STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2014-002208

THE STATE,

Respondent,

vs.

QUENTIN RAYMAR PRICE,

Appellant.

MOTION TO DISMISS APPEAL OR, ALTERNTIVELY, TO REMAND TO CIRCUIT COURT FOR RULING ON PENDING PETITION

Respondent, by and through undersigned counsel, would respectfully show unto this Court:

1. Appellant was charged with a magistrate's court offense of criminal domestic violence, first offense, and was released on bail subject to the condition that Appellant refrains from contact with the victim. A bench warrant was issued and hearing held on the issue of Appellant's contempt of court for violating conditions of bail. Appellant moved to vacate the bench warrant which was denied by the magistrate. Appellant also objected to the procedural method used to initiate the contempt proceedings but the objections were overruled. The magistrate found Appellant in contempt of court for violating conditions of bail and imposed a criminal sentence.

2. Appellant appealed to the Lexington County Court of Common Pleas. A hearing

respecting the appeal was convened before the Honorable William P. Keesley. Judge Keesley subsequently issued an order finding that magistrates have the power to cite and punish a defendant for constructive contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of summary courts but that use of a bench warrant in this particular case was improper because exigent circumstances were not established to support an immediate arrest. Judge Keesley overturned the finding of contempt and vacated the sentence finding the procedural framework and opportunity to be heard was inadequate in this case. Judge Keesley's order was dated September 30, 2014 and judgement was entered on October 7, 2014. (See attached Order on Appeal with Form 4 Judgement in a Civil Case indicating the judgment was entered October 7, 2014). The information on the judgment form indicates that a copy of the order was mailed by the Lexington County Clerk of Court to counsel for the parties on October 7, 2014. Id.

3. Appellant filed and served Notice of Appeal from Judge Keesley's order on October 14, 2014. On October 17, 2014, Respondent filed and served a Petition for Rehearing in the Lexington County Court of Common Pleas asking Judge Keesley to reconsider his order, alter or amend the findings, and affirm the finding of contempt. Appellant submitted a Reply to the Petition on October 22, 2014. Respondent's petition to reconsider the order on appeal is still pending in the circuit court for resolution.

4. Respondent herein moves this Court to dismiss Appellant's appeal or, alternatively, to hold Appellant's appeal in abeyance and to remand the matter to the Lexington County Court of Common Pleas for a ruling on the outstanding and timely request to reconsider the order on appeal. Rule 59, SCRCP, provides that a motion to alter or amend the judgment must be served no "later than ten (10) days after the **receipt of written notice of the entry of the order.**" Rule 59(b),

SCRCP (emphasis added); see also Rule 29 (a), SCRCrimP ("In cases involving appeals from convictions in magistrate's or municipal court, post-trial motions shall be made within ten (10) days after **receipt of written notice of entry of the order or judgment** disposing of the appeal.") (Emphasis added). Notice of entry of the order was forwarded by the Lexington County Clerk of Court to the parties on October 7, 2014. (See judgment form attached to order). The motion was timely filed and served by Respondent on October 17, 2014.

5. When a timely post-trial motion is made, the time for appeal for all parties is stayed and runs from receipt of written notice of entry of the order granting or denying the motion. See Rule 203 (b) (1), SCACR; State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000) (a timely Rule 59 motion stays the time to appeal for all parties until the motion is resolved); Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986) (service and filing of the notice of appeal before the filing of a timely post-trial motion under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motion). As in this case, where a timely post-trial motion is made but is filed subsequent to the filing of a notice of appeal, the appeal must be dismissed without prejudice, and the case remanded to the lower court to consider the post-trial motion. Wicker v. Anderson County Council, 289 S.C. 479, 347 S.E.2d 96 (1986). Any party may appeal after the ruling on the motion pending in the circuit court. Rule 203 (b) (1), SCACR.

