-2990 must, upon conviction, be punished as follows:

- (a) for a first offense, imprisoned for not less than ten nor more than thirty days;
- (b) for a second offense, imprisoned for not less than sixty days nor more than six months;
- (c) for a third and subsequent offense, imprisoned for not less than six months nor more than three years.

No portion of the minimum sentence imposed under this subitem may be suspended.

(B) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while his license was suspended for a definite period of time shall extend the period of the suspension for an additional like period. If the original period of suspension has expired or terminated before trial and conviction, the department shall again suspend the license of the person for an additional like period of time. If the suspension is not for a definite period of time, the suspension must be for an additional three months. If the license of a person cited for a violation of this section is suspended solely pursuant to the provisions of Section 56-25-20, the additional period of suspension pursuant to this section is thirty days and the person does not have to offer proof of financial responsibility as required under Section 56-9-500 prior to his license being reinstated. If the conviction was for a charge of driving while a license was revoked, the department shall not issue a new license for an additional period of one year from the date the person could otherwise have applied for a new license. Only those violations which occurred within a period of five years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section."

Chief judge retains administrative supervision

SECTION 2. Section 22-3-545(C) of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"(C) All cases transferred to the magistrate's or municipal court must be prosecuted by the solicitor's office. The chief judge for administrative purposes for the court of general sessions shall retain administrative supervision of cases transferred pursuant to this section. The chief magistrate of the county or the chief municipal judge of the municipality upon petition of the solicitor, and approval of the chief judge for administrative purposes for the court of general sessions, shall set the terms of court and order the magistrates and municipal judges to hold terms of court on specific times and dates for the disposition of these cases."

Jurisdiction in magistrate's court; exception

SECTION 3. Article 9, Chapter 3, Title 24 of the 1976 Code is amended by adding:

"Section 24-3-965. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to a prisoner under the jurisdiction of the Department of Corrections or to a prisoner in a county jail, municipal jail, prison, work camp, or overnight lockup facility, and the possession of contraband, other than weapons or illegal drugs, by a prisoner under the jurisdiction of the Department of Corrections or by a prisoner in any county jail, municipal jail, prison, work camp, or overnight lockup facility must be tried exclusively in magistrate's court."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 8th day of June, 2000.

Approved the 14th day of June, 2000.

This web page was last updated on Wednesday, December 9, 2009 at 9:09 A.M.

CDR Codes

CDR Code: 3322
Offense Description: Prisoners/ Contraband, other
than illegal drugs or weapons
Offense Statute(s): 24-03-0965
Penalty Statute(s): 24-03-0965
Offense Type: Misdemeanor
Offense Class: Unclassified
Status: Rescinded
Effective Date: 06-14-2000
Expiration Date: 07-07-2016
Rescind/Retire Date: 07-07-2016
Last Updated: 07-07-2016

ATTACHMENT B

**The STATE, Respondent,
v.
Jermaine Demarcus GRIER, Appellant.**

Opinion No. 5649.

Court of Appeals of South Carolina.

Submitted September 19, 2018.

Filed May 15, 2019.

Appeal From Lancaster County, Appellate Case No. 2016-001045, Brian M. Gibbons, Circuit Court Judge.

AFFIRMED.

Appellate Defender Kathrine Haggard Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior Assistant Deputy Attorney General William M. Blitch, Jr., and Jennifer Ellis Roberts, all of Columbia; and Solicitor Randy E. Newman, Jr., of Lancaster, all for Respondent.

MCDONALD, J.:

Jermaine D. Grier appeals his conviction for possession of contraband by a county or municipal prisoner, arguing the circuit court erred in denying his motion for a directed verdict and refusing to charge the jury with section 24-3-965 of the South Carolina Code (Supp. 2018), which governs the possession of certain contraband by inmates incarcerated within the South Carolina Department of Corrections. We affirm.

Facts and Procedural History

On November 16, 2015, Officer LaQuentin Smith was preparing to transport Grier from the Lancaster County Detention Center (LCDC) to the Lancaster County Courthouse. As part of the transport process, officers instruct a detainee to place his hands through an opening in his cell door (this opening is generally used to deliver food) for inspection. Officers then handcuff the detainee and ask him to turn around with his back to the door so the officers can wrap a chain around the inmate's waist and secure it.^[1] Officer Smith testified that when he and two other officers instructed Grier to place his hands through the door slot for inspection, Grier pulled back his left hand and placed it inside his jumpsuit. When Officer Smith again told Grier to place his left hand through the opening, Grier complied. Officer Smith found nothing in Grier's left hand.

After officers finished securing Grier, Officer Smith notified Sergeant Matthew Kennington that he suspected Grier had concealed something in his jumpsuit and needed to be searched. With Sergeant Nicholas Tuley as his witness, Sergeant Kennington searched Grier's jumpsuit and confiscated a twisted metal piece of a pen that appeared to have been sharpened down to the tip.

In February 2016, the Lancaster County Grand Jury indicted Grier for possession of contraband by a county or municipal prisoner under section 24-7-155 of the South Carolina Code (Supp. 2018). Grier's indictment states:

POSSESSION OF CONTRABAND BY COUNTY OR MUNICIPAL PRISONER

That Jermaine Demarcus Grier a prisoner of a county or municipal jail, prison, work camp or overnight lockup facility, did in Lancaster County, South Carolina, on or about November 16, 2015, unlawfully

possess a quantity of matter declared by the superintendent of the facility to be contraband, to wit: a sharpened metal piece derived from a writing pen, an illegal weapon, in violation of § 24-7-155, *Code of Laws of South Carolina (1976), as amended*.

Section 24-7-155 provides:

It is unlawful for a person to furnish or attempt to furnish a prisoner in any county, municipal, or multijurisdictional jail, prison camp, work camp, or overnight lockup facility with a matter declared to be contraband. It is unlawful for an inmate of a facility to possess a matter declared to be contraband. Matters considered contraband within the meaning of this section are those which are designated as contraband and published by the Department of Corrections as Regulation 33-1 of the Department of Corrections and this regulation must be displayed in a conspicuous place available and visible to visitors and inmates at the facility. The facility manager of a local detention facility, with the approval of the sheriff or chief administrative officer as appropriate, may designate additional items as contraband. Notice of the additional items must be displayed with Regulation 33-1.

Regulation 33-1 of the South Carolina Department of Corrections (2011) sets forth the following list of contraband:

- a. Any item which was not issued to the prisoner officially or which cannot be purchased by him or her in the prison canteen.
- b. Weapons, any and all firearms, knives of any and all descriptions, clubs, billies or any other article that may be used for offense or defense.

....

- e. Keys and locks.
- f. Tools of any description not approved for issue to prisoners by the Director.

....

Notice is hereby served on all prisoners and their visitors and any other person that the provisions of § 24-3-950, S.C. Code 1976 will be enforced; and all such persons are urged to observe the law and refrain from violating this section in particular.^[2]

Grier's jury trial began on May 11, 2016. Pretrial, Grier moved to quash the indictment,^[3] arguing the evidence he received through discovery suggested the confiscated item found in his jumpsuit was a tool for unlocking handcuffs, not an illegal weapon as set forth in the indictment. Additionally, Grier argued section 24-3-965 of the South Carolina Code (Supp. 2018)^[4] provided the appropriate charge for possession of contraband other than weapons or illegal drugs and that it vested the magistrate's court with exclusive jurisdiction.

The State responded that Grier was charged under § 24-7-155, for possession of a weapon, not under § 24-3-965. The circuit court denied Grier's motion to quash his indictment.

As its first witness, the State called Captain Larry Deason, who testified that during the booking process, all detainees receive a copy of LCDC's rules and regulations, are asked if they have any questions, and are required to sign a form on an electronic tablet confirming their receipt of the rules. Captain Deason explained that he and facility director Deborah Home formulated the rules based on statutes, Department of Corrections regulations, and their previous experience relating to the safety and security of officers and inmates. Caption Deason testified that the rules and regulations are compiled in a short handbook, which includes a description of items inmates are allowed to have in their cells and a section defining contraband. Without objection, LCDC's rules and regulations were admitted into evidence. Additionally, R. 33-1, which lists contraband articles, was admitted into evidence without objection.

Sergeant Richard Plyler testified he gave Grier a copy of the rules, which Grier stated he understood before signing the

form confirming his receipt. Over Grier's objection, the trial court admitted Grier's signature page into evidence.

As its next witness, the State called Officer Smith. Officer Smith explained the confiscated item "resembled ... the metal piece of the pen that you use to hang on to your pocket or something." When Officer Smith was asked if the confiscated item had any edges, he stated it "[s]eemed like it was sharpened just a little bit." On cross-examination, Officer Smith admitted he told the officer who took the report that it was possible Grier could have used the confiscated item to open his handcuffs. The following colloquy ensued on cross-examination:

Q: Did you describe the object as something he appeared to have been using or attempting to use to unlock his cuffs?

A: We explained to [Grier] that it's possible it could have been used to open his cuffs.

Q: Did you ever make any accusation or suggestions that he was using it as a weapon, or was there ever any attempt to use it as a weapon, or did you tell anybody that you perceived it as a weapon?

A: Well, it could be used as both, as a weapon or as a key the way it was made.

Q: Okay. Do you recall telling anyone that you considered it a weapon?

A: I don't recall.

Sergeant Kennington, the State's final witness, testified that under LCDC's rules and regulations, the confiscated item was an item of contraband and that it could have been used "both as a weapon or something to get a cuff off."

After the State rested its case, Grier renewed his motion to quash the indictment, arguing "the testimony was that it was possible that it could be used as a weapon but there's no evidence that it was, in fact, used as a weapon or presented as a weapon." Grier maintained he should have been charged with violating § 24-3-965—rather than § 24-7-155—and tried in magistrate's court instead of general sessions. The circuit court again denied Grier's motion to quash.

Grier next moved for a directed verdict, contending there was "no evidence that has been presented that there was any display of the contraband list at all." The State argued the conspicuous display was accomplished by providing each inmate with a copy of the rules and regulations. The circuit court found that the evidence demonstrating each inmate is provided with a copy of the rules and regulations during booking was sufficient to survive the directed verdict motion.

The following morning, Grier supplemented his directed verdict motion, conceding LCDC's rules and regulations were made available to Grier but asserting that the statute's use of the word "visible" required the rules and regulations to be more than simply "available." The State countered that the rules were both displayed and visible because each detainee received his own printed copy. After noting the "visible to visitors" language of § 24-7-155 was not at issue, the State argued the most conspicuous way to display the rules and regulations to a detainee was to provide him with his own physical copy. The circuit court acknowledged the "visitors" provision was not at issue and agreed with the State's argument that there was no better way to give notice than by providing detainees with a document defining contraband. Thus, the court again denied Grier's directed verdict motion. The circuit court then clarified that it would permit Grier to argue this issue—that the contraband in question was not a weapon—to the jury.

During the charge conference, Grier asked the circuit court to charge the language of § 24-3-965 (addressing the possession of non-weapons by state prisoners and the magistrate's court's jurisdiction) as a lesser included offense of § 24-7-155. Specifically, he argued the jury would make a factual determination as to whether the confiscated item found on Grier was a weapon, and if the jury found it was not, the offense would necessarily fall under § 24-3-965. The State argued § 24-3-965 was not a lesser included offense, and the officers' testimony established the confiscated item was a weapon with a sharp end, encompassed within the applicable regulations. Grier responded that if the jury believed the confiscated item was a lock pick, then it was not a weapon, and § 24-3-965 should govern. The circuit court denied Grier's motion, finding § 24-3-965 is not a lesser included offense of § 24-7-155.

In his closing argument, Grier argued that even though LCDC's rules and regulations were made available, they were

not visible as required by § 24-7-155. He reasoned that the statute required the rules to be visible rather than merely available because illiterate inmates who could not read their own copy would have the benefit of discussing the rules with other inmates, which would "bring[] a consciousness of the rules to the inmate that just hand[ing] them a piece of paper and sending them back to their cell does not give to them."

The circuit court charged the jury on the State's burden of proof, the presumption of innocence, reasonable doubt, the roles of the judge and jury, direct and circumstantial evidence, criminal intent, actual and constructive possession, credibility of witnesses, and the language of § 24-7-155. At no time during the charge did the court instruct the jury to decide whether the confiscated item was or was not a weapon. Neither Grier nor the State objected to the charge as given. Following its deliberation, the jury unanimously found Grier guilty, and the circuit court sentenced him to eight years' imprisonment, with credit for time served.

Law and Analysis

I. Directed Verdict

Grier argues the circuit court erred in refusing to direct a verdict of acquittal when the State failed to prove Regulation 33-1 was displayed in a conspicuous place available and visible to visitors and inmates in the facility, as required by statute. We disagree.

"We review the denial of a directed verdict motion in a criminal case under the any evidence standard of review." State v. Cain, 419 S.C. 24, 33, 795 S.E.2d 846, 851 (2017). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *Id.* (quoting State v. Harris, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015)).

Here, Grier was indicted for possession of contraband by a county or municipal prisoner, and the contraband at issue was categorized as a weapon. Sergeant Plyler testified he provided Grier with a copy of LCDC's rules and regulations and Grier signed a form acknowledging his receipt of this document. Likewise, Grier conceded that the rules were made available to him. Although LCDC's rules and regulations define "contraband" as "any item not permitted in the jail or any item used in a way for which it was not originally intended as well as too much of an item an inmate is allowed," they neither include the specific list of items detailed in R. 33-1, nor do they list any additional items. While the record demonstrates R. 33-1 is displayed at LCDC for visitors, the record is devoid of evidence that R. 33-1 is "displayed" for inmates as section 24-7-155 requires. Further, although Captain Deason's testimony provided evidence suggesting the substance of R. 33-1 was encompassed within the handbook provided to inmates at intake, the record contains no evidence that Grier was actually provided with a copy of R. 33-1. Accordingly, we find LCDC's failure to conspicuously display (or specifically provide) R. 33-1 to detainees at the facility violates the requirements of § 24-7-155.

Nevertheless, under our "any evidence" standard of review, we find this case was properly submitted to the jury because the record contains direct evidence that Grier unlawfully possessed contraband—specifically, a twisted metal piece of a pen sharpened down to the tip, and that he knew it was contraband. See Cain, 419 S.C. at 33, 795 S.E.2d at 851 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." (quoting Harris, 413 S.C. at 457, 776 S.E.2d at 366)). The State presented testimony that the confiscated item could be used as both a weapon and a lock pick. Further, the confiscated item is not included in the list of allowable items set forth in section five of LCDC's rules and regulations. Finally, the definition of contraband contained in section thirteen of LCDC's rules and regulations includes "any item not permitted in the jail" or "any item used in a way for which it was not originally intended," both of which are applicable here. As evidence existed to support the State's position that the sharpened pen tip was contraband—and that Grier had notice it was contraband—the circuit court properly allowed the case to go to the jury.

II. Jury Charge

Grier argues the circuit court erred in refusing to instruct the jury on section 24-3-965, and in allowing the jury to determine whether the confiscated item in question was a weapon in order to allow enhanced sentencing. We disagree.

"[T]he trial court is required to charge only the current and correct law of South Carolina." State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (alteration in original) (quoting State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011)). "The law to be charged must be determined from the evidence presented at trial." *Id.* (quoting Brandt, 393 S.C. at 549, 713 S.E.2d at 603). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *Id.* (quoting State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)). "Moreover, '[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" *Id.* (alteration in original) (quoting Brandt, 393 S.C. at 550, 713 S.E.2d at 603).

Prior to trial, Grier moved to quash his indictment, arguing the confiscated item secreted in his jumpsuit was neither a weapon nor an illegal drug. Thus, Grier argued, the appropriate charge would be for the possession of non-weapons contraband under section 24-3-965, which states in pertinent part:

[T]he possession of contraband, other than weapons or illegal drugs, by an inmate under the jurisdiction of the Department of Corrections or to an inmate in a county jail... must be tried exclusively in magistrates court. Matters considered contraband within the meaning of this section are those which are designated as contraband by the Director of the Department of Corrections or by the local facility manager.

During the charge conference, Grier requested that the circuit court charge the jury with § 24-3-965 as a lesser included offense of § 24-7-155. Grier further asked the court to allow the jury to determine whether the confiscated item was a weapon. If the jury determined the confiscated item was contraband but not a weapon, the magistrate's court would have exclusive jurisdiction. The circuit court declined to charge § 24-3-965 as a lesser included offense of § 24-7-155.

On appeal, Grier concedes § 24-3-965 is not a lesser included offense of § 24-7-155. Nevertheless, he argues the circuit court erred in not submitting a special verdict form instructing the jury to determine whether the contraband was, in fact, a weapon. However, Grier neither requested a special verdict form, nor raised an objection following the court's charge; thus, this argument is not preserved for our review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."); Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

Grier also attempts to now raise an argument under Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) and Dervin v. State, 386 S.C. 164, 687 S.E.2d 712 (2009), that he did not raise to the circuit court. Grier argues the statutory maximum the court may impose must be based solely on the facts reflected in the jury verdict or admitted by the defendant. He claims the circuit court improperly sentenced him because it used the statutory range from § 24-7-155, under which he was indicted, rather than that of § 24-3-965. We find this argument is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal."); Staubes, 339 S.C. at 412, 529 S.E.2d at 546 ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

Grier was indicted for possession of contraband by a county or municipal prisoner under § 24-7-155. There is direct evidence that Grier unlawfully possessed a twisted metal piece of a pen that appeared to have been sharpened to a pointed tip. The State presented testimony that the confiscated item could be used as either a weapon or as a lock pick. The confiscated item was not included in LCDC's list of allowable items, and LCDC's definition of contraband includes "any item not permitted in the jail" or "any item used in a way for which it was not originally intended." Both of these categories apply here, and Grier had notice that the confiscated item was prohibited as contraband.

Conclusion

Based on the foregoing, Grier's conviction is

AFFIRMED.^[5]

KONDUROS and HILL, JJ., concur.

[1] This is most commonly referred to as a "belly chain."

[2] See S.C. Code Ann. § 24-3-950 (2018) ("It shall also be unlawful for any prisoner under the jurisdiction of the Department of Corrections to possess any matter declared to be contraband.... Any person violating the provisions of this section shall be deemed guilty of a felony and, upon conviction, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both.").

[3] Although Grier did not use the language "motion to quash," the circuit court characterized Grier's motion as such.

[4] See S.C. Code Ann. 24-3-965 ("Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate under the jurisdiction of the Department of Corrections or to an inmate in a county jail, ... and the possession of contraband, other than weapons or illegal drugs, by an inmate under the jurisdiction of the Department of Corrections or by an inmate in a county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility must be tried exclusively in magistrates court. Matters considered contraband within the meaning of this section are those which are designated as contraband by the Director of the Department of Corrections or by the local facility manager.").

