

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
William P. Keesley, Circuit Court Judge

Appellate Case No 2014-002208

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

QUENTIN RAYMAR PRICE,

Appellant.

APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS APPEAL OR,
ALTERNATIVELY, TO REMAND TO CIRCUIT COURT FOR RULING ON PENDING
PETITION

Appellant, by and through his undersigned counsel, respectfully files this Return to Respondent’s Motion to Dismiss the Appeal or, Alternatively, to Remand (“Respondent’s Motion”). Appellant consents to Respondent’s request for a remand. However, Appellant strongly opposes Respondent’s request for dismissal.

I. PROCEDURAL HISTORY

In order to explain Appellant’s arguments in opposition, a brief explanation of the procedural history is necessary.

A. Contempt Proceedings

Appellant was arrested on November 19, 2013, and charged with criminal domestic

violence (CDV), first offense Order on Appeal, p. 2. Appellant's bond, which was set on November 20, 2013, included a condition of no-contact with the alleged victim, Camisha Mims. *Id.* Appellant was released on a surety bond on November 30, 2013. *Id.* Appellant was subsequently accused of violating the conditions of his bond by having contact with Mims *Id.* As a result of the accusations, the State went to the presiding judge at the Swansea Magistrate Court where the underlying charge was pending and obtained a bench warrant for Appellant's arrest. *Id.* The bench warrant was issued by Magistrate Judge Scott Whittle based on oral statements made by the State to the magistrate that there was an allegation that Appellant had violated the no-contact condition of his bond *Id.*

Appellant was served with the bench warrant on March 27, 2014, and was brought before the chief magistrate in the Lexington County Central CDV Court for criminal contempt of court proceedings on April 7, 2014. *Id.* Upon commencement of the proceedings, Appellant moved to vacate the bench warrant on the grounds that the use of the bench warrant to bring Appellant before the court in criminal contempt of court proceedings violated Appellant's constitutional rights and was not the proper procedure under South Carolina law. *Id.* Appellant argued that a Rule to Show Cause was the proper procedure for initiating contempt proceedings. *Id.* Chief Magistrate Gary Reinhart denied the motions and delayed the contempt hearing until April 9, 2014. *Id.* At the contempt hearing, Appellant renewed all objections to the process as violating his constitutional rights. Order on Appeal, pp 2-3 After a hearing, Appellant was found in contempt of court and sentenced to thirty days in jail. Order on Appeal, p. 3.

B. Appellate Proceedings

Appellant timely filed a notice of appeal with the Lexington County Clerk of Court on April 15, 2014. The magistrate's return was filed on July 10, 2014, and oral arguments were heard in the Court of Common Pleas by the Honorable William P Keesley on September 4, 2014. In an order

dated October 6, 2014, Judge Keesley held that “Magistrates have the power to cite and punish a defendant for constructive criminal contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts.” Order on Appeal, p. 1. The court also held, however, that the use of a bench warrant for the purpose of bringing Appellant before the court in a criminal contempt of court proceeding was improper in this case because “no exigent circumstances [were] shown to the court, supported by oath or affirmation, that required the immediate arrest of [Appellant].” *Id.*

On October 14, 2014, Appellant timely filed a notice of appeal in this Court as to the circuit court’s holding regarding the issue of subject matter jurisdiction. Respondent subsequently filed a Petition for Rehearing on October 17, 2014, asking Judge Keesley to reconsider his order as to his holding regarding the use of a bench warrant. Appellant’s Reply to the Petition was filed on October 22, 2014.

C. Underlying Criminal Charges

Appellant appeared for a pre-trial hearing before the Irmo Magistrate Court on October 28, 2014. At that time, the Criminal Domestic Violence Prosecutor for the Lexington County Sheriff’s Department (hereinafter, “the Prosecutor”) indicated, on the record, an intent to pursue additional contempt charges against Appellant and the implementation of electronic monitoring as a condition of bond. However, the Prosecutor agreed that if Appellant accepted a plea offer that day, she would not seek additional charges or electronic monitoring. Appellant accepted the Prosecutor’s offer.