6. Additionally, once an appeal is properly before the circuit court from magistrate's court and the circuit court renders its final judgment, the right to appellate review thereafter is controlled by statute. Only an aggrieved party may appeal the circuit court's order. See Rule 201 (b), SCACR; S.C. Code Ann. §18-1-30 (2014); S.C. Code § 18-9-10 (2014); State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77 (2000). In State v. Gregorie, our supreme court opined that a criminal defendant may only appeal as an aggrieved party from a circuit court order vacating a magistrate's

court conviction and sentence when the case is remanded by the circuit court for a new trial and the facts of the particular case reflect that the new trial would violate the defendant's right against double jeopardy because the State did not appeal the circuit court's finding that the State failed to meet its burden of proof. The order appealed by Appellant overturns the finding of contempt entered against Appellant and vacates the sentence. Appellant is not an aggrieved party within the meaning of the law.

7. Respondent submits, first, that because the finding of criminal contempt was overturned and Appellant's sentence was vacated without ordering a new contempt proceeding, Appellant is not aggrieved and his appeal is not proper. This Court must dismiss Appellant's appeal because it was initiated by a party who is not aggrieved as designated by law. Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970). 1

8. Alternatively and as set forth herein, Respondent submits that this Court must dismiss Appellant's appeal without prejudice because the time for appeal for all parties was stayed when Respondent timely made the motion or petition to reconsider, alter, or amend the order on appeal and the petition is still pending before the circuit court for resolution. Rule 203(b)(1), SCACR; Rule 59, SCRCP; Rule 29(a), SCRCrimP; Wicker v. Anderson County Council, 289 S.C. 479, 347 S.E.2d 96 (1986).

9. Alternatively, if this Court prefers not to dismiss the appeal at this time, Respondent moves this Court to hold Appellant's appeal in abeyance and to remand the case to the circuit court for a ruling on the pending post-trial petition to reconsider, alter or amend the order on appeal. The circuit court's ruling on the motion is necessary for finality of the judgment.

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1 On information and belief, Appellant has also entered a guilty plea to the criminal domestic violence charge for which he was released on bail.

WHEREFORE, Respondent moves this Court to dismiss Appellant's appeal or, alternatively, to remand the case to the circuit court for resolution of the pending petition to reconsider, alter or amend the order on appeal.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 3, 2015

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STATE OF SOUTH CAROLINA
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Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2014-002208

THE STATE,

Respondent,

vs.

QUENTIN RAYMAR PRICE,

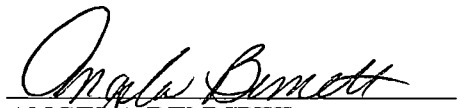
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal or, Alternatively, to Remand to Circuit Court Ruling on Pending Petition on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Jael D. Gilreath, Esquire, 407 ½ West Main Street, Lexington, South Carolina 29072.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of April, 2015.



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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	
-vs-	)	ORDER ON APPEAL
QUENTIN PRICE,	)	Case Number: 2014-CP-32-01449
Appellant - Defendant.	)	

This is an appeal from the Magistrate's Court wherein the appellant-defendant challenges a citation for contempt of court, the procedure whereby he was cited and tried for contempt, the finding of contempt, and the imposition of a criminal sentence.[1] The court determines: 1) that Magistrates have the power to cite and punish a defendant for constructive contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts; 2) that the use of a bench warrant in this instance was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant; and, 3) that the lack of a proper procedural framework and opportunity to be heard requires this court to reverse the finding of contempt of court and the sentence imposed, based on due process concerns.[2]

[1] In his Supplemental Statement of Issues on Appeal, the appellant sets out six specific assertions of error. Assertions 3 and 4 are challenges involving the conduct of the trial. Since the court is vacating the finding of contempt, it is not necessary to rule on those assertions other than to state, had the reversal not been entered on other grounds, the case would have to be reversed and remanded to allow the appellant to develop the record more fully.

[2] The court has concerns about whether a harmless error analysis should be conducted, since the defendant was in jail on other charges when served with the bench warrant, ultimately was given notice when brought before the Magistrate (with counsel), and was given two days to prepare to address the allegation of contempt. Because of the court's determination that fundamental due process was violated, however, the court has determined that a harmless error analysis is not proper.

FACTUAL BACKGROUND

The defendant was charged with Criminal Domestic Violence, First Offense, and he was released on bail on November 30, 2013. The offense is not a General Sessions offense. His release was subject to the condition that he was to have no contact with the purported victim. According to the State in its oral argument, he violated that condition earlier and was punished for contempt. On the previous occasion, he had been found hiding in the victim's shower and was found to be in contempt of court. It is not clear to this court what charges the defendant picked up after the arrest for the instant CDV 1st.