[5] We decided this case without oral argument pursuant to Rule 215, SCACR.

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South Carolina General Assembly
125th Session, 2023-2024

H. 3189

STATUS INFORMATION

General Bill

Sponsors: Reps. Wooten, W. Newton, Carter, Chapman, Haddon and Pope

Companion/Similar bill(s): 117

Document Path: LC-0022HDB23.docx

Introduced in the House on January 10, 2023

Currently residing in the House Committee on **Judiciary**

Summary: Contraband cell phones

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/8/2022	House	Prefiled
12/8/2022	House	Referred to Committee on Judiciary
1/10/2023	House	Introduced and read first time (House Journal-page 89)
1/10/2023	House	Referred to Committee on Judiciary (House Journal-page 89)

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

12/08/2022

ATTACHMENT D

1
2
3
4
5
6
7
8
9
10

A BILL

11 TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE "CONTRABAND
12 CELL PHONE ACT" BY ADDING CHAPTER 4 TO TITLE 24 SO AS TO PROVIDE NECESSARY
13 DEFINITIONS, TO ALLOW SUPERVISING LAW ENFORCEMENT OFFICERS WITH
14 REASONABLE SUSPICION TO BELIEVE THAT CONTRABAND CELL PHONES EXIST IN A
15 PRISON OR LOCAL DETENTION FACILITY TO AUTHORIZE THE USE OF ANY
16 ELECTRONIC DEVICE TO DETECT AND CONFIRM SUCH PRESENCE, TO ALLOW
17 SUPERVISING LAW ENFORCEMENT OFFICERS WHO CONFIRM THE PRESENCE OF
18 CONTRABAND CELL PHONES TO APPLY FOR AN EX PARTE ORDER REQUESTING
19 SUSPENSION OF SERVICE FOR SUCH CONTRABAND CELL PHONES, TO AUTHORIZE THE
20 CIRCUIT COURTS OF THIS STATE TO ISSUE EX PARTE ORDERS REQUIRING CELLULAR
21 SERVICE PROVIDERS TO SUSPEND CELLULAR SERVICE TO IDENTIFIED CONTRABAND
22 CELL PHONES, TO REQUIRE CELLULAR SERVICE PROVIDERS TO DISCONTINUE
23 CELLULAR SERVICE TO CONTRABAND CELL PHONES UPON RECEIPT OF ORDERS
24 ISSUED PURSUANT TO THIS CHAPTER, TO ALLOW CELLULAR SERVICE SUBSCRIBERS
25 AFFECTED BY ORDERS ISSUED PURSUANT TO THIS CHAPTER TO CHALLENGE THE
26 SUSPENSION OF SERVICE, AND TO PROVIDE IMMUNITY FROM CIVIL LIABILITY TO
27 CERTAIN PERSONS AND ENTITIES FOR COMPLIANCE WITH THE PROVISIONS OF THIS
28 CHAPTER; AND BY ADDING SECTION 24-3-975 SO AS TO PROVIDE THAT, SUBJECT TO
29 CERTAIN EXCEPTIONS, IT IS UNLAWFUL TO POSSESS WITHIN OR INTRODUCE UPON
30 THE GROUNDS OF A CORRECTIONAL FACILITY A TELECOMMUNICATION DEVICE, TO
31 DEFINE THE TERM "TELECOMMUNICATION DEVICE", AND TO PROVIDE A PENALTY
32 FOR A VIOLATION OF THIS PROVISION.

33
34 Be it enacted by the General Assembly of the State of South Carolina:

35
36 SECTION 1. Title 24 of the S.C. Code is amended by adding:

37
38 CHAPTER 4

39
40 Contraband Cell Phones

41
42 Section 24-4-10. This chapter may be cited as the "Contraband Cell Phone Act".

43
44 Section 24-4-20. As used in this chapter:

45 (1) "Cellular service provider" means any wireless telecommunication company providing service
46 to cellular telephones in the State of South Carolina.

1 (2) "Contraband cell phone" means a cellular telephone or device possessed or used by an
2 incarcerated or detained individual in violation of any applicable South Carolina law or policy
3 governing a prison or local detention facility in the State of South Carolina.

4 (3) "Electronic serial number" or "ESN" means an eight-digit hexadecimal code that uniquely
5 identifies mobile devices operating on CDMA networks.

6 (4) "GSMA device check database" is a global database containing information on millions of mobile
7 devices, including those reported as stolen or lost by participating operators.

8 (5) "International Mobile Equipment Identity" or "IMEI" means a fifteen-digit or seventeen-digit
9 decimal code that uniquely identifies mobile devices operating on GSM networks.

10 (6) "Local detention facility" means any municipal, county, or multijurisdictional jail, prison camp,
11 or overnight lockup used for the detention of persons charged with or convicted of a felony,
12 misdemeanor, local ordinance, or violation of a court order.

13 (7) "Mobile Equipment Identifier" or "MEID" means a fourteen-digit hexadecimal code that
14 uniquely identifies mobile devices operating on CDMA networks.

15 (8) "Prison" means any South Carolina Department of Corrections facility used for the detention of
16 persons charged with or convicted of a felony, misdemeanor, local ordinance, or violation of a court
17 order.

18 (9) "Supervising law enforcement officer" means a supervisor of any law enforcement agency in the
19 State of South Carolina including, but not limited to, the South Carolina Law Enforcement Division,
20 the Police Services Division of the South Carolina Department of Corrections, or any other recognized
21 state or federal law enforcement agency.

22
23 Section 24-4-30. When a supervising law enforcement officer has reasonable suspicion to believe
24 that one or more contraband cell phones exists in a prison or local detention facility, the supervising
25 law enforcement officer may authorize and approve the use of any electronic device, or other means,
26 to detect and confirm the presence of contraband cell phones and to detect any and all identifiers
27 associated with the contraband cell phones.

28
29 Section 24-4-40. When a supervising law enforcement officer has confirmed the presence of one or
30 more contraband cell phones in a prison or detention facility pursuant to Section 24-4-30 or any other
31 lawful means, the officer may apply for an ex parte order from the circuit court requesting the
32 suspension or discontinuation of service for contraband cell phones that the supervising law
33 enforcement officer is able to identify. The application must set forth the probable cause grounds on
34 which the application is based and must contain sufficient identifiers for the contraband cell phones.

35
36 Section 24-4-50. (A) Upon receipt of an application from a supervising law enforcement officer, the

1 circuit court is authorized to issue an ex parte order requiring cellular service providers to immediately
2 suspend or discontinue the cellular service provided to the identified contraband cell phone. The circuit
3 court shall maintain the original order.

4 (B) The court, upon request of the applicable law enforcement agency, also may prohibit the disclosure
5 of the existence of an order authorized by subsection (A) in any manner and under circumstances
6 considered appropriate by the court. However, a cellular service provider may disclose the existence of
7 an order to a subscriber whose service was interrupted as a result of the order and who is inquiring
8 about why service was interrupted.

9 (C) All circuit courts in this State have jurisdiction and venue to issue an order authorized by subsection
10 (A).

11
12 Section 24-4-60. Upon receipt of an order to immediately suspend or discontinue the cellular service
13 provided to an identified contraband cell phone from the circuit court, a cellular service provider shall
14 discontinue the cellular service to identified contraband cell phones as soon as is practicable, which
15 shall include reporting phone identifiers to the GSMA device check database, or by any other
16 reasonable means. However, if reporting a particular mobile device identifier to the GSMA database
17 may impact devices not identified as contraband, the cellular service provider is not required to report
18 that mobile device identifier to the GSMA database.

19
20 Section 24-4-70. (A) If the cellular service subscriber whose cellular service is affected by an order
21 issued pursuant to this chapter considers it necessary to challenge the suspension or discontinuation of
22 service, he must appear personally before the cellular service provider with the cell phone in question
23 and with proof of identification that must contain a photograph and list a physical address. The
24 subscriber must request reinstatement of the cellular service to the phone in question. The request must
25 contain the name and the physical and billing address of the person making the request.

26 (B) Upon receipt of a request for reinstatement that complies with subsection (A), the cellular service
27 provider may reinstate service to that cell phone if it reasonably appears that the service was suspended
28 or discontinued in error. In the event of reinstatement, the cellular service provider must provide the
29 supervising law enforcement officer and the prison or local detention facility with written notice after
30 the reinstatement, which shall include the date and time of the reinstatement and the name and address
31 of the requestor. If, after review of the request, the supervising law enforcement officer or anyone at
32 the prison or local detention facility objects to the reinstatement, a subsequent order may be sought
33 pursuant to Section 24-4-50.

34 (C) If the supervisory law enforcement officer receives a complaint regarding the suspension or
35 discontinuance of cellular service to any cell phone identified as a contraband cell phone in connection
36 with this chapter, the officer may conduct further investigation and confirmation of contraband devices

1 in question and may seek an order reinstating the cellular service to the phone in question.

2
3 Section 24-4-80. (A) No cause of action lies in any court against any cellular service provider, its
4 officers, employees, agents, or any other specified persons for discontinuing service or providing
5 assistance in accordance with the terms of a court order under this chapter.

6 (B) An appointed or elected public official, public employee, public agency, or supervisory law
7 enforcement officer is immune from civil liability for damages for any act or omission under this
8 chapter.

9 (C) A good faith reliance on a court order issued under this chapter is a complete defense against any
10 civil or criminal action brought under any provision of law.

11
12 SECTION 2. Chapter 3, Title 24 of the S.C. Code is amended by adding:

13
14 Section 24-3-975. (A) For purposes of this section, a “telecommunication device” means a device,
15 an apparatus associated with a device, or a component of a device that enables, or may be used to
16 enable, communication with a person inside or outside of a place of incarceration. Such devices include,
17 but are not limited to, portable two-way pagers, handheld radios, cellular telephones, personal digital
18 assistants, laptop computers, or any components of these devices. Telecommunication device also
19 includes any new technology that is developed or used for similar purposes.

20 (B) Except as authorized by the appropriate official in charge of the correctional institution, it is
21 unlawful to possess within or to introduce into or upon the grounds of a state correctional institution,
22 county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup
23 facility any telecommunication device. This prohibition does not apply to devices contained within
24 vehicles that are in designated parking areas or vehicles traveling on the grounds unless with the intent
25 to furnish the telecommunication device to an inmate.

26 (C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon
27 conviction, must be imprisoned for not more than three years and forfeits all earned work credits,
28 education credits, and good conduct credits.

29
30 SECTION 3. This act takes effect upon approval by the Governor.

31 ----XX----

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL	)	2024-GS-06-00205
	)	2024-GS-06-00206
	)	2024-GS-06-00207
	)	2024-GS-06-00208
	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	TRANSCRIPT OF RECORD
vs.	)	
	)	
COREY LAMONT RIVERA,	)	
DEFENDANT.	)	
	)	
THE STATE,	)	2024-GS-06-00202
PLAINTIFF,	)	2024-GS-06-00203
	)	
vs.	)	
	)	
JOHN WILSON WILLIAMSON, III,	)	
DEFENDANT.	)	

July 16, 2024
Barnwell, South Carolina

B E F O R E:

THE HONORABLE COURTNEY CLYBURN-POPE, JUDGE.

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

DAVID W. MILLER, ESQ.
Attorney for the Plaintiff

SAM GRIMES, ESQ.
DEREK BUSH, ESQ.
Attorney for the Defendants

PENNY M. JOHNSON
Court Reporter III

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

THE COURT: Mr. Miller.

MR. MILLER: Your Honor, we would like to start this afternoon with John Williamson and Cory Rivera. John Williamson is in custody. He is going to be brought out. He is going to be represented by Derek Bush.

THE COURT: Hi, Mr. Bush. I apologize. I didn't see you.

MR. BUSH: Hey, Judge. I'm not as important as our private practitioners here who are getting the sweet treatment, so I just sat here and was quiet. Glad to be down here in Barnwell.

THE COURT: All right, Mr. Miller.

MR. MILLER: Mr. Rivera is represented by Sam Grimes.

Your Honor, these Defendants, although their cases are not related, they are of the same category and class. They are each charged with and indicted for possession of contraband in the Barnwell County Detention Center.

Mr. Grimes and, I believe, Mr. Bush are joining -- or Mr. Grimes is making a motion to dismiss that he has filed. And that is in regards to indictment 2024-GS-06-00208, indictment 2024-GS-06-00207 and indictment 2024-GS-06-00206. So there's -- and, actually, and indictment 2024-GS-06-00205. So there are four indictments relating to Mr. Rivera.

1 And as for Mr. Williamson, he has two indictments,
2 indictment 2024-GS-06-00202 and 203.

3 THE COURT: Mr. Miller, is it appropriate for you to
4 give me some sort of a small background or synopsis?

5 MR. MILLER: Yes, Your Honor. Each of the Defendants
6 is charged with a possession of contraband in the Barnwell
7 County Detention Center -- well, there are a number of
8 defendants who are charged with possession of contraband.
9 Mr. Rivera was not in the Barnwell County Detention Center.
10 He is charged with providing contraband to inmates in the
11 Barnwell County Detention Center or in one of his
12 indictments, attempting to provide contraband to inmates in
13 the County Detention Center.

14 We have a number -- and all of these individuals are
15 charged under 24-7-155, which is the specific statute
16 relating to the possession of contraband by a county inmate
17 or furnishing contraband to a county inmate. That is
18 distinguished from the state -- there's a separate statute
19 that involves inmates in the Department of Corrections. But
20 this is the county inmates providing contraband to or
21 possession of contraband by a county inmate. So that's what
22 we're all talking about. That's how all of these are
23 related.

24 In each one of these cases -- and as the Court is
25 aware, there are several different things that are defined

1 as contraband. But in each one of these cases, we looked at
2 the incident reports and looked at the information provided
3 by law enforcement and determined that in each of the cases
4 that have been called today, the alleged contraband was not
5 an illegal weapon or -- was not a weapon or illegal drugs.
6 And because of that reason, it is our understanding that the
7 South Carolina Code Section 23-3-965 provides that in cases
8 where contraband has been provided to an inmate or where an
9 inmate possesses contraband, if it does not involve an
10 illegal drug or a weapon, then the case is exclusively
11 triable in the magistrate's court.

12 And as a result of that determination, on a
13 case-by-case basis, we went through and determined which
14 cases involved weapons and illegal drugs and which cases
15 involved something else. In those cases that did not
16 involve illegal drugs or weapons, we requested an
17 administrative order of this Court to transfer those cases
18 to the magistrate's court for trial, for adjudication.

19 And that's, basically, what the object is here. We are
20 trying to get these cases properly before the magistrate so
21 the cases can be tried in magistrate's court. And the
22 Defense has raised objections to the manner in which we
23 would try to get them submitted to the magistrate's court,
24 the jurisdiction of the magistrate hearing the cases, the
25 penalty or potential penalty that their clients would be

1 facing.

2 And in light of all of those questions from the Defense
3 or arguments from the Defense, we had a status conference
4 before Judge Gantt, who is the Chief Magistrate for Barnwell
5 County, last week. And when these issues came up and were
6 argued about, we felt like the best way to handle it would
7 be just to come before the circuit court, let the Defense
8 make all of their arguments that they intended to make and
9 obtain a ruling from the general sessions court about how --
10 or an order from the general sessions court about how these
11 cases were to proceed.

12 I would note that in each Defendant's case and there
13 are some other defendants that are similarly situated, we'll
14 talk about them on Thursday, but in all of the cases, the
15 defendants have been indicted. And we were doing that out
16 of an abundance of caution because that was something that
17 when we first started discussing this with the Defense
18 counsel, they indicated that they felt like because of the
19 penalty provision that the Defendants would need to be
20 indicted. So we did go ahead and we presented indictments
21 for all of these cases. They've all been true billed by the
22 Grand Jury in Barnwell County.

23 But now, they're pending indictments and we need to
24 figure out what is to be done with those indictments. And
25 the State's position is very simply that Section 23-3-965

1 says you take them to magistrate's court and you try them in
2 magistrate's court. And that's what it is our intent to do.

3 So in light of that, the Defense, specifically, Mr.
4 Grimes has filed a motion. And at that status conference,
5 which was held last Tuesday, the other Defense counsel,
6 including Mr. Bush, indicated that they would join in that
7 motion. So Mr. Bush and Mr. Grimes are here today to argue
8 that motion. I don't believe they have any kind of conflict
9 issues or anything else. I think that anything -- the
10 arguments would pertain equally to both of their clients.

11 So that's where we are, Your Honor. It's Mr. Grimes's
12 motion to dismiss.

13 THE COURT: Very good. Thank you, Solicitor Miller.
14 Mr. Grimes, your motion.

15 MR. GRIMES: Judge, as a bit of a preface, Mr. Johnson,
16 Ola Johnson, Ms. Alves, I believe are arguing their motions
17 on Thursday. Same issue. We all made this motion at the
18 magistrate court together.

19 I filed this motion. We didn't really argue it. I
20 think the State made some arguments, but this motion wasn't
21 particularly argued in magistrate's court. What I would
22 request is that the Court withhold ruling on it until --

23 THE COURT: Thursday.

24 MR. GRIMES: Until the other arguments have been made
25 because I would, also, like to preserve and be able to

1 attach any arguments that they make that I didn't make.
2 They may, also, like to do that vice versa, which may save
3 some time on Thursday versus them repeating everything I say
4 today.

5 Does that make sense?

6 THE COURT: It does. I'm not disagreeable to waiting
7 until Thursday until after Alves and Johnson have made their
8 argument. Is that what you want me to do, just so I'm
9 clear?

10 MR. GRIMES: Yes, Your Honor.

11 THE COURT: Very good. I'm not opposed to withholding
12 ruling until the arguments are made in completion.

13 MR. GRIMES: Okay. Thank you.

14 So there was probably a little bit of a
15 misinterpretation from the State as to our position on this
16 case. But it, essentially, boils down to interpreting what
17 24-3-965 means. And there are, essentially, two reasons to
18 interpret it when you apply it to the cases, particularly,
19 Mr. Rivera's case, but the same goes for the other cases
20 that are involved in these motions. One, what court has
21 jurisdiction to try this offense. And two, what is the
22 penalty.

23 So these cases -- as you know, it's the State's burden
24 to prove jurisdiction. 24-3-965 is pretty clear about what
25 controls jurisdiction. At this point, I'm talking about

1 general jurisdiction, which court has the jurisdiction to
2 try this class of cases. So if it is a weapon or an illegal
3 drug, general sessions court has the general jurisdiction to
4 try this offense. And if it is an item of contraband that
5 is not a weapon or an illegal drug, then the magistrate
6 court has general jurisdiction for these types of cases --
7 this class of case.