By the terms of the offer, Appellant pled guilty to two counts of CDV, First Offense, and received a sentence of thirty days on each, to run consecutive to each other, suspended upon successful completion of counseling through the Domestic Abuse Center. As part of the plea agreement, a companion charge of malicious injury to personal property, value \$2,000 or less, was

nolle prossed, and a charge of unlawful use of telephone¹ was held open with a promise to nolle prosee the charge upon the successful completion of the Domestic Abuse Center counseling and three months of good behavior, to include no contact with the alleged victim.

D. Respondent's Motion

On March 25, 2015, Appellant and Respondent received a letter from Judge Keesley asking whether it was necessary for him to rule upon Respondent's Petition. After some discussion amongst the parties, Respondent filed a Motion to Dismiss Appeal, or Alternatively, to Remand to Circuit Court for Ruling on Pending Petition on April 3, 2014.

II. MOTION TO REMAND

With respect to Respondent's Motion to Remand, Appellant consents to a remand of the case to circuit court for a ruling on Respondent's Petition for Rehearing and a stay of the proceedings before this Court, pending the circuit court's decision.

III. MOTION TO DISMISS APPEAL

Appellant objects to the dismissal of the appeal for the following reasons:

A. Appellant is an aggrieved party within the meaning of Rule 201(b) of the South Carolina Appellate Court Rules.

The right of a party to appeal is conferred by statute: "Any party aggrieved may appeal in the cases prescribed in this title." S C Code § 18-1-30 (2014). The South Carolina Supreme Court set forth the definition of aggrieved party:

...an aggrieved party within statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his

¹ The Prosecutor sought a warrant for unlawful use of telephone based on her review of phone calls made by Appellant while he was incarcerated in March and April of 2014 after he had been served with the bench warrant for contempt for violating the conditions of his bond. Appellant had just been served with the warrant for the unlawful use of telephone charge on October 27, 2014, and had not yet posted bond.

rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, *a denial of some personal or property right or the imposition on a party of a burden or obligation*

Bivens v Knight, 254 S.C. 10, 13, 173 S E.2d 150, 152 (1970) (emphasis added), *see also Cisson v McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970) (“The issue of who is a party aggrieved is not one of first impression for our court as we decided this question in *Bivens v Knight*. .”).

By this definition, a person is aggrieved when the decision of the court denies the person of some right or imposes on the party a burden or obligation. *Id.* Whether a party is aggrieved is not solely reliant on the status of a criminal conviction *See State v Gregorie*, 339 S.C. 2, 4, 528 S.E.2d 77, 78 (2000) (“The test is not whether the appeal involves a double jeopardy claim . . . but whether the party bringing the appeal is aggrieved.”). Although the Court did not define “personal or property right” or “burden or obligation” in these cases, a decision of the circuit court that subjects a person to unlawful prosecution is an inherent violation of that person’s fundamental due process rights, as guaranteed by the United States Constitution and the South Carolina Constitution, and imposes upon that person an undue burden. *See* U S. CONST amend. V (“No person shall . . . be deprived of life, liberty, or property, without due process of law . . .”), U.S. CONST amend. XIV, § 1 (“...nor shall any State deprive any person of life, liberty, or property, without due process of law ...”), S.C. CONST art. I, § 3 (“The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law .. ”)

Respondent relies on *Gregorie* for the following proposition:

[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.

Respondent Motion, pp. 3-4. This is a misinterpretation of *Gregorie*. The issue in *Gregorie* was “whether a criminal defendant whose magistrate's court conviction is overturned in circuit court may appeal that decision.” *Gregorie*, 339 S.C. at 3, 528 S.E.2d at 78. The Court noted that although “[t]he general rule is that a criminal defendant may not appeal ‘except from the final sentence imposed by the court’ . . . the Court of Appeals has created an exception to this rule.” *Id.* (quoting *State v Timmons*, 68 S.C. 258, 47 S.E. 140 (1904) (internal citations omitted)). That exception permits a defendant to appeal an order remanding the case to magistrate's court for further proceedings “if the issue is whether such proceedings would violate the defendant's double jeopardy rights.” *Id.* (citing *State v Clifford*, 335 S.C. 129, 515 S.E.2d 550 (Ct. App. 1999)). However, in *Gregorie*, the Court granted certiorari to clarify the appealability rule: “The test is *not* whether the appeal involves a double jeopardy claim as held by the Court of Appeals, but whether the party bringing the appeal was aggrieved.” *Id.* at 4, 528 S.E.2d at 78 (emphasis added) (internal footnotes omitted)

