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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-08-02704

The State.....Appellant,

v.

Nicholas M. Blair.....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
)
) CASE NO: 2013-CP-08-2704
)

State of South Carolina,

Appellant

) **AMENDED ORDER OF DISMISSAL¹**
)

vs.

Nicholas M. Blair,

Respondent.

MADEY P. A. J. III
CLERK OF COURT
BERKELEY COUNTY, SC

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MAGISTRATE'S COURT
BERKELEY COUNTY, SC

Presiding Judge:
Appellant's Attorney:
Respondent's Attorney:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Marcus Gore, Esquire
Gregory Deluca, Esquire
March 17, 2014
Karen V Andersen

This case came before the Court during the March 17, 2014 common pleas non-jury term for a criminal appeal from Magistrate's Court, filed December 5, 2013. Appellant was represented by Marcus Gore, Esquire and Respondent was represented by Gregory Deluca, Esquire. The Court had before it the Magistrate's Return, the Magistrate's record, the record on appeal, and the State's Notice of Appeal and Appeal.

In both its Notice of Appeal and Appeal and at the hearing, the State argued that its appeal should be granted based on the State's right to request a jury trial, relying on S.C. CODE ANN. § 22-2-150 (2013) ("Every person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided in this chapter"); S.C. CODE ANN. § 22-2-230 (2008), *repealed by Act No.*

¹ This Amended Order of Dismissal replaces the original Order of Dismissal, signed April 9, 2014 and filed April 15, 2014

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267, 2008 S.C. Acts 267; Rule 37, SCRCrimP (South Carolina Rules of Criminal Procedure apply to proceedings in magistrate's court to the extent they are not inconsistent with the statutes and rules governing the magistrate's court); Rule 14(b), SCRCrimP ("A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge."); State v. Senter, 396 S.C. 547, 555, 722 S.E.2d 233, 237 (2011) (State objected to defendant's request to waive jury trial, however, issue was not reviewed on appeal); State v. Nash, 51 S.C. 319, 28 S.E. 946 (1898) (interpreting the 1893 Code of Laws and addressing whether the prosecutrix may demand a jury trial in place of the solicitor or attorney general); State v. Hanson, 285 S.C. 543, 544, 331 S.E.2d 782, 782 (1985) State v. Shuck, 278 S.C. 441, 298 S.E.2d 95 (1982). ("A defendant's waiver of a jury trial is conditioned upon the consent of the prosecutor and the trial judge. . . . If either objects to the waiver, the defendant must be tried by a jury."). Additionally, in support of its position, the State relied upon an Attorney General's opinion interpreting State v. Hanson, 285 S.C. 543, 544, 331 S.E.2d 782, 782 (1985) and the repealed S.C. CODE ANN. § 22-2-230 (2008), *repealed by* Act No. 267, 2008 S.C. Acts 267. See Mr. John Patrick, Op. Att'y Gen. (Aug. 15, 1980), *available at* 1980 WL 120825.

In support of his position, Respondent relied on S.C. CODE ANN. § 22-2-150 (2013) and Rule 2 of the South Carolina Rules of Magistrates Court, which provides: "These rules shall govern all civil suits in the magistrates court. If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in similar situations but not inconsistent with these rules."

The Magistrate's Return reflects the following procedural posture: On November 6, 2013, Trooper Wooten called this case that was scheduled for a bench trial before Judge Whilden V. Baggett, Berkeley County Magistrate. Nicholas M. Blair, Respondent, was charged by

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citation G449285 for Driving Under the Influence with a refusal on the BA. His citation was marked as appearance required on November 6, 2013. The State was represented by Trooper Wooten and Respondent was represented by Gregory A. Deluca, Esquire for a bench trial. At the commencement of the hearing, Respondent indicated he was ready to proceed with the bench trial upon a plea of not guilty. Trooper Wooten stated he wanted a continuance or a jury trial. Thereafter, Respondent argued the State could not rely on the repealed S.C. CODE ANN. § 22-3-230 (2008) that was recognized in an Attorney General's Opinion as the source of the state's right to ask for a trial by jury and, consequently, did not have the right to request a jury trial. The defense also asserted that only the Defendant had a right to request a jury trial and referred to and did provide a copy of S.C. CODE ANN. § 22-2-150 (2013), stating that a person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury. Respondent also objected to the State's request for continuance based on failure to subpoena and ensure the presence of a necessary witness and wished to proceed. Ultimately, in a Return dated January 9, 2014 and filed January 14, 2014, the Magistrate denied the State's request for continuance and denied the State's request for a jury trial based on the plain language of state statute § 22-2-150 (2013). The case was subsequently dismissed after the defense made a motion to dismiss for lack of prosecution. The Magistrate advised both parties of their right to an appeal.

Upon review of the record of the Magistrate's hearing, this Court finds that the State requested the case be continued because its witness was unavailable and an independent demand that the case be set for a jury trial. No other grounds or opposition were articulated in the lower court record. Further, the record reflects that at no time prior to the matter being set for a bench trial, after the Trooper called the case for trial or during the proceedings did the State specifically

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oppose a bench trial in the lower court, nor did the State object to the Defendant's request for a bench trial.² Instead, the State asserted that it had an independent right to a jury trial. However, because the Magistrate ruled that the State could not request a jury trial, the issue was preserved for appellate review.

On an appeal from the Magistrate's Court, the Circuit Court acting as the appellate court, reviews the matters raised in the notice of appeal. S.C. CODE ANN. § 18-3-70 (2013) ("The appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses."). Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. S.C. CODE ANN. § 18-7-170 (2013). See State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App. 2012) ("In criminal appeals from magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception."); (State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) (citations omitted) (same).

This Court finds that the Magistrate did not abuse its discretion in denying the State's motion for continuance. See State v. Browder, 277 S.C. 206, 207, 284 S.E.2d 775, 776 (1981) ("Motions for continuance are addressed to the sound discretion of the trial judge, whose decision will not be disturbed on appeal absent a clear showing of abuse of discretion."). The record reflects that the basis of the motion was Trooper Wooten's assertion that he did not have

² It is apparent from the record that at some time prior to Trooper Wooten calling the case on November 6, 2013 that the case had been set by some mechanism in the Magistrate's Court for a bench trial. The record does not reflect that the State opposed the matter being set for a bench trial prior to the November 6, 2013 trial date. Further, the Return reflects that the case had been scheduled in advance as a bench trial for the November 6, 2013 court date.

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the witness he needed to proceed. Upon further inquiry by the Magistrate it was determined that the Trooper had failed to subpoena the witness. Based on this procedural posture this Court can discern no abuse of discretion as there exists no error of law and factual support exists in the record for the lower court's denial of the continuance.

Similarly, this Court finds the Magistrate did not abuse its discretion in ruling that, based on the plain language of S.C. CODE ANN. § 22-2-150 (2013), the State could not request a jury trial.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Thus, if the words are unambiguous, we must apply their literal meaning. Id. at 498, 640 S.E.2d at 459. However, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). In that vein, we must read the statute so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous," Id. at 377, 665 S.E.2d at 651, for "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law." Id. at 382, 665 S.E.2d at 654. See CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). "A court must take the statute as it finds it, giving effect to the legislative intent as expressed in the language of the statute, and cannot, under its power of construction, supply an omission in a statute." State v. Johnson, 396 S.C. 424, 429, 721 S.E.2d

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786, 788-89 (S.C. Ct. App. 2012), *reh'g denied* (Feb. 16, 2012) (citing State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999)).

Initially, this Court finds that the cases and authorities cited by the State in support of its position all interpret the repealed S.C. CODE ANN. § 22-3-230 (2008), which explicitly provided that either party—both the defendant and the State—are entitled to a jury trial.³ Applying the established rules of statutory construction, this Court finds that, according to the plain language of S.C. CODE ANN. § 22-2-150 (2013)—which provides that “[e]very person arrested,” in other words, only the defendant, is entitled to a jury trial—read in harmony with the entirety of Chapter 22 of the South Carolina Code of Laws, as well as the South Carolina Rules of Magistrates Court, the State is not entitled to an independent demand for a jury trial. This Court finds that it need not address whether the South Carolina Rules of Criminal Procedure—specifically, Rule 14(b), which provides the procedure by which a defendant may waive his right to a jury trial—provide the State a right to a jury trial by implication because this issue is squarely addressed within the Code applicable to Magistrate’s Court. This Court declines to read into the Code a provision granting the State an independent right to demand a jury trial, where not only did the state Legislature repeal an old statute disposing of that issue, but also failed to provide a corresponding right to the State in the only statute in the Code applicable to the Magistrate’s Court on point. See S.C. CODE ANN. § 22-2-150 (2013).

³ This Court declines to address the entirety of the above mentioned Attorney General opinion. See Mr. John Patrick, Op Att’y Gen. (Aug. 15, 1980), *available at* 1980 WL 120825. The Opinion reviews two distinctly different factual scenarios inapposite to the Respondent’s case. First, the Opinion answers the question of whether the Magistrate may *sua sponte* and without consent of either or both parties refuse to try a defendant without a jury, even where a defendant has elected to proceed with a bench trial. The Opinion also addresses case law regarding waiver of a jury trial in the civil context. Here, the Magistrate never refused to try Respondent’s criminal case as a bench trial and impose a jury trial on his own accord. Therefore, the cases and analysis employed by the Attorney General in explicating this issue are not applicable to the case at bar. The second question presented to the Attorney General is whether the prosecution in a criminal case may demand a jury trial without the consent of the defendant. As explained above, the Opinion answers this question relying solely on the repealed S.C. CODE ANN. § 22-2-230 (1976). Therefore, this portion of the Opinion is equally inapplicable to the present case.

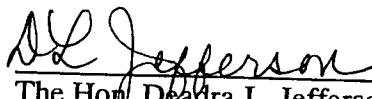
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Moreover, considering the State's argument that a criminal defendant may not unilaterally waive his right to trial by jury absent the consent of the solicitor and the trial judge, see Rule 14(b), SCRCrimP, this Court finds that the State never interposed or preserved any objection to the Respondent's waiver for the record. It is clear from the Magistrate's record that Trooper Wooten made one singular request for a jury trial after the case had been set for a bench trial and did not withhold consent to Respondent's waiver of his right to trial by jury. Therefore, this Court declines to review the issue of whether Respondent properly waived his right to a jury trial pursuant to Rule 14, SCRCrimP. See State v. Black, 319 S.C. 515, 521-22 462 S.E.2d 311, 315 (1995) (failure to make contemporaneous objection to the Magistrate operated as waiver of right to object and issue could not be addressed by the Circuit Court upon appeal); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (a party cannot argue one ground at trial and another ground on appeal).

This Court, having found adequate evidentiary support in the record, no error of law, and finding no abuse of discretion, **AFFIRMS** the decision of the lower court and dismisses the appeal, pursuant to S.C. CODE ANN. § 18-7-170 (2013).

IT IS SO ORDERED.

August 28, 2014
Charleston, South Carolina
At Chambers.


The Hon. Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

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JLJ

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-08-2704

State of South Carolina,

v.

