THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-08-02704

The State.....Appellant,

v.

Nicholas M. Blair.....Respondent.

AMENDED INITIAL BRIEF OF APPELLANT

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DID THE MAGISTRATE ERR IN DENYING THE STATE'S REQUEST FOR A JURY TRIAL?

STATEMENT OF THE CASE

On October 7, 2013, Corporal C. M. Wooten of the South Carolina Highway Patrol cited Respondent with Driving Under the Influence in violation of S.C. Code Ann. § 56-5-2930. (Uniform Traffic Ticket # G449285.) This matter came before the Honorable Whilden V. Baggett, Magistrate Judge for Berkeley County, on November 6, 2013 for a first appearance. (Uniform Traffic Ticket # G449285; Notice of Appeal and Appeal filed on December 5, 2013 in Berkeley County bearing C.A. No. 2013-CP-08-2704.)

At the pre-trial hearing, Respondent requested a bench trial. (Magistrate's Return filed January 14, 2014 in Berkeley County; Notice of Appeal and Appeal; Audio of Hearing on November 6, 2013 before Judge Baggett.) The State then requested a continuance or, in the alternative, that the matter be set for a jury trial; both motions were denied by Judge Baggett.[1] (Magistrate's Return; Notice of Appeal and Appeal; Audio of Hearing.) On the issue of the State's request for a jury trial, Judge Baggett ruled that the defense alone had the right to request a jury trial. (Magistrate's Return; Notice of Appeal and Appeal; Audio of Hearing.) Respondent then moved to dismiss the case for lack of prosecution, and Judge Baggett granted the motion. (Magistrate's Return; Notice of Appeal and Appeal; Audio of Hearing.)

The State then filed with the Berkeley County Circuit Court an appeal of the magistrate's ruling denying the State's request for a jury trial. (Notice of Appeal and

[1] The ruling on the motion for a continuance has not been appealed.

Appeal.) The appeal was called for oral argument on March 17, 2014 before the Honorable Deadra L. Jefferson, Circuit Court Judge.

Judge Jefferson initially entered an order holding that the State had failed to preserve the error on which its appeal was based. (Order of Judge Jefferson dated April 15, 2014.) The State received notice of said Order on April 15, 2014, and the State subsequently filed a Notice of Appeal with the South Carolina Court of Appeals. (Notice of Appeal and Appeal.) Thereafter, Judge Jefferson contacted the parties to advise that she wished to amend her order. The Court then stayed the appeal until September 2, 2014 to allow Judge Jefferson to file the amended order. No amended order was filed by September 2, 2014. Without an amended order from which the State could appeal before the stay expired, out of an abundance of caution Appellant elected to file its initial brief and designation of matter in response to the original order on September 2, 2014. Appellant subsequently received an amended order on September 15, 2014. The amended order had been signed on August 28, 2014 and filed on September 3, 2014, but Appellant was unaware that this had occurred. (Order of Judge Jefferson dated September 3, 2014.) The amended order concluded that the error had in fact been preserved, but it ultimately affirmed the magistrate's ruling and dismissed the appeal on substantive grounds. (Order of Judge Jefferson dated September 3, 2014.)

Appellant then requested that the Court either disregard the amended order as untimely or, if the amended order was considered, that Appellant receive an extension of time in which to amend its initial brief and designation of matter. In response, the Court ordered the Berkeley County Clerk of Court to refile the amended order and allowed Appellant ten additional days from the amended order's filing to file an amended initial

brief and designation of matter. The amended order was refiled in the Berkeley County Clerk of Court's Office on January 21, 2015 and received by the Court on January 22, 2015.

ARGUMENT

THE MAGISTRATE COURT ERRED IN DENYING THE STATE'S REQUEST FOR A JURY TRIAL.

The circuit court erred in affirming the magistrate court's ruling regarding the State's entitlement to a jury trial. The magistrate court's order should be reversed because the State was entitled to insist on a jury trial over Respondent's request to proceed without a jury.

A. The State Has the Right to a Jury Trial by Rule and Case Law.

The South Carolina Constitution establishes a criminal defendant's right to a trial by jury. S.C. Const. art. I, 14. In contrast, this Court has recognized that no such right exists to a bench trial because "'[a] defendant's only constitutional right concerning the method of trial is to an impartial trial by jury.'" State v. Senter, 396 S.C. 547, 554, 722 S.E.2d 233, 237 (Ct. App. 2011) (quoting Singer v. United States, 380 U.S. 24, 34 (1965)).

