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. 2015-001779

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

QUENTIN RAYMAR PRICE,

Appellant.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant, by and through his undersigned counsel, respectfully files this Return to Respondent's Motion to Dismiss the Appeal, filed on October 23, 2015, and received by Appellant on October 27, 2015. On March 25, 2014, the State used a bench warrant to initiate criminal contempt proceedings against Appellant for an alleged violation of Appellant's bond conditions. Appellant was convicted of criminal contempt of court on April 9, 2014. Although Appellant's conviction was reversed because the bench warrant was obtained without a showing of exigent circumstances, in violation of Appellant's due process rights, the ability of the State to prosecute bond violations using criminal contempt of court proceedings and bench warrants to initiate those proceedings remains unchecked. The use of criminal contempt proceedings to address alleged bond violations is the subject of this appeal.

Respondent's motion to dismiss the appeal should be denied because, contrary to the

conclusory statements of Respondent, (1) Appellant is an aggrieved party in this matter; (2) the issue on appeal before this Court is capable of repetition but evading review; (3) the issue presents a question of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest; and (4) the issue may affect future events and result in collateral consequences for Appellant.

In accordance with Rule 240(c)(3), SCACR, Appellant submits the following documents in support of this Return: Order on Appeal of the Honorable William P. Keesley (Exhibit A); Bail Proceeding Form II, State of South Carolina v. Quentin Raymar Price, Criminal Domestic Violence, 1st Offense (2013A3210202227) (Exhibit B); Bench Warrant 2013A3210202227 (Exhibit C); Form 4 Judgment in a Civil Case, Case No. 2014 CP-32-01449 (Exhibit D); Arrest Warrant 2014A3210200709 (Exhibit E); Order for Destruction of Arrest Records (Exhibit F); Email from Danielle Young of Domestic Abuse Center (Exhibit G); Notice of Dismissal from Domestic Abuse Center (Exhibit H).

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.[1] Exhibit A (Order on Appeal, p. 2). Appellant's bond, which was

[1] The domestic violence charges in this case were brought prior to the recent legislative action changing the classifications of domestic violence charges from categories defined by the number of prior convictions to categories defined by degrees. The recent change in law also renamed the offense "Domestic Violence," rather than "Criminal Domestic Violence." All references herein to charges of domestic violence will be referenced as "Criminal Domestic Violence" or "CDV,"

set on November 20, 2013, included a condition of no-contact with the alleged victim, Camisha Mims. Exhibit B (Bail Form, p. 2). Appellant was released on a surety bond on November 30, 2013. Exhibit A (Order on Appeal, p. 2). 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 Honorable Scott Whittle, the presiding magistrate judge at the Swansea Magistrate Court where the underlying charge was pending, and obtained a bench warrant for Appellant's arrest. Exhibit C (Bench Warrant). The bench warrant was issued by Judge Whittle based on oral statements made by the State to the magistrate that an allegation had been made that Appellant had violated the no-contact condition of his bond. Exhibit A (Order on Appeal, p. 2).

Appellant was served with the bench warrant on March 27, 2014, and was brought before a different magistrate, the chief magistrate for Lexington County, 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 constructive 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. Exhibit A (Order on Appeal, pp. 2-3). After a hearing, Appellant was found in contempt of court and sentenced to thirty days in jail. Exhibit A (Order on Appeal, p. 3). At each of the

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in accordance with the terminology used during the pendency of Appellant's charges and during the course of the proceedings below.

proceedings before the magistrate, Respondent was represented by Nicole Howland, Criminal Domestic Violence Prosecutor for the Lexington County Sheriff's Department (hereinafter Prosecutor Howland).

B. Appellate Proceedings

Appellant timely filed a notice of appeal that raised five issues of error with the Lexington County Clerk of Court on April 15, 2014. The magistrate's return was filed on July 10, 2014. On September 3, 2015, Appellant filed an Amended Statement of Issues on Appeal with the Lexington County Clerk of Court. The Amended Statement abandoned three of the original issues and added the new issues of whether magistrates have subject matter jurisdiction to punish a defendant using contempt powers for alleged violations of conditions of bond.