Nicholas M. Blair,

APPELLANT

RESPONDENT

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 12(b), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

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 BERKELEY COUNTY, SC

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX).**
 Affirmed; Reversed; Remanded; Other Dismissed

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:

This case was before the Court during the March 17, 2014 common pleas non-jury term for a criminal appeal from Magistrate's Court, filed December 5, 2013. At the hearing, the State argued that its appeal should be granted based on the State's right to request a jury trial relying on SC CODE ANN. § 22-2-150 (2013) ("Every person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided in this chapter"), Rule 14(b), SCRCrimP ("A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge."), and State v. Senter, 396 S.C. 547, 555, 722 S.E.2d 233, 237 (2011) (state objected to defendant's request to waive jury trial, however, issue was not reviewed on appeal):-

However, upon review of the record of the Magistrate's hearing, this Court finds that the State merely requested the case be continued because its witness was unavailable. No other grounds or opposition were articulated in the lower court record. Thus, this Court finds that the Magistrate's Court did not abuse its discretion in denying the State's motion for continuance. See State v. Browder, 277 S.C. 206, 207, 284 S.E.2d 775, 776 (1981) ("Motions for continuance are addressed to the sound discretion of the trial judge, whose decision will not be disturbed on appeal absent a clear showing of abuse of discretion.").

Further, the record reflects that at no time during the proceedings did the State specifically request a jury trial or oppose a bench trial in the lower court, nor did the State object to the Defendant's request for a bench trial. Simply stated the only request by the State was for a continuance of the entire matter based on the unavailability of a witness.

Therefore, this Court finds that the State did not adequately preserve any alleged error for appellate review. "In criminal appeals from Magistrate or Municipal Court, the Circuit Court does not conduct a de

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novo review, but instead reviews for preserved error raised to it by appropriate exception.” Richland County v. Simpkins, 348 S.C. 658, 661, 560 S.E.2d 899, 900–901 (Ct. App. 2002) (citing State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct.App.2001)). See S.C. CODE ANN. § 18-7-170 (2013) (Circuit Court may dispose of appeal from Magistrate’s Court). See also State v. Black, 319 S.C. 515, 521–22 462 S.E.2d 311, 315 (1995) (failure to make contemporaneous objection to the Magistrate operated as waiver of right to object and issue could not be addressed by the Circuit Court upon appeal); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (a party cannot argue one ground at trial and another ground on appeal). Accordingly, having found the State failed to preserve the alleged error to the appellate court, the State’s appeal is dismissed.

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.**


Circuit Court Judge

2128
Judge Code

4/9/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 15 day of April, 2014 and a copy mailed first class or placed in the appropriate attorney’s box on this 15 day of April, 2014 to attorneys of record or to parties (when appearing pro se) as follows.

Marcus Gore, Esquire

Gregory Deluca, Esquire

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

CLERK OF COURT

Court Reporter: Karen Andersen

2013 - CP - 08 - 2704

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE MAGISTRATES COURT
CASE NUMBER: G449285

State of South Carolina)

Appellant,)
vs)

Nicholas M Blair,)

Respondent,)

2014 JAN 14 PM 1:55
FILED
MARY PETERSON
CLERK OF COURT
BERKELEY COUNTY, SC

MAGISTRATE'S RETURN

On November 6, 2013 Trooper Wooten called a case that was scheduled for a bench trial. Nicholas M. Blair, the defendant, on citation G449285 was cited for Driving Under the Influence with a refusal on the BA. His citation was marked as appearance required on November 6, 2013. The defendant was represented by Gregory A. DeLuca.

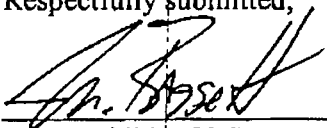
Mr. DeLuca advised that his client wished to enter a plea of not guilty and that he was ready to proceed with a bench trial. Trooper Wooten stated that he wanted a continuance or a jury trial. The defense objected and argued that the state did not have the right to a jury trial citing a repealed civil statute §22-3-230 that was recognized in an Attorney General's Opinion as the source of the states right to ask for a trial by jury. He added that he did not consent to a continuance and wished to proceed.

In the first matter I asked why he wanted a continuance and Trooper Wooten said that he did not have the witness that he needed to proceed. When asked if he had subpoenaed his witness he said that he did not. The state's request to continue the case was denied.

In the second matter, The Defense argued that only the defendant had a right to request a jury trial and referred to and did provide a copy of §22-2-150, stating that a person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury. Statute §22-3-230 had been repealed, and §22-3-230 was cited as the source of the Attorney General's Opinion stating that either party had the right to request trial by jury. Trooper Wooten's request for a jury trial was denied. I ruled that the State could not request a jury trial based on plain language of state statute (§22-2-150). I advised both parties that they each had the right to appeal.

The case was subsequently dismissed after the defense made a motion to dismiss for lack of prosecution.

Respectfully submitted,



Judge Whilden V. Baggett
Berkeley County Magistrate

January 9, 2014
Moncks Corner, South Carolina

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Attachment 1
from SC Dept. of Public Safety

Parties shall exercise peremptory challenges in advance of the trial date, and only persons selected to serve and alternates shall be summoned for the trial

HISTORY 1979 Act No 164, Part III, Section 12

SECTION 22-2-120 Selection of additional jurors at time of trial

If at the time set for the trial there are not sufficient jurors to proceed because one or more have failed to attend, have not been summoned, or have been excused or disqualified by the court, additional jurors must be selected from the remaining names or in the manner provided in Section 22-2-80 or Section 22-2-100

HISTORY 1979 Act No 164, Part III, Section 13, 2004 Act No 304, Section 6

SECTION 22-2-130 Penalty for failure of duly summoned juror to appear; frequency of jury service

If a juror duly summoned neglects or refuses to appear in obedience to a venire issued by a magistrate's court and does not render within forty-eight hours to the summoning magistrate a sufficient reason for his delinquency, he must pay a civil penalty not exceeding one hundred dollars. A failure to pay the civil penalty assessed is a contempt of court and may be punished accordingly. A person shall not serve on a jury in a magistrate's court more than once every calendar year.

HISTORY 1979 Act No 164, Part III, Section 14 1997 Act No 64, Section 2, 2000 Act No 257, Section 7

SECTION 22-2-135. Essential service to business excuse

Upon furnishing an affidavit to the clerk of court requesting to be excused from jury duty, a person either may be excused or transferred to another term of court by the magistrate if the person performs services for a business, commercial, or agricultural enterprise, and the person's services are so essential to the operations of the business, commercial, or agricultural enterprise that the enterprise must close or cease to function if the person is required to perform jury duty.

HISTORY 2000 Act No 394, Section 7

SECTION 22-2-140 Transfer of names between compartments of jury box

After a jury has been drawn from Compartment A, the names, whether accepted or rejected for jury service, shall as soon as practicable, be placed in compartment B, and they shall remain in Compartment B until all the names have been exhausted in drawing juries from Compartment A. At that time, all names in Compartment B shall be returned to Compartment A, and thereafter juries shall continue to be drawn therefrom in the manner provided in this act until a new jury box is prepared.

HISTORY 1979 Act No 164, Part III, Section 15

SECTION 22-2-150. Persons entitled to trial by jury

Every person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided in this chapter.

HISTORY 1979 Act No 164, Part III, Section 16

SECTION 22-2-160. Compensation and mileage for service on coroner's and magistrate's juries

Jurors serving in magistrate's court, and on coroner's juries shall receive a per diem of ten dollars, and mileage. Compensation and mileage shall be paid by the county in which the jury sits.

HISTORY 1979 Act No 164, Part III, Section 17

SECTION 22-2-170. Trial of criminal cases in jury area where offense was committed, waiver of right by defendant.

Magistrates shall have jurisdiction throughout the county in which they are appointed. Criminal cases shall be tried in the Jury Area where the offense was committed, subject to a change of venue, pursuant to the provisions of Section 22-3-820 of the 1976 Code, provided, however, that the chief magistrate for administration of the county, upon approval of the county governing body, may provide for the selection of magistrate's juries countywide upon the affirmative waiver by the defendant of his right to be tried in the jury area where the offense was committed.

HISTORY 1979 Act No 164, Part III, Section 18, 1981 Act No 110, Section 2

SECTION 22-2-190. County jury areas

The following jury areas for magistrates' courts in the various counties of the State are established:

(1) Abbeville County

Abbeville--Abbeville No 4, Cold Springs, Central, Abbeville No 1, Abbeville No 2, Abbeville No 3, Lebanon, Abbeville Mill

Calhoun Falls--Calhoun Falls 1, Calhoun Falls 2 Lowndesville 2, Watts

Lowndesville--Lowndesville 1, Mountain View

Antreville--Antreville, Level Land, Hampton

Due West--Donalds, Due West, Hillville, Keowee

Donalds--Rock Springs, Broadmouth, Hall's Store

(2) Aiken County

District 1, North Augusta, comprised of Aiken County Precincts 9, 10, 25, 26, 27, 28, 29, 44, 45, 54, 55, 58, 62, 63, 67, 68, 73, and 74,

District 2, Langley, comprised of Aiken County Precincts 8, 48, 65, 60, 38, 18, 41, 7, 12, 16, 18, 19, 49, 50, 51, 59, and 71,

District 3, Aiken, comprised of Aiken County Precincts 1, 2, 3, 4, 5, 6, 20, 33, 34, 35, 46, 47, 52, 57, 56, 72, 14, and 11,

District 4, New Ellenton, comprised of Aiken County Precincts 56, 17, 13, 22, 23, 37, 42, 43, 53, 81, 64, 69, 70, 75, and 76, and

District 5, Wagener/Monetta, comprised of Aiken County Precincts 21, 24, 30, 40, 31, 32, 38, and 39

The districts comprise the area in the precincts in existence on the effective date of this subsection, even if the precincts are later redesignated. Each magistrate's office must be maintained at a place designated by the Aiken County Legislative Delegation.

(3) Allendale County

Allendale--Allendale No 1, Allendale No 2, Woods, Martin

Fairfax--Ulmers, Sycamore, Fairfax No 1, Fairfax No 2



Attachment 2
From SC Dept. of Public Safety

1980 WL 120825

*14522 Office of the Attorney General
State of South Carolina

August 15, 1980

Mr. John Patrick
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, South Carolina 29211

Dear John:

In a letter to this office, you asked two questions concerning jury trials in magistrate's court. You specifically asked:

- (1) May a magistrate on his own motion and without consent of either or both parties impanel a jury in both a civil and a criminal case?
- (2) May the prosecution in a criminal case demand a jury trial without the consent of the defendant?

As to your first question concerning whether a magistrate may, on his own motion and without consent of either or both the defendant and the State, impanel a jury in a criminal case, § 22-2-150, Code of Laws of South Carolina, 1976, as amended, provides

'(e)very person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided in this chapter.'

While such statute provides that a defendant is entitled 'on demand' to a jury trial, as to your specific question, the South Carolina Supreme Court in *State v. Burgin*, 255 S.C. 237, 178 S.E.2d 325 (1970) held that as to a criminal case, a defendant has no right to waive a jury trial and demand that he be tried by a judge. (Based on the earlier case of *Redrup v. N. Y.*, 386 U.S. 767 (1967), the U.S. Supreme Court reversed *Burgin*, a case arising out of an obscenity prosecution. However, it appears that the principle in *Burgin* concerning the defendant's right to waive a jury trial was not affected by such reversal). Citing the U.S. Supreme Court's decision in *U. S. v. Jackson*, 390 U.S. 570, 88 S. Ct. 1209, 20 L.Ed.2d 138 (1968), and *Singer v. U. S.*, 380 U.S. 24, 85 S.Ct. 783, 13 L.Ed.2d 630 (1965), the South Carolina Supreme Court in *Burgin* determined that the defendant was not prejudiced by the trial court's denial of his motion for a trial by the judge alone. The Court further stated that:

'(t)here is no right to waive trial by jury guaranteed by the United States Constitution.' 257 S.C. 506 at 513.

