

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-08-2704

State of South Carolina,

v. Nicholas M. Blair,

APPELLANT

RESPONDENT

CHECK ONE:

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

2014 APR 15 AM 11:43
 FILED
 CLERK OF COURT
 BERKELEY COUNTY, SC

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

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

This case was before the Court during the March 17, 2014 common pleas non-jury term for a criminal appeal from Magistrate's Court, filed December 5, 2013. At the hearing, the State argued that its appeal should be granted based on the State's right to request a jury trial relying on SC CODE ANN. § 22-2-150 (2013) ("Every person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided in this chapter"), Rule 14(b), SCRCrimP ("A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge."), and *State v. Senter*, 396 S.C. 547, 555, 722 S.E.2d 233, 237 (2011) (state objected to defendant's request to waive jury trial, however, issue was not reviewed on appeal).

However, upon review of the record of the Magistrate's hearing, this Court finds that the State merely requested the case be continued because its witness was unavailable. No other grounds or opposition were articulated in the lower court record. Thus, this Court finds that the Magistrate's Court did not abuse its discretion in denying the State's motion for continuance. See *State v. Browder*, 277 S.C. 206, 207, 284 S.E.2d 775, 776 (1981) ("Motions for continuance are addressed to the sound discretion of the trial judge, whose decision will not be disturbed on appeal absent a clear showing of abuse of discretion.").

Further, the record reflects that at no time during the proceedings did the State specifically request a jury trial or oppose a bench trial in the lower court, nor did the State object to the Defendant's request for a bench trial. Simply stated the only request by the State was for a continuance of the entire matter based on the unavailability of a witness.

Therefore, this Court finds that the State did not adequately preserve any alleged error for appellate review. "In criminal appeals from Magistrate or Municipal Court, the Circuit Court does not conduct a de

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email: m. Gore, G. DeLuca, mcimag.

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novo review, but instead reviews for preserved error raised to it by appropriate exception.” Richland County v. Simpkins, 348 S.C. 658, 661, 560 S.E.2d 899, 900–901 (Ct. App. 2002) (citing State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct.App.2001)). See S.C. CODE ANN. § 18-7-170 (2013) (Circuit Court may dispose of appeal from Magistrate’s Court). See also State v. Black, 319 S.C. 515, 521–22 462 S.E.2d 311, 315 (1995) (failure to make contemporaneous objection to the Magistrate operated as waiver of right to object and issue could not be addressed by the Circuit Court upon appeal); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (a party cannot argue one ground at trial and another ground on appeal). Accordingly, having found the State failed to preserve the alleged error to the appellate court, the State’s appeal is dismissed.

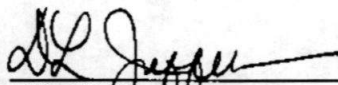
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2128
Judge Code

4/9/14
Date

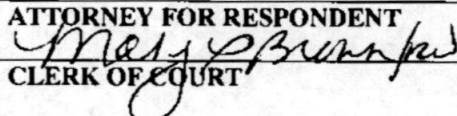
For Clerk of Court Office Use Only

This judgment was entered on the 15 day of April, 2014 and a copy mailed first class or placed in the appropriate attorney’s box on this 15 day of April, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Marcus Gore, Esquire

ATTORNEY FOR APPELLANT

Gregory Deluca, Esquire

ATTORNEY FOR RESPONDENT

CLERK OF COURT

Court Reporter: Karen Andersen