Respondent emphasizes that because Appellant's conviction for contempt was vacated by the circuit court on other grounds, Appellant has not been aggrieved. Respondent Motion, 4. This argument presumes that the only way that a criminal defendant can be aggrieved is by having his conviction affirmed. However, the test set forth in *Gregorie* makes no mention of the need for an upheld conviction, but instead focuses on whether a party has been aggrieved, which, under the definition set forth in *Bivens*, requires only that the court's “judgment or decree . . .

operate[] on his rights of property or bear directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” *Bivens*, 254 S.C at 13, 173 S E.2d at 152.

In determining whether an appeal is proper, appellate courts are concerned with “correcting errors that have practically wronged the appealing party.” *McWhorter*, 255 S C at 177-78, 177 S.E.2d at 605. Additionally, even if relief was granted in the form of the overturning of the conviction and vacating of the sentence on one issue, this could be considered merely alternative relief, as the primary relief requested by Appellant was a decision that the magistrate did not have subject matter jurisdiction to punish the alleged bond violation via contempt, rendering the conviction a nullity and prohibiting further unlawful prosecution. *See Sickora v Metropolitan Life Ins. Co* , 278 S C. 99, 101, 292 S.E 2d 593, 595 (1982) (“The motion for a new trial *nisi* was merely alternative relief. The alternative relief did not prevent a review by this Court on the basic contention If the primary relief had been granted, as it should have been, the alternative motion would have been unnecessary.”), *see also State v Guthrie*, 352 S C 103, 107, 572 S E 2d 309, 311 (2002) (“The acts of a court with respect to a matter as to which it has no jurisdiction are void.”).

B. Dismissal of this appeal is not proper because the issue presented is capable of repetition but evading review, presents a question of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest, and may affect future events.

1. Mootness

The South Carolina Supreme Court has found an appeal to be proper where the issue on appeal could have a “practical effect upon an existing case or controversy.” *State v Green*, 337 S C 67, 71, 522 S.E.2d 602, 604 (1999). In *Green*, the Court quoted the United States Supreme

Court for the proposition that “[a] criminal case is moot only if there is no possibility that any legal consequences will be imposed.” *Green*, 337 S.C. at 71, 522 S.E.2d at 604 (quoting *Sibron v New York*, 392 U.S. 40, 57, (1968)). The Court went on to find that although a defendant had already pled guilty on some charges, the State’s appeal relating to a subject matter jurisdiction issue was not moot as it pertained to the remaining charges.” *Green*, 337 S.C. at 71, 522 S.E.2d at 604.

2. Exceptions to Mootness

Even if Appellant’s case were otherwise moot, our Supreme Court has recognized the existence of “exceptions to the mootness doctrine.” *Byrd v Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). In *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), the Court indicated that “there are three general exceptions to the mootness doctrine.” The first exception permits appellate courts to assume jurisdiction, “despite mootness, if the issue raised is capable of repetition but evading review.” *Id.* (citing *Byrd, supra*; *Citizens Awareness Regarding Educ v Calhoun County Publ’g, Inc*, 185 W.Va 168, 406 S.E.2d 65 (1991)).

The second exception provides that “an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest” *Id.* “[Q]uestions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest” *Id.* (citing *Berry v Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951)).

The final exception recognizes that an appeal is not moot “if a decision by the trial court may affect future events, or have collateral consequences for the parties . . . even though the

appellate court cannot give effective relief in the present case.” *Id.* Although *Curtis* recognized these exceptions to the mootness doctrine in the civil context, this Court has found these exceptions applicable in the context of a criminal contempt appeal. *See State v Passmore*, 363 S.C. 568, 611 S.E.2d 273 (2005)

a. Capable of Repetition But Evading Review

The evolution of the common law exceptions to the mootness doctrine from stricter requirements to more lenient requirements is exhibited in *Byrd* with the Supreme Court’s clarification of the first exception to the mootness doctrine, “capable of repetition but evading review.” *See Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. The *Byrd* Court documented the original, stricter prerequisites for qualifying under the exception, noting both the Supreme Court and this Court had previously held that

under the exception, a court can take jurisdiction only if (1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.