In *Singer*, the U. S. Supreme Court had stated:

'(a) defendant's only constitutional right concerning the method of trial is to an impartial trial by jury. We find no constitutional impediment to conditioning a waiver of this right on the consent of the prosecuting attorney and the trial judge when, if either refuses to consent, the result is simply that the defendant is subject to an impartial trial by jury the very thing that the Constitution guarantees him.' 380 U.S. 24, 367; 85 S.Ct. 783, 790; 13 L.Ed.2d 630 (1965).

Therefore, referencing the above, in the opinion of this office, a magistrate may on his own motion refuse to try a defendant without a jury even though the defendant has specifically waived a trial by jury and moved to be tried by the magistrates alone. It further appears that the consent of the prosecuting attorney or officer to such is unnecessary.

As to your question concerning whether a magistrate may on his own motion and without the consent of either or both parties impanel a jury in a civil case, I am unaware of any authority in this State dispositive of the question.

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Page 2

1980 WL 120825

Pursuant to § 22-3-230, Code of Laws of South Carolina, 1976:

'(e)ither party to a suit before a magistrate shall be entitled to a trial by jury.'

Furthermore, it is clear that civil litigants may waive a jury trial and submit the case to a judge alone. See, *Gilford v. South Carolina National Bank*, 257 S.C. 374, 186 S.E.2d 258 (1972), and *Southern Railway Company v. Surety Insurance Company of Greenville*, 249 S.C. 407, 154 S.E.2d 561 (1967).

Generally, there appears to be a split in authority as to whether or not a judge may disregard a waiver of a jury trial in a civil case. It has been stated that:

'(t)he rule has been recognized that notwithstanding a waiver of a jury trial by the parties, the court may disregard it and require the issues to be submitted to a jury. (FN1) It has been held in other cases; however, that when the parties to an action which is triable of right by a jury, if a jury is properly demanded, have waived a trial by jury, the court may not thereafter impanel a jury on its own initiative, but must try the case without a jury.' *Jury*, 47 *Am. Jur.* 2d § 71, pp. 688.

However, again, as to your specific question, my research has not revealed and authority which specifically provides that a magistrate may require a jury trial where such has been waived by both sides. Therefore, it would appear that absent some statutory provision indicating otherwise, a magistrate in this State is without authority to require a jury trial in a civil case unless one of the parties makes demand.

*14523 In a separate question you asked whether the prosecution in a criminal case could demand a jury trial without the consent of the defendant. Enclosed please find a copy of a previous opinion of this office dated February 12, 1980, which held that the prosecution is a party within the language of § 22-2-230, supra, which again provides that:

'(e)ither party to a suit before a magistrate shall be entitled to a trial by jury.'

Therefore, the prosecution in a criminal case may demand a jury trial without the consent of the defendant.

If there is anything further, please do not hesitate to contact me.

Sincerely,

Charles H. Richardson

Assistant Attorney General

(FN1) In support of such statement, a reference was made to 64 ALR 2d 506, 584, § 24, which states in part '(t)he rule generally recognized by the cases is that a trial court may on its own motion call a jury to try issues of fact in a civil case even though a jury has been waived by the parties.' In association with such, reference was made to a South Carolina case, *Meier v. Kornahrens*, 113 S.C. 270, 120 S.E. 285 (1920). However, a review of such case does not appear to be sufficient authority to permit a conclusion that a magistrate may require a jury to be impanelled in a civil case unless demanded by one of the parties.



**S. C. DEPARTMENT
OF PUBLIC SAFETY**

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S C. 29016
Tel. (803) 896-7965 • Fax. (803) 896-7967

December 5, 2013

HAND DELIVERED

Mary P. Brown, Clerk
Berkeley County Circuit Court
P. O. Box 219
300 B California Avenue
Moncks Corner, SC 29461

Re: State of South Carolina vs. Nicholas M. Blair
Ticket No G449285
Appeal # 2013-CP-08-_____

Dear Ms. Brown:

Please find enclosed the State's Notice of Appeal and Appeal and a Certificate of Service to be filed of record. Please provide me with a clocked-in copy of both documents. A return envelope is enclosed.

A copy of this Notice has been served upon all parties.

With kind regards, I am

Yours very truly,

COPY

Randi Runkles
Paralegal
Office of General Counsel

/rr

Enclosures

cc: Honorable Whilden V. Baggett
Gregory A. DeLuca, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA)

Plaintiff(s))

vs.)

NICHOLAS M. BLAIR)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 40- _____

COPY

(Please Print)

Submitted By: Marcus K. Gore, Esq.

Address: Office of General Counsel

S.C. DEP'T OF PUBLIC SAFETY

POST OFFICE BOX 1993

BLYTHEWOOD, SC 29016

SC Bar #: 73647

Telephone #: 803. 896. 7965

Fax #: 803. 896. 7967

Other:

E-mail: MarcusGore@scdps.gov

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

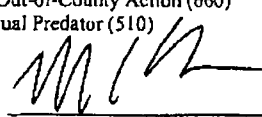
**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20____-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Label (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture - Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input checked="" type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: _____



Date: 5 December 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

CERTIFICATE OF EXEMPTION
FROM MEDIATION

NICHOLAS M. BLAIR,

Defendant/Respondent.

C/A # 2013-CP-08-_____

I certify that this action is exempt from mediation because.

This is a special proceeding or action seeking extraordinary relief such as

X This action is appellate in nature

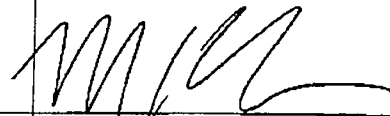
This is a post-conviction relief matter

This is a forfeiture proceeding brought by the State

This is a contempt of court proceeding; or

The parties submitted the case to voluntary mediation with a certified mediator

Respectfully Submitted,



Marcus K. Gore
Assistant General Counsel
S. C. Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Email: MarcusGore@scdps.gov

Date: 5 December 2013

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY : NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA : C/A # 2013-CP-08-_____

Appellant,

vs

NICHOLAS M. BLAIR,

Respondent.

**NOTICE OF APPEAL
AND APPEAL**

Ticket G449285

TO: The Honorable Whilden V. Baggett, Berkeley County Magistrate Judge,
and Gregory A. DeLuca, Counsel for above named Respondent.

Appellant, the State of South Carolina, by and through the undersigned, hereby gives notice of its appeal from the Order of the Honorable Whilden V. Baggett, issued on November 6, 2013, dismissing the above referenced case. The State received notice of said Order on November 6, 2013.

On October 7, 2013, Corporal C. M. Wooten of the South Carolina Highway Patrol cited the Defendant with Driving Under the Influence in violation of S.C Code § 56-5-2930. This matter came before the Honorable Whilden V. Baggett on November 6, 2013 for hearing. At the hearing, the Defendant requested a bench trial. The State requested a continuance due to the absence of a witness, or in the alternative, that this matter be set for a jury trial. Judge Baggett denied both of the State's requests.¹ On the issue of the State's request for a jury trial, Judge Baggett ruled that the defense alone has the right to request a jury trial. The Defendant then moved to dismiss the case for lack of prosecution, and the motion was granted

¹ The State is not appealing Judge Baggett's ruling on the request for a continuance

As discussed in detail below, the Defendant lacked the unilateral right to request a jury trial, and the court erred as a matter of law in denying the State's request for one.

A. The Defendant's Waiver of a Jury Trial is Conditioned on the Consent of the State.

South Carolina has long recognized that either party in a criminal matter may demand a jury trial. *See State v. Nash*, 51 S.C. 319, 28 S E 946 (1898). The Rules of Criminal Procedure explicitly reflect this principle: "A defendant may waive his right to a jury trial *only with the approval of the solicitor and the trial judge.*" Rule 14(b), S.C.R.Crim.P (emphasis added); *see also State v. Hanson*, 285 S C. 543, 544, 331 S.E.2d 782, 782 (1985) ("A defendant's waiver of a jury trial is conditioned upon the consent of the prosecutor and the trial judge. If either objects to the waiver, the defendant must be tried by a jury.").

The Defendant is free to waive his right to a jury trial, but this waiver is only effective if both the trial judge and the State consent. Here the State declined to consent to the Defendant's waiver and requested a jury trial. Pursuant to Rule 14(b), the court erred by denying the State's request.

B. The Repeal of Section 22-3-230 Supports Application of Rule 14(b), S.C.R.Crim.P.

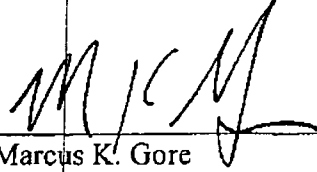
At the hearing, the Defendant argued that the State's right to demand a jury trial had been eliminated by the repeal of S.C. Code § 22-3-230. That section previously stated that "[e]ither party to a suit before a magistrate shall be entitled to a trial by jury." S.C Code Ann. § 22-3-230 (2008), *repealed by Act No. 267, 2008 S.C Acts 121* (attached hereto). Indeed, § 22-3-230 was repealed in 2008 by Act 267, but the preamble to the Act reflects that the primary purpose of the repeal was to "revise. . .Article [22] substantially in order to delete provisions that have been provided by the South Carolina Rules of Magistrates Court ..." Act No. 267, 2998 S.C. Acts 121.

The Magistrate's Court Rules do not specifically address the issue of who may request a jury trial. However, Rule 32 of the Rules of Criminal Procedure makes clear that its provisions, including Rule 14(b) as described above, "apply insofar as practicable in magistrate's court . " Rule 32, S.C.R.Crim.P. Further, Rule 2 of the Magistrate's Court Rules provides that "[i]f no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in similar situations." Rule 2, S.C.R.M.C. Contrary to the Defendant's position, § 22-3-230 was repealed as superfluous because it covered the same subject matter that was already addressed by Rule 14(b).