Oral arguments were heard in the Court of Common Pleas before 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." Exhibit A (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 whether magistrates possess subject matter jurisdiction to cite and punish a defendant for constructive contempt of court where the alleged contemptuous conduct is a violation of conditions of bond. Respondent, represented again by Prosecutor Howland during all proceedings before the circuit court, subsequently filed a Petition for Rehearing on October 17, 2014, asking Judge Keesley to reconsider his order with respect to his holding regarding the use of a

bench warrant. Appellant's Reply to the Petition was filed on October 22, 2014. No action was taken on the Petition until March 25, 2015, when Appellant and Respondent received a letter from Judge Keesley asking whether it was necessary for him to rule on the petition. On April 3, 2015, Respondent filed a Motion to Dismiss Appeal or, Alternatively, to Remand to Circuit Court for Ruling on Pending Petition, and Appellant filed a Return to the Motion on April 24, 2015. In an order filed on June 5, 2015, this Court dismissed without prejudice, pursuant to the rule set forth in *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986). In an email dated July 8, 2015, Respondent withdrew the Petition for Rehearing, and Judge Keesley issued a final order in the form of a Form 4 Judgment in a Civil Case, which was filed on August 13, 2015. Exhibit D (Judgment Form). This appeal followed, and Appellant received Respondent's Motion to Dismiss Appeal on October 27, 2015.

II. RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL

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 (2003). The South Carolina Supreme Court has 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 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) (citing *Bowles v. Dannin*, 62 R.I. 36, 2 A.2d 892).

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."). A decision of any court that subjects a person to unlawful prosecution is an inherent violation of a personal right – the right to due process of law, 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 to Dismiss, p. 5.[2] 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

[2] Respondent's Motion to Dismiss filed on October 23, 2015.

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*, our Supreme 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).

According to Respondent, 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." *Cisson v. McWhorter*, 255 S.C. 174, 177-78, 177 S.E.2d 603, 605 (1970). Additionally, even if some relief was granted in the form of the overturning of the conviction and vacating of the sentence on one issue, this would be merely alternative relief in this case, 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 bearing upon Appellant's rights or resulting in collateral consequences for Appellant.

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.

Respondent's arguments in the motion to dismiss essentially amount to an assertion that the issue before this Court is moot because Appellant's conviction was vacated on other grounds. However, similar to *Green*, Appellant still had a pending magistrate charge, unlawful use of telephone, that was brought by the same prosecutor and that included a bond condition of no

contact with the alleged victim as of October 21, 2015. Exhibit E (Arrest Warrant 2014A3210200709). On October 29, 2015, Appellant received a notice from the Irmo Magistrate Court, indicating that the unlawful use of telephone charge had been nolle prossed and was being expunged pursuant to Section 17-22-950 of the South Carolina Code of Laws. Exhibit F (Order for Destruction of Arrest Records). The notice was dated October 22, 2015. *Id.*

By the terms of an October 28, 2014, plea agreement that resolved the underlying CDV, as well as two other charges, this unlawful use of telephone charge was to be nolle proceed upon Appellant's successful completion of counseling through the Domestic Abuse Center and three months of good behavior after completion of the counseling.[3] Appellant's bond condition of no contact with the alleged victim was to remain in effect until the charge was resolved. Appellant did not complete his counseling at the Domestic Abuse Center because he was terminated from the program at the request of Prosecutor Howland on July 3, 2015, after Appellant's arrest on drug charges. Exhibit G (Email from Danielle Young); Exhibit H (Notice of Dismissal from Domestic Abuse Center). As a result, not only did Appellant not complete the first condition required for dismissal of the unlawful use of telephone charge, the second condition, the period of three months of good behavior, never began to run. No reason has been provided to Appellant as to why the unlawful use of telephone charge was suddenly nolle prossed and expunged on October 22, 2015, one day prior to the State's filing of the motion to dismiss.