Id. (citing *Treasured Arts, Inc v Watson*, 319 S.C. 560, 463 S.E.2d 90 (1995); *In re John Doe*, 318 S.C. 527, 458 S.E.2d 556 (Ct App. 1995), *In re Kaundra C*, 318 S.C. 484, 458 S.E.2d 443 (Ct. App. 1995); *Howard v Bibbs*, 287 S.C. 636, 340 S.E.2d 566 (Ct. App. 1986); *In re Angela Suzanne C*, 286 S.C. 186, 332 S.E.2d 542 (Ct. App. 1985)). However, the Court also noted a “less restrictive” approach taken by other cases that required only that an appeal present an issue that is “capable of repetition but evading review,” eliminating the requirement that “the same complaining party be subjected to the action again” *Id.* (quoting *In re Darlene C*, 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983)). The Court went on to “clarify that this less restrictive

approach is the appropriate standard in determining the applicability of the evading review exception of the mootness doctrine.” *Id.*

Cases that are capable of repetition but evading review are frequently characterized by the brevity of the underlying proceedings or sentence. *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281; *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. In applying this standard in *Byrd*, the Court found that “even if it is assumed that the issue in the present case is moot, it is an issue that is capable of repetition, but which will evade review. Short term student suspensions, by their very nature, are completed long before an appellate court can review the issues they implicate.” *Byrd*, 321 S.C. at 583, 468 S.E.2d at 864.

In *Passmore*, the Court found that a one year sentence for criminal contempt of court was too brief to survive appellate litigation, noting that even “the State concedes in its brief: ‘the sentence was in fact too brief to be fully litigated through appeal prior to its expiration.’” *Passmore*, 363 S.C. at 583, 611 S.E.2d at 281. The Court then suggested that in cases such as this, the test is “whether the unconstitutional violation suffered by Appellant could be inflicted on a contemnor in the future.” *Id.* Finding that the unconstitutional sentence imposed was “evidence enough a judge could make the same error in the future[.]” the Court “[found] it necessary to remind the bench of the constitutional limitation on a judge’s power of contempt.” *Id.* Thus, where a court’s decision demonstrates the potential to evade review due to the nature and brevity of the case and for future harm to occur to either the appealing party or other “contemnors” in the future, the appeal is not moot, and appellate courts should address the issue raised, regardless of whether the underlying litigation and sentence is complete.

In applying the “capable of evading review” prong of the test for the first exception to mootness, this Court should consider the nature and brevity of magistrate cases in general, and in

the context of contempt cases. Similar to the types of cases presented in *Byrd* and *Passmore*, magistrate cases, and especially magistrate contempt cases, are too brief to be fully litigated in the appellate courts prior to the resolution of the underlying case. With limited exceptions,² magistrate criminal jurisdiction is limited to cases in which the punishment does not exceed a fine of five hundred dollars or imprisonment for thirty days or both S.C. Code Ann. § 22-3-550(A) (Supp 2014). Where magistrates have the power to punish for contempt, the punishment is limited to the confines of magistrate’s sentencing authority under Section 22-3-550. S.C. Code Ann. § 22-3-950 (2007). Because of these strict limitations on cases arising in the magistrates’ exclusive jurisdiction, magistrate-level criminal cases tend to be much more brief than their general sessions counterparts. Additionally, as dictated by statute, the sentence for an individual offense rarely exceeds thirty days, and, with the exception of certain fraudulent check and shoplifting offenses, and offenses qualifying under Section 22-3-545, magistrates may not impose consecutive sentences to exceed a total of ninety days. S C Code Ann § 22-3-550(B) (Supp. 2014) As a result, for purposes of appellate litigation, the timeline for magistrate cases, from arrest to completion of sentence, are almost always “too brief to be litigated through appeal prior to [their] expiration.” *See Passmore*, 363 S C at 583, 611 S.E 2d at 281.

The brevity of these cases for appellate purposes is compounded by the fact that magistrate appeals are made first to the circuit courts. S.C. Code Ann. § 18-3-10 (2014). Because of this statutory requirement, a magistrate appeal must be made first to the appropriate Court of Common Pleas, and a return must be filed by the magistrate before the case may be scheduled for the first appellate hearing before that court. *Id* ; S.C. Code Ann § 18-3-40 (2014).