CONCLUSION

For the reasons stated above, the court erred as a matter of law in denying the State's request for a jury trial. The State respectfully requests this Honorable Court to reverse the decision of the lower court, and remand this case to the lower court for trial and such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Marcus K. Gore
Assistant General Counsel
S. C. Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016
Telephone: (803) 896-7965
Attorney for Appellant
Email: MarcusGore@scdps.gov

Blythewood, SC

Date. 5 December 2013

OTHER COUNSEL OF RECORD:

Gregory A. DeLuca, Esquire
DeLuca & Maucher, LLP
P. O. Box 9
Goose Creek, SC 29445

South Carolina General Assembly
117th Session, 2007-2008

A267, R314, S1221

STATUS INFORMATION

General Bill

Sponsors: Senators Hutto and Massey

Document Path: I:\s-jud\bills\hutto\jud0062 pb.doc

Introduced in the Senate on March 20, 2008

Introduced in the House on April 1, 2008

Last Amended on May 27, 2008

Passed by the General Assembly on May 28, 2008

Governor's Action: June 4, 2008, Signed

Summary: Magistrate court

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/20/2008	Senate	Introduced and read first time <u>SJ-5</u>
3/20/2008	Senate	Referred to Committee on Judiciary <u>SJ-5</u>
3/26/2008	Senate	Committee report: Favorable with amendment Judiciary <u>SJ-16</u> ,
3/27/2008	Senate	Committee Amendment Adopted <u>SJ-38</u>
3/27/2008	Senate	Read second time <u>SJ-38</u>
3/28/2008		Scrivener's error corrected
4/1/2008	Senate	Read third time and sent to House <u>SJ-8</u>
4/1/2008	House	Introduced and read first time <u>HJ-15</u>
4/1/2008	House	Referred to Committee on Judiciary <u>HJ-15</u>
5/14/2008	House	Committee report: Favorable Judiciary <u>HJ-3</u>
5/20/2008	House	Debate adjourned until Wednesday, May 21, 2008 <u>HJ-37</u>
5/21/2008	House	Debate adjourned <u>HJ-26</u>
5/22/2008	House	Amended <u>HJ-16</u>
5/22/2008	House	Debate adjourned <u>HJ-24</u>
5/22/2008	House	Debate adjourned until Tuesday, May 27, 2008 <u>HJ-46</u>
5/27/2008	House	Amended <u>HJ-13</u>
5/27/2008	House	Read second time <u>HJ-14</u>
5/28/2008	House	Read third time and returned to Senate with amendments <u>HJ-20</u>
5/28/2008	Senate	Concurred in House amendment and enrolled <u>SJ-121</u>
5/29/2008		Ratified R 314
6/4/2008		Signed By Governor
6/11/2008		Copies available
6/11/2008		Effective date 06/04/08
6/13/2008		Act No 267

VERSIONS OF THIS BILL

3/20/2008

3/26/2008

3/27/2008

3/28/2008
3/28/2008-A
5/14/2008
5/22/2008
5/27/2008

(A267, R314, S1221)

AN ACT TO AMEND ARTICLE 3, CHAPTER 3, TITLE 22, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CIVIL PROCEDURE IN MAGISTRATES COURT, SO AS TO REVISE THE ARTICLE SUBSTANTIALLY IN ORDER TO DELETE PROVISIONS THAT HAVE BEEN PROVIDED BY THE SOUTH CAROLINA RULES OF MAGISTRATES COURT AND TO RENAME THE ARTICLE TO CONFORM WITH THE REVISIONS, AMONG OTHER THINGS; TO AMEND SECTION 5-7-12, RELATING TO THE DESIGNATION OF SCHOOL RESOURCE OFFICERS, SO AS TO PROVIDE A STUDENT ARRESTED FOR A MISDEMEANOR BY A SCHOOL RESOURCE OFFICER MUST RECEIVE A BOND HEARING WITHIN TWENTY-FOUR HOURS OF HIS ARREST AND MAY RECEIVE A COURTESY SUMMONS.

Be it enacted by the General Assembly of the State of South Carolina

Civil procedure in magistrates courts, revision

SECTION 1. Article 3, Chapter 3, Title 22 of the 1976 Code is amended to read

"Article 3

Civil Procedure Filing
and Execution of Judgments

Section 22-3-300. A magistrate, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof which may be filed and docketed in the office of the circuit court of the county in which the judgment was rendered. The time of the receipt of the transcript by the clerk shall be noted thereon and entered in the abstract of judgments and from that time the judgment shall be a judgment of the circuit court, but no sale shall be made under any execution issued upon such judgment in the circuit court until the time for appeal from the judgment in the magistrates court has expired, nor pending such appeal. If the judgment is set aside in the magistrates court, it shall have the effect of setting aside the judgment filed and docketed in the circuit court. The filing and docketing of such transcript in the circuit court shall not affect the right of the magistrate to grant a new trial. A certified transcript of such judgment may be

filed and docketed in the clerk's office of any other county and with like effect in every respect as in the county in which the judgment was rendered.

Section 22-3-310. Execution may be issued on a judgment heretofore or hereafter rendered in a magistrates court at any time within three years after the rendition thereof and shall be returnable sixty days from its date. But no sale shall be made under any such execution until after the time for appeal has expired, nor pending such appeal, and in cases for the claim and delivery of personal property when bond for the property claimed has been properly given by either party, the status of such property shall not be changed until after the expiration of the time for appealing has expired or until such appeal has terminated.

Section 22-3-320 If the judgment be docketed with the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county and have the same effect and be executed in the same manner as other executions and judgments of the circuit court.

Section 22-3-330 Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons."

School resource officers, procedures for certain student arrests

SECTION 2. Section 5-7-12(A) of the 1976 Code is amended to read:

"(A) The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county. The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours

of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 29th day of May, 2008

Approved the 4th day of June, 2008.

STATE OF SOUTH CAROLINA :
COUNTY OF BERKELEY :

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA :

C/A # 2013-CP-08-_____

Appellant,

vs

CERTIFICATE OF SERVICE

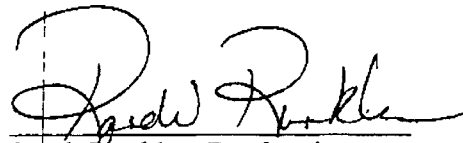
NICHOLAS M. BLAIR,

Ticket No. G440285

I HEREBY CERTIFY that on this 5th day of December, 2013, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Whilden V. Baggett
Berkeley County Magistrate Judge
P. O. Box 6122
Moncks Corner, SC 29461-6122

Gregory A. DeLuca, Esquire
DeLuca & Maucher, LLP
P. O. Box 9
Goose Creek, SC 29445



Randi Runkles, Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: December 5, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA)

Plaintiff(s))

vs.)

NICHOLAS M. BLAIR)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - ~~48~~ ⁰⁸ 2704

(Please Print)

Submitted By: Marcus K. Gore, Esq.
Address: Office of General Counsel
S.C. DEP'T OF PUBLIC SAFETY
POST OFFICE BOX 1993
BLYTHEWOOD, SC 29016

SC Bar #: 73647
Telephone #: 803. 896. 7965
Fax #: 803. 896. 7967
Other:
E-mail: MarcusGore@scdps.gov

NOTE The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law This form is required for the use of the Clerk of Court for the purpose of docketing It must be filled out completely, signed, and dated A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
- This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20____-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input checked="" type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Aib (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | |

FILED
2013 DEC -5 PM 2:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Submitting Party Signature: MKG

Date: 5 December 2013

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

vs

NICHOLAS M BLAIR,

Defendant/Respondent

CERTIFICATE OF EXEMPTION
FROM MEDIATION

C/A # 2013-CP-08- 2704

I certify that this action is exempt from mediation because

- This is a special proceeding or action seeking extraordinary relief such as
- This action is appellate in nature
- This is a post-conviction relief matter
- This is a forfeiture proceeding brought by the State
- This is a contempt of court proceeding, or
- The parties submitted the case to voluntary mediation with a certified mediator

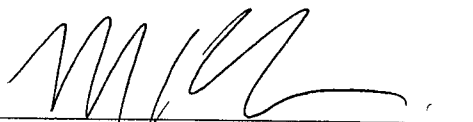
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013 DEC -5 PM 2:27

FILED

TSY

Respectfully Submitted,



Marcus K. Gore
Assistant General Counsel
S C. Department of Public Safety
Office of General Counsel
P O. Box 1993
Blythewood, SC 29016
Telephone (803) 896-7965
Email MarcusGore@scdps.gov

Date: 5 December 2013

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A # 2013-CP-08-2704

Appellant,

vs

NICHOLAS M BLAIR,

Respondent

NOTICE OF APPEAL
AND APPEAL

Ticket G449285

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013 DEC -5 PM 2:27

FILED

TO The Honorable Whilden V Baggett, Berkeley County Magistrate Judge,
and Gregory A DeLuca, Counsel for above named Respondent

Appellant, the State of South Carolina, by and through the undersigned, hereby gives notice of its appeal from the Order of the Honorable Whilden V Baggett, issued on November 6, 2013, dismissing the above referenced case. The State received notice of said Order on November 6, 2013.

On October 7, 2013, Corporal C M Wooten of the South Carolina Highway Patrol cited the Defendant with Driving Under the Influence in violation of S.C Code § 56-5-2930. This matter came before the Honorable Whilden V Baggett on November 6, 2013 for hearing. At the hearing, the Defendant requested a bench trial. The State requested a continuance due to the absence of a witness, or in the alternative, that this matter be set for a jury trial. Judge Baggett denied both of the State's requests.¹ On the issue of the State's request for a jury trial, Judge Baggett ruled that the defense alone has the right to request a jury trial. The Defendant then moved to dismiss the case for lack of prosecution, and the motion was granted.

¹ The State is not appealing Judge Baggett's ruling on the request for a continuance.

As discussed in detail below, the Defendant lacked the unilateral right to request a jury trial, and the court erred as a matter of law in denying the State's request for one.

A. The Defendant's Waiver of a Jury Trial is Conditioned on the Consent of the State.

South Carolina has long recognized that either party in a criminal matter may demand a jury trial. See *State v. Nash*, 51 S.C. 319, 28 S.E. 946 (1898). The Rules of Criminal Procedure explicitly reflect this principle: "A defendant may waive his right to a jury trial *only with the approval of the solicitor and the trial judge*" Rule 14(b), S.C.R.Crim.P. (emphasis added), see also *State v. Hanson*, 285 S.C. 543, 544, 331 S.E.2d 782, 782 (1985) ("A defendant's waiver of a jury trial is conditioned upon the consent of the prosecutor and the trial judge. If either objects to the waiver, the defendant must be tried by a jury.")

The Defendant is free to waive his right to a jury trial, but this waiver is only effective if both the trial judge and the State consent. Here the State declined to consent to the Defendant's waiver and requested a jury trial. Pursuant to Rule 14(b), the court erred by denying the State's request.

B. The Repeal of Section 22-3-230 Supports Application of Rule 14(b), S.C.R.Crim.P.

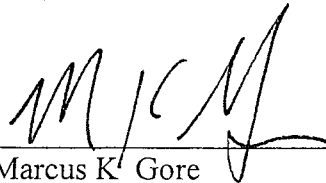
At the hearing, the Defendant argued that the State's right to demand a jury trial had been eliminated by the repeal of S.C. Code § 22-3-230. That section previously stated that "[e]ither party to a suit before a magistrate shall be entitled to a trial by jury." S.C. Code Ann. § 22-3-230 (2008), *repealed by* Act No. 267, 2008 S.C. Acts 121 (attached hereto). Indeed, § 22-3-230 was repealed in 2008 by Act 267, but the preamble to the Act reflects that the primary purpose of the repeal was to "revise . . . Article [22] substantially in order to delete provisions that have been provided by the South Carolina Rules of Magistrates Court . . ." Act No. 267, 2008 S.C. Acts 121.

The Magistrate's Court Rules do not specifically address the issue of who may request a jury trial. However, Rule 32 of the Rules of Criminal Procedure makes clear that its provisions, including Rule 14(b) as described above, "apply insofar as practicable in magistrate's court." Rule 32, S C R Crim P. Further, Rule 2 of the Magistrate's Court Rules provides that "[i]f no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in similar situations." Rule 2, S C R M.C. Contrary to the Defendant's position, § 22-3-230 was repealed as superfluous because it covered the same subject matter that was already addressed by Rule 14(b).