8 We don't get to pick what the allegation is. And I'll
9 tell you this for a reason. I'm not trying to be obstinate
10 or difficult to deal with, but they have not alleged an item
11 for Mr. Rivera's case. They have told us that they're not
12 going to allege it is a weapon or an illegal drug, which
13 means if it is an item of contraband and it is not an
14 illegal drug or weapon, their only jurisdiction is in
15 magistrate court. But the indictments do not allege any
16 type of contraband, an item of contraband. The warrants did
17 not allege an item of contraband.

18 So I'm not telling you the magistrate court has
19 jurisdiction to hear these cases unless it's the State's
20 position of what our position was. And I just can't tell
21 you that, not because I don't believe it's true, but because
22 the jurisdiction in this statute is determined by the item.
23 And they do not have an item in this case. They have an
24 idea about what the item might be, but they don't have the
25 item. In other words, there wasn't one recovered.

1 Essentially, the incident report and stuff indicates
2 that a person who they claim to be Mr. Rivera came to the
3 exterior of the jail, Barnwell jail, and, potentially, left
4 an item there that was recovered by a person on the inside
5 of the jail, an inmate, but they don't have that item. So
6 --

7 THE COURT: Mr. Grimes, not to interrupt your argument,
8 but just so I'm clear as you make your argument, Mr. Rivera
9 is your client? Who's your client?

10 MR. GRIMES: No, Your Honor, I don't have -- Mr.
11 Rivera is seated here behind me.

12 THE COURT: I apologize. I thought maybe he was your
13 client. Okay. So Mr. Rivera is, obviously, on the outside
14 coming in, those are the allegations.

15 What's your client's name, Mr. Grimes, just so I can
16 attach?

17 MR. GRIMES: Corey Rivera is my client.

18 THE COURT: Corey Rivera. And who is this Mr. Rivera?
19 What's your name?

20 MR. RIVERA: Corey.

21 THE COURT: Okay. Now, we're together. Very good.
22 Okay.

23 MR. GRIMES: So Judge, that's kind of an odd position
24 to take, but I can't concede to an item and relieve the
25 State of their burden of proving an item and jurisdiction in

1 this case. If the case goes forward, we're going to have a
2 motion to dismiss and/or quash the indictment based on that
3 argument. So I believe the State intends to try this case
4 in magistrate court based on everything they've told me. I
5 don't have any reason to believe otherwise. They have
6 indicated to us that they are not alleging that this case
7 involves a weapon or an illegal drug, which would give
8 general sessions court jurisdiction to hear the case.

9 So 24-3-965 is clear that if it's not an illegal drug
10 or a weapon, general sessions court does not have
11 jurisdiction of the case. If the item is any other of a
12 finite, although, pretty exhaustive list of items, then the
13 State's exclusive remedy and jurisdiction is in magistrate
14 court. And the statute says, essentially, possession of
15 contraband other than weapons or illegal drugs by an inmate
16 under the jurisdiction of the Department of Corrections or
17 county jail, municipal jail, regional detention facility,
18 prison camp, so on and so forth, must be tried exclusively
19 in the magistrate's court.

20 The State has taken a -- or is attempting to do a very
21 constrained interpretation of that, that the warrant for
22 those items would be pending in general sessions court with
23 the general sessions court clerk, but the case would be
24 tried in magistrate's court.

25 Now, this one sentence doesn't say any of that and I'm

1 not aware of any other instance where anything like that
2 exist in South Carolina law. But they're implying that all
3 that must be true from this one sentence. Instead of
4 interpreting the statute to say when it's not a weapon or an
5 illegal drug, file the warrant in magistrate court and be
6 tried in magistrate court, they're taking the position that
7 when it's not a weapon or an illegal drug, you file the
8 warrant in general sessions court and try it in magistrate
9 court.

10 Now, I don't know why in the world you would take that
11 position, but that's where we are. I've been practicing
12 criminal law for quite a long time along side Mr. Miller,
13 who, quite frankly, was and is a mentor of mine. We were in
14 the same solicitor's office for close to 15 years. I think
15 he started three weeks or so before I did. I've never heard
16 of anything like this ever where somebody -- and there's --
17 the State has pointed to transfer court, but that operates
18 completely differently and there's a statute that controls
19 how that procedure works. There isn't anything in this
20 24-3-965 which would lead somebody to believe that you would
21 file this charge in one court and try it in a different
22 court and there should be any reason for that.

23 Since this case has been pending, I've kind of had
24 ongoing conversations with Mr. Miller and Ms. Staggs about
25 what to do with this charge. We have taken the position

1 this is a magistrate court offense and it should have been
2 filed in magistrate court. If they intend to pursue it as
3 an item of contraband that's going to be not an illegal drug
4 or a weapon, which they indicated they are, the exclusive
5 jurisdiction for those items is in magistrate court. And I
6 don't know of any reason to read this statute any other way.

7 Maybe Your Honor is familiar with something that would
8 be similar to this, but this statute doesn't provide any
9 procedure to do what the State's asking to do. And it's
10 created quite a few problems. So what the State has done is
11 take these cases and indict them.

12 And, quite frankly, last week when we ended up in
13 magistrate court, I think all of the defense attorneys were
14 surprised to see there was an order transferring or
15 transmitting these cases to magistrate court for trial. We
16 asked the court -- we asked the magistrate court not to
17 schedule these cases for trial because we wanted to contest
18 that issue. It was not an uncontested issue for this
19 reason. And that's why nothing was scheduled in magistrate
20 court other than these hearings. What's going to happen in
21 magistrate court with these cases is kind of held in
22 abeyance.

23 Your Honor might be surprised to find out that despite
24 this order sending these cases to magistrate court, they
25 were here in the general sessions court clerk's office and

1 they went to the Grand Jury, apparently, on Thursday,
2 despite the order sending them to the magistrate court for
3 trial. So nothing was sent, apparently.

4 I'm not blaming anybody at the clerk's office. I don't
5 know exactly what the intent of the State was, but it's not
6 a procedure that people are particularly familiar with
7 because it doesn't really exist. It's just made up.

8 I will point Your Honor to -- for comparison, I'll
9 point you to 22-3-545, which is the transfer court statute
10 that, basically, creates the procedure for transfer court.
11 And interestingly, this statute section was in the bill that
12 24-3-965 was in when it passed back in 2000. There was a
13 section dealing with driving under suspension cases giving
14 the magistrate court jurisdiction in those cases despite the
15 fact that they carry more than 30 days. There was a section
16 dealing with transfer court and there was a section dealing
17 with these contraband cases.

18 So in this section, 22-3-545, essentially, transfer
19 court was made. And there is, basically, a procedure
20 created for how the cases will end up in transfer court.
21 How they will be adjudicated in transfer court and how long
22 they can be there and how they will be supervised. There's
23 a very detailed procedure for how to handle cases that are
24 in transfer court. Those cases are cases that are -- don't
25 exceed a certain fine and one year imprisonment.

1 Interestingly, there's a whole process for the consent of
2 the defendant. And I'll come back to that section, this
3 same statute later for a different reason.

4 But I wanted to point out that in the same bill in
5 which 24-3-965 was passed, the transfer court statute
6 section was in that bill and they chose not to do something
7 similar in the contraband cases. And I think the reason
8 they chose not to do something similar in the contraband
9 cases is because they didn't have any intention for them to
10 ever be filed or pending in general sessions court.

11 So if you read 24-3-965 the way the Defense is
12 proposing that it should be read, I think the only logical
13 way to read it, you wouldn't have any of those transfer
14 court problems because the cases would never be pending in
15 general sessions court.

16 Well, why would you read 24-3-965 to -- why would you
17 read it in a way that requires that these warrants be filed
18 in general sessions court supervised by a general sessions
19 court judge and be tried magistrate court? What would be
20 the purpose of reading the statute that way? Because it's a
21 whole lot of hoops to jump through and a whole lot of
22 problems that are created when you're in that situation. So
23 why would you want to read it that way?

24 Well, this comes to the second point. The State is in
25 this statutory procedural nightmare with no guidepost

1 because they want the Court to read this statute as being a
2 ten-year offense in magistrate court. In order words,
3 instead of being a 30-day offense in magistrate court as the
4 statute intends, they would like for this offense to be a
5 ten-year offense. And they would probably be happy with it
6 being tried in general sessions court, but the statute
7 doesn't allow that.

8 So in order to prosecute a ten-year felony offense in
9 magistrate court, what do you have to do? Well, there are a
10 lot of things you would have to do, one of which is to
11 create some sort of procedure for the charge to be in
12 magistrate court to be able to be tried in magistrate court.
13 So they presented Your Honor with an order transferring -- I
14 forget the term and I don't have a copy of the order, but
15 transferring or transmitting these cases to magistrate court
16 for trial despite the fact that nothing was transferred or
17 transmitted and the warrants stayed in the clerk of court's
18 office and went to the Grand Jury and were true billed by
19 the Grand Jury after that order was signed. You can see the
20 procedural nightmare starts to begin. All of this is driven
21 by the fact that they want this to be a ten-year offense
22 instead of the 30-day offense as anticipated by the statute.

23 So I will tell you that prosecuting this as a ten-year
24 offense would make getting a plea in these cases easier. I
25 don't know the details involved in all the other defendants'

1 cases. I will tell you that there are what I would consider
2 factual legal issues in Mr. Rivera's case. And if faced
3 with the prospect of being guilty of a felony and subject to
4 potentially ten years in prison versus what I assume would
5 be an offer of something very minimal, he may be more likely
6 to plead and his cases won't have to be tried and that would
7 be a benefit to the State.

8 However, if these cases were 30-day offenses, Mr.
9 Rivera's situation is a little different from some of the
10 other defendants who have been in jail for longer than 30
11 days since these offenses were charged, so, essentially,
12 worst case scenario for them is a time-served sentence.

13 So there is a motivation for the State to attempt to
14 read this statute as a ten-year felony offense despite the
15 fact that it has to be tried in magistrate court, but there
16 isn't a way to interpret the statute in accordance with
17 statutory interpretation rules and come to that conclusion.

18 So I'll tell Your Honor -- and I'm not going to read
19 the whole motion. I hope you had a chance to look at it or,
20 at least, have it in front of you. I have another copy if
21 you need it.

22 THE COURT: Can you hand me -- paper copy is easier for
23 me to read.

24 MR. GRIMES: So in the beginning in the actual motion,
25 it's more of an outline of what occurred. Essentially, we

1 were told by the State via e-mail that they intended to try
2 these cases in magistrate court. I responded to the
3 magistrate court and there was a number of people on that
4 e-mail that I believe were stating select a court and forum
5 and pursue the case in whichever forum they select based on
6 which court would have jurisdiction over what item they're
7 alleging was the contraband in this case.

8 Mr. Miller responded to the group e-mail that my
9 client's case, Mr. Rivera's case, was only triable in
10 magistrate court, but that the warrants would be pending in
11 general sessions court and that I could file the motions in
12 general sessions court and Your Honor would hear the
13 motions. That's kind of how we ended up here.

14 I didn't copy the statutes in there, but I put some of
15 the rules for statutory interpretation. So the cardinal
16 rule of statutory construction is to ascertain and give
17 effect to the intent of the legislature. So when you can
18 detect the plain meaning of the statute, that's what you're
19 supposed to do. If there's a question as to what the
20 statute says or means, it's not clear on its face, then you
21 use the rules of statutory interpretation. So the statute's
22 language must be construed in light of intended purpose of
23 statute. And whenever it's possible, the legislative intent
24 should be found in the plain language of the statute itself.
25 There's not a lot of language that goes to the intent in

1 this statute.

2 The statute must be interpreted with realistic
3 circumstances and rationales in mind. The courts will
4 reject an interpretation of a statute leading to an absurd
5 result clearly unintended by the legislature. And however
6 plain the ordinary meaning of the word used in the statute
7 may be, the courts will reject that meaning when to accept
8 it would lead to a result so plainly absurd that it could
9 not possibly have been the intended -- intended by the
10 legislature. A statute should be so construed that no word,
11 clause, sentence, provision or part shall be rendered
12 surplusage or superfluous.

13 And then this one, in particular, as it goes to the
14 Defense's arguments, when a statute is penal in nature, it
15 must be strictly construed against the State and in favor of
16 the Defendant. And then there's two citations there for
17 that rule.

18 So in 24-3-965, the Defense's contention is that the
19 legislature did a couple of things. One, they provided for
20 the jurisdiction to be in magistrate court. And they
21 limited the penalty in this case to that which is allowable
22 in magistrate court, under the exclusive jurisdiction of
23 magistrate court, which is up to 30 days or up to \$100 fine.

24 So if you read the statute that way, these other
25 problems that have cropped up here don't exist. The warrant

1 is filed in magistrate court, it's prosecuted in magistrate
2 court, it's punished in magistrate court. It's within the
3 jurisdiction of the magistrate court and everything else
4 flows exactly how it's supposed to flow.

5 Now, the reason we didn't end up in that position is
6 because that eliminates the strong arm of the ten-year
7 felony offense, which the State would like to prosecute
8 these cases. And there's, quite frankly, how many of these
9 cases pending, I don't know if they're the ones -- I think
10 there are just more than the ones that had motions this
11 week. This has been an issue in Barnwell for the jail.
12 It's unfortunate. I don't know if you've noticed it,
13 they've extended the gate outside the jail, almost to the
14 road. It's clear that this is a problem for them and
15 prosecuting these cases is a concern of theirs. And
16 prosecuting that as a ten-year felony offense would be a
17 benefit to the State. That doesn't make it an okay
18 interpretation of the statute, but you can see what the
19 motivation would be to make these offenses as severe as
20 possible.

21 So in 24-3-965, the Defense's position is that the
22 meaning of the statute is clear. I'm not talking about just
23 a trial of the case being in magistrate court. These cases
24 should be filed in the magistrate court's office. The
25 statute says they're exclusively triable in magistrate

1 court. It doesn't mention anything about filing these
2 charges in any other court or why you would do that or what
3 the benefit of it would be or the procedure for any of that.
4 It doesn't mention anything about general sessions court.
5 It just says these cases are exclusively triable in
6 magistrate's court, which means magistrate court has
7 jurisdiction over the cases, whether it's a guilty plea or
8 motions or trials, whatever.

9 Because, quite frankly, all the cases are trials until
10 they're not. If they're dismissed or they plead guilty,
11 that's fine, but in order to get to that point, they are all
12 trials until they resolve. All these people have a right to
13 a trial by a jury. And that hasn't been waived until such
14 time as they plead guilty. So what would happen in this
15 case until the time the charge is filed, all the way up
16 until the time the trial happens is the trial of the case.

17 So with regard to which court has jurisdiction, the
18 Defense's position -- I'm saying that kind of slow because
19 I've said the State's position for 15 years. But our
20 position is that that part of the statute, there isn't any
21 other way to interpret it. These cases should be filed in
22 magistrate court. They should be heard in magistrate court.
23 All the things about them should be in magistrate court.
24 And that magistrate court would have the exclusive
25 jurisdiction of the case.

1 I guess there's multiple ways that the Court could
2 decide this motion. Your Honor could dismiss these cases
3 because the Court doesn't have jurisdiction to hear the
4 case. And I think that's probably the efficient way of
5 doing it. The State has had the opportunity to remand these
6 warrants in magistrate court. They could have done it. It
7 could have been done -- I think Mr. Rivera's case is from
8 last November. So they've had the opportunity to remand the
9 case to magistrate court. They've indicated that it's only
10 triable in magistrate court. They sent it to the Grand Jury
11 for an indictment anyway. So I don't know why any of that
12 was done, but the Court should conclude that general
13 sessions court does not have jurisdiction to hear the case
14 and that dismissal of the charges are proper and they,
15 essentially, had the opportunity to remand the case and have
16 chosen not to.

17 If the Court decides to proceed with the case as the
18 State has indicated thus far, meaning the charges remain
19 pending in general sessions, but are tried in magistrate
20 court, then we have -- we'll have a number of other issues,
21 but the other issue that's in our motion is to determine
22 what the possible penalty is in this statutory provision.

23 So at this point, I don't think that the Defendants
24 could even plead guilty if they wanted to because, as Your
25 Honor is aware, they have to have a knowing and intelligent

1 waiver of their rights, which includes to be informed of the
2 possible penalty that they're facing. And there's a
3 significant dispute as to what the possible penalty is that
4 they're facing. The Defense's contention is that the
5 statute provides for a maximum possible penalty of 30 days
6 or a hundred dollars with limitation of exclusive
7 jurisdiction of magistrate court. There isn't anything in
8 the statute that changes the penalty despite the exclusive
9 jurisdiction of the magistrate court.

10 And so the Defense's contention is facing a 30-day
11 offense. The State's position is that they're facing ten
12 years and it's a felony. So whether it be in magistrate
13 court or general sessions court, they don't have the ability
14 to plead guilty at this point because they don't even know
15 what they're facing. So the Court's going to be constrained
16 to determine, whether it be in magistrate court or general
17 sessions court, what the possible penalty is for this
18 statute. And that's not as easy as the jurisdiction.

19 I think the fair way to read this statute in accordance
20 with the legislative intent is to determine that it was
21 intended to be the exclusive jurisdiction limits of
22 magistrate's court, which is 30 days or a hundred dollars.
23 The State's position is that despite the fact that this case
24 is pending in magistrate court and tried in magistrate
25 court, it should be a ten-year felony offense. There isn't

1 any legislative goal that would be furthered that way.

2 So what was the purpose in dividing this statute into
3 two separate classes of offenses? The worse kind, which are
4 weapons and illegal drugs, and the arguably less worse kind,
5 which are everything else, which could be cigarettes or
6 candy or who knows what. And notably cell phones, but I'll
7 come back to that in a moment.

8 So why would you create two separate classes of
9 offenses and why would you have them being tried in two
10 separate courts if they were going to have the exact same
11 penalty? And interestingly, those people with the worse
12 offense who are tried in general sessions court could
13 receive a probationary sentence while those with the less
14 severe offenses that are tried in magistrate court would
15 still be facing ten-year felony, but can't have probation
16 because magistrates can't order probation. So what would be
17 the legislative purpose of that? And quite frankly, there
18 is just no legislative intent to create the first ten-year
19 felony offense in magistrate court for inmates who have
20 contraband of the less severe type.

