

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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NOV 08 2013

SC Court of Appeals

Appeal from Georgetown County

Edward B. Cottingham, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RYAN ALAN WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2012-213373

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ANDERS BRIEF OF APPELLANT

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DAVID ALEXANDER  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether appellant's prosecution violated appellant's statutory double jeopardy rights pursuant to section 17 – 23 – 20 of the South Carolina Code?

### STATEMENT OF THE CASE

On October 13, 2010, a Georgetown County grand jury indicted appellant for failure to stop for a blue light/siren. On October 23, 2012, appellant was tried in his absence before the Honorable Edward B. Cottingham and a jury. R. 1. Gregory McCollum represented appellant. R. 1. Erin Bailey represented the State. R. 1. The jury convicted appellant. R. 153, ll. 16 – 19. Judge Cottingham sealed the sentence. R. 157, ll. 10 – 13. On October 29, 2012, appellant appeared before Judge Cottingham and was sentenced to three years' imprisonment. R. 165, ll. 1 – 4. A timely notice of appeal was served and filed and this appeal follows.

## ARGUMENT

Appellant's prosecution violated appellant's statutory double jeopardy rights pursuant to section 17-23-20 of the South Carolina Code.

### Relevant Facts

On July 17, 2010, Georgetown County Sheriff's Deputy Reginald Grant was on patrol when he observed a speeding car. R. 59, ll. 16 - 19. He gave chase. R. 59, l. 16 - 60, l. 6. Another deputy, John Seale ("Seale"), joined the chase. R. 60, LL. 13 - 19. The officers testified that they signaled their blue lights and appellant failed to stop. R. 60, l. 20 - 61, l. 1. Appellant ran out of gas and was apprehended. R. 63, ll. 9 - 19.

Prior to trial, appellant moved to dismiss the case on double jeopardy grounds. R. 16, ll. 16 - 17, l. 13. Appellant argued that section 17-23-20 of the South Carolina Code prohibited prosecution of appellant because he had previously been tried for charges arising from the same facts in magistrate's court. R. 17, l. 5 - 21, l. 3. Appellant called Deputy Seale in a pretrial hearing to establish these facts. R. 21, ll. 2 - 22.

Deputy Seale testified that appellant was charged with driving under the influence, speeding, driving under suspension second offense, open container of beer, and minor in possession of beer. R. 22, ll. 3 - 7. A plea agreement was reached in magistrate's court. R. 22, ll. 8 - 10. All of these charges arose from the chase on July 17, 2010. R. 22, l. 11 - 23, l. 14. Defense counsel proffered to the court that appellant pled guilty to DUI and received a sentence of time served. R. 20, ll. 7 - 18. The record is admittedly unclear what happened to the remaining charges as defense counsel stated that appellant was found not guilty and the charges were expunged, but the deputy

testified that there was a plea agreement. R. 20, ll. 7 – 18. R. 22, l. 3 – 23, l. 3.

Regardless, it is clear that the charges were disposed of by the magistrate.

When defense counsel attempted to argue that double jeopardy forbade the instant prosecution based on section 17 – 23 – 20, the trial judge refused to hear any argument, stating, “I don’t need any cite of cases. I’m not going to waste the Court’s time any further with that.” R. 25, l. 21 – 27, l. 6. The court ruled that because failure to stop for a blue light lacked the same elements as the other crimes adjudicated in magistrate’s court, the protections of the Double Jeopardy Clause did not apply. R. 27, l. 13 – 29, l. 3.

### **Discussion**

The trial judge confused the constitutional protections of the Double Jeopardy Clause with the statutory protections asserted by appellant. Appellant did not seek constitutional protection but instead sought protection under the following code section:

Whenever a municipal court or a magistrate’s court shall have acquired jurisdiction by reason of a person committing an act which is alleged to be in violation of a municipal ordinance and which is in violation of the criminal law of this State a conviction or an acquittal by the first court acquiring jurisdiction **shall be a complete bar** to a trial by another court **for the same alleged unlawful act or acts.**

S.C. Code Ann. § 17 – 23 – 20 (titled “Double jeopardy after trial in municipal or magistrates court”). The trial judge performed a constitutional analysis which determines whether one crime requires proof of a fact which the other crime does not require. State v. Jolly, Shearouse Advance Sheet No. 21, Op. No. 5128, \_\_\_\_S.C.\_\_\_\_, 2013 WL 1897164 (Ct. App. May 8, 2013).