CONCLUSION

For the reasons stated above, the court erred as a matter of law in denying the State's request for a jury trial. The State respectfully requests this Honorable Court to reverse the decision of the lower court, and remand this case to the lower court for trial and such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Marcus K. Gore
Assistant General Counsel
S C Department of Public Safety
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Attorney for Appellant
Email MarcusGore@scdps.gov

Blythewood, SC

Date 5 December 2013

OTHER COUNSEL OF RECORD

Gregory A. DeLuca, Esquire
DeLuca & Maucher, LLP
P. O. Box 9
Goose Creek, SC 29445

South Carolina General Assembly
117th Session, 2007-2008

A267, R314, S1221

STATUS INFORMATION

General Bill

Sponsors Senators Hutto and Massey

Document Path 1\s-jud\bills\hutto\jud0062 pb doc

Introduced in the Senate on March 20, 2008

Introduced in the House on April 1, 2008

Last Amended on May 27, 2008

Passed by the General Assembly on May 28, 2008

Governor's Action June 4, 2008, Signed

Summary Magistrate court

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/20/2008	Senate	Introduced and read first time <u>SJ-5</u>
3/20/2008	Senate	Referred to Committee on Judiciary <u>SJ-5</u>
3/26/2008	Senate	Committee report Favorable with amendment Judiciary <u>SJ-16</u>
3/27/2008	Senate	Committee Amendment Adopted <u>SJ-38</u>
3/27/2008	Senate	Read second time <u>SJ-38</u>
3/28/2008		Scrivener's error corrected
4/1/2008	Senate	Read third time and sent to House <u>SJ-8</u>
4/1/2008	House	Introduced and read first time <u>HJ-15</u>
4/1/2008	House	Referred to Committee on Judiciary <u>HJ-15</u>
5/14/2008	House	Committee report Favorable Judiciary <u>HJ-3</u>
5/20/2008	House	Debate adjourned until Wednesday, May 21, 2008 <u>HJ-37</u>
5/21/2008	House	Debate adjourned <u>HJ-26</u>
5/22/2008	House	Amended <u>HJ-16</u>
5/22/2008	House	Debate adjourned <u>HJ-24</u>
5/22/2008	House	Debate adjourned until Tuesday, May 27, 2008 <u>HJ-46</u>
5/27/2008	House	Amended <u>HJ-13</u>
5/27/2008	House	Read second time <u>HJ-14</u>
5/28/2008	House	Read third time and returned to Senate with amendments <u>HJ-20</u>
5/28/2008	Senate	Concurred in House amendment and enrolled <u>SJ-121</u>
5/29/2008		Ratified R 314
6/4/2008		Signed By Governor
6/11/2008		Copies available
6/11/2008		Effective date 06/04/08
6/13/2008		Act No 267

VERSIONS OF THIS BILL

3/20/2008

3/26/2008

3/27/2008

3/28/2008
3/28/2008-A
5/14/2008
5/22/2008
5/27/2008

(A267, R314, S1221)

AN ACT TO AMEND ARTICLE 3, CHAPTER 3, TITLE 22, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CIVIL PROCEDURE IN MAGISTRATES COURT, SO AS TO REVISE THE ARTICLE SUBSTANTIALLY IN ORDER TO DELETE PROVISIONS THAT HAVE BEEN PROVIDED BY THE SOUTH CAROLINA RULES OF MAGISTRATES COURT AND TO RENAME THE ARTICLE TO CONFORM WITH THE REVISIONS, AMONG OTHER THINGS; TO AMEND SECTION 5-7-12, RELATING TO THE DESIGNATION OF SCHOOL RESOURCE OFFICERS, SO AS TO PROVIDE A STUDENT ARRESTED FOR A MISDEMEANOR BY A SCHOOL RESOURCE OFFICER MUST RECEIVE A BOND HEARING WITHIN TWENTY-FOUR HOURS OF HIS ARREST AND MAY RECEIVE A COURTESY SUMMONS.

Be it enacted by the General Assembly of the State of South Carolina

Civil procedure in magistrates courts, revision

SECTION 1 Article 3, Chapter 3, Title 22 of the 1976 Code is amended to read

“Article 3

Civil Procedure Filing
and Execution of Judgments

Section 22-3-300 A magistrate, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof which may be filed and docketed in the office of the circuit court of the county in which the judgment was rendered. The time of the receipt of the transcript by the clerk shall be noted thereon and entered in the abstract of judgments and from that time the judgment shall be a judgment of the circuit court, but no sale shall be made under any execution issued upon such judgment in the circuit court until the time for appeal from the judgment in the magistrates court has expired, nor pending such appeal. If the judgment is set aside in the magistrates court, it shall have the effect of setting aside the judgment filed and docketed in the circuit court. The filing and docketing of such transcript in the circuit court shall not affect the right of the magistrate to grant a new trial. A certified transcript of such judgment may be

filed and docketed in the clerk's office of any other county and with like effect in every respect as in the county in which the judgment was rendered

Section 22-3-310 Execution may be issued on a judgment heretofore or hereafter rendered in a magistrates court at any time within three years after the rendition thereof and shall be returnable sixty days from its date. But no sale shall be made under any such execution until after the time for appeal has expired, nor pending such appeal, and in cases for the claim and delivery of personal property when bond for the property claimed has been properly given by either party, the status of such property shall not be changed until after the expiration of the time for appealing has expired or until such appeal has terminated

Section 22-3-320 If the judgment be docketed with the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county and have the same effect and be executed in the same manner as other executions and judgments of the circuit court

Section 22-3-330 Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons ”

School resource officers, procedures for certain student arrests

SECTION 2 Section 5-7-12(A) of the 1976 Code is amended to read

“(A) The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county. The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours

of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction."

Time effective

SECTION 3 This act takes effect upon approval by the Governor

Ratified the 29th day of May, 2008

Approved the 4th day of June, 2008

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA :

C/A # 2013-CP-08-2704

Appellant,

vs

CERTIFICATE OF SERVICE

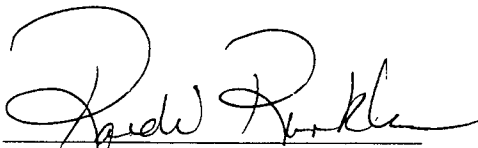
NICHOLAS M BLAIR,

Ticket No G440285

I HEREBY CERTIFY that on this 5th day of December, 2013, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following

The Honorable Whilden V Baggett
Berkeley County Magistrate Judge
P O Box 6122
Moncks Corner, SC 29461-6122

Gregory A. DeLuca, Esquire
DeLuca & Maucher, LLP
P O Box 9
Goose Creek, SC 29445


Randi Runkles, Paralegal
Office of General Counsel
S C Department of Public Safety

Dated December 5, 2013

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013 DEC -5 PM 2:26

151
FILED

1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2013-CP-08-02704
)
 3 _____)
)
 4 STATE OF SOUTH CAROLINA)
)
 5 vs.) Transcript of Record
)
 6 NICHOLAS BLAIR,)
)
 7 Defendant.)
)
 _____) DATE: March 17, 2014

8
9 B E F O R E:

10 The Honorable Deadra L. Jefferson

11 A P P E A R A N C E:

12 Marcus Keith Gore
For the State

13 Gregory A. DeLuca
For the Defendant

14
15
16 Karen V. Andersen, RMR, CRR,
Circuit Court Reporter
17
18
19
20
21
22
23
24
25

1 MR. GORE: I am here, Your Honor, for the State.

2 MR. DeLUCA: Craig DeLuca, Your Honor.

3 THE COURT: And you are Mr.?

4 MR. GORE: Marcus Gore.

5 THE COURT: Nice to see you.

6 MR. GORE: Thank you. Nice to see you.

7 MR. DeLUCA: Gregory A. DeLuca.

8 THE COURT: This is State of South Carolina vs.
9 Nicholas M. Blair, 2013-2704. Magistrate's return was filed
10 on January 14th of 2014. This was heard by Judge Baggett,
11 Berkeley County magistrate. This case was originally tried
12 on November 6th, 2013. It was schedule for a bench trial on
13 a citation for driving under the influence with a refusal
14 under BA. This is being appealed by the State.

15 Okay. Mr. Gore, you may proceed.

16 MR. GORE: Thank you, Your Honor. My name is
17 Marcus Gore. And I'm here on behalf of the State. Your
18 Honor, this a fairly narrow issue. I don't think there's
19 going to be much disagreement between the parties as to what
20 happened at the underlying trial or what the issue before us
21 is. But I will try to hit it on the head for you. And that
22 is, does the State have the right to insist on a jury trial.

23 Mr. Blair was summoned to come to court. When he
24 did, he asked for a bench trial. The trooper who was
25 prosecuting the case at that time, he requested a jury

1 trial. And the judge denied that request. And so the case
2 was dismissed because the trooper was not willing to go
3 forward in the bench trial. The State's position is that
4 the trooper was entitled to request a jury trial.

5 THE COURT: Under what authority?

6 MR. GORE: Specifically under Rule 14 of the rules
7 of criminal procedure.

8 THE COURT: Doesn't the statute control?

9 MR. GORE: There is no statute on point that says
10 specifically whether or not the State has -- the statute
11 doesn't say anything about the State requesting --

12 THE COURT: Person's entitled to a jury trial.

13 MR. GORE: I'm sorry?

14 THE COURT: Isn't there a section as to who is
15 entitled to a jury trial, 22-21-50?

16 MR. GORE: That section specifically says that the
17 defendant may request a jury trial.

18 THE COURT: Yeah, but it's been my experience when
19 the legislator is silent, they say what they mean and they
20 don't say what they don't mean.

21 MR. GORE: I don't disagree with that, but --

22 THE COURT: I don't think I can expand the law.

23 MR. GORE: They've also approved Rule 14 of the
24 rules of criminal procedure that says that a defendant can
25 only waive his right to a jury trial when the State agrees

1 to that.

2 THE COURT: But it addresses a defendant. It
3 doesn't say -- it doesn't confer right on the State, does
4 it?

5 I guess I'm a little curious as to why the trooper
6 wasn't willing to just go forward with a bench trial. I
7 don't see what prejudice he would have suffered. It's
8 always been a benefit to have a bench trial.

9 MR. GORE: I wasn't there that day, Your Honor. I
10 can't read his mind as to why he made that decision. He
11 wanted a jury trial that day, and I think he's entitled to
12 it. I don't disagree with you that the right conferred upon
13 the State is not the right to request a jury trial. The
14 right, though, is that the State can ask -- can insist that
15 the -- can refuse the defendant's waiver of the jury trial.
16 That's what Rule 14 says.

17 THE COURT: That's predicated on the defendant
18 exercising the right to some statute conferred upon him.
19 The statute -- you don't expand the meaning of the statute.
20 I can't write words into it, add to it, expand to it. It
21 says what it says. It's unambiguous.

22 It's just like when the State loses a -- well,
23 under certain circumstances -- well, when a person is
24 acquitted, they can't appeal it. I mean, the reason it's
25 stacked against you is because you have the burden of proof.