[3] The audio recording of Appellant's October 28, 2014 hearing and plea has been obtained but not yet transcribed. The audio is available if needed by the Court, or, if necessary, Appellant can seek an order for funds to obtain a transcription of the audio.

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), our Supreme Court identified "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 that 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." *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864 (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 a likelihood that future harm may occur to either the appealing party or other parties 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,[4] 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-

[4] For example, Section 22-3-545 also provides for magistrate 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 . . ."

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 (2003). 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, is 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 (2003). 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 (2003). 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.

In this case, Appellant was convicted of contempt of court on April 9, 2014. Exhibit A (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. Exhibit A (Order on Appeal, p. 1). The underlying charge, for which Appellant was arrested on November 19, 2013, was resolved on October 28, 2014, pursuant to the aforementioned 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 prosecuted by the Criminal Domestic Violence Prosecutor for the Lexington County Sheriff's Department.[5] As a result, the likelihood that the "constitutional violation suffered by Appellant could be inflicted on [another party] in the future" is not only high, but happens in a majority of CDV and related magistrate cases in Lexington County. *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

Additionally, the likelihood is great that defendants in other parts of the state might be subjected to the same unlawful and unconstitutional prosecution. Although the Attorney

[5] 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.

General's Office has issued conflicting opinions over the years on the issue, a March 1, 2013 Opinion suggested that magistrates and municipal judges may use bench warrants and contempt proceedings to punish alleged bond violations. Opinion of the Attorney General to The Honorable Ernest O'Brien, 2013 WL 1695519 (S.C.A.G.) (March 1, 2013). In a memorandum dated April 9, 2013, Court Administration notified magistrates and municipal courts of the March 1, 2013 Attorney General Opinion's approval of the use of bench warrants and contempt proceedings to address alleged bond violations.[6]

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 continue to be, construed as not binding on future cases. *See* Exhibit A (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.

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[6] The April 9, 2013 Memorandum is directed to Magistrate and Municipal Judges and states, "The [Attorney General's] 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."

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 v. Zahler*, Supreme 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.* at 433, 735 S.E.2d at 477 (emphasis added) (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, in and of themselves, important matters of public interest because whether subject matter jurisdiction exists determines the validity of a court's actions with respect to the matter at hand. *See Guthrie*, 352 S.C. at 107, 572 S.E.2d at 311. 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, whether a magistrate has subject matter jurisdiction to use contempt powers to punish alleged bond violations is a question of public importance because of the procedure's 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 an 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. Furthermore, as a result of the aforementioned Court Administration Memorandum and Attorney General Opinion, it is possible that this unlawful practice is or will be used in other counties throughout the state, subjecting a much larger percentage of the public to the same constitutional violations.

The issue presented in this appeal is one of great 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* Exhibit A (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 no prior notice was given.

In a majority of cases, defendants are given two options by the State: contest the contempt charge or enter a plea of guilty to the contempt and to the underlying criminal charge,

such as CDV, and receive separate sentences of periods of incarceration, to run consecutive, that are suspended to domestic abuse counseling and, at times, other conditions, such as a continued prohibition on contact with the alleged victim.[7] Should a defendant fail to complete or violate some portion of the suspended sentence, the suspended periods of incarceration, typically – prior to the recent change in the domestic violence laws – thirty days each,[8] are activated, and while the CDV charge is eligible for "good time credit" under Section 24-13-210, the contempt is treated as ineligible for any "good time credit," and that period of incarceration is served day-for-day. *See* S.C. Code Ann. § 24-13-210(C) (Supp. 2010) (Providing for a reduction in sentence at the rate of one day for every two days served for any "inmate convicted of an offense against this State and sentenced to a local detention facility [and] whose record of conduct shows that he has faithfully observed all the rules . . . and has not been subjected to punishment for misbehavior.").

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[7] In some 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 the defendant is eligible and the prosecutor chooses to offer the defendant the opportunity to enter the program.