As to the instant case, the State went to a Magistrate and obtained a bench warrant for the defendant's arrest based on an oral statement that the defendant had violated the conditions of his bond. At the time of the service of the bench warrant in this case on March 27, 2014, the defendant was incarcerated on unrelated charges. He was taken before another Magistrate, the Chief Magistrate, on April 7, 2014, pursuant to the bench warrant and treated as being charged with contempt of court. The defense attorney moved to vacate the bench warrant and objected to the consideration of the charge of contempt of court based on various constitutional and procedural grounds. She demanded that any contempt citation be supported by a Rule to Show Cause, issued pursuant to pleadings and/or affidavit, with proper notice and an opportunity to be heard.

Upon hearing that the defense attorney needed more time to prepare to address the charges, the Magistrate delayed the proceedings for an additional two days, asking her if the amount of time was sufficient. The parties appeared for a hearing on the issue of contempt of court. The transcripts of both proceedings are in the file, as well as the Return of the Magistrate. The defendant's motions to vacate the bench warrant were

denied, and the objections to the procedural method of citing the defendant for contempt of court were overruled. The Magistrate found the defendant to be in contempt and sentenced him to serve 30 days in jail. There is a dispute as to whether the Magistrate gave the defendant proper credit for time served, but this court finds no error in that regard. This appeal followed.

There is nothing in the file indicating that a written document was presented to the issuing Magistrate to request the bench warrant or to seek revocation of bond. There is not an affidavit, petition, motion, or any sworn testimony in this file reflecting that it was presented to the issuing Magistrate in order to obtain the bench warrant. It is undisputed that this alleged misconduct took place outside the Magistrate's presence. Based on the file, it appears that the issuing Magistrate was contacted and advised orally that the defendant had violated a no-contact order in his bond. The Magistrate issued a bench warrant for the defendant's arrest. A copy of the bench warrant is not in the file, so the court is of the opinion that the bench warrant does not set forth with specificity the date, time, and place of the allegedly contemptuous conduct. Nonetheless, it appears that defense counsel knew essential aspects of the alleged contempt, including the time and place of the alleged violation, prior to the hearing.

THE POWER TO HOLD SOMEONE IN CONTEMPT OF COURT

Several principles seem to be in play. The State's basic argument is that courts have an inherent power to enforce their orders, and the inherent powers of a Magistrate include the power to punish for constructive contempt. The appellant's position is that fundamental due process requires notice and an opportunity to be heard before a person is

incarcerated. The court agrees with both propositions. However, the court does not agree with all the interpretations that the parties advance from those principles.

The Criminal Trial Benchbook provided to all circuit judges in South Carolina contains the following section dealing with contempt of court.

CONTEMPT POWER

> The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings. Direct contempt occurs when a person's conduct interferes with judicial proceedings, when a person exhibits disrespect for the court, or when one hampers judicial proceedings. State v. Havelka, 285 S.C. 388, 330 S.E.2d 288 (1985) (the trial court's finding of contempt for inappropriate dress was reversed when the defendant was not disruptive and had no notice that the attire was inappropriate).
>
> Constructive contempt occurs outside the court's presence or hearing but nevertheless tends to impede or prevent the due administration of justice. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).
>
> The court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to the law. The jury pool constitutes an integral constituent part of the court and contemptuous acts within their sight or hearing will constitute direct contempt. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The appellant argues that a South Carolina Magistrate cannot punish for contempt of court, except for direct contempt. He cites various cases, including State v. Harper (376 S.E. 2d 272, 297 S.C. 257 (1989), S.C. Code Ann. §22-3-950, as well as opinions of the South Carolina Attorney General. While the court is impressed with the extent of authority and the content of it, the court disagrees with the assertion that Magistrates have no power to punish for constructive contempt of court.

State v. Harper involved a Magistrate who cited an attorney for multiple counts of contempt of court when the attorney stood to raise objections to the jury selection process in court. The opinion states, "South Carolina Code Annotated Section 22-3-950 (1976) sets forth the magistrate's power to punish for contempt." This court believes that the defendant is reading that sentence too broadly. It does not state that the statute is the only method by which a Magistrate may hold someone in contempt of court.

