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SC Court of Appeals

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
Case Tracking No. 2014-001003

The State,.....Appellant,

v.

Nicholas M. Blair,.....Respondent.

INITIAL BRIEF OF RESPONDENT

Gregory A. DeLuca
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State v. Johnson, 396 S.C. 424, 429, 721 S.E.2d 786, 788-89 (S.C. Ct. App. 2012), *reh'g denied* (Feb. 16, 2012) (citing *State v. White*, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999)).....2

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STATEMENT OF ISSUES ON APPEAL

1. Did the Magistrate abuse its discretion and err in denying the State's request for a continuance and a jury trial?

STATEMENT OF THE CASE

Appellant, The State, and respondent, Nicholas M. Blair, appeared in the Berkeley Magistrate Court for a required initial hearing on November 6, 2013 regarding a citation for Driving Under the Influence bearing Uniform Traffic Ticket #G449285. (Amended Order of Dismissal of Judge Jefferson dated August 28, 2014; Magistrate's Return of Judge Whilden V. Baggett.) Respondent entered a plea of not guilty and waived his right to a jury trial, with the approval of The State and trial judge deduced from making no objection to the same, thus respondent proceeded with a bench trial. (Compact disc of court audio of November 6, 2013 hearing; Amended Order of Dismissal of Judge Jefferson dated August 28, 2014; Magistrate's Return of Judge Whilden V. Baggett.) The State asked for a continuance or a jury trial. (Compact disc of court audio of November 6, 2013 hearing; Amended Order of Dismissal of Judge Jefferson dated August 28, 2014; Magistrate's Return of Judge Whilden V. Baggett.) The Trial Judge denied The State's motion for a continuance and further denied The State's motion for a jury trial based upon S.C. Code Ann. § 22-2-150 (2013) whereby said statute clearly states that the arrested person is the only party that may demand a jury trial. (Compact disc of court audio of November 6, 2013 hearing; Amended Order of Dismissal of Judge Jefferson dated August 28, 2014; Magistrate's Return of Judge Whilden V. Baggett; S.C. Code Ann. § 22-2-150 (2013).) Respondent moved to dismiss the case for lack of prosecution and the Judge granted the motion with no further objection from The State. (Compact disc of court audio

of November 6, 2013 hearing; Amended Order of Dismissal of Judge Jefferson dated August 28, 2014; Magistrate's Return of Judge Whilden V. Baggett.) The State appealed the ruling and the Honorable Deadra L. Jefferson heard oral arguments on March 17, 2014 and issued an Amended Order of Dismissal filed on September 3, 2014 in the Berkeley County Court of Common Pleas whereby she affirmed the magistrate's ruling and dismissed the appeal. (Amended Order of Dismissal of Judge Jefferson dated August 28, 2014.) The State subsequently filed a Notice of Appeal with the South Carolina Court of Appeals.

ARGUMENT

I. THE MAGISTRATE DID NOT ABUSE ITS DISCRETION AND DID NOT ERR IN DENYING THE STATE'S REQUEST FOR A CONTINUANCE AND A JURY TRIAL.

The Magistrate did not abuse its discretion and did not err in denying the State's request for a continuance and a jury trial. This determination should be affirmed as the Trial Judge's denial of The State's motion for a continuance is within his discretion, and further, his denial of The State's motion for a jury trial based upon S.C. Code Ann. § 22-2-150 (2013) is also within his discretion as the arrested person is the only party that may demand a jury trial pursuant to said statute that he relied upon. "Motions for continuances 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.." *State v. Browder*, 277 S.C. 206, 207, 284 S.E.2d 775, 776 (1981). Further, the Trial Judge must apply the actual meaning of the words in 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 (S.C. Ct. App.

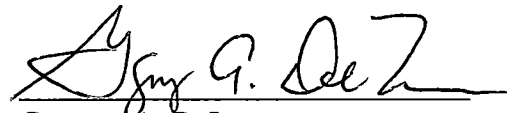
2012), *reh'g denied* (Feb. 16, 2012) (citing *State v. White*, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999)).

The Magistrate did not abuse its discretion and did not err in denying the State's request for a continuance and a jury trial.

CONCLUSION

This Court should affirm the decision of the circuit court as well as affirming for any ground appearing on the record of appeal as provided by Rule 220(c) of the South Carolina Appellate Court Rules.

Respectfully submitted,



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March 26, 2015

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APPEAL FROM BERKELEY COUNTY
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The State,.....Appellant,

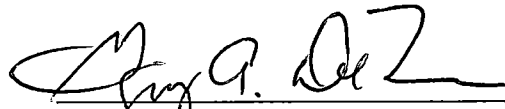
v.

Nicholas M. Blair,.....Respondent.

PROOF OF SERVICE

I certify that I have served the *Respondent's Initial Brief and Designation of Matter to Included in the Record on Appeal* on Marcus K. Gore, the attorney on record for the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on March 26, 2015, addressed to Post Office Box 1993, Blythewood, SC 29016.

March 26, 2015



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SC Court of Appeals
Reply to Moncks Corner Office

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March 26, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: **The State v. Nicholas M. Blair**
Case No.: 2013-DR-08-02704
Case Tracking No.: 2014-001003

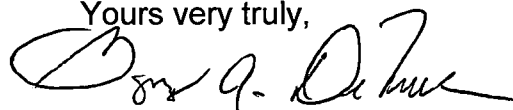
Dear Honorable Kitchings:

Enclosed herewith please find the original and three (3) copies of the Respondent's Initial Brief and Designation of Matter regarding the above-referenced matter. In addition, enclosed please find an original and two (2) copies of the Proof of Service. Please return the clocked-in copies via the self-addressed stamped envelope provided.

Thank you for your consideration.

With kind regards, I remain

Yours very truly,



Gregory A. DeLuca

GAD/
Enclosures as stated
CC: Client & Marcus K. Gore

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The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
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IMPORTANT DOCUMENTS