1 I mean, the rules confer constitutional rights on parties,
2 because the presumption is based on public policy that the
3 State holds all the cards. I'm putting that in real lay
4 language instead of legal jargon.

5 MR. GORE: I understand that.

6 THE COURT: But I'm just -- I guess when I read the
7 file, I was just a little confused other than maybe he was
8 maybe just a little confused about going forward or --
9 confused isn't the right word I want to use, unprepared
10 maybe or just -- I guess I'm trying to figure out how --
11 it's my understanding that even if somebody comes to court,
12 a criminal defendant in Circuit Court, and they want a bench
13 trial, they are entitled to it. And the State cannot ask
14 for a jury trial.

15 If the defendant comes to court right now, if I
16 were doing criminal court next-door, and the defendant came
17 in and said, I want a bench trial, I don't want a jury
18 trial, I think that they are entitled to do that.

19 MR. GORE: I disagree with that. Could I hand you
20 a case here?

21 THE COURT: You can just give me a citation.

22 MR. GORE: Sure. This is the case State vs.
23 Senter, Court of Appeals from 2011. Citation is 396 South
24 Carolina 547, 722 S.E. 2d 223. And it describes the
25 situation you've just described to me. It says --

1 THE COURT: That probably might not have been the
2 best analogy because of the right for the State to have to
3 consent once a person -- but still, that is still predicated
4 upon that person exercising their right.

5 MR. GORE: But the rule is Rule 14. And Senter
6 also says that when the defendant says, I do not want to
7 proceed with a jury trial, the State can say, no, we
8 disagree with that, we want to proceed with a jury trial and
9 we are going to insist on a jury trial. And the rule allows
10 the State to make that decision.

11 Now, I don't disagree with you. It's a rare
12 situation that it happens. But Rule 14, as well as Senter,
13 recognizes that the State absolutely has that right to
14 insist we want to proceed with a jury, for whatever reason;
15 the trooper is unprepared; he's not comfortable in front of
16 the judge; he wants a group of 12 people to hear this case,
17 or six people in magistrate court. That's his decision and
18 his right.

19 THE COURT: Anything further?

20 MR. GORE: I suspect the defendant is going to
21 address an argument about what the statute says, and I will
22 let him do that first.

23 THE COURT: I think you need to make your full
24 argument and then I will determine if we have time for any
25 rebuttal.

1 MR. GORE: That's fine. Let me go forward with the
2 rest of what I was going to say. I guess my first point is
3 that I think Rule 14 squarely addresses the issue of whether
4 or not the State can insist on a jury trial. And Rule 14
5 says a defendant may waive his right to a jury trial only
6 with the approval of the solicitor and the trial judge.

7 In a case of this sort, the trooper is acting as a
8 solicitor. He is the prosecuting agent in this case.

9 THE COURT: But the trooper wasn't ready to go
10 forward anyway even if he got a jury trial because he didn't
11 have the witness he needed.

12 MR. GORE: I think that probably may have been the
13 case. That's true, but his reason for --

14 THE COURT: In other words, it was a two-fold
15 request. He asked for a continuance and said he didn't have
16 a witness. And that's solely a discretionary matter.

17 MR. GORE: Absolutely. I'm not appealing that.

18 THE COURT: He's in control of when that comes
19 forward. So I guess I'm trying to figure out in the grand
20 scheme of things, what difference did it make even if he got
21 a jury trial because he wasn't ready to go forward?

22 MR. GORE: This was not a jury term. There was no
23 jury there ready to try the case. They would not have gone
24 forward that day.

25 THE COURT: So was this a request just to buy time?

1 MR. GORE: It very well may have been, but I don't
2 think that's irrelevant. It doesn't matter why this trooper
3 wants it. If he asks for it, he's entitled to get it.

4 THE COURT: You may continue.

5 MR. GORE: Thank you, Your Honor. Rule 14
6 addressed -- gives the State the right to insist on that
7 jury trial.

8 Additionally, I also cite the case State vs. Hanson
9 to you, which is 285 S.C. 543. It says: A defendant's
10 waiver after jury trial is conditioned upon the consent of
11 the prosecutor and the trial judge. If either objects to
12 the waiver, the defendant must be tried by a jury.

13 I think this is squarely the point that I've been
14 addressing this morning. At the, I'm going to say, pretrial
15 hearing in this case, the defendant made a point that --
16 this particular section in the code that I think you were
17 referencing previously used to say that defendant or State
18 could request a jury trial; and he's right. It did used to
19 previously state that explicitly. And in 2008, it was
20 amended to read that it just says now the defendant may
21 request a jury trial.

22 I think importantly, and it's an issue I address in
23 the appellate brief that I filed with the Court, is the
24 reason that the statute was amended is addressed in the
25 preamble to that statute. And the revision says they want

1 to revise Article 22 substantially in order to delete
2 provisions that have been provided by the South Carolina
3 rules of magistrate court. So this deletion was essentially
4 a cleanup. They are trying to get rid of some superfluous
5 things, things they don't need anymore. Then we have to go
6 look at what do the rules say.

7 Well, the criminal procedure rules are explicit.
8 They apply in magistrate court. And that's Rule 37 of the
9 criminal procedure rules say, if there isn't a procedure in
10 magistrate's court, then you use the criminal procedure
11 rules. That, therefore, would adopt this provision that I
12 just discussed in Rule 14.

13 So Rule 14 of the criminal rules, along with all
14 the criminal rules, explicitly apply in magistrate's court.
15 And the magistrate's court rules only apply to civil cases
16 anyway. So there are no magistrate court explicit rules for
17 criminal trials. So the only thing we are left with are the
18 civil court rules.

19 THE COURT: I don't think so. There's a
20 magistrate's manual that has rules for criminal court.

21 MR. GORE: Well, the actual rules of magistrate's
22 procedure, Rule Number 2 of them, explicitly says that these
23 rules shall only apply to -- Rule 2 says, these rules shall
24 govern all civil suits in the magistrate court. That's Rule
25 2 of the civil rules.

1 THE COURT: I understand that, but there's another
2 whole set of rules that deal with criminal court.

3 MR. GORE: They are the criminal rules, same ones
4 you use in General Session. Those apply in magistrate's
5 court. There's not a separate set of rules for them. So
6 those procedures are adopted through the criminal procedure
7 rules.

8 So, Your Honor, in the end, we think that we've got
9 a variety of authority here that points us in one direction,
10 that is, the State can insist on this jury trial. Rule 14
11 points there, this case law Hanson that I cited, as well as
12 Senter. And I've given you the citation for those. And
13 then we think that the repeal of this particular section
14 sort of dovetails with what you would expect. They got rid
15 of this particular provision because it was already
16 addressed in Rule 14. Rule 14 says that the State can
17 insist on that jury trial, so they don't need that provision
18 anymore. It's clean-up.

19 THE COURT: Rule 14 does not say that. Rule 14
20 says that -- where does it say in Rule 14 that the State can
21 insist on a jury trial as a matter of their being -- they
22 being vested with a right to a jury trial?

23 MR. GORE: 14B says: A defendant may waive his
24 right to a jury trial only with the approval of the
25 solicitor. That gives the State the ability to say, no, you

1 are not proceeding with --

2 THE COURT: But where does it say in that language
3 the State has a right independent of that to request a jury
4 trial?

5 MR. GORE: It doesn't say that, but the only way
6 you can read that, if the State can insist -- if the State
7 can say, 'defendant, you can't have a jury trial, then it's
8 implicit that the State has to be saying then we are going
9 forward with a jury trial. Because if it's conditioned on
10 the State's approval, then the State controls that question,
11 or the judge controls that question, as a matter of fact.

12 THE COURT: Actually, the judge is the last voice
13 on the issue.

14 MR. GORE: You are absolutely right about that.
15 Would you agree with me that the judge absolutely could
16 insist on a jury trial going forward?

17 THE COURT: That's a loaded question.

18 MR. GORE: I understand. All right. I don't have
19 anything further. Thank you, Your Honor.

20 THE COURT: You're welcome.

21 Mr. DeLuca.

22 MR. DeLUCA: Thank you. Your Honor, Section
23 22-2-150 clearly states that every person arrested and
24 brought before a magistrate charged with an offense within
25 this jurisdiction shall be entitled on demand to a trial by

1 jury which shall be selected as provided in this chapter.

2 That leads it to where the defendant is allowed to,
3 the arrested party. They rely on Rule 14. Rule 14B of the
4 rules of criminal procedure states that a defendant may
5 waive his right to a jury trial only with the approval of
6 the solicitor and the trial judge.

7 On this case, they are not appealing the
8 continuance, but he asks for a continuance. He never
9 objected, not once, on the record to the bench trial. He
10 clearly said, I want a jury trial. That right is not
11 afforded to the State, Your Honor. And it was never
12 approved or was never consented with the approval of the
13 trial judge. The trial judge denied it, and said that the
14 arrested party has the right to ask for a jury trial. They
15 never once objected to the bench trial.

16 He went ahead and acted like he was the accused,
17 the prosecutor, and asked for a jury trial. It was a delay
18 tactic. He didn't have his witness there. And that's why
19 they are not appealing that issue. He had no good cause to
20 go forward. My client was required to be there and asked
21 for and waived the jury trial and asked for the bench trial.

22 There was nothing where the Court -- where the
23 judge approved or consented to continuing it to a jury
24 trial. But we believe that they have not proved their case
25 here. We believe that that right -- and they rely on the

1 magistrate rules. And under the magistrate rules, under
2 Line 2, I believe that it says under Rule 2: If no
3 procedure is provided by these rules, the Court, magistrate
4 court, shall proceed in a manner consistent with the
5 statutory law applicable to magistrates and with Circuit
6 Court practice in similar situations, but not inconsistent
7 with these rules.

8 It's clear that there's no rule laid out in the
9 magistrate rules. But it shall proceed in an American
10 system with the statutory law applicable to magistrates,
11 which is Section 22-2-150, that he's entitled to a jury
12 trial. And he's the only one allowed to.

13 If the Court -- if the legislature wanted to give
14 the solicitor the right to ask for a jury trial, then they
15 would have stated that clearly in 14B of the criminal rules.
16 It doesn't. It says you have to object. They never
17 formally objected. And it was never approved or consented
18 to by the trial judge.

19 So we would just ask that this Court deny their
20 appeal here and that the dismissal of my client's claim be
21 upheld, Your Honor.

22 THE COURT: Mr. DeLuca, you said that the trooper
23 never -- what were you saying on the record the trooper
24 never did?

25 MR. DeLUCA: The trooper never objected to the

1 bench trial. We requested the bench trial, and the first
2 thing that he did was he asked for a continuance. And he
3 asked for the continuance based on him not having the
4 witness there. And then once that was denied, then he went
5 and said, okay, then I just request a jury trial, which was
6 obviously a delay tactic, but he never formally objected to
7 the bench trial.