The language of §22-3-950 has been modified somewhat concerning the penalty for contempt since Harper was decided, but the language that is critical to the analysis relevant in this appeal has not changed.

SECTION 22-3-950. Power to punish for contempt.

> Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

WPA #5

The Supreme Court in Harper was not dealing with a constructive contempt situation, so the language of the opinion and its reference to the statute should be read in that context. The Supreme Court was acknowledging a statute that was applicable to the situation before it. Since it was not considering constructive contempt, there was no need for it to determine that a Magistrate lacks contempt powers for conduct outside a Magistrate's observation.

The appellant also cites the Fourth Circuit Court of Appeals in Dean v. Shirer, 547 F.2d 227 (4th Cir. 1976), for the proposition that a Magistrate's contempt powers are

limited to instances where the contemptuous conduct occurs in the presence of the court. The Fourth Circuit was dealing with a summary judgment ruling in a civil suit arising from alleged state action in finding a person in contempt. The quotation cited in the appellant's brief is correct in stating that the contempt power under the statute (now §22-3-950) is limited to events occurring in the Magistrate's presence (or direct contempt).

Dean is not binding on this court, but even if it were, it does not definitively state that a Magistrate lacks inherent contempt powers. Again, the federal court was dealing with whether there was a clear lack of jurisdiction in a case alleging misconduct by a judge, and the federal court found no clear absence of jurisdiction where contemptuous events occurred outside the municipal judge's presence.

It is this court's view that the cases and opinions cited by the appellant do not actually state that South Carolina Magistrates lack jurisdiction in situations of constructive contempt. They may hint at it. It may be in dictum. But, it is this court's view that those cases either were dealing with situations of direct contempt, so the language must be viewed in that context, or they were dealing with tangential issues.

In a well-written opinion cited by the appellant, the office of the South Carolina Attorney General responded to a request from South Carolina Court Administration [To: Neal Forney, 1978 S.C. Op. Atty. Gen. 214 (1978)]. The question posed was, "Is the power of the magistrate to punish for contempt of court limited to trial situations or does it include such activities as bond proceedings, preliminary examinations, and warrant issuing proceedings?" The answer given by the Assistant Attorney General seems to this court to construe the question as being one that deals with contemptuous behavior committed in the Magistrate's presence, but not in an actual trial. So, the conclusion

reached was stated, as follows: "Pursuant to Section 22-3-950, magistrates may punish all behavior within the definition of contemptuous done in their presence while performing the duties of their office as contempt of court. This would include contemptuous actions during bond proceedings, preliminary examinations, and warrant issuing proceedings." This court agrees with that statement; but, that conclusion does not state that a Magistrate lacks the ability to punish for contempt committed outside the judge's presence.

That Attorney General's opinion includes an excellent explanation of some issues currently before this court, including the following language:

> In your question you asked whether the power of a magistrate to punish for contempt of court is limited to trial situations or does it include other activities, such as bond proceedings, preliminary examinations, and warrant issuing proceedings. A review of early court decisions appears to indicate wide authority. In Lining v. Bentham, a Justice of the Peace, 2 S.C.L. (2Bay) 1, (1796), a justice of the peace had ordered a man imprisoned for accusing the justice of gross impartiality [sic] and abuse of power during a bail proceeding. The South Carolina Constitutional Court of Appeals affirmed the action and referenced '. . . the power of a magistrate to commit for insults or contempts . . .' offered in the presence of the court. The Court by dictum stated however that as to any contempts offered out of the presence of the court, such 'ought to' be prosecuted by indictments. (More recent cases reference the fact that for contempts committed out of the presence of the court, 'constructive contempt', such should be initiated pursuant to a rule to show cause. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956); State v. Johnson, 249 S.C. 1, 152 S.E.2d 669 (1967).) In State v. Johnson, 3 S.C.L. (1 Brev.) 155 (1802) a justice of the peace had ordered a particular woman imprisoned for an unspecified period of time for coming to his office, treating him contemptuously and threatening him. The Charleston Constitutional Court held that a 1731 Act which provided punishment by fine instead of imprisonment for contempt of court and which was argued to apply did not apply to a justice of the peace. Instead, it was stated that:
> ***2** Justices of peace have a power derived from the common law, and necessarily attached to their offices, of committing and confining for gross behavior in their presence while engaged in the proper discharge of their duties, as public magistrates. This power has always been recognized and respected, as lawful, and indispensably requisite, for the maintenance of their offices and jurisdiction . . .. 1 Brev. At 159