If a defendant requests to proceed with a bench trial, South Carolina courts have long recognized that this request is conditioned on the consent of the trial judge and the State. In effect, this allows the State to insist on a jury trial because it can withhold its consent to the bench trial request. This mechanism is currently articulated in Rule 14 of the South Carolina Rules of Criminal Procedure, which provides that a "defendant may waive his right to a jury trial *only with the approval of the solicitor and the trial judge.*" Rule 14(b), SCRCrimP (emphasis added). Although presently expressed in Rule 14, the

conditional jury trial rule was first recognized by a 1970 South Carolina Supreme Court decision that predates the 1988 adoption of the Rules of Criminal Procedure. See State v. Burgin, 255 S.C. 237, 249, 178 S.E.2d 325, 329 (1970), *rev'd on other grounds*, 404 U.S. 806 (1971) (observing that there is "no right to waive trial by jury guaranteed by the United States Constitution" and "no constitutional impediment to conditioning a waiver of this right on the consent of the prosecuting attorney and the trial judge...."). Since 1970, South Carolina courts have repeatedly recognized the State's right to insist on a jury trial by withholding consent. See, e.g., State v. Hanson, 285 S.C. 543, 544, 331 S.E.2d 782, 782 (1985) ("A defendant's waiver of a jury trial is conditioned upon the consent of the prosecutor and the trial judge. If either objects to the waiver, the defendant must be tried by a jury."); State v. Shuck, 278 S.C. 441, 442, 298 S.E.2d 95, 96 (1982) ("We hold that a defendant in a non-capital criminal case may waive his right to a jury trial with the consent of the prosecuting attorney and the trial judge."). Importantly, this conditional jury trial rule has been held to apply at all trial levels, including magistrate's courts. See Hanson, 285 S.C. at 544, 331 S.E.2d at 782 ("This same rule applies in magistrate's court."); see also Rule 37, SCRCrimP (stating the Rules of Criminal Procedure, including Rule 14, apply "insofar as practicable in magistrate's courts . . . to the extent they are not inconsistent with the statutes and rules governing those courts.").

Our jurisprudence makes clear that a defendant has no right to a bench trial because the prosecution may always insist on a jury trial over the defendant's protests. Respondent was free to waive her right to a jury trial, but her waiver was only effective if both the trial judge and the State consented. "When the State objected to the [Respondent's] waiver of a jury trial, the trial judge should have empaneled a jury."

Hanson, 285 S.C. at 544, 331 S.E.2d at 782; see also Burgin, 255 S.C. at 250, 178 S.E.2d at 329 ("[I]f either [the judge or the prosecution] refuses to consent, the result is simply that the defendant is subject to an impartial trial by jury . . . .").

B. The Repeal of § 22-3-230 Had No Effect on the State's Right to a Jury Trial.

The magistrate court's denial of the State's request for a jury trial was rooted in an apparent belief that the repeal of S.C. Code Ann. § 22-3-230 eliminated the State's ability to request a jury trial. (Magistrate's Return.) The magistrate court reasoned that the repeal of § 22-3-230 left § 22-2-150 as the exclusive mechanism for seeking a jury trial in a criminal case before a magistrate. This conclusion was erroneous because § 22-2-150 says nothing about the State's right to request a jury trial, and the repeal of § 22-3-230 had no impact on the longstanding rule that the defendant's waiver of a jury trial is conditioned on the consent of the State.

1. Section 22-2-150 Does Not Deprive the State of the Right to Demand a Jury Trial.

While § 22-2-150 provides criminal defendants the right to a jury trial in magistrates court, the circuit court incorrectly concluded that whether the State is entitled to a jury trial is "squarely addressed within the Code applicable to Magistrate's Court." (Order of Judge Jefferson.) Section 22-2-150 provides that "[e]very 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." S.C. Code Ann. § 22-2-150 (Supp. 2013). Although § 22-2-150 recognizes the defendant's right to a jury trial before a magistrate, it says nothing about the State's right in this regard and should not be construed as implying anything further. "A court must

take the statute as it finds it, giving effect to the legislative intent as expressed in the language of the statute, and cannot, under its power of construction, supply an omission in a statute." State v. Johnson, 396 S.C. 424, 429, 721 S.E.2d 786, 788-89 (Ct. App. 2012) (citations omitted); see also State v. Belviso, 360 S.C. 112, 600 S.E.2d 68 (Ct. App. 2004) (recognizing State's right to appeal from magistrate's dismissal despite fact that statute authorizing appeal applied only to defendants).