[8] Prior to the legislative enactment of the new domestic violence laws, both contempt and criminal domestic violence, first offense, were each punishable by incarceration not to exceed thirty days. S.C. Code Ann. § 22-3-950 (2003) (Authorizing magistrates to punish for contempt "by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550."); S.C. Code Ann. § 22-3-550 (Supp. 2014) Limiting magistrates' general jurisdiction to offenses punishable by "a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both."); S.C. Code Ann. § 16-25-20(B)(1) (Supp. 2014) (providing for punishment of Criminal Domestic Violence, First Offense, by incarceration not to exceed thirty days or a fine not less than one thousand dollars nor more than two thousand five hundred dollars). With the recent statutory changes, the magistrate-level domestic violence charge, Domestic Violence, Third Degree, is now punishable by a fine of not less than one thousand five hundred dollars nor more than two thousand five hundred dollars, or incarceration not to exceed ninety days, or both. S.C. Code Ann. § 16-25-20(D)(1) (amended 2015).

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 prior to the hearing, 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 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.[9]

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. Respondent even essentially admits in the Motion to Dismiss that the issue presented on appeal is likely to affect future litigants and necessitate appellate review. *See* Respondent Motion to Dismiss, p. 7 ("The ground Appellant

[9] 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.

advances for consideration on appeal, at most, is a matter for another litigant on another day"). 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 Affecting Appellant

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 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 discussed 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. Furthermore, the contempt conviction, though overturned, could be used during sentencing or during any future hearings[10] 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.

[10]For example, in each of the proceedings below, the Prosecutor noted to the courts that the alleged bond violation in question was Appellant's second time being charged with contempt for having contact with the alleged victim. *See, e.g.* Exhibit A (Order on Appeal, p.2).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court deny Respondent's motion to dismiss. Pursuant to Rule 240(b), it is the understanding of undersigned counsel that Respondent's filing of a motion to dismiss automatically stays the time for filing initial briefs until resolution of the motion.

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

Date: 11/02/2015

EXHIBIT A

FILED

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.

WPC #3

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.

WAC #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

WPM #7

> 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.

WPH #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. *5Vin.* 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:

WPM #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.

WPA #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.

WPC #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

---

[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

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.

WPM #18

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

---

[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

William P. Keesley
Judge

September 30, 2014

EXHIBIT B

Criminal Charging Document No.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

IN THE Criminal Domestic Violence Court

STATE OF SOUTH CAROLINA
v.
Price, Quentin Raymar
NAME OF DEFENDANT

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Offense Charged: Domestic / Criminal Domestic Violence - 1st offense-[2013A3210202227]

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

[X] The release of the defendant on recognizance will not reasonably assure his appearance as required.
[X] The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

Nature of Circumstances of Offense

[Considerations: Nature and Circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

[ ] The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of $ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

[ ] The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of $ _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits $ _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the state.

APPEARANCE RECOGNIZANCE WITH SURETY

[ ] The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of $ 5000.00

3. That the defendant shall appear at (check one):

[ ] the term of COURT OF GENERAL SESSIONS beginning on _____ at _____ o' clock, ___
at _____
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

[X] the session of [ ] MAGISTRATE COURT [ ] MUNICIPAL COURT beginning on December 16, 2013 at 1:00 o' clock, PM,
at Criminal Domestic Violence Court - 139 East Main Street/Lexington, SC 29072 / (803) 785-2886
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Bond Amount(s): $5,000.00 (CS) or $5,000.00 (SB)

INITIALS OF DEFENDANT

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE

11-20-13
DATE

Carlie Wood
Lexington County Clerk of Court

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

1027 Center St 127 A Meetze Rd
ADDRESS — SIGNATURE OF DEFENDANT

West Columbia, SC 29169-6749
CITY/STATE/ZIP — TELEPHONE — DATE

[redacted] [redacted]
SOCIAL SECURITY NUMBER — DRIVER'S LICENSE OR ID NUMBER — ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
NAME OF PERSON OR ORGANIZATION