21 What would be satisfied by reading the statute in a
22 manner in consonant with the Defense's position? Well, you
23 have 30-day offenses that are summary in nature that can be
24 prosecuted in magistrate court much more quickly than they
25 can be prosecuted in general sessions court with less severe

1 penalties and you can dispose of those less severe cases
2 more quickly and with less resources. So is there a way to
3 interpret the statute that provides -- that is consonant
4 with the legislative intent of disposing of these less
5 severe cases more quickly with less resources? Yes, it's to
6 interpret this as being a 30-day magistrate offense.

7 The State's proposed interpretation of this statute,
8 does it go along with any even fathomable legislative
9 intent? No. You put people in a worse position with less
10 rights for less severe offenses. In other words, they're
11 treated worse than the people in general sessions court for
12 having committed a less severe offense. Because they can't
13 get probation. They don't the protections from the Grand
14 Jury. They don't have 12-person juries. They don't have --
15 you know, there's a whole list -- I don't want to direct you
16 to the wrong area.

17 On Page 8 and Page 9, there's a whole list of
18 differences between magistrate court and general sessions
19 court, which to a large extent are kind of obvious, but I
20 wanted to point them out because it just can't be the
21 legislative purpose that creates a situation where the
22 people that committed the less severe offense of the two
23 classes end up in a situation where they don't have the
24 right to a preliminary hearing, they don't have the
25 protections of the Grand Jury, they don't have the larger

1 jury pool in general sessions court. They don't have a jury
2 of 12 persons, so they have a jury of six people. They
3 don't have statutory jury exemptions that are provided by
4 statute, the ability to see the jury pool in person,
5 presiding judge must have been an attorney for, at least,
6 eight years, which is required for circuit court judges,
7 discovery disclosure requirements. We still have some
8 Constitutional protection cases that go forward in
9 magistrate court intend to be summary of nature, so they may
10 not have some of the protections of the South Carolina Rules
11 of Criminal Procedure. They don't have a jury pool from the
12 entire county. And those are just some of them.

13 But they will still be facing the exact same penalty as
14 the people that had the more severe offenses that were going
15 forward in general sessions court. I think Your Honor can
16 see the picture. There's just not a possibility that that
17 was the intent of the legislature. It doesn't say it in the
18 statute, so we have to determine what it was they were
19 trying to do. And what they were trying to do was clearly
20 to resolve these less severe cases in magistrate court more
21 quickly and with less resources.

22 So when you look at the statute, if it's clear on its
23 face exactly what's supposed to happen, there isn't any
24 interpretation of the statute that goes on. You just take
25 the meaning of clear on its face and that's the meaning that

1 the court interprets, that's how legislative interpretation
2 works in accordance with the interpretation rules. However,
3 if there's any ambiguity, if there's anything that's unclear
4 about what's supposed to happen, you have to apply the rules
5 of legislative interpretation.

6 The reason the Defense is telling you this case is not
7 clear on its face with regard to the possible penalty is
8 because it begins with notwithstanding the provisions of
9 Section 22-3-540, 22-3-545, 22-3-550, 24-3-950 and 24-7-155.
10 And then it goes on. That's a whole list of different
11 statutes. Some of them have to do with magistrate court
12 exclusive jurisdiction, transfer court. Some of them are
13 the offense statutes for these two offenses. The one that
14 pertains to prisons, which is very similar to the one these
15 folks are charged with.

16 All those statutes have multiple provisions, so what
17 part of which of those statutes you're supposed to,
18 basically, ignore is unclear from the statute. Because if
19 you -- it doesn't say notwithstanding the penalty
20 provisions, so 24-3-155, it just says notwithstanding the
21 provisions of it, right.

22 So what are you supposed to do with the offense
23 statute? What part are you supposed to ignore? We have to
24 ignore a part of it in accordance with the legislative
25 interpretation because no part of the statute can be

1 superfluous or surplusage, so each word has to have a
2 meaning. So all those statutes are in there. Part of those
3 statutes have to be what I've called notwithstanding, but,
4 essentially, accepted. Notwithstanding just means despite,
5 so despite what provision of the offense provision of this
6 crime is going to be notwithstanding?

7 Well, there's only two provisions. One creates the
8 offense. So having contraband is a crime. The other is the
9 penalty provision. You face one year to ten years and
10 there's a fine. And it's a felony. One of those two
11 provisions -- this statutes means what it means despite one
12 of those two provisions, but one of them has to be excepted.
13 Or if you except the provision that creates the offense,
14 then there's no crime. So you can't say except for the
15 provision creating the crime is triable in magistrate court.
16 You can't do that because it doesn't make any sense. You
17 wouldn't have a crime to start with. So the only other
18 provision that can be excepted is the provision that creates
19 the penalty, right? So except for the penalty provision of
20 this case, it's a magistrate court offense triable in
21 magistrate court.

22 That's the only way to read that statute and it make
23 any sense at all. It does not conflict with legislative
24 intent to read it that way. It does not conflict with
25 Constitutional rights to read it that way. As long as you

1 read as a magistrate court offense, the maximum penalty is
2 the maximum possible penalty for the exclusive jurisdiction
3 of magistrate court, which is 30 days or a hundred dollars,
4 then all of this stuff works. It's not unconstitutional and
5 it makes sense and it's consonant with the legislative
6 intent. So all of those things work.

7 I think in order to interpret the statute at all, the
8 Court has to first make the finding that it's not clear on
9 its face exactly what's supposed to happen. I think that's
10 an easy ruling in this case. It's not clear on its face
11 what's supposed to happen.

12 Mr. Miller is going to argue to you that it is
13 perfectly clear what's supposed to happen on its face
14 without resorting to any legislative intent, without
15 resorting to any of the other rules of legislative
16 interpretation. And he's stuck with that position because
17 to get where they want to be, to have this be a ten-year
18 offense, Your Honor can't use any of the legislative
19 interpretative rules because none of them gets you to that
20 conclusion, right? None of them would say the legislature
21 intended to create this second class of less severe offenses
22 to be punished exactly the same, but with less rights in
23 magistrate court. Nobody could come to that conclusion.

24 And you come to that conclusion every time you analyze
25 this with the rules of legislative interpretation. If you

1 don't use any of those rules, then you could come to the
2 incorrect conclusion the State is proposing that it's a
3 ten-year offense. But you have to determine that the
4 statute is clear on its face, that these charges are
5 supposed to be filed in general sessions court, that they're
6 supposed to be somehow transferred to magistrate court on
7 some docket procedure that doesn't exist, which is a made up
8 docket procedure, and that only the trial of the case will
9 happen in magistrate court, despite the fact that they're
10 indicted in general sessions court and general sessions
11 court judge is hearing motions in the case. You know, if
12 you come to that result, you can only get there by saying
13 the statute is clear on its face that the State's going to
14 tell you, not using any rules of statutory interpretation.

15 And primarily, the reason that they're going to tell
16 you that is because even if you thought that they were
17 right, even if you said well, I'm about 95 percent certain
18 that what Mr. Miller is saying is true, that these cases are
19 supposed to be filed in general sessions court, indicted,
20 despite the fact there's no mention of that, and tried in
21 magistrate court, even if you said well, I interpret the
22 statute, I think Mr. Miller's right on this issue, I'm about
23 95 percent certain, then you still find for the Defense
24 because when the statute is penal in nature, it must be
25 strictly construed against the State and in favor of the

1 Defendant, which means if you have any doubt about how to
2 interpret this statute, the interpretation that benefits the
3 Defendant is the one you have to go with.

4 So because that rule of statutory interpretation exist,
5 they can't have the Court interpret the statute. So they
6 have to take the position it's clear on its face and we
7 won't use anything to try to determine what it means. I
8 don't know that you could logically come to that conclusion,
9 but that's the position that they have to take or else they
10 lose from the outset.

11 So I will tell Your Honor that this statute was enacted
12 in 2000. And from 2000 when this statute was enacted until
13 some time in 2016, there was a CDR code where this offense
14 was prosecuted in magistrate court as a 30-day offense. I
15 think the most recent conviction that we located in Barnwell
16 was in 2016 with that CDR code. I attached that CDR code as
17 an exhibit and part of this memorandum. I think it may be
18 Exhibit B.

19 So in Exhibit B, you can see from June 14th of 2000
20 until July of 2016 -- and I think 2016 was the last
21 conviction we could find in Barnwell for this CDR code. It
22 was prosecuted just as the Defense is saying, as a
23 magistrate offense, and it had this 33-22 CDR code. The
24 title of it was Contraband Other than Illegal Drugs or
25 Weapons. It had this offense -- well, it had offense

1 statute 24-3-965, which is the prison version of the statute
2 that we're referencing.

3 It was rescinded in 2016. We contacted Court
4 Administration. They weren't sure why that happened. The
5 people that worked there at the time in 2016 weren't there.
6 We really didn't get any other conclusion other than that's
7 an administrative decision. We didn't find any type of case
8 law or statutory revisions that would coincide with that.
9 The statute hasn't been revised. So for, essentially, 16
10 years out of 24 years of existence, it was interpreted one
11 way. And for the remaining, I don't know how it's been
12 interpreted other than here we are treating this as if it's
13 always been this way. And it just hasn't. Coming up with
14 this procedure that doesn't exist anywhere in any of the
15 statutes.

16 So it's been almost a quarter of a century since this
17 statute was enacted and we're coming up with a procedure as
18 to how to deal with it as a ten-year felony magistrate court
19 for, basically, the first time 24 years later. I think it's
20 because it was never intended to be one, in general sessions
21 court and two, a ten-year felony offense.

22 I will tell you that there is -- I would like Your
23 Honor to read -- of course, I won't ask you to do it now,
24 but I would like Your Honor to read State V. Greer, which is
25 in attachment C. The Court doesn't decide this issue, but

1 it does reference this issue because it says in the case
2 that, essentially, the State was trying to go for the
3 enhanced penalty provisions. They couldn't meet the burden
4 of proving what the item was to get that enhanced penalty of
5 the ten-year offense. And it references, basically, an
6 enhanced penalty based on what the item was. The Court
7 clearly draws a distinction between what the penalties would
8 be based on the outcome of what the State could prove the
9 item was. And the only way to come to that conclusion is if
10 they are two separate penalties. That's a different
11 conclusion than what the State is proposing to Your Honor
12 today.

13 So I'm not telling you that State V. Greer is on point.
14 What I'm telling you is that they acknowledge there was two
15 separate penalties in passing, like it wasn't even something
16 that they really needed to consider was arguable that it
17 wouldn't -- that it would be the same penalty. Because if
18 it was the same penalty, State V. Greer wouldn't need to
19 happen. The Defendant would be arguing to no avail because
20 he would be facing the exact same penalty regardless of what
21 the item was.

22 And the Court didn't go into some analysis and say
23 well, it doesn't matter what the item was because you'd be
24 facing ten years either way. The Court skipped over that as
25 if it was not even worthy of its attention. It was just

1 understood that it would be two separate penalties. So
2 that's the reason I attached Attachment C.

3 And then, interestingly, in dealing with legislative
4 intent, Attachment D is a bill that's pending in the
5 legislature right now. It's a bill that was filed to deal
6 with prison contraband that includes cell phones.

7 So what the statute intends to do is to give the State
8 additional tools to fight the prevalence of having cell
9 phones in the prison system. There's all kind of tools in
10 there, but what they're proposing is a penalty for cell
11 phone contraband to be three years. There just isn't any
12 way in the world that they intend to fight cell phones in
13 prison by reducing the penalty from ten years to three
14 years.

15 This bill is an effort to increase the penalty for cell
16 phones. So they wouldn't increase it to the same amount as
17 weapons and illegal drugs, which is ten years, but they
18 would increase it above what it should be currently, which
19 is a 30-day offense because it's an item of contraband
20 that's not illegal drugs or weapons. So it should have a
21 penalty -- it currently has a penalty of -- the maximum
22 penalty is 30 days.

23 So the purpose of this bill is saying that's not
24 enough. We need to be able to have more tools to combat the
25 prevalence of cell phones in prisons so we're going to

1 increase the penalty to three years. So I included that as
2 Attachment D, essentially, showing that if the legislature
3 believed that this was a ten-year offense, then the
4 provisions in this bill that are being dealt with now in the
5 legislature make absolutely no sense at all. So that's the
6 reason that Attachment D is in there.

7 Then in wrapping up, I did want to talk about problems
8 that exist when you interpret the statute or read the
9 statute in a manner that the State is proposing. So as Your
10 Honor is aware, appeals from magistrate court comes to
11 circuit court. If this case is pending in general sessions
12 court, Your Honor is deciding motions on it and it's tried
13 in magistrate court. And on the trial of that case, it's
14 appealed to circuit court, it's going to be right back here
15 starting in the same court that it was pending the whole
16 time. That's not the way our appellate court system works.

17 There isn't any change in the provisions of the
18 appellate jurisdiction of the circuit court. It doesn't say
19 notwithstanding 14 -- I think it's 14-3 something that gives
20 this court appellate jurisdiction over magistrate cases.
21 There isn't anything in there -- it doesn't say
22 notwithstanding those provisions.

23 Your Honor has this case pending on your docket. It's
24 tried in magistrate court. The appeal for that comes right
25 back here where you would be hearing, essentially, the same

1 motion I'm making now and similar motions that's the Court
2 has already decided. That makes no sense at all. It's a
3 problem that's created when you read the statute the way the
4 State wants you to read it. It's a problem that doesn't
5 exist when you read it the way it was intended to be read.

6 The other problem is this kind of shadow docket of
7 contraband court that's created. So as I pointed out
8 earlier, in 22-3-545, that deals with the transfer court
9 and, basically, creates all the procedure for how transfer
10 court is held. It's all laid out in the statute. You don't
11 have to wonder how do I get the cases to transfer court, how
12 do they come back from transfer court, what happens while
13 they're there. None of that stuff is in question because
14 it's all laid out in the statute. And in the same bill they
15 did that, they passed this contraband provision allowing the
16 magistrate to have exclusive jurisdiction of these cases.

17 There's only three sections in that bill. So the bill
18 was initially a driving under suspension bill. They tacked
19 on some stuff for transfer court and they made this
20 provision. They put it in there -- they added it literally
21 the day before it was ratified, I think. So the whole time
22 this bill was pending in the House and the Senate, it didn't
23 have anything about the jurisdiction of magistrate court for
24 contraband cases. And then I think on May 31st, they add
25 that as an amendment. They read it. They read it again the

1 next day. They send it back to the Senate and that's what's
2 in the statute. One day before they send it back to the
3 Senate, it's added. It's ratified later that week.

4 They had the ability to create a procedure. They chose
5 not to. It was right in front of them on the same bill.

6 They chose not to do it because they didn't have any
7 intention of this case ever working like a transfer court
8 case. They didn't intend to create contraband court. They
9 didn't intend to create any of that procedure, so the State
10 has made up the procedure. Because, quite frankly, if
11 you're going to do this, you're going to have to have a
12 procedure. I think Mr. Miller is right about that. So they
13 just make one up.

14 I've been referring to it as the shadow docket for the
15 contraband court, but the reality is there isn't any
16 authority to have that. As surprised as we were to find out
17 about the order and maybe Your Honor is surprised to find
18 out despite the order, the cases went to the Grand Jury
19 anyway, none of that is provided for.

20 So they could have created that procedure. They had it
21 right in front of them when they passed this bill. They
22 chose not to. And the reason they chose not to is because
23 they had no intention of that ever happening.

24 The other offenses that exceed the statutory maximum
25 jurisdiction for penalties in magistrate court are dealt

1 with differently. Driving under suspension. Somewhere in
2 that bill, it says they're going to be in magistrate court
3 and it says these are going to be the possible penalties.
4 So it spells out that they're going to be in magistrate
5 court jurisdiction and this is going to be the possible
6 penalty.

7 So that happened in the same bill as the creation of
8 the contraband. But despite doing that, despite giving the
9 magistrate court specific increase in sentencing
10 possibilities like they did for driving under suspension,
11 they just gave the regular sentencing maximum for contraband
12 cases, 30 days. They didn't give them an extra sentence or
13 an extra provision that allowed them to sentence higher than
14 that.

15 And then after this happened, there is an offense
16 forgery, no dollar amount. And forgery, no dollar amount --
17 and this is unique, this is -- I don't know of another
18 instance where it occurs. But it's an actual -- it's a
19 felony for forgery, dollar amount, forgery less than
20 \$10,000. It's a felony, five-year offense. They said,
21 except if the offense does not involve a dollar amount, then
22 it's -- and it's in magistrate court jurisdiction. And they
23 reduced it from a felony to a misdemeanor and they reduced
24 the possible penalty from five years to three years. And
25 all of that is explicit in the statute. There's not any

1 question on what's supposed to happen. There's not any
2 question that they increased the magistrate court's
3 jurisdiction to sentence higher than the maximum.

4 And they took special care to reduce it from a felony
5 to a misdemeanor. They took special care to reduce the
6 maximum possible penalty and they outlined in the statute.
7 None of that was done here because they didn't have any
8 intention of expanding the magistrate's court jurisdiction
9 on sentencing because they intended for this to be a 30-day
10 offense.

11 And so the other -- the other problem that's created is
12 -- and I don't believe I took the position with Mr. Miller
13 that these cases need to be indicted. I took the position
14 -- I take the position that if they're prosecuted in general
15 sessions court, they stand to have indictments because
16 they're required by our Bill of Rights in South Carolina.
17 And if they're prosecuted in magistrate court, they don't
18 need an indictment because the statute is clear that cases
19 proceed in magistrate court on a warrant.

20 And I will pass up some selected Constitutional
21 provisions. And there was one I left off this list
22 regrettably. I'll reference it specifically in a moment.
23 And this is in Article V, Section 1 where it talks about the
24 judicial system, judicial power in certain courts, how it
25 shall be vested in a unified judicial system, which shall

1 include the supreme court, court of appeals, circuit court
2 and other circuit courts uniform jurisdiction that may be
3 required for general law.

4 The section that I left out and, actually, put in
5 Section 2. What I meant to do was put in Section 4, which
6 gives the Chief Justice the authority over all of the
7 courts. So our court system doesn't work -- the magistrate
8 courts answer to the circuit courts and the circuit courts
9 answer to the Court of Appeals.

10 Uniquely, in our system, all of the courts have a
11 direct chain of command directly to the chief justice. So
12 the magistrates in Barnwell County don't answer to the
13 circuit court judge in Barnwell County. And there isn't
14 anything in Section 11, jurisdiction of circuit court, that
15 would grant this Court the ability to supervise magistrate
16 court, which is what's proposed by the State.