> Therefore, with reference to the above case authority indicating broad contempt powers, it is the opinion of this Office that Section 22-3-950, supra, which grants a magistrate the power to enforce the observance of decorum in his court while holding the same should be construed to allow the magistrate to punish for all behavior within the definition of contemptuous done in his presence while in the performance of the duties of his office.

In Lining v. Bentham cited above, it is true that the Constitutional Court of Appeals of South Carolina stated in dictum: "The true rule of distinction seems to be this, that where contumelious words are spoken, or other insult is offered to a justice of the peace, and in his presence, he may commit; but when spoken behind his back, he ought to proceed by indictment. 3 *Burn*, 33. *Salk.* 698. 3 *Mod.* 139. 2 Show. 207." Taking into consideration the differences in procedure and court structure between the 18th Century and the 21st, this dictum can be read to support both the State's argument that a proceeding may be pursued for constructive contempt, as well as the appellant's position that the procedure to be utilized would not be a bench warrant.

WPM #8

The rest of the opinion seems to support a broad view of contempt powers for justices of the peace. A major portion of the opinion dealt with whether the officer was performing in a ministerial or judicial capacity at various times, so as to be immune. Lining includes the following language:

> With regard to the power of a magistrate to commit for insults or contempts offered to him while in the due execution of his office, it is incidental to magisterial authority; and without such power, he could never vindicate or support the laws, which are intrusted to his management, and over which he has jurisdiction. That a magistrate, sitting in judgment touching a matter within his jurisdiction, constituted a court in law, though an inferior one, and he was bound to protect the authority of such court. And one general principle, incidental to all courts, as well superior as inferior, was a power to commit for contempts, either by *word or deed*, offered in the presence of the judge, and in the face of such court. And this is not against *magna charta*, or the law of the land, but forms a

> part of the common law, which is recognised by the terms of our constitution. 5*Vin.* tit. *Contempts*, 447. *Lill. Pract. Reg.* 305. *Gilb. Hist. C. B.* 20, 21. 2 *Hawk.* 96. 112, 113.

Again, a statement that a Magistrate may punish for contemptuous behavior done in the judge's presence is not a statement that a Magistrate may only punish for behavior committed in the court's presence. As noted earlier, the charge of Criminal Domestic Violence, First Offense, is within the jurisdiction of the Magistrate's Court. The Magistrates here were dealing with cases where the jurisdiction would not be going to the circuit court after the bond hearing, so this court believes that they must have the inherent power to enforce their orders, including conditions of bond.

There are other sections of the Code that deal with situations where Magistrates have contempt powers in matters where the jurisdiction remains in Magistrate's Court.

Section 22-3-930 discusses contempt powers related to compelling witnesses to testify. It provides, in part:

WM #9

> If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550.

Section 22-3-550 discusses the contempt power of the Magistrate concerning restitution. It reads, in part, in Subsection (A):

> In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.
>
> A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs,

fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C).

In determining the meaning of statutes, the courts are directed to give a reading that harmonizes various statutes dealing with the same subject matter. The statutes above indicate that Magistrates have other contempt powers. They may review and punish for contempt for certain violations related to compelling attendance of witnesses and restitution. While these may be issues of direct contempt, it seems that they may also involve situations where the alleged misconduct took place in a constructive contempt context.

In addition, there are statutes in South Carolina dealing with bail and the power to punish violations by using contempt of court which seem applicable to any court with jurisdiction. Sections of the South Carolina Code dealing with bail contain provisions discussing the interaction between conditions of bail, the need to monitor them, and the power to enforce them through contempt of court.

WPM #10

SECTION 17-15-20. Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.

(A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing . . . and to do and receive what is enjoined by the court, and . . . be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

SECTION 17-15-30. Matters to be considered in determining conditions of release; contempt. . . .