_____ _____ _____ _____
ADDRESS — CITY/STATE — ZIP — TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
SIGNATURE OF CUSTODIAN (IF APPROVED) — DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____

☐ Part-time Release. The defendant will be released from custody from _____ o' clock, _____ to _____ o' clock, _____
TIME — AM/PM — TIME — AM/PM

on _____ on condition that he return to the custody of _____
DATE(S) — NAME OF PERSON OR ORGANIZATION

at _____ as designated.
LOCATION

d. ☐ Other conditions. The defendant will comply with the following other conditions of release: _____
Must Notify Court Immediately of Change of Address; No Contact with Victim; Do Not Return to Incident Location; Must have law enforcement escort to pick up personal belongings

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of NOVEMBER, 2013, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $ 2000.00, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY/BONDSMAN: Attorney-In-Fact — TELEPHONE — SIGNATURE OF SURETY BONDSMAN

ADDRESS OF SURETY/BONDSMAN: Gene Frye Bail Bonds, 1310-B Avenue

CITY/STATE/ZIP: West Columbia, SC 29169 (803) 926-1122 — SIGNATURE OF JUDGE

NAME OF INSURANCE COMPANY — DATE: 11-20-13

ADDRESS OF INSURANCE COMPANY — (By) Commission Expires: 3-18-23

CITY/STATE/ZIP

Form Approved by S.C. Attorney General
Section 17-15-40
March 21, 2012

SCCA/511A (Revised 3/2012)

EXHIBIT C

STATE OF SOUTH CAROLINA)
) 2013A3210202227
COUNTY OF LEXINGTON) Case Number

BENCH WARRANT

2013A3210202227

To any Lawful Constable or Officer:

Whereas, in the criminal case of the State of South Carolina against Quentin Raymar Price defendant, whereas, the defendant named above did:

Violate conditions of bond as imposed by The Honorable Brian Jeffcoat on November 20,2013, in that he contacted the victim in a pending case against him to wit:

That on 03/09/14 around 6:00pm the defendant, Quentin Price, and his ex-girlfriend got into an argument after he started kicking her car and removed the vehicle license to her Dodge Neon. The defendant then charged Ms. Mims after she told him to leave causing her to fear that she was about to be assaulted. Ms. Mims then struck the defendant with a stun gun in self defense and ran back into her apartment to get away from him. The defendant then left the scene. This incident occurred at 5326 Bush River Rd. in the Columbia area of Lexington County. Mr. Price and Ms. Mims formerly cohabitated together and have a child in common.

The Defendant should be brought before the court to be dealt with according to law !

This order is to command you to take and convey him/her to the common jail. The keeper of said jail is hereby commanded to receive the said defendant and to safely keep until he/she shall be thereof discharged by due course of law; and for so doing, this shall be your good and sufficient warrant.

Witness: The due execution of this warrant on March 25, 2014.

Judge Whittle
Lexington County
Swansea Magistrate Court
500 Charlie Rast Road
Swansea, SC 29160

OFFICER'S RETURN

STATE OF SOUTH CAROLINA

Lexington County

I hereby certify that pursuant to the command of the within warrant, I have placed the said Quentin Raymar Price in the jail this day.

Officer's Name Date

Address: 127 A Meetze Rd
West Columbia, SC 29169
DL# 102646923
State: SC
Height: 6'0"
Weight: 240
SSN: 247-93-3504
DOB: July 7, 1993
Sex: M
Race: B

Swansea Magistrate
04-2014-0018

RETURN TO: Lexington County Swansea Magistrate 500 Charlie Rast Road Swansea SC 29160

MC3256

EXHIBIT D

FORM 4

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

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2014 CP-32-01449

STATE OF SOUTH CAROLINA — PLAINTIFF(S)

QUENTIN RAYMAR PRICE — DEFENDANT(S)

Submitted by: Judge	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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:

WPC #1

THIS IS A MAGISTRATE APPEAL THAT WAS HEARD IN SEPTEMBER 2014. THE STATE PETITIONED FOR A REHEARING ON OCTOBER 17, 2014. THE STATE'S PETITION FOR REHEARING IS WITHDRAWN.