17 The cases would go to the magistrate court, that they
18 would remain there pending the supervision of the general
19 sessions court judge. All of this is in the e-mail from Mr.
20 Miller, I believe. But we are arguing these motions in
21 general sessions court despite the fact that magistrate
22 court has jurisdiction in this case. And nothing in Section
23 11 of our Constitution gives the circuit court authority
24 that says circuit court shall be a general trial court with
25 original jurisdiction in civil and criminal cases, except --

1 THE COURT: I'm going to read it. I'm going to read
2 it. I've got it.

3 MR. GRIMES: You can read it, right. I do want to
4 point out that there is one exception and it's exception
5 over cases with exclusive jurisdiction in magistrate court,
6 which is exactly what this statute says happens in this
7 case. So the legislature couldn't give supervision or
8 jurisdiction in this case, couldn't give these type of
9 authorities because the Constitution says otherwise
10 specifically.

11 And then in Section 11, it talks about when you need an
12 indictment. And it specifically says, For any crime, the
13 jurisdiction over which is not within the magistrate's
14 court. So why do we need an indictment in this case? I
15 don't know. They were in the magistrate court's
16 jurisdiction and they were sent to the Grand Jury anyway.
17 So I'm really not sure. But you know what, that problem
18 doesn't exist unless you read this statute the way the
19 State's proposing for you to read it.

20 So you have an unconstitutional procedure where cases
21 -- well, statutory violation because cases in magistrate
22 court are tried on warrants pursuant to their statutes. And
23 then a -- it doesn't require with the Constitution to try a
24 case in magistrate court on an indictment because they're
25 specifically not intended for magistrate court cases. And

1 then you end up with this weird personal jurisdiction issue
2 because the warrants are what convey the jurisdiction of a
3 person. So the Court has general jurisdiction to hear a
4 class of cases.

5 Like in this instance, magistrate court can hear cases
6 where the offenses are not weapons and not illegal drugs.
7 But service of the warrant is what conveys the personal
8 jurisdiction over the person of that particular case, right?
9 So the magistrates in magistrate court kind of have a trial
10 or whatever is going on there on this case, but there isn't
11 anything pending in magistrate court coming under that
12 jurisdiction because those documents that do that are in
13 general sessions court giving the general sessions court
14 judge jurisdiction over the person of the defendant when
15 they have no general jurisdiction to hear that class of
16 cases. So there's a criss-cross of jurisdiction, all of
17 which doesn't have to happen unless you read the statute the
18 way the State is proposing.

19 Constitutional issues I don't believe is decided in
20 this case -- I'm not going to belabor this issue, but I
21 don't believe it was decided in this State if there is a
22 minimum requirement of jurors in felony cases. I couldn't
23 find one. So this may be a first impression type issue. I
24 need to preserve the issue for appeal. But I don't believe
25 --

1 THE COURT: It's in your memo, that particular --

2 MR. GRIMES: Right. I'm not going to spend a lot of
3 time on it, but I will tell you in 22-3-545(b) -- and
4 remember, this is the transfer court. These are the cases
5 that only carry up to one year. It's noted in sentence
6 after sentence after sentence that the Defendant has to
7 waive their right to a 12-person jury. And that all the way
8 up -- they have to waive it in writing, they have to be
9 apprised of it to go into transfer court, to stay there and
10 then all the way up until the time of trial, they can,
11 apparently, revoke that waiver and come back to general
12 sessions all based on the fact that -- I think they have to
13 be apprised in writing or maybe multiple times that they're
14 allowed to have their case tried in front of 12 jurors in
15 general sessions. So they would be waiving that to have it
16 tried in front of six jurors in municipal court. That leads
17 me to believe that our courts would determine that a
18 six-person juror in magistrate court is not Constitutionally
19 sufficient for a ten-year felony offense. But I need to
20 make that point and I'll move on.

21 I will tell you that a further kind of Constitutional
22 issue arises because offenses in magistrate court are
23 supposed to be summary in nature pursuant to the statutes
24 dealing with summary court and magistrate court
25 jurisdiction. Ten-year felony offenses are not summary in

1 nature. They're extensive in discovery and preparation from
2 both the State and the defense. And so I will make that
3 Constitutional argument.

4 I will tell you, particularly, as it goes to Mr.
5 Rivera's case, even in documents I saw today, I think they
6 were true billed last Thursday, but I'm not positive about
7 that. They don't allege a particular item, which I
8 discussed at the beginning and I'll just discuss it here
9 again now. I'm proceeding on this argument based on the
10 State's position that they don't intend to allege that Mr.
11 Rivera had either a weapon or illegal drugs. I don't think
12 those indictments are sufficient to one, place Mr. Rivera on
13 notice of the charges against him. Or two, to be
14 statutorily compliant to grant any court jurisdiction
15 because they haven't alleged an item of contraband. I don't
16 know that the Court needs to reach that issue. If the case
17 proceeds, I would be making a motion to dismiss or motion to
18 quash based on that argument.

19 If you will allow me just a moment to check on all the
20 items on my list.

21 THE COURT: Sure. But you're going to have to let me
22 get to Mr. Miller. I've got to hear Mr. Miller's argument.
23 You go ahead and check, I'll give you a minute, but I need
24 to hear Mr. Miller's side of the story.

25 MR. MILLER: Well, Your Honor, let's start at the back

1 and go first with that. Mr. Grimes said there's no
2 requirement that there be any indictment, but we're going to
3 move to quash this indictment because the indictment isn't
4 sufficient enough to convey jurisdiction upon the Court. So
5 it's part and parcel of a larger argument.

6 What they really want is they don't want these cases to
7 be able to be tried. And if these cases are tried, they
8 want to make sure that these cases are tried only exposing
9 their client to a 30-day misdemeanor. And that's just not
10 what is in the statute.

11 And the problem that they have is they say when they
12 quote from the statute, they always quote from the statute,
13 but they never read the first sentence of the statute. The
14 first sentence of the statute -- and we're talking about
15 24-3-965, Notwithstanding the provisions of 22-3-540.
16 22-3-540, let's look at what that is. Exclusive and
17 concurrent jurisdiction of magistrates. Magistrate shall
18 have exclusive jurisdiction of all criminal cases in which
19 the punishment does not exceed a fine of \$100 or
20 imprisonment for 30 days except cases in which an offense
21 would end the jurisdiction of a magistrate is included in
22 the charge of an offense beyond his jurisdiction or when it
23 is permissible to join a charge of an offense within his
24 jurisdiction with one or more of which the magistrate has no
25 jurisdiction.

1 Magistrate shall have concurrent, but not exclusive
2 jurisdiction in the accepted cases. The provisions of this
3 section shall not be construed so as to limit the
4 jurisdiction of any magistrate whose jurisdiction has been
5 extended beyond that stated above. So that says magistrates
6 have jurisdiction up to 30 days and where a fine does not
7 exceed \$100. But the statute says notwithstanding that.

8 So then it says, Notwithstanding the provisions of
9 Section 22-3-545. So you go to 22-3-545, that's your
10 transfer court. But it says notwithstanding that, which
11 means disregard that statute. Okay, now we've disregarded
12 that statute, too. Notwithstanding the provisions of
13 22-3-550, that is jurisdiction over minor offenses,
14 restitution, contempt, maximum consecutive sentences. This
15 is a limitation on what the magistrate can do. But it says
16 disregard that. That's what notwithstanding means. It
17 means disregard.

18 24-3-950, in 24-3-950, we all agree this doesn't even
19 apply here because this is the statute that makes it
20 contraband for State Department of Correction inmates.
21 That's the statute for that.

22 And then it says 24 -- it says, Notwithstanding the
23 provisions of Section 24-7-155. So what do you say here?
24 Mr. Grimes says well, you either have to disregard the
25 offense or you have to disregard the penalty. And he says

1 if you disregard the offense, then that means that there's
2 no crime and that's an absurd result. It is an absurd
3 result because it is an absurd reading of the statute.

4 What the statute says, it says all of these things are
5 contraband and cannot be possessed by an inmate in a county
6 facility. It just says contraband. This is the general
7 statute. The exemption or the notwithstanding part is we
8 are going -- the legislature is going to carve out two
9 categories of contraband and we're going to say you can't
10 try those in magistrate's court. Two categories, illegal
11 drugs and weapons.

12 24-7-155 does not have the word drug in it. It does
13 not have the word weapon in it. It says in relevant part,
14 It is unlawful for an inmate of a facility to possess a
15 matter declared to be contraband. That's all matters
16 declared to be contraband.

17 The statute goes on, Matters considered contraband
18 within the meaning of this section are those which are
19 designated as contraband and published by the Department of
20 Corrections as regulation 33-1 of the Department of
21 Corrections. And this regulation must be displayed blah,
22 blah, blah, on and on. No reference to illegal drugs, no
23 reference to weapons. It's the general contraband statute.

24 So when the legislature says in 24-3-965,
25 notwithstanding the provisions of any of these other

1 statutes, the offenses of furnishing contraband other than
2 weapons or illegal drugs, that's the notwithstanding part,
3 to an inmate under the jurisdiction of the Department of
4 Corrections or they bring it in here, an inmate in a county
5 jail, municipal jail, region detention facility must be
6 tried exclusively in magistrate's court. Matters considered
7 contraband within the meaning of this section are those
8 which are designated as contraband by the director of the
9 Department of Corrections or the local facility manager.

10 If it was the legislature's intent to make this a
11 30-day misdemeanor, then they just didn't have to put
12 22-3-540, 22-3-545 or 22-3-550 in there. They could have
13 just said notwithstanding the provisions of 24-3-950 and
14 24-7-155, those are the two contraband sections, if it
15 involves illegal drugs or a weapon, it's triable in
16 magistrate's court and then we wouldn't be here. But the
17 reality of it is they didn't do that, they specifically said
18 we're going to take away the magistrate's limitation on his
19 criminal jurisdiction so that they have the jurisdiction to
20 hear these cases.

21 And so to read it any other way would be to say that
22 that is surplus. Because otherwise, why did they have to do
23 it? So they're saying disregard what we said about the
24 penalties. If it doesn't involve illegal drugs or a weapon,
25 it's triable in magistrate's court. And everything else in

1 the statute stays exactly the way that it is.

2 Mr. Grimes up forgery, no dollar amount. When you're
3 talking about forgery, no dollar amount, the legislature
4 said, okay, less than \$10,000 is a five-year felony and with
5 that five-year felony if you can't establish that there's a
6 dollar amount involved, it's a separate penalty. It's a
7 separate thing. It is a forgery, no dollar amount. And in
8 a forgery, no dollar amount, it is triable in the
9 magistrate's court and it is punishable by up to three years
10 and it is a misdemeanor.

11 And guess what, they did that. If that's what their
12 intent was here, they could have done it the same way here.
13 They could have gone into the statute that established that
14 contraband was a felony and said unless it involves illegal
15 drugs or a weapon, in which case, it's a 30-day misdemeanor
16 and it's exclusively triable in magistrate's court. That's
17 all they had to do. But they didn't do that.

18 Mr. Grimes has pointed to the potential legislation.
19 And I think it's part of his motion. I think it's on the
20 bad end of his motion. This proposed legislation. Well,
21 the proposed legislation about bringing a cell phone or a
22 telecommunication device into a facility doesn't involve
23 giving inmates contraband at all. It doesn't involve
24 supplying it to inmates. It's illegal. It's illegal under
25 the statute that, by the way, hasn't passed. It was

1 introduced. It was sent to committee and that's where it
2 died.

3 But even in that, if you read that statute, that
4 proposed legislation, it's not reducing the penalties for an
5 inmate having a cell phone, what it's doing is it's making a
6 guard who takes their personal cell phone into the detention
7 center liable for a three-year misdemeanor. It's taking
8 some visitor that goes into the facility that has a
9 telecommunications device, and it actually says introduces a
10 device into a facility. It's creating a whole new separate
11 thing from contraband. It's not saying oh, well, we'll
12 reduce the penalty from one to ten years down to a maximum
13 of three years. But it doesn't really matter because that's
14 not what the legislature passed and it hasn't been passed.

15 Your Honor, it was brought up in the argument that
16 there were three separate -- or four separate CDR codes and
17 they don't know what happened with this fourth CDR code.
18 Well, right now, and, apparently, since 2016, there are only
19 three CDR codes relating to contraband. Those three CDR
20 codes are CDR Code 74, which is contraband possession by a
21 prisoner, furnishing or attempting to furnish a prisoner
22 with contraband. That's the one that applies to the State
23 inmates. CDR Code 433, which is under children, adults
24 furnishing contraband to a juvenile in the custody of the
25 Department of Juvenile Justice while on the grounds of the

1 Department of Juvenile Justice.

2 And 437, which is what we have here. There's only one
3 CDR code that applies to 24-07-155 and there's only one
4 penalty statute that applies to it, too, and that is,
5 likewise, 24-7-155. That's the only penalty statute that
6 there is from Court Administration. Not 22-3-540 or
7 22-3-545 or 22-3-550. The only penalty provision there is
8 for possessing contraband in a county detention facility or
9 supplying contraband to someone in a county detention
10 facility is a Class E felony, one to ten years.

11 Your Honor, we have -- there are some specific
12 arguments made in Mr. Grimes's case about his specific
13 client and the lack of specificity and the identification of
14 what is the contraband that he was intending to introduce or
15 that we allege he was attempting to introduce.

16 The State has and has turned over to the Defense plenty
17 of evidence as far as what we believe the Defendant was
18 attempting to do. The Defendant has confessed. He said to
19 the investigator investigating the contraband case, he took
20 in vape pens. Not illegal drugs, not a weapon. He took
21 vape pens. We have him on video holding up a vape pen in
22 front of the screen and asking his son "like these" and
23 talking about the fact that his son -- his son is on a
24 recorded jail call, video call from the jail, his son is
25 telling him what vape pens he wants him to get.

1 So this idea that there's no way he can possible be
2 available to stand trial because he doesn't have any idea
3 what the charge is against him or what we're alleging
4 against him is -- well, that can be determined by the trial
5 judge at the close of the case. Because we believe that the
6 evidence is going to be clear there was not any intention by
7 Mr. Rivera to introduce a weapon or to introduce illegal
8 drugs into the jail.

9 The fact is when Mr. Rivera got caught and was seen by
10 somebody sliding something up under the gate at the jail and
11 the investigation started and then there was video located
12 of him doing this multiple times, we didn't know where that
13 stuff went inside the jail. We do know there were a couple
14 of times when it got picked up and carried by an inmate into
15 the jail. We don't know what happened with it after that.

16 But the idea that well, they have to allege it's a
17 weapon or they have to allege it's illegal drugs or they
18 have to allege that it is something, the State would submit
19 if it's a weapon or an illegal drug, that's something we
20 have to prove, but if it's not, it's not something that we
21 have to prove because the very nature of the contraband
22 statute establishes anything that the director of the
23 facility identifies as contraband.

24 And so there's a photo, a huge photo outside of the
25 facility at the jail that actually has all of the different

1 items on it that are considered contraband, but it's not
2 really long. Because, basically, it's anything that you
3 didn't get issued to you in the jail and that you didn't buy
4 from the commissary, it's contraband. You can't have
5 anything in the jail that is not either issued to you or you
6 didn't purchase from the commissary. So that would include
7 whatever Mr. Rivera had wrapped up in this little package
8 that he shoved under the gate, it's by definition
9 contraband. We don't have to identify what it is. It's not
10 something that we have to prove.

11 In fact, the Greer case that Mr. Grimes referred you to
12 was interesting because there was a big argument in that
13 case about whether or not there was a -- one of the issues
14 the Court actually did get to was whether or not there
15 needed to be a special jury form for the jury to determine
16 whether the State had proven that the item that he had --
17 and in that case, it was a bent up piece of metal that the
18 State alleged could be used as a weapon. And his position
19 was you can't try me in general sessions court for this
20 because it was actually a tool used to open up handcuffs.
21 It was not a weapon, it was a tool used to open up
22 handcuffs.

23 And he wanted to make the argument, did make the
24 argument, although, ultimately, they said it wasn't
25 preserved, he wanted to make the argument that you can't try

1 me in this courtroom at all because the statute says it's
2 exclusively triable in the magistrate's court. And my
3 reading of the case was that, essentially, the Court said
4 look, if the State wants to take on the burden of proving
5 that you had a weapon or you had illegal drugs, they can try
6 you in general sessions court, but they don't have to.

7 So there isn't -- there's been a lot of discussion and
8 a lot of back and forth and ringing of hands about the
9 procedure and how is this procedure supposed to work and how
10 is it supposed to be done. There's your CDR code, warrants
11 are obtained, warrants are served. Under Mr. Grimes's
12 theory of the procedure, at that point, we can go ahead and
13 go try the case in magistrate's court. And that's fine if
14 that's what we are supposed to do. But somebody has got to
15 look at that CDR code, got to look at that warrant, got to
16 determine what it is that this person had and make a
17 determination of is this something that needs to go to
18 general sessions or is this something that needs to go to
19 the magistrate's court. And that's what we did.

20 And that's what was in -- that's what the preamble, the
21 whole purpose of this was, was to look at all of our
22 contraband cases out of the jail and to determine and in
23 some instances -- I don't believe it's either of these
24 Defendants, but in some instances, you'll have a defendant
25 who gets caught with a cell phone one day and he gets caught

1 with marijuana a week later. Well, cell phone case triable
2 in the magistrate's court, marijuana case has to be in
3 general sessions. That's what the determination is.

4 We indicted the cases out of an abundance of caution.
5 They went to the Grand Jury. They got that protection
6 afforded to them. Fine. If it was unnecessary, it was
7 unnecessary. It doesn't mean somehow that the magistrate no
8 longer can try the case because for every indictment, there
9 is a warrant. There's still a warrant underneath every
10 single one of those indictments. It's printed right on the
11 indictment.

12 So if, in fact, the Court determines hey, these cases
13 should be in the magistrate's court properly, these cases
14 should be in the magistrate's court, then okay, we can
15 dismiss the indictment, but the warrant that is underlying
16 the indictment is still a valid warrant. There's not any
17 problem with the warrant itself. I suppose Mr. Grimes would
18 be okay with us getting new warrants for his client that
19 he'd have to be served with.

20 But either way, there's nothing about the fact that
21 there was an indictment that prevents or deprives a
22 magistrate's court of jurisdiction. And even if there was
23 in the normal situation, the fact of the matter is, the
24 legislature has made it clear, they intended to carve out
25 for the magistrate's court exclusively the jurisdiction to

1 try cases involving 24-7-155. And I'm just using 24-7-155
2 for now, but, obviously, any time we talk about it, there is
3 the companion 24-3-950, but that's just not an issue here.