(D) A court hearing these matters has contempt powers to enforce the provisions of this section.

SECTION 17-15-50. Amendment of order.

The court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release.

SECTION 17-15-100. Power to punish for contempt not affected.

Nothing contained in Sections 17-15-10 through 17-15-60 shall affect the power of **any** court of the State to punish for contempt. [Emphasis added.]

It is this court's finding that the General Assembly has not restricted Magistrate's Court to punish only situations of direct contempt. The power to punish for contempt is an inherent power of a court, a power that is too important and essential to be eliminated by reference to language that does not specifically provide for elimination or restriction of the power. As the State repeatedly argued, a court must be allowed to enforce its orders. If the intent of the General Assembly was to restrict the power of Magistrates to situations of direct contempt only, it is this court's belief that the legislature would have done so with definite and precise language.

WPR #11

USE OF THE BENCH WARRANT TO INSTITUTE AND MAINTAIN CONTEMPT PROCEEDINGS

The State argues that there must be a provision to allow the issuance of a bench warrant to protect victims who are endangered by a defendant's violation of the conditions of bail.[3] The appellant counters that he has fundamental due process rights that must be honored before he can be incarcerated, and that the opportunity for misuse is too great to allow law enforcement officials and/or purported victims to obtain bench warrants based merely on ex parte assertions that a condition of bond has been violated.

[3] Of course, if the defendant violates the law in doing so, he may be subject to arrest on new charges.

The court agrees that victims must be protected, but the procedure used here is not appropriate. It violates fundamental due process rights.

South Carolina's statutes do provide a specific mechanism to revoke or modify bond in situations where a Magistrate sets bond, but it is for a General Sessions offense. Subsection (B) of §17-15-55 reads:

> (B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.
>
> (3) If the state's motion to revoke or modify bond includes a prima facie showing of **imminent danger** to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty-eight hours of receiving service of the state's motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant's motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety. [Emphasis added.]

While this procedure is not a contempt citation, it is analogous to the underlying situation here. This procedure does not support the State's position that a bench warrant can be issued for the immediate arrest of this defendant for violation of the conditions of bond, based solely on an unsworn, ex parte claim that such an event occurred. As discussed below, this court might be able to

accept an exception for an emergency situation, but none was shown here.

The procedure applicable to General Sessions offenses recognizes that there must be a motion and a reasonable effort to provide notice to the defendant, with an opportunity to be heard, before a defendant can be judged to have done something that requires revocation based on a violation of the bond order. There have to be specific allegations of how the conditions of bond have been violated. This procedure balances the emergency situation by providing that a hearing can be held in the defendant's absence and a bench warrant could issue thereafter, with the ability of the defendant to move to reconsider and vacate the bench warrant. But, the hearing in the defendant's absence could take place only after there is a specific motion and proof provided to the court of reasonable efforts to notify the defendant, defense counsel, and any bail bonding company or surety. The hearing could not go forward in the General Sessions scenario if the defense attorney was not present.

WPA #13

The State also points to the uniform bond form that is issued by South Carolina Court Administration. On the form, a notice is provided that a bench warrant will be issued for the defendant if he violates a condition of bond. The court acknowledges that the form contains that language. The court believes that the form comports with state law, particularly as it relates to General Sessions cases. But, in this court's view, that notice alone is not sufficient to withstand a due process analysis. If it were, there would be no need for §17-15-55(B).

In another well-written opinion, the office of the Attorney General discussed an inquiry by a Municipal Judge as to whether a law enforcement officer, knowing of a no-

contact provision in a bond, could arrest a defendant for violation of a condition of bond, without a warrant [2004 WL 3058232 (S.C.A.G.)]. The opinion discussed freshly-committed offenses, which the Municipal Judge mentioned. The Assistant Attorney General referenced a 1996 opinion of the Attorney General's office, which is said to assert that a Municipal Judge can issue a bench warrant for a violation of a condition of bond, and stated:

> Consistent with such opinion, a bench warrant **could** be issued for a defendant violating a condition of a bond. [emphasis added] I do not know of any authority for a law enforcement officer to arrest for violation of a condition of a bond committed in his presence. Of course, such conduct . . . by a defendant may give rise to possible other criminal violations for which an arrest may be made at the location . . ..