8 THE COURT: Does anybody have a copy of the
9 transcript?

10 MR. DeLUCA: Your Honor, I have requested a copy of
11 the transcript --

12 MR. GORE: I do, Your Honor.

13 MR. DeLUCA: -- and it hasn't been forwarded to me.

14 MR. GORE: I don't have the transcript. I only
15 have the audio. It's only seven minutes long.

16 THE COURT: I presume it was never transcribed? Do
17 you have a way of copying that?

18 MR. GORE: You can have this copy. I brought this
19 for you. You can have this copy.

20 MR. DeLUCA: I was never given a copy. We've
21 requested it.

22 THE COURT: Can you all make[^] sure Mr. DeLuca gets a
23 copy.

24 MR. GORE: Sure.

25 THE COURT: I need to listen to this, because while

1 the issue has been raised, I need to make sure it's
2 preserved for appeal. Because if it wasn't preserved,
3 there's no point in the Court ruling on it. And I read the
4 case and they are really not on point. All of them address
5 the due process rights of the defendant. It does not
6 address the State at all. And it really talks about the
7 fair and impartial right of a defendant to a jury trial. It
8 talks about deprivation of a defendant's rights.

9 And I'm not one to read things into a statute or
10 rule where it doesn't exist. Rule says what it says. Where
11 it's unambiguous, you really don't have to resort to
12 statutory instruction. I need to listen to this when I have
13 a moment and look back, and then look back at the return
14 again and go from there.

15 So I'm going to take the matter under advisement.
16 I will keep y'all posted. Anything further?

17 MR. DeLUCA: Thank you, Judge. Have a great week.

18 (Proceedings are concluded.)

19

20

21

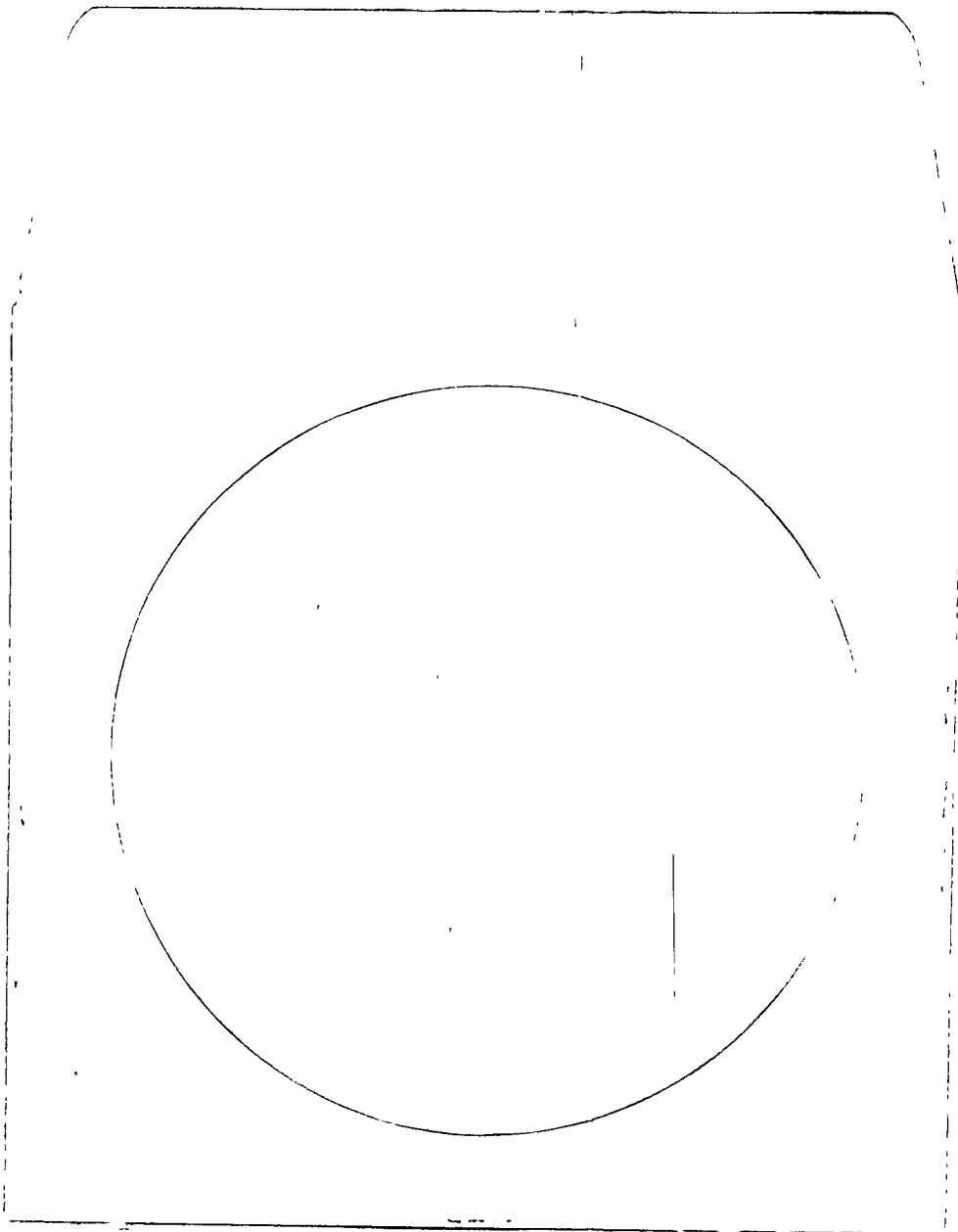
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Compact disc of court audio of November 6, 2013 hearing before the
Honorable Whilden V. Baggett, Magistrate Judge for Berkeley County



C

Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 22 Magistrates and Constables

Chapter 2 Selection of Magistrates and Magistrates' Jury

→ → **§ 22-2-150. Persons entitled to trial by jury.**

Every person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided in this chapter

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CHAPTER 2

JURISDICTION AND PROCEDURE IN MAGISTRATES' COURTS *

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ARTICLE 1.

Civil Jurisdiction.

§ 43-51 Extent.

Magistrates shall have civil jurisdiction in the following cases:

- (1) In actions arising on contracts for the recovery of money only, if the sum claimed does not exceed one hundred dollars,
- (2) In actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed one hundred dollars;
- (3) In actions for a penalty, fine or forfeiture, when the amount claimed or forfeited does not exceed one hundred dollars,
- (4) In actions commenced by attachment of property, as provided by statute, if the debt or damages claimed do not exceed one hundred dollars,
- (5) In actions upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceeds that sum, the judgment to be given for the sum actually due and when the payments are to be made by installments an action may be brought for each installment as it becomes due;
- (6) In actions upon a surety bond taken by them, when the penalty or amount claimed does not exceed one hundred dollars,
- (7) In actions upon a judgment rendered in a court of a magistrate or an inferior court when such action is not prohibited by § 10-1520,
- (8) To take and enter judgment on the confession of a defendant in the manner prescribed by law when the amount confessed shall not exceed one hundred dollars,

discretion, require as a condition of an amendment the payment of costs to the adverse party.

1942 Code § 274, 1932 Code § 274, Civ. P. '22 § 230, Civ. P. '12 § 97, Civ. P. '02 § 88, 1887 (19) 787, 1896 (22) 13

Cross references.—As to amendments after demurrer, see §§ 10-644, 10-691 and notes. As to amendments by the court, see § 10-492 and note thereto.

Magistrate should exercise discretion to the end that no prejudices shall result to the litigants by allowing amendments to the pleading. *Holladay v. Hodge*, 84 S. C. 91, 65 S. E. 952 (1909)

Statute does not require that pleadings be served on adverse party after amendment. *Holladay v. Hodge*, 84 S. C. 91, 65 S. E. 952 (1909)

Summons may be amended to conform to proof.—It is not error for a magistrate to

permit a summons to be amended by changing the name of the corporation defendant to the firm name to conform to the proof. *Pierce v. Varn, Byrd & Co.*, 76 S. C. 359, 57 S. E. 184 (1907)

And the sheriff's return may be amended.—Return of a sheriff on summons in attachment may be shown to be incorrect and an amendment allowed. *Sanders v. Landreth Seed Co.*, 91 S. C. 26, 74 S. E. 120 (1912)

Applied in *Harby v. Wells*, 52 S. C. 156, 29 S. E. 563 (1898); *Lookout Mt. Medicine Co. v. Hara*, 56 S. C. 456, 35 S. E. 130 (1900)

§ 43-91 Waiver when action brought in wrong county

When any civil action cognizable by a magistrate shall be brought in the wrong county the mere failure of the defendant to appear shall not be deemed a waiver of any objection such defendant may have to the jurisdiction of the magistrate. But nothing herein contained shall be construed to prevent any positive action of such defendant from which an intention to waive the jurisdictional objection might be inferred from operating as such waiver.

1942 Code § 275, 1932 Code § 275 Civ. P. '22 § 231, 1919 (31) 51

Quoted in *State v. Jennings*, 161 S. C. 263, 159 S. E. 627 (1931). Cited in *Ex parte Townes*, 97 S. C. 56, 81 S. E. 278 (1914).

§ 43-92 Offer of judgment.

The defendant in a court of a magistrate may, on the return of process and before answering, make an offer in writing to allow judgment to be taken against him for an amount stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceeding shall be had in the action, determine whether he will accept or reject such offer. If he accept the offer and give notice thereof in writing, the magistrate shall file the offer and the acceptance thereof and render judgment accordingly. If notice of acceptance be not given and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer he shall not recover costs but shall pay to the defendant his costs accruing subsequent to the offer.

1942 Code § 274, 1932 Code § 274, Civ. P. '22 § 230, Civ. P. '12 § 97, Civ. P. '02 § 88, 1887 (19) 787, 1896 (22) 13

Liability of plaintiff for costs if he recovers less than defendant's offer.—The plaintiff is liable for all costs of the case subsequent to the defendant's offer if he refuses to accept such offer and recovers less. *Williford v. Gadsden*, 27 S. C. 87, 2 S. E. 858 (1887).

§ 43-93 Right to jury trial.

Either party to a suit before a magistrate shall be entitled to a trial by jury

1942 Code § 3710 1932 Code § 3710 Civ. C. '22 § 2244, Civ. C. 12 § 1394 Civ. C. '02 § 985 G. S. 841 R. S. 884, 1868 (14) 100.

Rights of defendant.—Jury may be empanelled on demand of the prosecution against the protest of defendant. *State v. Nash*, 51 S. C. 319, 28 S. E. 946 (1898)

A defendant in a magistrate's court in Charleston County is entitled to trial by jury on demand, and his refusal to pay costs of summoning and per diem of jurors

in advance is not a waiver of this right. *Pinckney v. Green*, 67 S. C. 309, 45 S. E. 202 (1903).

For related case, see *State v. Williams*, 40 S. C. 373, 19 S. E. 5 (1893).

Applied in *Keppas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929).

§ 43-94 How jurors selected.

In civil cases in a magistrate's court the parties may agree on a jury. When they do not agree, the sheriff, constable or other officer appointed by the magistrate shall furnish the parties or their attorneys with a list of eighteen of the jurors to be drawn and selected by ballot from the whole number of jurors who are drawn, the names on such lists to be numbered from one to eighteen. From such list the parties or their attorneys shall alternately strike until there shall be but six left, who shall constitute the jury to try the case.

1942 Code § 3711, 1932 Code § 3711, Civ. C. '22 § 2245, Civ. C. '12 § 1395 Civ. C. '02 § 987, G. S. 842, R. S. 885, 1868 (14) 100 1914 (28) 484; 1936 (39) 1535, 1938 (40) 1716.