4 So the legislature did not do something that was --
5 they didn't do something that was futile. They knew what
6 they were doing. They knew how this statute was going to
7 interact with the other statutes that they had already
8 passed. And the only way that this could possibly mean this
9 is a 30-day misdemeanor instead of the one to ten-year
10 felony that the statute provides would be if, in fact, they
11 did not mean to say notwithstanding all of these other
12 limitations on the magistrate's jurisdiction. That's the
13 only way to read the statute.

14 The fact that the statute doesn't include this is the
15 procedure and they have to go to this court and they have to
16 be indicted and the defendant has to waive all of these
17 different things and then it has to be sent down and if it's
18 not disposed of within 180 days, it goes back. All that's
19 in the transfer court statute. Okay, that's what that
20 statute is. It's transfer court.

21 It isn't a necessity of the statute and the statute is
22 not invalidated by not fully listing out the procedure of
23 how the legislature intends for it to happen. The
24 legislative intent couldn't be more clear. If it doesn't
25 involve illegal drugs, if it doesn't involve a weapon, then

1 we want you trying it in the magistrate's court. Matter of
2 fact, we're not going to let you try it any place other than
3 the magistrate's court. That much is clear.

4 It is, also, clear that if they intended for the
5 statute to suddenly go from a up to ten-year felony down to
6 a 30-day misdemeanor, they would have said that, too, but
7 they didn't. They said exactly the opposite. They said
8 notwithstanding what magistrate's normal jurisdiction to
9 sentence to in a criminal case is, these cases still go
10 there.

11 And so I don't believe that there is any ambiguity in
12 the statute. I don't see any ambiguity in the statute.
13 When you only read the back of the statute, when you only
14 read the part after the first paragraph, you take out all
15 that notwithstanding language, then I think that it would be
16 certainly -- actually, I don't think there would be an
17 ambiguity there.

18 The fact is, if none of that notwithstanding the
19 provisions of sections in those five sections listed, the
20 fact is I don't think there would be any ambiguity there.
21 You would be trying the case in magistrate's court and it
22 would be a 30-day misdemeanor. But they put notwithstanding
23 the provisions of Section 22-3-540, 22-3-545, 22-3-550,
24 24-3-950 and 24-7-155, they put that there. They put that
25 there for a reason.

1 And the reason is they wanted to take a portion of
2 24-7-155's contraband, that being stuff that wasn't weapons
3 and it wasn't illegal drugs and they wanted those cases to
4 be tried in magistrate's court. And they have the
5 jurisdiction -- or they have the authority to set the
6 jurisdiction of the magistrate's court and that is what they
7 have done in Section 24-3-965.

8 Your Honor, there were -- Mr. Grimes said at the
9 beginning that his real questions were what court has
10 jurisdiction and what is the penalty. Your Honor, it is my
11 belief that there is nothing -- while the General Assembly
12 may come up with some other procedure or this Court may come
13 up with some other procedure for procedurally how the cases
14 go from warrant to service to ultimate adjudication in
15 whatever means, there may be some different procedure that
16 will work, but the procedure that we've got here seems to me
17 to be appropriate. If, in fact, the Court determines it is
18 not, we can go with whatever procedure is offered.

19 The reason that I have been hesitant -- and I have
20 talked with Mr. Grimes about this. The reason I have not
21 remanded the case on the docket sheet to the magistrate's
22 court, I haven't remanded that because I didn't want that to
23 be seen as some kind of waiver of the argument about what
24 the penalty provision was. We can remand them on the docket
25 sheet. I can dismiss the indictments. We can remand them

1 on the docket sheet. We can do whatever needs to be done.

2 Mr. Grimes seems to have a lot of problem or concern
3 about where the case is pending, whether it's pending here
4 or whether Ms. McElveen has got the paperwork or whether
5 it's over at the magistrate's office here in Barnwell. I
6 don't know why that's an issue, but I think it would be --
7 it would provide some clarity if the physical -- if the
8 physical case and everything about the case was being
9 transferred to magistrate's court, it seems that it would
10 answer the issue of where does the appeal go from there.

11 And that's something that's a question that we've all
12 talked about back and forth, not just me and Mr. Grimes, but
13 I think several of the attorneys have asked, you know, where
14 does the appeal from the magistrate's judgment go? But
15 that's not -- the fact that the statute doesn't say and all
16 appeals will be directly to the Court of Appeals or all
17 appeals in circuit court, that doesn't invalidate the
18 statute. The statute doesn't have to answer every single
19 possible question that can ever be asked about how the
20 statute is going to be implemented. The statute is clear on
21 its face. It doesn't have any ambiguity. And there's no
22 reason to get into the rules of statutory construction.

23 And even if you do get into the rules of statutory
24 construction as to the individual statute itself, the State
25 would submit that the -- even under that analysis, there is

1 no reason to take in this conclusion that the Defense wants.
2 And that's, basically, what this has been. We really,
3 really, really want it to be a 30-day misdemeanor if you try
4 it in magistrate's court. So let's try to find some
5 ambiguity with the section. Let's talk about a statutory
6 construction. Let's talk about how we analyze all these
7 things to get to the point that it's a 30-day misdemeanor in
8 magistrate's court. But the statute doesn't say that. And
9 the statute doesn't -- you can't even get to that point
10 unless you disregard parts of the statute to start with,
11 that first sentence. If you disregard that, then you can
12 start arguing about well, what did they mean and what did
13 they intend. But if they intended for this to be a 30-day
14 misdemeanor, there's no reason in the world for them to put
15 notwithstanding the magistrate's jurisdiction only carries
16 up to 30 days and it involves misdemeanors.

17 I don't believe, Your Honor, there was anything else if
18 I could be permitted to reply very briefly to Mr. Grimes.

19 THE COURT: I'm going to let Mr. Grimes reply and then
20 I'll take a quick reply from you.

21 MR. MILLER: Yes, Your Honor.

22 MR. GRIMES: Judge, I'm going to stick mostly to what
23 Mr. Miller said. He said the Defense wants you to ignore
24 the first sentence of the statute where it says
25 notwithstanding provisions of 22-3-545, 550, 950, 155. We

1 don't want you to ignore that. I put it in my motion. I
2 want you to focus on it. That is the ambiguity. That's the
3 ambiguity I told you he was going to tell you doesn't exist.

4 And he made quite a show over here of saying 22-3-540,
5 don't pay attention to this one notwithstanding. 545, 550,
6 don't pay attention to these notwithstanding. And then when
7 we get to 170 -- or 7-155, then it's hold on a minute, some
8 of these provisions are getting accepted and some of them
9 aren't.

10 And if you accept the State's position is that you're
11 just going to know which of all these -- might be two dozen
12 different provisions in all these different statutes -- are
13 going to be accepted and which ones aren't, it's clear
14 you're just going to ignore the first three statutes and
15 then ignore parts of the last statute. That's a nonsensical
16 argument, but it completely misconstrues the Defense's
17 argument. That sentence, you don't have to get any further
18 than that sentence to know that there's an ambiguity in how
19 to deal with the statute. You're going to have to determine
20 what it means.

21 Now, 22-3-540, the very first sentence, the magistrate
22 shall have the exclusive jurisdiction of all criminal cases
23 in which the punishment does not exceed a fine of \$100 or
24 imprisonment for 30 days. And it goes on, except cases in
25 which an offense within the jurisdiction of a magistrate

1 included in the charge. I will tell you, that sentence is
2 why the legislature did not have to put an explicit sentence
3 in 24-3-965 because they didn't intend to change that.
4 Those other statutes where they gave the magistrate court
5 broader jurisdiction for 90 days or three years or whatever
6 it is, they put it in the statute because they were
7 explicitly giving them broader jurisdiction. When they said
8 exclusive jurisdiction in the magistrate court, they didn't
9 just mean general jurisdiction over the charge. They meant,
10 also, it's within the exclusive jurisdiction so it's subject
11 to the maximum penalty for the exclusive jurisdiction in the
12 magistrate court, which is 22-3-540.

13 There's an exception in 22-3-540 and that exception is
14 the provision that you're going to except or notwithstanding
15 when you read 24-3-965. But to just go through these
16 statutes like Mr. Miller says, throw out the first three in
17 their entirety. There's multiple provisions in all of those
18 statutes. But you're going to disregard all of those first
19 three statutes according to the State. And then when you
20 get to 24-7-155, then you're going to start picking and
21 choosing which provisions to accept.

22 That's not how you deal with the statute. That's not
23 how you read those sections. You're going to have to make
24 exceptions for the statutory provisions that don't align
25 with 24-3-965. And there is no reason to read it in a

1 manner that would extend the maximum possible penalty that
2 you can get in the exclusive jurisdiction of magistrate
3 court. It doesn't say that in the statute. They could
4 have, they did it in others, but they didn't do it in this
5 one. There is no reason why you would choose to exempt or
6 notwithstanding the entire statute provision of 22-3-540 and
7 then only parts of other statutes. There's no reason to
8 treat it that way. None.

9 And it doesn't make any sense in the world. I
10 explained to you that the State's position is Your Honor's
11 not supposed to look at this and determine does it make
12 sense, what the legislature intends to do now and what did
13 they intend to do. They're going to tell you that it's
14 completely unambiguous as you know exactly what to do just
15 by looking at it. You should ignore the facts that all of
16 these procedural problems exist. You should ignore all
17 those due process issues that exist.

18 They're not sure why the Defense is concerned with
19 these due process issues about prosecuting somebody in a
20 court where there's no charges pending. They're not sure
21 why the Defense is concerned about all those sort of things,
22 all of those problems that come up when you read this
23 statute in this crazy way the State wants you to read it.
24 None of those problems exist if you read it in the logical
25 way that the Defense has proposed. None of them. Not an

1 indictment, not a procedural problem, not a sentencing
2 issue, not a Constitutional problem with having six-person
3 juries to decide ten-year felony offenses.

4 Those problems don't exist when you read the statute
5 the way it's intended to be made. But if you just say we're
6 going to ignore any possible reason to look at what they
7 mean here and you say it's got to be clear on its face,
8 regardless of how ridiculous it is and we'll just make up
9 the rules as we go along and figure out -- even they didn't
10 propose -- they said, well, the questions that come up, the
11 statute doesn't have to answer those questions. We'll just
12 figure it out. They just did it this way. I think that's
13 fair. If the Court thinks something else is fair. That's
14 not how you prosecute cases in criminal court. We'll just
15 figure it out. We'll just come up with these procedures.
16 We'll just put it in one court and try it in another court,
17 maybe we'll transfer it, maybe we'll send it to Grand Jury.
18 All those things, just made up procedures have to exist
19 because of this ridiculous interpretation of the statute.
20 It creates these problems. It doesn't answer the questions.
21 All the questions that aren't answered, they don't
22 acknowledge that the problems are created by that
23 interpretation.

24 And then, specifically, this argument about Court
25 Administration, I brought that up as an example of the

1 ambiguity that exist in the statute that requires the Court
2 to interpret it. Court Administration doesn't get to
3 decide. They're not legislators. They're not judges. They
4 don't get to decide what the crimes are. They don't get to
5 decide what the penalties are or make administrative
6 decisions. They had that position with us when my office
7 contacted them. They don't decide whether it's a 30-day
8 offense or ten-year offense. They're just trying to deal
9 with the things that are coming at them. If they've got it
10 wrong, they can fix it. They can make a CDR code just as
11 quick as they can rescind one and we can move forward. They
12 probably could do it by tomorrow if we asked.

13 And then here's a perfect example of -- not arguing the
14 facts of this case, I made some reservations in regards to
15 the sufficiency of the indictment. Mr. Miller did make some
16 arguments as to the facts of this case, the allegations that
17 the State has, that's fine. And then he said, but that's
18 not for you to decide, that's for the trial judge to decide.
19 So he's going to decide what issues are for the general
20 sessions court judge to determine while the charges are
21 pending here, but then he's going to tell you what issues he
22 wants for the magistrate court. There isn't any way that
23 that's how to deal with these charges.

24 I get there's a problem at the jail. And the
25 resolution of this case is probably not going to make that

1 better or worse, but we can't ignore an obvious intention of
2 the legislature so that we can prosecute these cases as
3 ten-year offenses and this made-up procedure.

4 THE COURT: Mr. Miller.

5 MR. MILLER: Your Honor, if you -- notwithstanding the
6 provisions of 22-3-540 and 22-3-550, that's the first clause
7 of 22-3-545. That's transfer court. The legislature in
8 enacting the transfer court statute used the language
9 notwithstanding the provisions of those two code sections.
10 Except for adding 22-3-545, it's exactly the way that they
11 did the statute giving magistrates exclusive jurisdiction in
12 24-3-950 -- or excuse me, 965.

13 So Your Honor, this is -- I don't know -- I guess
14 there's a way that they could be more clear, but the point
15 is not for us to tell the legislature how they could have
16 done it better. The question is did the legislature do it
17 good enough. And the fact of the matter is the legislature
18 did it good enough. They said something. They passed a
19 law. They passed a law through the whole legislature. They
20 got it to the governor. The governor signed it. It became
21 the law in this state.

22 And the law says that except whenever we are talking
23 about -- and I don't know what parts of those sections --
24 I'm not sure real sure what parts of 22-3-540 and 545 and
25 550 Mr. Grimes thinks they could have been talking about

1 whenever they said notwithstanding, but it seems pretty
2 obvious to us that the intent of the legislature was that
3 this was going to be tried in the magistrate's court and
4 that it would be tried and the potential penalties facing
5 defendants who were convicted in the magistrate's court were
6 a fine for a period of incarceration between one and ten
7 years.

8 If the Court has any questions about specific issues,
9 I'd be happy to answer them.

10 THE COURT: I don't have any questions at this time.
11 I'm going to, obviously, hold off on a ruling until
12 Thursday.

13 Mr. Bush, are you presenting argument as well?

14 MR. BUSH: I am, Judge.

15 THE COURT: My apologies.

16 MR. BUSH: That's okay. I'm happy to go after the two
17 smartest people in the courtroom. It's fine. They're,
18 also, matching today which may have been sort of why I
19 wasn't seen.

20 I'll just say this briefly on behalf of Mr. Williamson,
21 who's my client in this case, Your Honor. One, we attach
22 and join with Mr. Grimes and Mr. Rivera in the entirety of
23 their written motion as well as in the oral arguments that
24 Mr. Grimes eloquently made and the eloquent counters he made
25 to Mr. Miller. I hope not to be anywhere near as longwinded

1 as either of them in mine since they've kind of gone through
2 their thing and done what they've done.

3 Mr. Williamson is slightly differently situated than
4 Mr. Rivera. He's charged with having -- he's alleged to
5 have had cell phones in his possession, two separate counts
6 of that. You know, the thing for us and that I find so
7 interesting, Mr. Miller stands up here and he says this is
8 what we have always been supposed to have done with these
9 cases, tried them in the exclusive jurisdiction of the
10 magistrate's court with the penalty of one to ten years in
11 prison.

12 Well, Your Honor, he, the day before our hearing in
13 magistrate's court, had Your Honor sign this order
14 transferring cases to the magistrate's court. Now, why
15 would he do that, Your Honor, if he believed that this was
16 the only way these cases are supposed to be resolved?
17 Protecting himself, number one, protecting the State,
18 obviously, but he knew that there was a problem with this.
19 So he came to you with a contested issue and had you sign
20 this order the day before our hearings.

21 Now, I'd like to thank Chief Magistrate Gantt for --
22 when we presented him hey, we just got these served on us
23 literally the moment we walked into this courtroom. He
24 paused the proceedings and gave us the ability to come in
25 front of Your Honor. And I want to thank Mr. Miller for

1 scheduling it so quickly. But we know that there's an issue
2 with this. You know, they've made all the arguments about
3 whether you should or shouldn't get to legislative intent,
4 so I just want to be practical with Your Honor.

5 Here's the deal, the legislature never ever intended
6 for somebody who gets caught with a firearm in the jail to
7 be eligible for probation and somebody who gets caught with
8 a rubber band they're not allowed to have to be looking at a
9 sentence of one to ten years in prison in a magistrate's
10 court. Ever.

11 And when we talk about whether or not they put specific
12 language in there as Mr. Miller wanted us to believe, they
13 would have said this charge carries 30 days or up to \$100
14 fine. Judge, they didn't have to do that because at the
15 time this law was passed, the CDR code was in place for it.
16 It was the common practice of the State in these cases, for
17 cases that did not involve a weapon and did not involve
18 illegal drugs to be sent to the magistrate's court on that
19 CDR code for an offense that carried 30 days or up to \$100
20 fine.

21 Now, why that CDR code disappeared in 2016, I don't
22 know. But the reality is the State operated using that CDR
23 code in this very jurisdiction to convict folks in
24 magistrate's court for contraband that did not contain
25 illegal drugs or weapons.

1 And for as long as I've been practicing, and I haven't
2 been practicing as long as Mr. Grimes and Mr. Miller, this
3 is the very first time ever of all the cases I've had on
4 contraband that have come out of Barnwell jail, and I've had
5 plenty that did not involve firearms and illegal drugs, that
6 we're all of a sudden trying to try these cases in
7 magistrate's court with a penalty that carried one to ten
8 years. The legislative body did not intend that when they
9 passed that in 2000 and it's clear. And we have to get to
10 that. We have to get to that.

11 Mr. Miller is like, the defense lawyers, this is just
12 what they want. It's the only thing that they want.
13 Actually, Judge, it's what the law requires. Our job is to
14 defend the Constitution upon defending our clients. And
15 it's what the law requires in this specific case. And I
16 appreciate Mr. Miller's arguments. Frankly, I appreciate
17 the situation that he's in with the contraband issues that
18 they're having at the jail, but no matter how hard he argues
19 it, Judge, he's still wrong. He's still wrong. These
20 charges that do not involve illegal drugs or weapons are
21 required to be tried in the magistrate court. I agree.

22 And for whatever reason, despite knowing that the
23 magistrate had exclusive jurisdiction at the time they asked
24 you to sign this order on July 8th of 2024, Mr. Williamson's
25 cases, the ones that they're saying need to be tried in

1 magistrate's court, the ones they're saying carries a
2 penalty of one to ten years have been sitting on the general
3 sessions court docket for 422 days and 340 days
4 respectively.

5 So it's interesting to me that we're here in this
6 particular position today with the State saying hey, we have
7 to try these cases in magistrate's court and we want you to
8 have these big huge penalties for folks who are charged with
9 things that are not firearms and not illegal drugs, but it
10 wasn't until July the 8th of this year that they decided
11 they wanted to do it.

