

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 StateAppellant,

v

Nicholas M BlairRespondent.

FINAL REPLY BRIEF OF APPELLANT

Marcus K Gore, Assistant General Counsel
Email MarcusGore@scdps.gov
Catherine Fant, Assistant General Counsel
Email CatherineFant@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone. (803) 896-7965
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS..... .1

TABLE OF AUTHORITIES 11

ARGUMENT

 A. The State Has Not Appealed the Denial of Its Request for a Continuance 1

 B The Rules of Statutory Construction Mandate Reversal. .. . 1

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

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

 3 A Consideration of Legislative History is Appropriate .. . 3

CONCLUSION .. . 4

TABLE OF AUTHORITIES

CASES

<u>City of Greer v Humble</u> , 402 S C 609, 742 S E 2d 15 (Ct App 2013)	1
<u>Consumer Advocate for State v South Carolina Dept. of Ins.</u> , 397 S C 599, 725 S E 2d 708 (Ct App 2012)	2
<u>Kennedy v S C Ret Sys.</u> , 345 S C 339, 549 S E 2d 243 (2001).	3
<u>Limehouse v Hulsey</u> , 404 S C 93, 744 S E 2d 566 (2013)	4
<u>Regions Bank v Strawn</u> , 399 S C 530, 732 S E.2d 230 (Ct App. 2012)	3
<u>State v Jacobs</u> , 393 S C 584, 713 S E 2d 621 (2011)	2
<u>State v Johnson</u> , 396 S C 424, 721 S E 2d 786 (Ct App 2012)	2
<u>Verenes v Alvanos</u> , 387 S.C 11, 690 S E 2d 771 (2010)	1

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 (R p. 11) The magistrate "ruled that the State could not request a jury trial based on [the] plain language of state statute (§ 22-2-150) " (R p 11) "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,¹ 393 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.

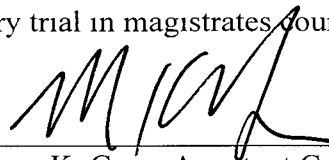
Although not mentioned in his brief, Respondent argued to the magistrate that the repeal of S C Code § 22-3-230 eliminated the State's longstanding right to request a jury trial (R pp 11, 56 at 1 01-4 46) The magistrate adopted Respondent's position in his decision "Statute § 22-3-230 has been repealed, 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 " (R p 11) 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.



Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov

South Carolina Department of Public Safety
Office of General Counsel
P O Box 1993
Blythewood, SC 29016
Telephone (803) 896-7965
Attorneys for Appellant

Blythewood, S.C.
April 24, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 04 2015
SC 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

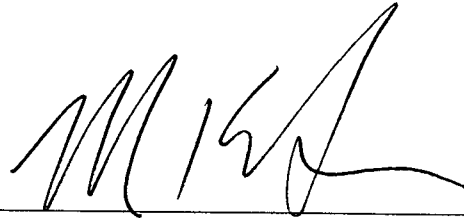
The State.....Appellant,

v.

Nicholas M. Blair.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellant's Final Brief and Final Reply
Brief comply with Rule 211(b), SCACR.



Marcus K. Gore, Assistant General Counsel
MarcusGore@scdps.gov
Catherine Fant, Assistant General Counsel
CatherineFant@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

May 1, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 04 2015
SC 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.

PROOF OF SERVICE

I hereby certify that I have served Appellant's Final Brief, Final Reply Brief and Record on Appeal on Jenny Abbott Kitchings, Esq., Clerk, at the South Carolina Court of Appeals, addressed to 1220 Senate Street, Columbia, SC 29201, via United States Mail, postage prepaid, on this 1st day of May, 2015.


Monishia L. Davis
Paralegal

Dated: May 1, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 04 2015
SC 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.

PROOF OF SERVICE

I hereby certify that I have served Appellant's Final Brief and Final Reply Brief on the Respondent, Nicholas M. Blair, addressed to his attorney of record, Gregory A. DeLuca, Esq., at DeLuca & Maucher, LLP, 113 Broughton Road, Moncks Corner, SC 29461, via United States Mail, postage prepaid, on this 1st day of May, 2015.


Monishia L. Davis
Paralegal

Dated: May 1, 2015