² For example, Section 22-3-545 also provides for jurisdiction where a case is being transferred to magistrate court from the court of general sessions and “the penalty for which the crime in the does not exceed five thousand five hundred dollars or one year imprisonment or both . . .”

This process frequently results in the lapse of a significant amount of time between the conviction that forms the basis of the appeal and the issuance of an appealable decision by the circuit court.

For example, in this case, Appellant was convicted on April 9, 2014. Order on Appeal, p. 3. The Notice of Appeal was filed with the Lexington County Clerk of Court's Office on April 15, 2014, and the magistrate's return was filed on July 10, 2014. Oral arguments were heard before the circuit court on September 4, 2014, and the court's Order on Appeal was filed on October 6, 2014, nearly six months after Appellant's conviction for contempt. The underlying charge, for which Appellant was arrested on November 19, 2013, was resolved on October 28, 2014, pursuant to a plea agreement. Magistrate cases are often resolved even more quickly than this, demonstrating that, similar to the student suspension at issue in *Byrd* and the one year criminal contempt sentence in *Passmore*, they are "by their very nature, completed long before an appellate court can review the issues they implicate . . . and clearly fit[] into the evading exception of the mootness doctrine." See *Byrd*, 321 S C at 432, 468 S.E 2d at 864.

In applying the "capable of repetition" prong of the test, this Court must consider several factors that are at play in this case. First, it is important to note that the unlawful pursuance of criminal contempt convictions against criminal defendants for allegedly violating the no-contact provision of a defendant's bond is used in a majority of magistrate level criminal cases in Lexington County where the underlying charge includes an alleged victim. Specifically, this method is used in virtually all cases prosecuted by the Criminal Domestic Violence Prosecutor

for the Lexington County Sheriff's Department,³ and upon information and belief, there has been at least one instance of a magistrate initiating such proceedings against a defendant in bond court where that defendant had been arrested on a new count of CDV, first offense, and the alleged victim in that charge was the same as in a prior pending CDV charge. As a result, the likelihood that the "constitutional violation suffered by Appellant could be inflicted on a contemnor in the future" is not only high, but happens in a majority of magistrate cases in Lexington County that include an alleged victim. *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281

Second, Appellant has already faced the threat of the same unlawful prosecution since the original conviction, and also faces the possibility of being subjected to the same violation again, even though his sentence has already been served and the original CDV charge has been resolved. Although Appellant's conviction for criminal contempt of court was overturned by the circuit court, Appellant has a pending charge that originated from his incarceration after being served with the bench warrant that was used to initiate the contempt proceedings, and that charge, unlawful use of telephone, includes a bond condition of no contact with the alleged victim.

On October 28, 2014, at a pre-trial hearing, the Prosecutor notified Appellant, on the record, of an intent to pursue additional contempt charges on the basis of alleged violations of the no contact conditions of his bond, as well as an intent to move for the implementation of electronic monitoring as a new condition of bond. However, at that same hearing, the Prosecutor indicated that these charges and bond conditions would not be sought if Appellant pled guilty to the underlying charges. An offer was made by the Prosecutor and accepted by Appellant,

³ It should be noted that although this practice is most common in CDV cases, it is not limited solely to that type of case, but also includes, for example, cases involving charges of assault and battery in the third degree, unlawful use of telephone, and violations of orders of protection

resulting in a guilty plea to two counts of CDV, first offense, with a sentence of thirty days on each charge, to run consecutive, suspended upon successful completion of counseling through the Domestic Abuse Center.

In addition to not seeking additional contempt charges or electronic monitoring as a condition of bond, the Prosecutor also dismissed a malicious injury to personal property charge and agreed to dismiss the unlawful use of telephone charge upon successful completion of the counseling, an additional three months of good behavior after the counseling has been completed, and no contact with the alleged victim. As a result, Appellant is still subject to a bond condition of no contact. Should allegations be made that Appellant violated this condition, the circuit court's order permits the Prosecutor to engage in the same unlawful prosecution for criminal contempt, which could result another thirty day sentence and which would require dismissal from Appellant's domestic abuse counseling, triggering the suspended consecutive thirty day sentences. This renders the appeal ripe for review because the circuit court's decision places Appellant in the position of facing the same unlawful prosecution repeatedly, in violation of his due process rights under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution.