12 And so I think, honestly, this whole issue is probably
13 opening up a bigger can of worms for the State than they
14 would like to try to get their way in interpreting this
15 statute incorrectly. I don't know -- and maybe Mr. Miller
16 can tell us. I don't know how many cases his office before
17 July the 8th of 2024 that have been contraband cases that
18 did not include firearms and illegal drugs, I don't know how
19 many of them that they've tried in magistrate's court, Mr.
20 Miller's office, I don't think it's any. He can correct me,
21 I don't know. Because that's not what the legislature
22 intended. Now, to fix the problem that they've got here,
23 they're trying to get you to read a statute inappropriately.

24 Judge, I totally disagree with his position. I think
25 that these offenses are exclusively in the magistrate's

1 court. That's offenses that are contraband that don't
2 involve firearms and illegal drugs. But without a doubt, in
3 2000, when this law passed, there was a CDR code that made
4 these offenses 30 days or up to \$100 fine. And that's what
5 the legislature intended when they dissected these classes
6 of cases. These charges need to be utilized in the
7 exclusive jurisdiction of the magistrate's court and to have
8 -- be attached to that CDR code of 30 days with that penalty
9 of 30 days and \$100 fine. They never intended for somebody
10 to be rubber stamped to be in magistrate's court getting
11 tried by six people, not afforded all the rights that Mr.
12 Grimes eloquently laid out and be sentenced to prison up to
13 ten years and not be afforded even the same right of
14 probation that somebody can have for a firearm in the jail.
15 It doesn't make any sense, Judge. And the legislature in my
16 opinion doesn't try to make law that doesn't make sense, but
17 Mr. Miller is trying to make this all not make sense. I,
18 frankly, don't understand why, but it's why we're here.

19 So we're asking that you -- we join in the motion to
20 dismiss this case for all the same reasons that Mr. Grimes
21 laid out, but, specifically, for Mr. Williamson, I wanted to
22 lay out those arguments.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Bush.

25 Mr. Miller, I will allow you to make a response to Mr.

1 Bush if you find it necessary to do so.

2 MR. MILLER: It's not necessary, Your Honor.

3 THE COURT: So we'll apply your argument to Mr. Bush as
4 well as Mr. Grimes' arguments.

5 So I'll hold my ruling on this until after I hear
6 arguments from Mr. Alves and Mr. Johnson.

7 Will Mr. Johnson, also, be arguing, do you know?

8 MS. ALVES: Yes.

9 THE COURT: All right. I will hold off on any ruling
10 and this will give me an opportunity to read over this
11 motion and the memo attached to the motion.

12 Anything else, gentlemen?

13 MR. GRIMES: No, Your Honor.

14 THE COURT: Anything else from the State?

15 MR. MILLER: No, Your Honor.

16 THE COURT: Well, thank you all for traveling down to
17 Barnwell for your arguments.

18 And thank you, Mr. McMillian as well.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Barnwell County, South Carolina, on the 16th day of July, 2024.

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

November 22, 2024

Penny M. Johnson

Penny M. Johnson
Official Court Reporter

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL	)	
	)	
	)	
	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	2023A0610400077
JASIAH BRABHAM,	)	2023A0610400137
DEFENDANT.	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	2023A0610400230
vs.	)	2023A0610400231
	)	2023A0610400232
JEFFREY PENLEY,	)	
DEFENDANT.	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	2023A0610400135
	)	
KESHAWN KELLEY,	)	
DEFENDANT.	)	

July 18, 2024
Barnwell, South Carolina

B E F O R E:

THE HONORABLE COURTNEY CLYBURN-POPE, JUDGE.

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

DAVID W. MILLER, ESQ.
Attorney for the Plaintiff

OLA JOHNSON, ESQ.
Attorney for the Defendant

PENNY M. JOHNSON
Court Reporter III

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

MR. MILLER: Your Honor, before the Court, we have three Defendants who are similarly situated in that they are each charged with possession of contraband while in the Barnwell County Detention Center. They are all represented by Mr. Ola Johnson.

Jasiah Brabham is charged in warrant 2023A0610400077 with possession of contraband in the jail. That warrant is not the subject of this hearing because the contraband alleged was marijuana. However, he, also, has a charge that he got about two months later, 2023A0610400137 is a contraband charge that originated on June the 21st of 2023. And in that incident, he was in possession of a charging cable and a charging block for a cell phone.

Along with Mr. Jasiah Brabham is Mr. Jeffrey Penley, who's sitting on the end of the table there. Mr. Penley has three warrants. They are 2023A0610400230, 231 and 232. They have incident dates respectively of August 25th, 2023, September 2nd, 2023 and August 31st of 2023. The reason why the incident dates are out of order is because the last charge, the warrant ending in 232, was brought based upon review of video evidence in the case. So it was brought after they had observed the incident from September 2nd, which is in the warrant ending 231.

Finally, Your Honor, we have Keshawn Kelley. Mr.

1 Kelley is sitting between Mr. Brabham and Mr. Penley. He is
2 charged in warrant 2023A0610400135 with possession of
3 contraband, that stemming from an incident that occurred on
4 June the 21st of 2023 wherein Mr. Kelley was alleged to be
5 in possession of a cell phone.

6 So the one warrant for Mr. Brabham, the three warrants
7 for Mr. Penley and the one warrant for Mr. Kelley, the State
8 is seeking to adjudicate those cases pursuant to 24-3-965,
9 which vest the exclusive jurisdiction over these offenses in
10 the magistrate's court. And Mr. Johnson has made a motion
11 to dismiss the cases and I believe in the alternative to
12 identify the sentencing range for the offenses if they are
13 adjudicated in magistrate's court.

14 THE COURT: All right. Mr. Johnson, just -- and you
15 probably already know this, but for the record, Tuesday, we
16 had -- I heard extensive argument with regards to another
17 set of cases. So I did read your memo last night. So if
18 you'll present your argument, just keep that in mind that
19 I've already read your written argument.

20 MR. JOHNSON: Yes, Your Honor.

21 THE COURT: Thank you, Mr. Johnson.

22 MR. JOHNSON: Just to clarify, I appreciate the
23 solicitor providing all the information. I just wanted to
24 confirm, with Brabham, that warrant they're proceeding with,
25 I just want to make sure I have the correct number on that.

1 That is the one ending in 212? That's on the motion.

2 MR. MILLER: I'll look it up right now.

3 MR. JOHNSON: The actual indictment for Mr. Brabham, it
4 list that as their number of 212 for the indictment. And
5 that, actually, was indicted as cell phone charging block.
6 So I'll just go forward with that. That does appear to be
7 accurate.

8 Like Your Honor stated, these are very similar grounds
9 that were covered earlier this week. Obviously, there's two
10 arguments here for all three Defendants seated here next to
11 me, Your Honor. There's a difference with Mr. Penley. I'll
12 get to that in a second.

13 But starting out, of course, the first issue, asking
14 for dismissal of the cases. The case law, I think you've
15 already gone over this, Your Honor, by reading the motion
16 about the standard that should be applied for applying the
17 plain meaning of the statute. The State's allegation that
18 this should be a subject of that statute transferring the
19 case to magistrate court, thereby alleging that it involves
20 something other than drugs or a weapon. Based on that, the
21 State is indicating, I would argue that general sessions
22 court does not have jurisdiction, therefore, the case should
23 be dismissed.

24 They have indicted the cases. All three appear to have
25 indictments. For that reason, we're moving for dismissal of

1 all these cases. I think it would strain the interpretation
2 of that statute. When you look at what the State is
3 alleging, obviously, they're relying upon language of the
4 statute applying to transfer court trying to say somehow
5 this case could be managed. They presented us with an order
6 at a previous hearing in the magistrate court transferring
7 the case to magistrate court. So, of course, our argument
8 is that that is not sufficient and all these cases must be
9 dismissed.

10 The argument of subject matter jurisdiction goes into
11 that discussion of the transfer court, but as an alternative
12 issue, we started discussing on Page 6 talking about the
13 language applying to sentencing ranges. Obviously, their
14 argument is that this increased range of -- or this range of
15 minimum of one year up to ten years would apply. The
16 State's argument is that that would apply in magistrate's
17 court. The magistrate can sentence a Defendant and held a
18 trial in magistrate court.

19 Our argument is that the penalty would have to be no
20 more than 30 days as you look at the plain meaning of the
21 statute and all the standards that would apply. It enforces
22 the Court to interpret the statute and argument would be
23 that you must interpret that in a way that would actually
24 benefit the Defendants and limit the range to 30 days.

25 It's my understanding that the solicitor does intend on

1 pursuing all of these as contraband cases in magistrate
2 court alleging they all contain contraband other than drugs
3 or the other substances listed in the statute in general
4 sessions.

5 As a result, I would, also, point out for Mr. Penley,
6 it's a little unique. The evidence in the case makes it
7 pretty clear they have no idea really what they're alleging.
8 The description of the events in the incident report seems
9 to be they see something on the video, something being
10 passed. But the something they're talking about was never
11 seized.

12 Upon discussion with the solicitor's office, it doesn't
13 seem there's any additional evidence coming forward about
14 that. So the argument would be they're making an argument
15 based on some theory by somebody who watched the video about
16 what might have been passed.

17 So since the actual indictment that I'm holding today
18 was the best that they could do, it says here -- and I'm
19 referring to Mr. Penley's indictments. It says on here did
20 pass -- possess items that appear to be contraband. And it
21 says that happened at the Barnwell jail. And that is with
22 the same -- I believe with all three indictments ending in
23 211, 209 and 210.

24 And, Judge, of course, since they're unable to specify
25 within that, we ask that the cases be dismissed. I don't

1 think they would have much success in magistrate's court
2 either. I think that the vagueness there kind of kills
3 their case. So we would ask for a dismissal of all the
4 charges against all the Defendants related to these
5 contraband warrants. But in addition, Mr. Penley has that
6 unique situation where they failed to identify in either the
7 warrant or the indictment.

8 The argument for the warrants on Mr. Brabham and Mr.
9 Kelley, of course, those warrants do not list the contraband
10 as stated in the motion, but their indictments do specify in
11 saying they're referring to the cell phone charging blocks.
12 I would just argue the same argument for dismissal and for a
13 limitation of any sentencing range to be 30 days.

14 That's all I have at this time, Your Honor. There's a
15 lot there in the motion for the Court to go over, I'll rely
16 upon that. That's it.

17 THE COURT: Mr. Johnson, thank you for your argument.

18 Mr. Miller, do you have any response?

19 MR. MILLER: Your Honor, again, we're talking -- well,
20 let me address Mr. Penley's situation. The inmates are
21 provided with and it is posted at the jail what is
22 contraband. They have a list, these things are contraband.
23 And contraband includes anything that was not issued to you
24 by the jail or that you did not purchase from the
25 commissary. If you didn't get it from the jail issued to

1 you and you can't purchase it -- or you didn't purchase it
2 from the commissary, then it's contraband.

3 In his case, Mr. Penley is on video being seen as the
4 go-between between Mr. Grimes's client, who is the father of
5 one of the inmates in the jail. And Mr. Grimes's client is
6 on video pushing a package up underneath the gate where Mr.
7 Penley gets the package and then he disappears inside the
8 jail with the package.

9 Ultimately, they do locate contraband in Mr. Rivera,
10 Jr.'s cell, but they did not intercept the contraband while
11 it was in Mr. Penley's possession. But we know from other
12 evidence, including Mr. Rivera's confession that what he was
13 dropping off were vapes. That was what he was dropping off.
14 And they were vapes that were intended to go to his son.

15 We are not alleging that there was illegal drugs or
16 there was a weapon involved because, frankly, we did not
17 catch Mr. Penley in possession of the contraband despite the
18 fact that he is on video picking the contraband items up and
19 carrying those items into the jail.

20 Your Honor, in addition, as far as the issue with Mr.
21 Johnson's objection to the procedure, if the Court believes
22 -- and I don't know that it really makes a difference.
23 That's one of the reasons why I've been frustrated by this.
24 If the Court believes that the cases should be tried in
25 magistrate's court -- and I think everybody agrees that the

1 cases should be tried in magistrate's court -- there are
2 multiple ways that that can be done.

3 The cases can be remanded to the magistrate's court to
4 be tried there. The cases could be transferred to the
5 magistrate's court, just administratively, here, go try this
6 in the magistrate's court. That's what we intended to do
7 and that's what we attempted to do. By we, I mean the
8 State. Or alternatively, the Court can dismiss all of these
9 cases in general sessions and we can just go get new
10 warrants for them for all of these things in magistrate's
11 court and process it as though it's a magistrate's court
12 case from the beginning.

13 There isn't any real confusion over what the statute
14 directs. The statute says very clearly that it has to be
15 tried in the magistrate's court. So whichever one of those
16 three options, we believe that the option that we've already
17 done is sufficient, but if the Court believes that the cases
18 should just start and finish, beginning and end in
19 magistrate's court, then, certainly, we can do that as well.

20 Your Honor, the second ask of Mr. Johnson is that
21 somehow when these cases get tried at the magistrate court,
22 they're suddenly only 30-day -- only misdemeanors that carry
23 up to 30 days. That's just not what the plain language of
24 the statute says. And I've made that argument at length,
25 I'm not going to get back into it any more than to say that

1 the limitation that says a magistrate's jurisdiction is 30
2 days in criminal cases is specifically accepted by the plain
3 language of the statute. The very first thing the statute
4 says, it says, Notwithstanding these limitations on the
5 magistrate's criminal jurisdiction, these cases all get
6 tried in magistrate's court.

7 So we take the position that because there is no reason
8 -- there's nothing that says that these cases are 30-day
9 misdemeanors. The only statute that applies or that
10 mentions the penalty provision is the contraband statute
11 itself and it is very clear. It's a felony one year to ten
12 years. And then the legislature in their wisdom gave the
13 authority to try those cases exclusively to the magistrate's
14 court. That's what we're trying to get done, Your Honor,
15 and that's where we're at, so that would be the extent of
16 the State's argument.

17 THE COURT: Thank you, Mr. Miller.

18 Mr. Johnson, any response to that, sir?

19 MR. JOHNSON: Just that I think it's straining the
20 interpretation of the statute. The solicitor mentions the
21 statute, but then he doesn't mention the fact that the
22 statute fails to outline the penalty. So the statute says
23 this is to be moved to the magistrate court in these
24 circumstances, but there's a legislative history of
25 penalties being outlined as avoiding some absurd result.

1 We, also, have a ten-year felony in magistrate court when
2 the intention was a magistrate court option for these cases
3 and the history of the legislative intent there would be to
4 create lower penalties as outlined for magistrate court.
5 Obviously, enforces the Court to do a lot of interpreting.
6 I think the interpreting of all that, the judgment should
7 remain on that language about how to interpret a statute and
8 where to place the weight and the favor when you're trying
9 to interpret the statute that has that vague that vague
10 language in there. I think that should fall in favor of the
11 Defense.

12 Other than that, Your Honor, I would point out the
13 solicitor stated that the case involving Mr. Penley was vape
14 pens, but on the indictment it fails to say that. It simply
15 says contraband. So, of course, the State had the option of
16 alleging that in their indictment and failed to do so.
17 That's all I have, Your Honor.

18 THE COURT: All right. Thank you very much, gentlemen.
19 I am going to get all parties involved, all attorneys
20 involved a ruling on this. It's not going to be by the end
21 of day, but I will get you a ruling as quickly as possible.
22 Very soon.

23 MR. JOHNSON: Thank you.

24 MR. MILLER: Thank you, Your Honor.

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Barnwell County, South Carolina, on the 18th day of July, 2024.

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

November 29, 2024

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

STATE OF SOUTH CAROLINA

vs.

JOHN WILSON WILLIAMSON, III
DEFENDANT

IN THE COURT OF GENERAL SESSIONS

SECOND JUDICIAL CIRCUIT

RECEIVED

SEP 13 2024

SC Court of Appeals

Warrant Nos.: 2023A0610400084
2023A0610400174

Indictment Nos.: 2024GS0600202
2024GS0600203

ORDER DISMISSING WARRANTS AND
INDICTMENTS

PRESIDING JUDGE: Courtney Clyburn Pope
COURT REPORTER: Penny Johnson
HEARING DATES: July 16 and 18, 2024
DEFENSE COUNSEL: Derek M. Bush
PROSECUTOR: Dep. Solicitor David Miller, Asst. Solicitor Leigh Staggs

FILED FOR RECORD
2024 SEP -4 PM 4:35
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Defendant is charged on the above referenced warrants with violations S.C. Code §24-7-155. An Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court.

This matter came before the Court pursuant to a motion by Defendant following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

By: CBC Date: 9-5-2024

Defendant was charged with a violation of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the matter did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court." The State interprets §24-3-965 to mean that contraband cases not involving illegal drugs or weapons should be tried in magistrate court, with penalties ranging from one to ten years and/or a fine of at least \$1,000. The State argues that this interpretation prevents rendering the phrases "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550" meaningless.

The State further takes the position that the portion of §24-7-155 to be "notwithstanding" applies to contraband cases involving illegal drugs or weapons, as magistrate courts have limited jurisdiction and could face practical issues, such as the inability to subpoena out of county drug

analysts or dealing with jurisdictional conflicts for weapons related cases. Counsel for defendants argued that the statute is ambiguous because each statute listed has multiple provisions and it is not obvious which provisions of which statute sections the Court is to except or ignore when applying this statute.

The Court agrees with defendants that the overlapping contraband statutes are ambiguous and the legislature could not have intended a sentence up to 10 years for this category of cases. In reaching this determination, the Court believes it does not make sense to ignore or except all of the provisions of each listed statute section – which would mean to ignore the entire statute that creates the offense as well as the entire statute which provides any criminal jurisdiction to the magistrate court. Therefore, the Court finds that an ambiguity exists in the statute and that the Court must use the mandated rules of statutory interpretation to discern the meaning of §24-3-965.

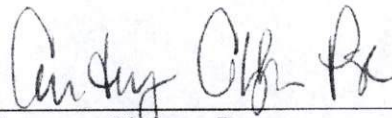
In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases – one that involves weapons or illegal drugs, and another that involves all other types of contraband. The Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty.

The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court.

Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrants in this matter are not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining new warrants in the original jurisdiction of the magistrate court against the Defendant for the offenses alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope
Chief Administrative Judge
Second Judicial Circuit

September 4th, 2024
D. H., South Carolina

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SEP 13 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BARNWELL

SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

Warrant Nos.: 2023A0610400221

vs.