As discussed above, our courts have repeatedly acknowledged that the defendant's right to a jury trial is conditioned on the consent of the prosecution. Beginning with Burgin and continuing through its current formulation in Rule 14, South Carolina has long recognized that the State can insist on a jury trial by withholding its consent to the defendant's bench trial request. Burgin and its progeny make no reference to § 22-3-230 or any other statutory authority as the source of the State's right to a jury trial. Rather, these cases make clear that the State's right to insist on a jury trial exists independent of any statutory grant, and § 22-2-150 is therefore irrelevant to that question.

The conclusion that § 22-2-150 grants the defendant the exclusive right to a jury trial is premised on two erroneous assumptions. First, the conclusion is at odds with the principle that the prosecution and defense are subject to the same procedural rules. South Carolina's system of criminal procedure draws no distinction between the procedural rules applicable to the prosecution and the defense. See, e.g., S.C. Code Ann. § 22-2-100 (providing for equal preemptory challenges to prosecution and defense); S.C. Code Ann. § 22-3-930 (permitting either party to request trial subpoenas); Rule 13, SCRCrimP (same); Rule 5, SCRCrimP (permitting both parties to engage in pre-trial discovery).

Second, the argument presumes that the State is treated differently at the magistrate level than in the Court of General Sessions. It is undisputed that Rule 14 supplies the right to insist on a jury trial to both the State and the defense in a General Sessions matter. Senter, 396 S.C. at 555 n.4, 722 S.E.2d at 237 n.4 (citing Rule 14, SCRCrimP). By determining that § 22-2-150 eliminates the State's right to a jury trial, both the magistrate and circuit court mistakenly concluded that the Legislature intended for the State to be able to insist on a jury trial in a General Sessions case, but not in a magistrate court case.

2. The Repeal of § 22-3-230 Did Not Affect the State's Right to Jury Trials Because the Statute Did Not Apply to Criminal Trials at the Time of its Repeal.

In denying the State's request for a jury trial, the magistrate court held that the State's right to a jury trial in a criminal proceeding emanated solely from State v. Nash, 51 S.C. 319, 28 S.E. 946 (1898), which relied on a statute, § 22-3-230, that has since been repealed.[2] The magistrate court ruled that once § 22-3-230 was repealed, the authority of the State to request a jury trial was also lost. (Magistrate's Return.) However, the post-Nash repeal of § 22-3-230 had no impact on the State's ability to request a jury trial because of subsequent changes to the organization of the South Carolina Code.

In Nash, the South Carolina Supreme Court recognized that the State was entitled to request a jury trial in criminal actions pursuant to § 884 of the Civil Statutes of South Carolina. Section 884 was the precursor to § 22-3-230 and provided that "[e]ither party to a suit before a Magistrate shall be entitled to a trial by jury." 1868 S.C. Acts § 884. The

[2] The Magistrate's Return reflects that his ruling was based on an opinion of the South Carolina Attorney General. (Op. S.C. Att'y Gen. (Aug. 15, 1980) (1980 WL 120825)). The referenced opinion cites a prior opinion of the South Carolina Attorney General for a more detailed analysis of the question posed. (Op. S.C. Att'y Gen. (Feb. 12, 1980) (1980 WL 121029)). The earlier opinion cites Nash as the source of its analysis. Thus, the magistrate court implicitly relied on Nash in issuing its ruling.

defendant in Nash had questioned whether § 884 allowed the prosecution to request a jury trial because the applicability of § 884 to criminal trials was unclear. The Nash court found that the State was a "party to a suit" and thus entitled to request a jury trial.

