

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.

INITIAL REPLY BRIEF OF APPELLANT

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APR 13 2015

SC Court of Appeals

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ARGUMENT

A. The State Has Not Appealed the Denial of Its Request for a Continuance.

Appellant has not, as Respondent contends, appealed the magistrate's denial of its motion for a continuance. (Init. Br. of Appellant at FN 1.) Rather, Appellant's argument is limited to the denial of its request for a jury trial.

The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. City of Greer v. Humble, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013). "Whether a party is entitled to a jury trial is a question of law." Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). The sole issue raised by Appellant therefore concerns an error of law which may be corrected by this Court.

B. The Rules of Statutory Construction Mandate Reversal.

The parties agree that the magistrate's denial of the State's request for a jury trial was principally based on his reading of S.C. Code § 22-2-150. (Magistrate's Return.) The magistrate "ruled that the State could not request a jury trial based on [the] plain language of state statute (§ 22-2-150)." Id. "Questions of statutory interpretation are questions of law, which are subject to *de novo* review and which [appellate courts] are free to decide without any deference to the court below." City of Greer, 402 S.C. at 613, 742 S.E.2d at 17 (citations omitted). The magistrate misapplied principles of statutory construction and erred in his interpretation of § 22-2-150. This Court should therefore review the magistrate's conclusion regarding § 22-2-150 *de novo* and reverse his decision.

1. The Plain Meaning § 22-2-150 Does Not Preclude the State from Requesting a Jury Trial.

Section 22-2-150 unequivocally provides criminal defendants the right to request a jury trial in magistrates court. Respondent, however, would have this Court read § 22-2-150 as doing more. He incorrectly concludes that "the arrested person is the only party that may demand a jury trial pursuant to [§ 22-2-150]." (Init. Br. of Respondent at p. 2.)

In interpreting a statute, "a court must abide by the plain meaning of the words of a statute." State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (citations omitted). "When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation." Id. Respondent seeks to have this Court expand the language of § 22-2-150 to include a prohibition that does not exist. Section 22-2-150 is silent as to whether the State may request a jury trial, and any effort to find such a limitation ignores the plain language of the statute.

2. Respondent's Expansive Reading of § 22-2-150 Is Not Permissible.

As noted by Respondent, a trial judge "must apply the actual meaning of the words in a statute and 'cannot, under its power of construction, supply an omission in a statute.'" (Init. Br. of Respondent at p. 2 quoting State v. Johnson, 396 S.C. 424, 429, 721 S.E.2d 786, 788-89 (Ct. App. 2012).) Respondent seeks to have this Court supply an omission in § 22-2-150 in contravention of this well-settled principle of statutory construction. Section 22-2-150 says nothing about the State's right to request a jury trial, and any construction that concludes otherwise provides the very omission forbidden by this Court's jurisprudence. Consumer Advocate for State v. South Carolina Dept. of Ins., 397 S.C. 599, 602, 725 S.E.2d 708, 709 (Ct. App. 2012); Johnson, 396 S.C. at 429, 721 S.E.2d at 788-89.

3. A Consideration of Legislative History is Appropriate.

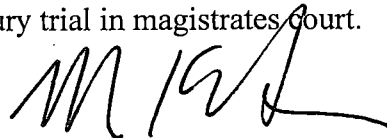
Although not mentioned in his brief, Respondent argued to the magistrate that the repeal of S.C. Code § 22-3-230 eliminated the State's longstanding right to request a jury trial. (Magistrate's Return and Audio of Hearing.) The magistrate adopted Respondent's position in his decision. "Statute § 22-3-230 has been repealed, and § 22-3-230 was cited as the source of the Attorney General's Opinion stating that either party had the right to request trial by jury." (Magistrate's Return.) Insofar as § 22-2-150 is unambiguous in its silence regarding the State's right to request a jury trial, there was no basis for the magistrate to consider the impact of the repeal of § 22-3-230 on § 22-2-150.

Assuming *arguendo* that the language of § 22-2-150 is somehow ambiguous, the magistrate's conclusion regarding the impact of the repeal of § 22-3-230 was erroneous. In situations involving an ambiguous statute, consideration of legislative history is appropriate. See Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001)("When the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself."); Regions Bank v. Strawn, 399 S.C. 530, 542, 732 S.E.2d 230, 236 (Ct. App. 2012)("In some cases, legislative history may be probative in determining the legislature's intent."). Appellant's Initial Brief goes into great detail regarding the legislative history of § 22-3-230 and its intersection with longstanding precedent recognizing the State's right to request a jury trial and the current Rule 14. (Init. Br. of Appellant at pp. 7-11.) Conversely, Respondent's Initial Brief does not refute this legislative history and offers no alternative explanation of the legislative history articulated by Appellant. Appellant's discussion of the legislative history of § 22-3-230 is

entirely consistent with the recognized right of the State to request a jury trial. See Limehouse v. Hulsey, 404 S.C. 93, 106, 744 S.E.2d 566, 573 (2013) ("[A]s the rules of statutory construction dictate, it is also necessary for courts to consider the legislative history in order to effectuate the purpose of [a] statute.").

CONCLUSION

Appellant's sole issue on appeal is the denial of its request for a jury trial, a question of law that may be corrected by this court via *de novo* review. The principal question concerning the State's right to request a jury trial revolves around the magistrate's interpretation of § 22-2-150. The plain language of § 22-2-150 is silent regarding the State's right to a jury trial. Despite this silence, the magistrate erroneously concluded that § 22-2-150 implied a limitation on the State's right. Reading this type of omission into the statute is precluded by principles of statutory construction. In the event that § 22-2-150 is somehow determined to be ambiguous, a resort to legislative history is appropriate, and that history indicates that the repeal of § 22-3-230 did nothing to change the longstanding right of the State to insist on a jury trial in magistrates court.



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April 9, 2015

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The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-08-02704

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PROOF OF SERVICE

I hereby certify that I have served the Initial Reply Brief of Appellant on the Respondent, Nicolas M. Blair, addressed to his attorney of record, Gregory A. DeLuca, DeLuca & Maucher, LLP, 113 Broughton Road, Moncks Corner, SC 29461, via United States Mail, postage prepaid, on this 9th day of April, 2015.



Monishia Davis
Paralegal

Dated: April 9, 2015

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April 9, 2015

Ms. Jenny Abbott Kitchings
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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. Initial Reply Brief of Appellant
2. 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/md

Enclosures

cc: Gregory A. DeLuca, Esq.

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