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)
N/A		$
		$
		$

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.**

William P. Keesley
Circuit Court Judge

2050
Judge Code

8/5/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Nicole Howland

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jael Gilreath

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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.

EXHIBIT E

ARREST WARRANT

2014A3210200709

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Lexington

THE STATE 14007629

against

Quentin Raymar Price

Address. 1027 Center Street

West Columbia, SC 29169-

Phone: SSN: 247-93-3504

Sex. M Race: B Height: 6 Weight: 240

DL State. SC DL #: 0102646923

DOB: 7/ 7/1993 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: S. J. Gamble - 1504

Offense: Telephone / Unlawful use of telephone (after 07/20/01)

Offense Code: 2553

Code/Ordinance Sec: 16-17-0430(A)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on _____

Signature of Constable/Law Enforcement Officer

RECEIVED

MAY 01 2014

Lexington County Sheriff's Dept.

RETURN WARRANT TO:

Criminal Domestic Violence Court
139 East Main Street
Lexington, SC 29072

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Lexington)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant S. J. Gamble who being duly sworn deposes and says that defendant Quentin Raymar Price did within this county and state on or about 3/14/2014 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Lexington) in the following particulars:

DESCRIPTION OF OFFENSE: Telephone / Unlawful use of telephone (after 07/20/01)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Between 3/14/14 and 4/25/14 the Defendant, Quentin Price, did in several telephone calls threaten to assault his girlfriend, Ambrea Reese, if he found out that she was cheating on him while he was incarcerated. Several of Mr. Price's calls to Ms. Reese were vulgar and profane in nature. Mr. Price made these calls to Ms. Reese while incarcerated at the Lexington County Detention Center located at 521 Gibson Rd. in the Lexington area of Lexington County. Mr. Price's calls from the detention center were recorded.

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Lexington)

Affiant's Address P O Box 639
Lexington, SC 29071-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 3/14/2014 defendant Quentin Raymar Price did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Telephone / Unlawful use of telephone (after 07/20/01)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 5/ 1/2014

(L.S.)

Signature of Issuing Judge

Arthur L Myers

Judge Code: 7252

Judge's Address 139 East Main St
Lexington, SC 29072-
Judge's Telephone

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL

EXHIBIT F

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE SUMMARY COURT
ORDER FOR DESTRUCTION OF ARREST RECORDS

Certified True Copy
Rochelle Clarke
Lexington Magistrate - District

THE STATE OF SOUTH CAROLINA)

v.)

Quentin Raymar Price)
127-A Meetze Road)
Lexington, SC 29072)
Defendant)
AKA)

Race B Sex M Age 22
DOB 7/7/1993 SSN XXX-XX-3504
SID # SC01952322

Charges were disposed of in the court indicated below:

☒ Magistrate ☐ Municipal

I, Rebecca L Adams, Summary Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended either by an adjudication of not guilty or by a judicial dismissal, and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed according to §17-22-950.

Warrant/Ticket/Courtesy Summons No. 2014A3210200709 Date of Arrest 10/27/2014 Place of Arrest County Of Lexington , S.C.

Arrest Charge Telephone / Unlawful use of telephone (after 07/20/01)

Warrant/Ticket/Courtesy Summons No. _____ Date of Arrest 10/27/2014 Place of Arrest County Of Lexington , S.C.

Arrest Charge _____

I further find the charge(s) covered by this order was not made pursuant to Title 56 (traffic), Title 50 (DNR), or the authority of counties and municipalities under Title 4 and Title 5, and that the defendant is eligible for expungement.

I also find that §17-22-950 has been complied with as follows (check one):

☒ The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.

☐ The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

IT IS ORDERED that all records relating to such arrest or issuance of ticket or courtesy summons and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except for: arrest and booking record, associated bench warrants, mug shots, and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); under §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order.