Section 884 was codified in 1868 under a heading entitled "An Act to Provide for the Temporary Appointment of Magistrates, and to Define Their Powers and Duties." Id. The heading made clear that § 884 was intended to apply to magistrate courts in all types of cases. Although the language of § 884 was relocated in later versions of the Code, the headings indicated that the provision was still applicable to magistrate courts generally. See 20 S.C. Code Ann. § 3710 (1942) (under "Magistrates and Constables") 20 S.C. Code Ann. § 3710 (1932) (same); 20 S.C. Code Ann. § 2244 (1922) (under "Magistrates – Their Courts, Powers and Duties"); 20 S.C. Code Ann. § 986 (1902) (under "Magistrates"). Importantly, some of the statutory provisions dealing with magistrate courts in these prior versions of the Code drew distinctions between the procedures to be used in criminal versus civil cases, but some – including § 884 – made no such distinction. See 20 S.C. Code Ann. § 3710 (1942) ("Either party to a suit before a Magistrate shall be entitled to a trial by jury."); 20 S.C. Code Ann. § 3710 (1932) (same); 20 S.C. Code Ann. § 2244 (1922) (same); 20 S.C. Code Ann. § 986 (1902) (same); 1868 S.C. Acts § 884 (same). Thus, by their own words these generic magistrate court provisions applied with equal force in civil and criminal matters.

An important change occurred in 1952. For the first time, the statutory provisions regarding magistrate courts were organized into separate sections dealing with criminal actions, civil actions, real estate actions, and claim and delivery actions. The 1952 revision created seven separate articles within Title 43:

- Article 1 (Civil Jurisdiction)
- Article 2 (Criminal Jurisdiction)
- Article 3 (Procedure in Civil Actions, Generally)
- Article 4 (Procedure in Criminal Cases)
- Article 5 (Provisions Applicable to Both Civil and Criminal Cases)
- Article 6 (Proceedings when Title to Real Estate is Involved)
- Article 7 (Proceedings in Claim and Delivery)

Former provisions that were previously located under a general "Magistrate" heading were now placed within specific articles. Significantly, the language from former § 884 was placed within Article 3 ("Procedure in Civil Actions Generally"). See 43 S.C. Code Ann. § 93 (1952). The original language from § 884 eventually became § 22-3-230 and retained its classification within Article 3 until its repeal in 2008.[3]

By placing the § 884 language within an article designated as civil in nature, the 1952 revision indicated that the Legislature intended to make § 884 and its progeny applicable to civil cases only. The Nash court was correct to read § 884 as applicable to civil and criminal matters alike, because the statutory scheme at the time classified the law as applicable in magistrate courts generally. However, the 1952 move of former § 884 to an article expressly delineated as dealing with civil procedure made clear that the language of § 884 was no longer intended to apply as broadly as it had been construed in Nash.

Accordingly, the magistrate court incorrectly reasoned that the State's right to a jury trial was premised exclusively on § 22-3-230 as articulated in Nash. The court thus erred in holding that the repeal of § 22-3-230 eliminated the State's right to a jury trial.

[3] At the time of its repeal, § 22-3-230 was located in Article 3 and was entitled "Civil Procedure Filing and Execution of Judgments."

3. The Legislature Did Not Intend to Eliminate the Prosecution's Recognized Right to a Jury Trial.

The magistrate court's ruling based on the repeal of § 22-3-230 presumed that the Legislature intended to eliminate a well-established right of the prosecution. "The Legislature is presumed to enact legislation with reference to existing law . . . ." Hoogenboom v. City of Beaufort, 315 S.C. 306, 318 n.5, 433 S.E.2d 875, 884 n.5 (Ct. App. 1992) (citations omitted). A more sound interpretation of the intent behind the repeal of § 22-3-230 is that the statute was simply eliminated as superfluous. Both Rule 14 and case law establishing the State's right to request a jury trial predated the recent repeal of § 22-3-230, and the repeal should not be read to imply the elimination of a longstanding rule. "It must be presumed that the legislature intended to achieve a consistent body of law." State v. Ramsey, 311 S.C. 555, 562, 430 S.E.2d 511, 516 (1993). There was also no reason to provide a statutory basis for the prosecution's right to insist on a jury trial when Rule 14 and a long line of cases already provided for the right.