2023A0610400233

COREY LAMONT RIVERA

2023A0610400234

DEFENDANT

2023A0610400235

ORDER DISMISSING WARRANTS

PRESIDING JUDGE: Courtney Clyburn Pope
COURT REPORTER: Penny Johnson
HEARING DATES: July 16 and 18, 2024
DEFENSE COUNSEL: Samuel Grimes
PROSECUTOR: Dep. Solicitor David Miller, Asst. Solicitor Leigh Staggs

FILED FOR RECORD
2024 SEP -3 PM 4:25
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Defendant is charged on the above referenced warrants with violations of S.C. Code §24-7-155. An administrative Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court for trial.

This matter came before the Court pursuant to a motion by Defendant following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
Rhonda D. McElveen, Clerk of Court for Barnwell
County, South Carolina, do hereby certify that the
foregoing constitutes a true and correct copy of the
original documents which have been filed in my office.
Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
By: Cbc Date: 9-5-2024

for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

Defendant was charged with a violation of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the matter did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court." The State interprets §24-3-965 to mean that contraband cases not involving illegal drugs or weapons should be tried in magistrate court, with penalties ranging from one to ten years and/or a fine of at least \$1,000. The State argues that this interpretation

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pg. 2

prevents rendering the phrases “Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550” meaningless.

The State further takes the position that the portion of §24-7-155 to be “notwithstanding” applies to contraband cases involving illegal drugs or weapons, as magistrate courts have limited jurisdiction and could face practical issues, such as the inability to subpoena out of county drug analysts or dealing with jurisdictional conflicts for weapons related cases. Counsel for defendants argued that the statute is ambiguous because each statute listed has multiple provisions and it is not obvious which provisions of which statute sections the Court is to except or ignore when applying this statute.

The Court agrees with defendants that the overlapping contraband statutes are ambiguous and the legislature could not have intended a sentence up to 10 years for this category of cases. In reaching this determination, the Court believes it does not make sense to ignore or except all of the provisions of each listed statute section – which would mean to ignore the entire statute that creates the offense as well as the entire statute which provides any criminal jurisdiction to the magistrates court. Therefore, the Court finds that an ambiguity exists in the statute and that the Court must use the mandated rules of statutory interpretation to discern the meaning of §24-3-965.

In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases – one that involves weapons or illegal drugs, and another that involves all other types of contraband. The Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty.

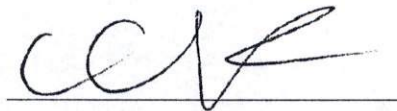
CBC?

The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court.

Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrants in this matter are not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining new warrants in the original jurisdiction of the magistrate court against the Defendant for the offenses alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope

Chief Administrative Judge

Second Judicial Circuit

August 31, 2024

Barnwell, South Carolina

CBC
P.4

FILED FOR RECORD

STATE OF SOUTH CAROLINA

2024 SEP 22 PM 7:53

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BARNWELL

RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

Warrant Nos.: 2023A0610400137

vs.

Indictment :2024GS0600212

ORDER DISMISSING WARRANTS

JASIAH M. BRABHAM

DEFENDANT

RECEIVED

OCT 04 2024

SC Court of Appeals

PRESIDING JUDGE: Courtney Clyburn Pope

COURT REPORTER: Penny Johnson

HEARING DATES: July 16 and 18, 2024

DEFENSE COUNSEL: Ola Johnson

PROSECUTOR: Dep. Solicitor David Miller, Asst. Solicitor Leigh Staggs

Defendant is charged on the above referenced warrants with violations of S.C. Code §24-7-155. An administrative Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court for trial.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

Rhonda D. McElveen, Clerk of Court for Barnwell
County, South Carolina do hereby certify that the
going constitutes a true and correct copy of the
original documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

CBC Date: 9-23-2024

This matter came before the Court pursuant to a motion by Defendant following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

Defendant was charged with a violation of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the matter did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court." The State interprets §24-3-965 to mean that contraband cases

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pg. 2

not involving illegal drugs or weapons should be tried in magistrate court, with penalties ranging from one to ten years and/or a fine of at least \$1,000. The State argues that this interpretation prevents rendering the phrases “Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550” meaningless.

The State further takes the position that the portion of §24-7-155 to be “notwithstanding” applies to contraband cases involving illegal drugs or weapons, as magistrate courts have limited jurisdiction and could face practical issues, such as the inability to subpoena out of county drug analysts or dealing with jurisdictional conflicts for weapons related cases. Counsel for defendants argued that the statute is ambiguous because each statute listed has multiple provisions and it is not obvious which provisions of which statute sections the Court is to except or ignore when applying this statute.

The Court agrees with defendants that the overlapping contraband statutes are ambiguous and the legislature could not have intended a sentence up to 10 years for this category of cases. In reaching this determination, the Court believes it does not make sense to ignore or except all of the provisions of each listed statute section – which would mean to ignore the entire statute that creates the offense as well as the entire statute which provides any criminal jurisdiction to the magistrates court. Therefore, the Court finds that an ambiguity exists in the statute and that the Court must use the mandated rules of statutory interpretation to discern the meaning of §24-3-965.

In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases – one that involves weapons or illegal drugs, and another that involves all other types of contraband. The

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pg 2

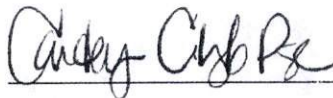
Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty.

The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court.

Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrants in this matter are not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining new warrants in the original jurisdiction of the magistrate court against the Defendant for the offenses alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope

Chief Administrative Judge

Second Judicial Circuit

September 20, 2024

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Allen, South Carolina

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pg 5

FILED FOR RECORD

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

COUNTY OF BARNWELL

RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

Warrant Nos.: 2023A0610400135

vs.

Indictment :2024GS0600204

ORDER DISMISSING WARRANTS

KESHAWN L. KELLEY

DEFENDANT

RECEIVED

OCT 04 2024

SC Court of Appeals

PRESIDING JUDGE: Courtney Clyburn Pope

COURT REPORTER: Penny Johnson

HEARING DATES: July 16 and 18, 2024

DEFENSE COUNSEL: Ola Johnson

PROSECUTOR: Dep. Solicitor David Miller, Asst. Solicitor Leigh Staggs

Defendant is charged on the above referenced warrants with violations of S.C. Code §24-7-155. An administrative Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court for trial.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

By: CBC Date: 9-23-2024

This matter came before the Court pursuant to a motion by Defendant following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

Defendant was charged with a violation of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the matter did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court." The State interprets §24-3-965 to mean that contraband cases

CB 2

not involving illegal drugs or weapons should be tried in magistrate court, with penalties ranging from one to ten years and/or a fine of at least \$1,000. The State argues that this interpretation prevents rendering the phrases “Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550” meaningless.

The State further takes the position that the portion of §24-7-155 to be “notwithstanding” applies to contraband cases involving illegal drugs or weapons, as magistrate courts have limited jurisdiction and could face practical issues, such as the inability to subpoena out of county drug analysts or dealing with jurisdictional conflicts for weapons related cases. Counsel for defendants argued that the statute is ambiguous because each statute listed has multiple provisions and it is not obvious which provisions of which statute sections the Court is to except or ignore when applying this statute.

The Court agrees with defendants that the overlapping contraband statutes are ambiguous and the legislature could not have intended a sentence up to 10 years for this category of cases. In reaching this determination, the Court believes it does not make sense to ignore or except all of the provisions of each listed statute section – which would mean to ignore the entire statute that creates the offense as well as the entire statute which provides any criminal jurisdiction to the magistrates court. Therefore, the Court finds that an ambiguity exists in the statute and that the Court must use the mandated rules of statutory interpretation to discern the meaning of §24-3-965.

In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases – one that involves weapons or illegal drugs, and another that involves all other types of contraband. The

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pg. 3

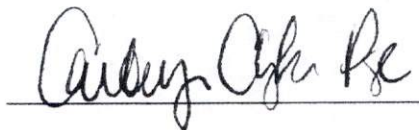
Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty.

The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court.

Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrants in this matter are not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining new warrants in the original jurisdiction of the magistrate court against the Defendant for the offenses alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope

Chief Administrative Judge

Second Judicial Circuit

September 28, 2024

CBC
09/24

Alc, South Carolina

CBC
2005

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA,
vs.
JERICHO KNIGHT-HUDSON,

Defendant.

Warrant No(s):
2023A0610400155
2024A0610400205
2024A0610400212

RECEIVED

JAN 14 2025

SC Court of Appeals

ORDER DISMISSING WARRANTS

PRESIDING JUDGE: Courtney Clyburn Pope
COURT REPORTER: Penny Johnson
HEARING DATES: July 16, 2024 and July 18, 2024
DEFENSE COUNSEL: Wallis A. Alves
PROSECUTOR: David W. Miller

FILED FOR RECORD
2024 DEC 31 PM 1:50
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

The Defendant is charged on the above referenced warrants with violations of S.C. Code §24-7-155. An administrative Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court for trial.

This matter came before the Court pursuant to a motion by Defendant following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

Defendant was charged with violations of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the matter did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a

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Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

By: CBC Date: 12-31-2024

sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court."

The State interprets §24-3-965 to mean that contraband cases not involving illegal drugs or weapons should be tried in magistrate court, with penalties ranging from one to ten years and/or a fine of at least \$1,000. The State argues that this interpretation prevents rendering the phrases "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550" meaningless. The State further takes the position that the portion of §24-7-155 to be "notwithstanding" applies to contraband cases involving illegal drugs or weapons, as magistrate courts have limited jurisdiction and could face practical issues, such as the inability to subpoena out of county drug analysts or dealing with jurisdictional conflicts for weapons related cases. Counsel for defendants argued that the statute is ambiguous because each statute listed has multiple provisions and it is not obvious which provisions of which statute sections the Court is to except or ignore when applying this statute.

The Court agrees with defendants that the overlapping contraband statutes are ambiguous and the legislature could not have intended a sentence up to 10 years for this category of cases. In reaching this determination, the Court believes it does not make sense to ignore or except all of the provisions of each listed statute section - which would mean to ignore the entire statute that creates the offense as well as the entire statute which provides any criminal jurisdiction to the magistrates court. Therefore, the Court finds that an ambiguity exists in the statute and that the Court must use the mandated rules of statutory interpretation to discern the meaning of §24-3-965.

In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases-one that involves weapons or illegal drugs, and another that involves all other types of contraband. The

Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty. The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court. Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrants in this matter are not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining new warrants in the original jurisdiction of the magistrate court against the Defendant for the offenses alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope
Chief Administrative Judge
Second Judicial Circuit

December 31, 2024
Aiken, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

SECOND JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA,

vs.

SHEMAR MCKAY DONALDSON,

Defendant.

Warrant No(s): 2023A0610400146
and 2023A0610400220

ORDER DISMISSING WARRANTS

PRESIDING JUDGE: Courtney Clyburn Pope
COURT REPORTER: Penny Johnson
HEARING DATES: July 16, 2024 and July 18, 2024
DEFENSE COUNSEL: Wallis A. Alves
PROSECUTOR: David W. Miller

RECEIVED
JAN 14 2025
SC Court of Appeals

FILED FOR RECORD
2024 DEC 31 PM 1:49
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

The Defendant is charged on the above referenced warrants with violations of S.C. Code §24-7-155. An administrative Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court for trial.

This matter came before the Court pursuant to a motion by Defendant following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

Defendant was charged with violations of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the matter did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a

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By: Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
Date: 12-31-2024

sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court."

The State interprets §24-3-965 to mean that contraband cases not involving illegal drugs or weapons should be tried in magistrate court, with penalties ranging from one to ten years and/or a fine of at least \$1,000. The State argues that this interpretation prevents rendering the phrases "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550" meaningless. The State further takes the position that the portion of §24-7-155 to be "notwithstanding" applies to contraband cases involving illegal drugs or weapons, as magistrate courts have limited jurisdiction and could face practical issues, such as the inability to subpoena out of county drug analysts or dealing with jurisdictional conflicts for weapons related cases. Counsel for defendants argued that the statute is ambiguous because each statute listed has multiple provisions and it is not obvious which provisions of which statute sections the Court is to except or ignore when applying this statute.

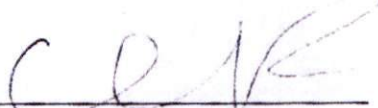
The Court agrees with defendants that the overlapping contraband statutes are ambiguous and the legislature could not have intended a sentence up to 10 years for this category of cases. In reaching this determination, the Court believes it does not make sense to ignore or except all of the provisions of each listed statute section - which would mean to ignore the entire statute that creates the offense as well as the entire statute which provides any criminal jurisdiction to the magistrates court. Therefore, the Court finds that an ambiguity exists in the statute and that the Court must use the mandated rules of statutory interpretation to discern the meaning of §24-3-965.

In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases-one that involves weapons or illegal drugs, and another that involves all other types of contraband. The

Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty. The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court. Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrants in this matter are not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining new warrants in the original jurisdiction of the magistrate court against the Defendant for the offenses alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope
Chief Administrative Judge
Second Judicial Circuit

December 31, 2024
Aiken, South Carolina

303 Miller
1C-Farley

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

SECOND JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA,

vs.

JONATHAN WILLIAM EUGENE
BLOCKER,

Defendant.

Warrant No(s): 2023A0610400205

ORDER DISMISSING WARRANT

PRESIDING JUDGE: Courtney Clyburn Pope
COURT REPORTER: Penny Johnson
HEARING DATES: July 16, 2024 and July 18, 2024
DEFENSE COUNSEL: Andrew B. Farley
PROSECUTOR: David W. Miller

The Defendant is charged on the above referenced warrant with violation of S.C. Code §24-7-155. An administrative Order Transferring Cases to Magistrate Court was signed by this Court on July 8, 2024 ordering Defendant's, and similarly situated defendants', case(s) be transferred to the Barnwell County magistrate court for trial.

This matter came before the Court pursuant to an oral motion by Defendant's counsel following the July 8, 2024 Order of this Court. Other similarly situated defendants in Barnwell County made the same or similar motions. The Court heard arguments in Barnwell from both the State as well as counsel for all similarly situated defendants on the dates listed above. The Court herein incorporates all motions, memorandums, arguments, objections of both the State and similarly situated defendants in the record of this matter and in this Order.

Defendant was charged with violation of §24-7-155 and the warrants for those offenses were filed in the Barnwell County Court of General Sessions. The State notified counsel for Defendant that the allegations in the warrant did not include contraband that was a weapon or an illegal drug. The State informed Defendant, and similarly situated defendants, that it intended to try the cases in magistrates court pursuant to §24-3-965 while the warrants remained pending on the general sessions court docket. Additionally, the State maintained the position that, despite being tried in magistrate court, violations of this statute were felonies and were punishable by a

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
County, South Carolina do hereby certify that the
foregoing constitutes a true and correct copy of the
original documents which have been filed in my office.

Page 1 of 3

By: Shanda D. McElwain Date: 2-9-2025
Clerk of Court, Barnwell County, SC

sentence of not less than one year and not more than ten years or a fine of not less than one thousand dollars and not more than ten thousand dollars or both, as provided by §24-7-155.

During arguments in this matter, as well as in the similarly situated cases, the State alleged §24-3-965 was clear on its face and therefore was not subject to any statutory interpretation. Counsel for defendants argued that the introductory phrase of §24-3-965 was ambiguous and therefore the Court must use the mandated rules of statutory interpretation to discern the meaning of the statute. Section 24-3-965 begins as follows: "Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate... must be tried exclusively in magistrates court."

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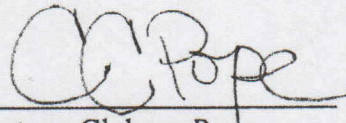
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In applying the rules of statutory interpretation, the Court must defer to legislative intent, avoid absurd results, and because this statute is penal in nature, must construe any ambiguity in favor of defendants. §24-3-965 divides violations of §24-7-155 into two classes of cases-one that involves weapons or illegal drugs, and another that involves all other types of contraband. The

Court finds that the legislature could not have intended for the category of cases that does not involve weapons or illegal drugs to be subject to the same ten-year maximum penalty. The Court further finds that violations of §24-7-155, that do not involve weapons or illegal drugs must be brought in magistrate court with magistrate court warrants and are not properly filed in general sessions court. Thus, the July 8, 2024 Order Transferring Cases to Magistrate Court is hereby vacated. Therefore, the above warrants must be dismissed. If the State intends to pursue prosecution of the allegations in this matter, it must be prosecuted in magistrate court. Based on the foregoing, it is therefore ORDERED:

1. The previously filed July 8, 2024 Order Transferring Cases to the Magistrate Court is hereby VACATED; and,
2. The warrant in this matter is not properly before this Court and should be, and hereby are, DISMISSED; and,
3. Nothing in this order prevents the State from obtaining a new warrant in the original jurisdiction of the magistrate court against the Defendant for the offense alleged in this matter.

IT IS SO ORDERED.



Courtney Clyburn Pope,
Resident Judge
Second Judicial Circuit

February 7, 2025
Aiken, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Feb 26 2025

SC Court of Appeals

APPEALS FROM BARNWELL COUNTY
Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No: 2024-001535

THE STATE,

Appellant,

v.

JOHN W. WILLIAMSON,

Respondent.

Appellate Case No: 2024-001542

THE STATE,

Appellant,

v.

COREY L. RIVERA,

Respondent.

Appellate Case No: 2024-001723

THE STATE,

Appellant,

v.

JASIAH M. BRABHAM,

Respondent.

Appellate Case No: 2024-001682

THE STATE,

Appellant,

v.

KESHAWN L. KELLEY,

Respondent.

Appellate Case No: 2025-000086

THE STATE,

Appellant,

v.

JERICO J. KNIGHT-HUDSON,

Respondent.

Appellate Case No: 2025-000095

THE STATE,

Appellant,

v.

SHEMAR M. DONALDSON,

Respondent.

and

Appellate Case No: 2025-000292

THE STATE,

Appellant,

v.

JONATHAN BLOCKER,

Respondent.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the within *Motion to Consolidate* dated February 21, 2025, on Respondents by sending an electronic copy via email to Jordan M. Wayburn, Esquire, Robert M. Dudek, Esquire, and Andrew B. Farley, Esquire, counsel of record for Respondents, at the addresses listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 21st day of February, 2025.



Susan Spencer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

Susan Spencer

From: Susan Spencer
Sent: Friday, February 21, 2025 2:49 PM
To: rdudek@sccid.sc.gov; jwayburn@sccid.sc.gov; 'andrew@afarleylaw.com'
Cc: Ben Aplin
Subject: Motion to Consolidate (Williamson, Rivera, Kelley, Brabham, Donaldson, Knight-Hudson, Blocker)
Attachments: Motion to Consolidate.pdf

Good Afternoon,

Attached please find a Motion to Consolidate in the above matters. This motion will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

SUSAN SPENCER, Legal Assistant
South Carolina Attorney General's Office
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