When considering this exception to mootness, this Court should also look to the effect of the circuit court's order in this case. Because the court's order overturning Appellant's conviction was based solely on the holding 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," the order has been, and will likely continue to be, construed as not binding on future cases. *See* Order on Appeal, p. 1 (emphasis added). This creates a scenario where the State could continue to use bench warrants

for the purpose of bringing defendants before the court in criminal contempt proceedings, and upon appeal of a conviction to the Court of Common Pleas, the circuit court judge could continue to overturn convictions on the basis that the use of the bench warrant was improper in that instance, and either decide not to reach the issue of subject matter jurisdiction, or continue to hold that magistrates have subject matter jurisdiction. The result is that the issue would continue to be repeated while always evading review.

For each of these reasons, the issue of whether magistrates have subject matter jurisdiction to punish alleged bond violations using contempt powers is the epitome of an issue that is capable of repetition but evading review.

b. Matters of Important Public Interest

The second exception permits courts to hear an appeal that would otherwise be moot where a question would be decided that is “of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. This exception is rooted in the long standing principle that “questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest” *Ashmore v Greater Greenville Sewer Dist*, 211 S.C. 77, 96-97, 44 S.E.2d 88, 96 (1947). In *Berry*, the Court quoted the language from *Ashmore*, again recognizing this principle as an exception to the rule against deciding what would otherwise be considered purely academic questions, even though it was inapplicable in that case. *Berry*, 220 S.C. at 89, 66 S.E.2d at 461.

Our Supreme Court recently applied the same logic in *State v Langford*, where it considered on appeal arguments that were not preserved for appellate review but instead were

raised for the first time on appeal by way of an amicus brief filed by a third party 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012) The Court found that the issue of “who decides when criminal defendants in this State should be tried is a matter of *significant public interest*” that warranted review. *Id.* (analyzing the constitutionality of Section 1-7-330 of the South Carolina Code of Laws, which vested solicitors with exclusive power to control general sessions dockets, the Court applied the “matter of significant public interest” exception to the otherwise strict issue preservation requirements as stated in *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011)).

The Court’s continued willingness to apply this type of exception in a variety of contexts indicates the significant importance placed on issues that bear upon the public and could have consequences for parties that are not involved in the case at hand. This is also evidenced by the Court’s willingness to take on such an issue in *Langford*, despite the Court’s affirmation of Langford’s conviction. *Id.* at 446, 735 S.E.2d at 484 (finding that although Section 1-7-330 was unconstitutional, Langford was not prejudiced by the solicitor’s control of the docket).

In this case, the issue of whether magistrates have subject matter jurisdiction to punish for contempt of court where the basis for the contempt is an alleged violation of the conditions of a criminal defendant’s bond is a matter of “important public interest” involving a “question of imperative and manifest urgency that should be decided by this Court to establish a rule for future conduct.” *See Curtis*, 345 S.C. at 568, 549 S.E.2d at 596 Issues of subject matter jurisdiction are, themselves, important matters of public interest because whether subject matter jurisdiction exists determines the validity of a court’s actions with respect to a matter. *See State v Guthrie*, 352 S.C.103, 107, 572 S.E.2d 309, 311 (2002). Thus, subject matter jurisdiction is a question of such fundamental importance that it may be raised for the first time on appeal or *sua*

sponte by the court. *Id.* (“Whether the trial court lacks subject matter jurisdiction to hear a case is a fundamental issue that may be raised at any time, including for the first time on appeal, and it may be raised *sua sponte* by the court.”); *see also Brown v State*, 343 S.C. 342, 540 S.E.2d 846 (2001).

Additionally, as it relates to this case, subject matter jurisdiction is a question of public importance because of its widespread use in magistrate cases that involve an alleged victim. As previously noted, the process of seeking criminal contempt convictions against defendants based on allegations that a defendant violated the no contact condition of his bond is being used throughout Lexington County in the prosecution of magistrate cases involving, for example, charges of criminal domestic violence, unlawful use of telephone, assault and battery, and violation of order of protection. This amounts to a large number of magistrate cases, just in Lexington County, that result in, or could potentially result in criminal contempt prosecution based on allegations that a defendant had contact with an alleged victim in violation of the conditions of his or her bond.