R. Adams
Judge

Signed this 22 day of Oct, 2015

For SLED internal use only: Expunged by SLED by: _____ Date: _____

EXHIBIT G

Gilreath, Jael

From: O'Cain, Shannon
Sent: Thursday, October 29, 2015 2:24 PM
To: Gilreath, Jael
Subject: FW: Quentin Price

From: Davis, Shannon
Sent: Thursday, October 29, 2015 2:22 PM
To: O'Cain, Shannon
Subject: FW: Quentin Price

See below.

From: Danielle Young [mailto:danielle@sc.twcbc.com]
Sent: Thursday, October 29, 2015 1:54 PM
To: Davis, Shannon <sadavis@lex-co.com>
Subject: Quentin Price

Hey Shannon,

I received notification that you have requested to know why Quentin Price was dismissed from DAC. On July 3rd, staff received notification from Nicole Howland stating he was arrested for distribution of drugs and that she requested that DAC close his case. I can send you the official dismissal letter if you would like.

Danielle

EXHIBIT H

domestic abuse center
COUNSELING AND EDUCATION TO STOP DOMESTIC VIOLENCE

"NOTICE OF DISMISSAL"

DATE: July 3, 2015

TO: The Honorable Adams, Irmo Magistrate Court

FROM: DAC STAFF

Case Name: Quentin Price **Case/Warrant #:** 2014A3210200476 & 2014A3210200227

DAC Case Actions Summary

Received Referral on: June 24, 2015

Client has/has not been in the DAC program before: 2nd Attempt

Start Letter was mailed to on: June 24, 2015 **for start date of:** June 29, 2015

Subsequent contacts include the following:
- Mr. Price attended orientation on June 29th.
- His first group session was scheduled for July 8th.

This client's participation has been terminated for the following reason(s):

( ) Did not begin program or respond to contacts from DAC.

( ) Accumulating excessive absences without acceptable justification or documentation. He has missed ____ sessions out of ____scheduled sessions.

(X) Involvement in a criminal incident related to domestic or other violence while attending DAC. Date reported to DAC: July 3, 2015

(X) Other/Comments:
- According to Solicitor Nicole Howland, Mr. Price was arrested for drug charges on July 2, 2015.

If you wish to re-refer this client back to DAC, please call our office to confirm their eligibility. Clients who are re-referred generally will be required to restart the program from the beginning, unless there were previous extenuating circumstances regarding their original non-compliance with program policies.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
NOV 02 2015
SC Court of Appeals

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

THE STATE,

RESPONDENT,

V.

QUENTIN RAYMAR PRICE,

APPELLANT

APPELLATE CASE NO. 2015-001779

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of Appellant's Return to Respondent's Motion to Dismiss Appeal 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 U.S. Mail this 2nd day of November, 2015.

Jael D. Gilreath
Assistant Public Defender
407 West Main Street
Lexington, SC 29072
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of November, 2015.

Notary Public for South Carolina
My Commission Expires: March 10, 2020

OFFICE OF THE PUBLIC DEFENDER

Eleventh Judicial Circuit
Lexington, Saluda, Edgefield,
and McCormick Counties

ROBERT M. MADSEN
Circuit Public Defender

ELIZABETH FULLWOOD
Lexington Public Defender
407 W. Main St.
Lexington, SC 29072
Telephone (803) 957-8873
Fax (803) 957-1443

BENNETT CASTO
Tri-County Public Defender
Post Office Box 1852
McCormick, SC 29835
Telephone (864) 852-9555
Fax (864) 852-9554

November 2, 2015

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)
Appellate Case No.: 2015-00179

Dear Ms. Kitchings:

I have enclosed an original and six copies of the Appellant's Return to Respondent's Motion to Dismiss Appeal in the above matter for filing in your office. I am, by copy of this letter, serving a copy of this Return on Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via U.S. Mail, together with my Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

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

enclosures

cc: Salley W. Elliot, Senior Assistant Attorney General
Robert M. Dudek, Chief Appellate Defender