The legislation which repealed § 22-3-230 was denoted as "an Act to amend Article 3, Chapter 3, Title 22, Code of Laws of South Carolina, 1976, relating to *civil procedure in magistrates court.*" Act No. 267, 2008 S.C. Acts 121 (emphasis added). Act 267 had no impact on Articles 5, 7, or 9, all of which dealt with criminal procedure. The preamble to Act 267 further clarified that the Legislature understood the limited impact of the repeal, as the purpose of Act 267 was to "revise the Article substantially in order to delete provisions that have been provided by the South Carolina Rules of Magistrates Court." Act No. 267, 2008 S.C. Acts 121. Insofar as the Rules of Magistrates Court only apply in civil cases, Act 267 was explicitly intended to alter civil rather than criminal procedure. Rule 2, SCRMC ("These rules shall govern all civil suits in the magistrates

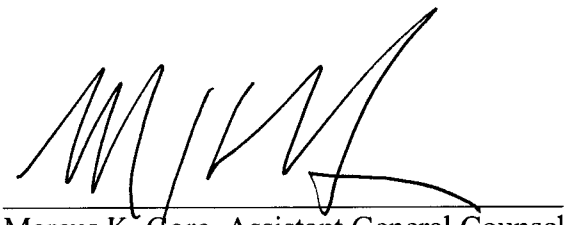
court."). Further, Magistrates Court Rule 13 permits either party in a civil action to request a jury trial just as the repealed § 22-3-230 had done. Rule 13, SCRMC. The preamble to Act 267 therefore makes clear that the Legislature understood that the sole impact of the repeal of § 22-3-230 was upon civil matters.

C. Appellant's Request for a Jury Trial Operated as a Refusal to Consent to Respondent's Jury Trial Waiver.

The circuit court also declined to review the issue of whether Appellant properly withheld consent to Respondent's waiver of her right to a jury trial. The circuit court reasoned that because the State requested a jury trial instead of withholding consent to the jury trial waiver of the Respondent, it did not properly invoke Rule 14. Although the State did not explicitly refuse consent to the Respondent's request for a bench trial, the Respondent's bench trial request was immediately followed by the State's request for a jury trial. (Magistrate's Return; Notice of Appeal and Appeal; Audio of Hearing.) Insofar as a bench trial and a jury trial are mutually exclusive, the State's request for a jury trial can be understood to have had but one meaning – the State was unwilling to consent to the Respondent's request for a bench trial. Therefore, the State did not need to refuse consent to the bench trial request in order to trigger Rule 14.

CONCLUSION

The State, having asserted its grounds and legal authority in support thereof, hereby asks this Court to reverse the circuit court order and grant such other relief as the Court deems just and proper under the circumstances.



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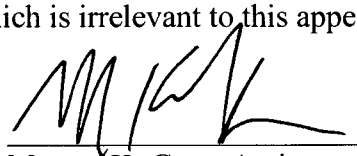
CERTIFICATE OF COUNSEL

I certify that the Appellant's Amended Designation of Matter to be Included in the Record on Appeal contains no matter which is irrelevant to this appeal.



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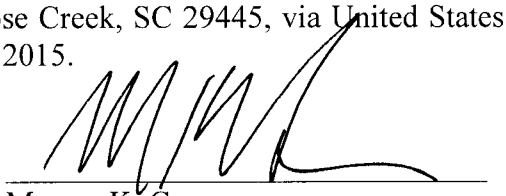
PROOF OF SERVICE

I hereby certify that I have served the Amended Initial Brief of Appellant and Amended Designation of Matter to be Included on the Record on Appeal on the Respondent, Nicolas M. Blair, addressed to his attorney of record, Gregory A. DeLuca, DeLuca & Maucher, LLP, P.O. Box 9, Goose Creek, SC 29445, via United States Mail, postage prepaid, on this 29th day of January, 2015.



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January 29, 2015

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Re: The State vs. Nicholas M. Blair
Appeal from Berkeley County
The Honorable Deadra L. Jefferson
C/A 2013-CP-08-02704
Appellate Case No. 2014-001003

Dear Ms. Kitchings:

Enclosed please find the following to be filed in the above matter:

1. Amended Initial Brief of Appellant
2. Appellant's Designation of the Matter to be included in the Record on Appeal
3. Certificate of Counsel
4. Proof of Service

Also enclosed is an additional copy of each document above. Please clock-in the copies enclosed and return them to me in the envelope provided herein.

Thank you for your attention to this matter.

Yours very truly,

Marcus K. Gore
Assistant General Counsel

MKG

Enclosures

cc: Gregory A. DeLuca, Esq.

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