In discussing the 1996 opinion of the Attorney General, the following language appears:

> This office has indicated in a prior opinion dated October 21, 1996 that "(w)here a defendant fails to perform a condition required of him by a bond, the bonding judge may bring the defendant back before him for further action. Such is typically done by virtue of a bench warrant." That opinion commented further that
>
> > I know of no reason why the issuance of a bench warrant would not be the appropriate procedural mechanism to bring the defendant back generally before the court where he or she has violated a special condition of his or her bond...(Citing People ex rel. Shaw v. Lombard, 408 N.Y.S.2d 664 (1978))... it has been generally stated that "the proper procedure is to require the defendant to appear before the court, by a bench warrant if necessary, in order for the court to review its release of the defendant on recognizance or bail."...Such is consistent with Section 17-15-40 stating that "a warrant for the person's arrest will be issued immediately" upon violation of a condition of release.

In discussing these issues, the opinion uses terms that a Magistrate "could" or that

a Magistrate "may" issue a bench warrant. The opinion relies upon a case from another jurisdiction that approved the issuance of a bench warrant **if necessary**. The opinion gives import to the word "immediately" in §17-15-40.[4] In this court's view, there may be situations where it is appropriate to issue a bench warrant to have a defendant brought to court on an allegation that a condition of bond was violated, but it seems to this court that citing someone for criminal contempt in the context of constructive contempt would involve more due process protections than considering whether to revoke bond on a pending criminal charge. The contempt citation is a new criminal proceeding.

It may be that a higher court would focus on the defendant's being released on bail as a matter of favor, rather than of right, where his freedom can be taken away more easily than someone who was not already under arrest. However, it seems to this court that issuing a bench warrant as a substitute for a motion to revoke bond or as a citation of contempt is not the proper method in most cases. If it is allowed at all, due process would require some exigent circumstance that did not exist here. Moreover, if a bench warrant is allowable, fundamental due process seems to require that the allegation be supported at a minimum by oath or affirmation, and some safeguards for a prompt hearing would need to be in place. This seems to be particularly true when citing someone with a new criminal contempt charge.

This record reflects no such emergency, so there is no need for the court to decide if a bench warrant would be proper in a situation of emergency. The court's

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[4] §17-15-40: On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General.

understanding is that the defendant was arrested on other charges, he was in jail when he was served with this bench warrant, and there was no indication that he was about to be released.

If this court were to agree that a bench warrant "may" or "could" be issued to bring a defendant back before the court for an alleged violation of a condition of bond, it disagrees with the statement in the opinions of the Attorney General that the **typical** method of bringing a defendant back before the court would be though issuance of a bench warrant. The court's understanding is that the typical method is to serve the defendant with a motion to revoke the bond or modify its conditions.

In fact, the 1996 opinion of the Attorney General acknowledges the need for notice and an opportunity to be heard when deciding whether or not to revoke bond. In the very same opinion, when discussing the Municipal Judge's question about whether contempt of court is the proper "charge," the opinion turns to revocation of bond. Absent an emergency situation, with protections for a speedy hearing, this court has difficulty in seeing how issuing a bench warrant ex parte in this instance would involve less protection under due process principles than a procedure to revoke the defendant's bond. The 1996 opinion states:

> Where a defendant is brought back before the court for violation of the condition of a bond, the bond may be revoked or new, additional conditions may be imposed. As stated at 8 C.J.S. Bail Section 83, p. 105, "(a)ccused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail, or to revoke release on bail or recognizance...Whether to revoke bail or to impose more restrictive conditions is discretionary with the judicial officer." **Of course, in order for bail to be revoked, the defendant must be provided notice and an opportunity to be heard.** Ibid. As stated at S.C. Code Ann. §17-15-50 (2003), "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release." [emphasis added]

State v. Harper was cited on page 4 of this order dealing with the appellant's assertion that the Magistrate's contempt powers are limited to direct contempt. The court in Harper wrote:

> Contempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted. Brasington v. Shannon, 288 S.C. 183, 341 S.E. (2d) 130 (1986); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). It is well settled that contempt results from willful disobedience of an order of the court; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which such finding is based. Curlee v. Howle, 277 S.C. 377, 287 S.E. (2d) 915 (1982).