Had appellant only sought constitutional protection, the trial judge’s analysis would have been correct. However, section 17 – 23 – 20 provides greater protection than the Constitution. While the constitutional test analyzes the facts and elements of the offenses,

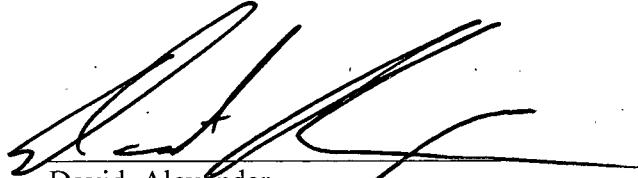
section 17 – 23 – 20 only looks at the underlying facts. S.C. Code Ann § 17 – 23 – 20. The statute uses the language “same alleged unlawful act or acts.” Id. This means that the Legislature intended this section to bar prosecutions based on the same factual occurrence. The Legislature could have used the words “crime” or “offense” if they had wanted the same constitutional analysis to apply. The Legislature’s choice of “same alleged unlawful act or acts” means South Carolina citizens enjoy greater freedom from subsequent prosecution than provided by the Constitution. Since appellant’s current conviction arises from the same facts as his trial in magistrate’s court, section 17 – 23 – 20 requires reversal. See State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986) *abrogated by* State v. Easler, 327 S. C. 121, 489 S.E.2d 617 (1997). But see State v. Clarke, 382 S.C. 423, 396 S.E.2d 827 (1990) (analyzing section 17-23-20’s impact on a charge of unlawfully carrying a pistol tried after improper lane change acquittal in municipal court).

At trial, the solicitor claimed that a South Carolina Supreme Court case with nearly identical facts controlled the result in this case. See State v. Hoffman, 257 S.C. 461, 186 S.E.2d 421 (1972). While Hoffman’s facts are admittedly similar, Hoffman was decided based on the constitutional double jeopardy analysis. Id. Hoffman did not discuss section 17 – 23 – 20. Id. Therefore, Hoffman does not apply, section 17 – 23 – 20 controls, and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of November, 2013.

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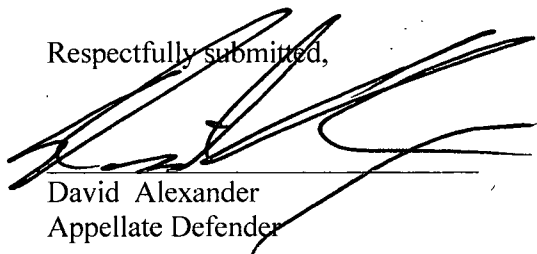
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ryan Alan Williams states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Edward B. Cottingham, which was held on October 23, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Ryan Alan Williams.

Respectfully submitted,

  
David Alexander  
Appellate Defender

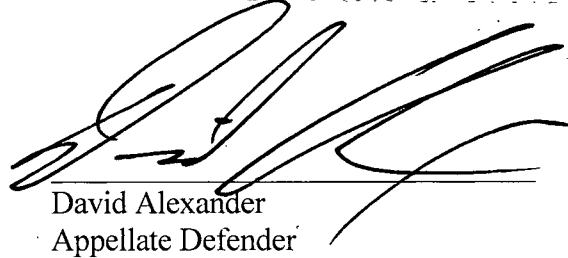
ATTORNEY FOR APPELLANT

This 8th day of November, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 8, 2013



David Alexander  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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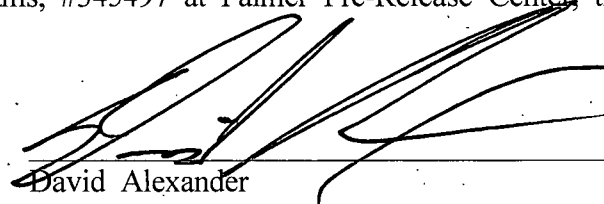
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APPELLATE CASE NO. 2012-213373

CERTIFICATE OF SERVICE

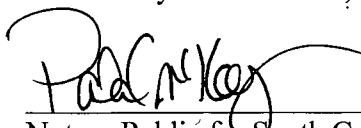
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Ryan Alan Williams, #345497 at Palmer Pre-Release Center, this 8th day of November, 2013.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 8th day of November, 2013.



(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.