In addition to the cases in Lexington County, upon information and belief, this process is being utilized in other counties and is being taught to magistrates in their training as an acceptable practice. Although the Attorney General’s Office has issued conflicting opinions over the years on the issue, Court Administration recently issued a memorandum that was based upon one of the most recent Attorney General Opinions and notified magistrates of this procedure.⁴ As a result, it is possible that this unlawful practice is or will be used in other

⁴ The Memorandum, dated April 9, 2013, is directed to Magistrate and Municipal Judges and cites an Attorney General opinion dated March 1, 2013, stating, “The opinion concludes that, pursuant to S.C. Code Ann. §§ 17-15-30(D) and 17-15-100, magistrate and municipal courts are authorized to use their contempt powers to enforce conditions of release on bond.”

counties throughout the state, subjecting a much larger percentage of the public to the same constitutional violations

It should also be noted that the issue is one of importance that requires guidance for future actions because of the effects that this practice has on the lives of defendants and their families. Two methods are typically used in Lexington County to initiate contempt proceedings in this context: (1) the issuance of a bench warrant, as described by the circuit court in the Order on Appeal, and (2) oral notice upon arrival for a court appearance. *See* Order on Appeal, p 2. When a bench warrant is used, the defendant is arrested on the bench warrant and held without bond until the contempt proceeding, which is determined by the court and/or the State; the amount of notice given to defense counsel, if any, varies. In other cases, a defendant may arrive for a court appearance and be notified for the first time upon arrival that contempt proceedings will be held that day on the basis of allegations for which there was given no prior notice. In a majority of cases, defendants are given two options by the State: contest the contempt charge or plea guilty to the contempt and to the underlying criminal charge, such as CDV, and receive consecutive sentences, typically thirty days on each, that are suspended to counseling.⁵

Because in many cases the defendant and defense counsel, if the defendant is represented, have little knowledge of the allegations and minimal, if any, time to prepare a defense, defendants often forfeit their constitutional rights with regards to contesting the underlying criminal charge and accept the offer in order to prevent an almost certain conviction on contempt that is likely to result in a thirty day sentence that is served day for day, with no recommendation

⁵ In certain eligible cases other offers are made, such as to plead guilty to the contempt and receive a sentence that is suspended upon the completion of a Pre-Trial Intervention program, if appropriate.

of a suspended sentence. This frequently puts defendants in the position of having to decide between two options. On the one hand, a defendant could contest the contempt in a hearing where he or she may be sentenced to serve thirty days in jail, day for day, and face the risk of a variety of collateral consequences, such as losing a job or custody of children, in order to exercise their constitutional rights on the underlying criminal charge. On the other hand, a defendant could give up his or her constitutional rights by accepting the offer to plead guilty to the contempt and the underlying criminal charge in order to avoid the risks associated with going forward in a contempt hearing where many constitutional protections are not afforded or not observed.⁶

The fact that this practice is so pervasive in Lexington County alone would be enough to qualify as a matter of important public interest, but the possibility that the practice is being used or may be used in other counties heightens the importance. As a result, the issue is ripe for review by the appellate courts, and this Court should decide the issue in order to establish a rule for future conduct.

c. Collateral or Future Consequences

The third exception articulated in *Curtis* recognizes the need for appellate review where the lower court's decision creates the potential for collateral or future consequences for the parties. *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. Collateral or future consequences are not limited to any particular set of circumstances and need not be legal certainties in order to qualify

⁶ For example, no right to a jury trial exists in contempt cases where the contemnor is not facing a sentence of more than six months incarceration. See *Bloom v Illinois*, 391 U.S. 194 (1968); *Curlee v Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982). Additionally, because a defendant is frequently presented with the allegations upon arrival at a court appearance with no prior summons for a contempt hearing, the defendant may not yet have the advice of counsel and is not afforded the opportunity to call witnesses on his or her behalf.

the issue for review. In *Passmore*, the Supreme Court listed several examples of potential collateral consequences that were “enough to surmount the mootness doctrine”:

Although Appellant’s time has been served, she may yet experience the repercussions of having been sentenced to a year in prison for contempt of court. For example, she might be obliged to indicate jail time served on an employment application. Thus, the sentence could affect her ability to obtain future employment. Likewise, she could be required to disclose the conviction on a credit application, thereby hindering her chances of securing credit. Further, drivers’ license applications, voter registration applications, and other documents may mandate the divulgence of prior convictions. Hence, Appellant’s unconstitutional conviction will continue to stigmatize and prejudice her. These significant collateral consequences are enough to surmount the mootness doctrine

Passmore, 363 S. C. at 583, 611 S.E.2d at 281. It should be noted that the consequences noted by the Court were separate and apart from the possibility of any future incarceration and trumped the fact that the *Passmore* had already served her sentence on the underlying criminal contempt. *Id.* The examples provided also indicate that the potential future harm need not be a strictly legal harm, but may bear upon any aspect of life. *See id.* The only requirement is that the “decision by the trial court may affect future events.” *Curtis*, 345 S. C. at 568, 549 S. E. 2d at 596

Similarly, the circuit court’s decision in this case may affect future events and have collateral consequences for Appellant. In addition to the potential that Appellant may be confronted with similar contempt charges again in the future, as previously discussed, other collateral consequences could result, rendering the case ripe for review. Besides further prosecution for contempt, the Prosecutor may continue to use the threat of prosecution for contempt as a means of inducing Appellant to plead guilty on his remaining pending charge, should the Prosecutor or anyone else make new allegations regarding the violation of conditions of Appellant’s bond. Furthermore, the contempt conviction, though overturned, could be used

during sentencing or during any future hearings with Appellant and could have to be disclosed to, among others, potential employers if asked about prior arrests on criminal charges.

As a result, Appellant's case is not moot, but ripe for review, because of the collateral consequences and likelihood that the circuit court's decision may affect future events.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court deny Respondent's motion insofar as it requests that the Court dismiss the appeal. Appellant consents to a remand of the case to the circuit court for a ruling on Respondent's Petition for Rehearing and asks that this appeal be held in abeyance while the case is remanded and that no new notice of appeal be required to resume the appeal before this Court.



Jael D. Gilreath
Assistant Public Defender
407 W Main Street
Lexington, SC 29072

Date: 04/24/2015

RECEIVED
APR 24 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
William P Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V


QUENTIN RAYMAR PRICE,

APPELLANT

APPELLATE CASE NO. 2014-002208

CERTIFICATE OF SERVICE

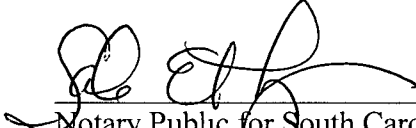
The undersigned attorney hereby certifies that a true copy of Appellant's Return to Respondent's Motion to Dismiss or, in the Alternative, to Remand in the above referenced case has been served upon Salley W Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via email and U S Mail this 24th day of April, 2015.



Jael D Gilreath
Assistant Public Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of April, 2015



Notary Public for South Carolina
My Commission Expires. 3 25 2024

OFFICE OF THE PUBLIC DEFENDER

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Lexington Public Defender
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Lexington, SC 29072
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Eleventh Judicial Circuit
Lexington, Saluda, Edgefield,
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BENNETT CASTO
Tri-County Public Defender
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McCormick, SC 29835
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RECEIVED

APR 24 2015

April 24, 2015

SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court for Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: **The State vs. Quentin Price (Return to Respondent's Motion)**

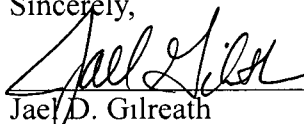
Dear Ms. Kitchings:

I have enclosed an original and six copies of the Appellant's Return to Respondent's Motion to Dismiss or, in the Alternative, to Remand in the above matter for filing in your office. Please file the original and return the date/time stamped copy to me in the envelope provided.

I am, by copy of this letter, serving two copies of this Return on Salley W. Ellhott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via email and U S Mail, together with my Certificate of Service.

Thank you for your assistance in this matter

Sincerely,



Jae D. Gilreath
Assistant Public Defender
407 West Main Street
Lexington, SC 29072
(803) 785-8873

enclosures

cc: Salley W Elliot, Esquire
Office of the Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201