The Brasington case, cited in Harper, involved a Family Court determination of contempt. It includes the following language:

> In an action for contempt, the burden of proof is on the moving party. See, e.g., State v. Bowers, 270 S.C. 124, 241 S.E. (2d) 409 (1978). The use of a rule to show cause to initiate the proceeding does not shift the burden of proof to the respondent. 60 C.J.S., Motions & Orders, Section 37(5).
>
> Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Moseley v. Mosier, 279 S.C. 348, 306 S.E. (2d) 624 (1983); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. Means v. Means, 277 S.C. 428, 288 S.E. (2d) 811 (1982). The burden then shifts to the respondent to establish his defense and inability to comply with the order. Id.; Pratt v. South Carolina Department of Social Services, 283 S.C. 550, 324 S.E. (2d) 97 (Ct. App. 1984).
>
> In a Rule 53 proceeding, the clerk of court must identify the court order which the respondent has allegedly violated, and must identify the specific acts or omissions which constitute noncompliance. These facts must be alleged in the affidavit which supports the rule. See, e.g. State v. Johnson, 249 S.C. 1, 152 S.E. (2d) 669 (1967); Hornsby v. Hornsby, 187 S.C. 463, 198 S.E. 29 (1938).
>
> In the present case, the affidavit which supported the rule asserted Shannon had failed to obey an order of the court, but it did not identify the order or the *185 manner in which the order had been violated. The

Wpa #17

affidavit was insufficient to put Shannon on notice of the charges to which he was required to respond.

Because of the insufficiency of the affidavit and the improper shifting of the burden of proof, the orders of the trial judge are reversed.

In oral argument, counsel for the State asserted that the Family Court allows for the issuance of a bench warrant where the safety of a victim is in issue. There was no citation of authority, but there are provisions related to contempt of court in Rule 14, SCRFC, and the procedure there deals with issuance of a Rule to Show Cause. The official notes following Rule 14, SCRFC,[5] do not seem to support the State's contention that issuance of a bench warrant was appropriate here. Rule 13, SCRFC, which deals with bench warrants in Family Court, also does not seem to support the State's argument.

Moreover, as this record reflects, a defendant who commits a new offense that also constitutes a violation of his bond on a pending charge can be arrested for the new offense. The judge who considers setting bond on the new offense would be made aware of the fact that the defendant was on bond, what the conditions of the existing bond are, and what dangers the defendant might pose to the victim and to the community.

CONCLUSION

For the foregoing reasons, the court has determined that the Magistrate's power to punish for contempt is not limited to situations of direct contempt. The court has also

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[5] Rule 14 provides for a Rule to Show Cause for contempt situations, except for direct contempt. The official notes begin by stating, "The long established procedural vehicle to bring a party into court for contempt proceedings has been the rule to show cause." The notes then provide citations and explanations about direct and constructive contempt.

concluded that a bench warrant was not properly obtained or used to cite the defendant for contempt of court.

THEREFORE, IT IS ORDERED:

1) that the appeal is denied insofar as it is based on a claim that the Magistrate lacked jurisdiction to deal with constructive contempt of court for a violation of a condition of bond; and,

2) that the appeal is granted as to the claim that the use of a bench warrant in this instance was improper and violated due process.

IT IS FURTHER ORDERED that the citation for contempt of court is overturned and the sentence is vacated.

AND IT IS SO ORDERED.

#19

William P. Keesley
Judge

September 30, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201449

State	Quentin Raymar Price
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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: _____

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:

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)

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.**

10/7/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **7th of October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **7th of October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Nicole Howland PO Box 639 Lexington, SC 29071/LCSD
Rich Roberson PO Box 639 Lexington SC 29071/LCSD

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jael Denise Gilreath
407 1/2 West Main Street Lexington, SC 29072

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
APR 06 2015
SC Court of Appeals

April 3, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Quentin Price
Appellate Case No: 2014-002208

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss Appeal or, Alternatively, to Remand to Circuit Court Ruling on Pending Petition along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: Assistant Public Defender Jael D. Gilreath
Ms. Trisha Allen