Applied in *Granville Mfg. Co. v. Re-new*, 113 S. C. 171, 102 S. E. 18 (1920).

§ 43-95 Compensation of jurors in civil cases

Except as otherwise provided jurors in a magistrate's court shall receive fifty cents for each civil case tried.

1942 Code § 3712-1, 1932 Code §§ 632, 932 Civ. P. '22 §§ 28, 572, Civ. C. '12 § 4040, Civ. C. '02 § 2738, G. S. 2269, R. S. 2384 1874 (15) 608, 1878 (16) 630, 1907 (25) 518 1911 (27) 86, 1917 (30) 161, 1920 (31) 735, 1925 (34) 233; 1936 (39) 1472, 1939 (41) 415

§ 43-96 Variance between pleadings and proof.

A variance between the proof on the trial and the allegations in a pleading shall be disregarded, as immaterial, unless the court shall be satisfied that the adverse party has been misled to his prejudice thereby.

1942 Code § 274, 1932 Code § 274, Civ. P. '22 § 230, Civ. P. '12 § 97, Civ. P. '02 § 88, 1887 (19) 787, 1896 (22) 13.

§ 43-97 Default judgments, liquidated and unliquidated demands

When a defendant in a court of a magistrate in an action on contract does not appear and answer the plaintiff may file proof of the service of the summons and complaint or of the summons on one or more of the defendants and that no answer or demurrer has been served upon him. When the action is for the recovery of money only, judgment may be given for the plaintiff by default if the demand be liquidated. If (a) the claim be unliquidated, (b) the plaintiff itemize his account and append thereto an affidavit that it is true and correct and no part of the sum sued for has been paid by discount or otherwise, (c) a copy of such account and affidavit be served with the summons on

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1942

Richland County all official funds which have heretofore come into their respective hands, the owner or claimant of which cannot be ascertained by the master or judge of probate, as the case may be, or which may have remained in the hands of the master or judge of probate for a period of seven (7) or more years, where such funds are not held in trust for those having a future or contingent interest therein and where no claim has been made therefor within seven years, which shall be by said treasurer credited to the general school fund, to be apportioned as other school funds are apportioned; provided, that in the event any owner shall establish his or her right to any such fund or funds, and the same has been accredited by the county treasurer, such fund or funds shall be paid to such owner or claimant by the order of the court of common pleas from the general school fund of the county. Any of said funds which may now be invested or loaned out by the master or judge of probate for the benefit of those who cannot be ascertained by the master or judge of probate, as the case may be, shall be paid over to the county treasurer as soon as same is collected. It shall be the duty of the said master or judge of probate, and they are hereby required to keep accounts of all such funds so paid by each of them respectively, to said county treasurer, which account shall show the date of such payments, the title of case or source from which such funds are derived and the amount so paid over to the said treasurer, and it shall be the duty of the county treasurer to open and keep separate account with each, the said master and judge of probate, of all said funds so received by him from the said master and judge of probate, respectively, which accounts shall show the dates of said payments, the title of cases or sources, from which funds are derived, and the accounts shall be open to public inspection at any time during office hours; provided that any of said funds which may now be invested or loaned out shall be paid over to the county treasurer as soon as same is collected, and

1923 Code, § 3708; 1930 (80) 1908.

§ 3704-3. Union County—office abolished—duties, powers, etc. imposed on probate judge and clerk of court. The office of master in and for the county of Union is hereby abolished. All the duties, powers and emoluments of the master in said county are hereby imposed upon, vested in and attached to the office of judge of probate in and for said county. The bond of the said judge of probate be fifteen thousand dollars. The said probate judge shall only receive as compensation the fees and commissions as are now provided by law for the master for services rendered. All cases in which the said probate judge may be directly or indirectly interested or otherwise disqualified shall be referred to the clerk of court for Union County to act as special master, who shall receive the compensation and commissions of said case as now provided for by law.

1923 Code, §§ 3671, 3672, 3673, 3674; Civ. C. '22, §§ 2213, 2214, 2215, 2217, 2218; 1917 (80) 27, 1921 (33) 5.

ARTICLE 7

Magistrates and Constables

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- 3784. Sumter County.
- 3785-1. Magistrate, third magisterial district, Sumter County.
- 3781. Union County.
- 3782. Williamsburg County.
- 3789. York County.

§ 3707. Appointment of magistrates—term—jurisdiction—suspension. The Governor shall have authority, by and with the advice and consent of the Senate, to appoint magistrates in each county of the State, who shall hold their office for the term of two years, and until their successors are appointed and qualified. The number of magistrates to be appointed for each county and their territorial jurisdiction shall be the same as heretofore prescribed by law for magistrates in the respective counties of the State, except as hereinafter otherwise provided. Such magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty, and the Governor shall report any suspension, with the cause thereof, to the Senate at its next session, for its approval or disapproval.

1923 Code, § 3707; Civ. C. '22, § 2241, Civ. C. '12, § 1591; Civ. C. '02, § 963; 1907 (23) 472.

Jurisdiction.—Under the Constitution, art. 3, § 23, a magistrate's jurisdiction is confined to the county for which he is appointed. *Dill v. Durham*, 98 B. C. 433, 35 S. E. 2, Ann. Cas. 120, 816.
Magistrate retains office and right to emolument thereof until successor appointed.—Under constitutional and statutory provisions fixing term of magistrates at two years and until successors are appointed and qualified, magistrate whose office was still in existence and

whose successor had not been appointed had title to office with right to emolument thereof. *Gaffney v. Mallory*, 7, 159 S. C. 297, 193 S. E. 841.
 See generally, *McDowell v. Burwast*, 82 S. C. 469, 75 S. E. 873, Ann. Cas. 142, 325, 90 S. C. 400, 73 B. E. 782, 5 A. L. R. 581.
 Applied in *State v. Bowden*, 82 S. C. 393, 75 S. E. 328, 46 L. R. A. (N. S.) 1204, L. R. A. 19162, 868.

§ 3708. **Oath.**—Before entering upon the discharge of the duties of his office, each magistrate must take, in writing, the oath of office prescribed in the Constitution, and also the oaths prescribed in sections 3043 and 3044 before the clerk of the court of common pleas of the county, or, in case there be no such clerk, before any one authorized to administer an oath, and must file the same with the secretary of state.
 1932 Code, § 3708, Civ. C. '22, § 2242, Civ. C. '12, § 1393, Civ. C. '02, § 984, 1897 (22) 472.

§ 3708. **Jurisdiction.**—The civil jurisdiction of a magistrate shall be, the same as that heretofore exercised by trial justices. They shall have exclusive jurisdiction in all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, except in cases of riot, assault and battery, and larceny, and the carrying of concealed weapons coupled with an offense in which such weapon is used. In criminal matters beyond their jurisdiction to try, they shall sit as examining courts, and commit, discharge, and (except in capital cases) recognize persons charged with such offenses. Magistrates shall have concurrent jurisdiction only with the court of general sessions in cases of riot, assault and battery and larceny. In counties where they are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district where the offense was committed, unless the place of trial be changed to another district in the same county in the manner prescribed by law.
 1932 Code, § 3709, Civ. C. '22, § 2243, Civ. C. '12, § 1393, Civ. C. '02, § 985, 1897 (22) 472.

See generally, *State v. Williams*, 40 S. C. 373, 19 S. E. 3, 27 L. R. A. 563, 35 L. R. A. 566, 43 L. R. A. 47, 58, 77, 45 L. R. A. 155.

§ 3710. **Parties entitled to trial by jury.**—Either party to suit before a magistrate shall be entitled to a trial by jury.
 1932 Code, § 3710, Civ. C. '22, § 2244, Civ. C. '12, § 1394, Civ. C. '02, § 986, G. S. 841; R. S. 884, 1898 (14) 109, § 6.

Right to jury trial.—Jury may be empaneled on demand of the prosecution against the protest of defendant. *State v. Nash*, 51 S. C. 319, 29 S. E. 946, 17 L. R. A. (N. S.) 612, L. R. A. 19153, 560, 22 A. L. R. 283.
 A defendant in a magistrate's court in Charleston County is entitled to trial by jury on demand, and his refusal to pay costs of summoning and per diem of

jurors in advance is not a waiver of this right. *Pinciney v. Green*, 57 S. C. 309, 311, 45 S. E. 202.
 See generally, *State v. Williams*, 40 S. C. 373, 19 S. E. 3, 27 L. R. A. 595, 35 L. R. A. 566, 43 L. R. A. 47, 58, 77, 45 L. R. A. 155.
 Applied in *Xepapas v. Richardson*, 149 S. C. 62, 146 S. E. 686.

§ 3711. **Parties may agree upon a jury in civil cases—how jurors are**

drawn.—In civil cases the parties may agree on a jury, but when they do not agree, and also in criminal causes, a jury shall be selected in the following manner: the sheriff, constable or other officers appointed by the magistrate, shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity; he shall deliver the ballots to the magistrate, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party, and the officer shall thus proceed until he shall have drawn six who shall not have been challenged; neither party being allowed more than six challenges, but if the first twelve drawn shall be challenged, and the parties do not agree to a choice, the last six shall be the jury, and when any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided, provided, in the trial of all civil cases in the magistrate's court, it shall be the duty of the sheriff, constable or other officer appointed by the magistrate to furnish the parties or their attorneys with a list of eighteen of the jurors to be drawn and selected by ballot from the whole number of jurors who are drawn, the names on said lists to be numbered from one to eighteen, from which said list the parties or their attorneys shall alternately strike, until there shall be but six left, which shall constitute the jury to try the case.

1932 Code, § 3711, Civ. C. '22, § 2245, Civ. C. '12, § 1395, Civ. C. '02, § 987; G. S. 842, R. S. 885, 1898 (14) 100 § 6, 1914 (22) 484, 1936 (39) 1538; 1938 (40) 1716.

See generally, *Columbia v. Smith*, 109 S. C. 548, 38 S. E. 1023, *State v. Byrnes*, new, 113 S. C. 171, 102 B. E. 18, Town 100 § C 286, 84 S. E. 822, Ann. Cas. 170, Council v. Calhoun, 33 S. C. 291, 10 S. E. 984.
 Applied in *Grantville Mfg. Co. v. Re-*

§ 3712. **Penalty for failure to perform jury duty—service limited.**—If any juror duly summoned shall neglect or refuse to appear in obedience to any venire issued by any police or municipal or magistrate court, and shall not within forty-eight hours render to the recorder or magistrate holding such police or magistrate court, and issuing the venire, a sufficient reason for his delinquency, he shall forfeit and pay a fine of ten dollars (\$10.00) to the treasury of the municipality or county where the cause is tried, to be assessed by such recorder or such magistrate so holding the police or magistrate court and collected on his warrant without other process, and a failure to pay forthwith such fine so assessed shall constitute a contempt of court and be punished accordingly; provided, no person shall be required to serve on a jury in said courts oftener than once in each month of the year.

1932 Code, § 3712, Civ. C. '22, § 2246, Civ. C. '12, § 1396, Civ. C. '02, § 988, G. S. 843, R. S. 886, 1898 (14) 101, § 7, 1908 (25) 1087.

§ 3712-1. **Jurors—compensation—per diem and mileage.**
 (1) **Civil.**—Jurors in magistrates' court shall receive fifty cents for each civil case tried and mileage as allowed other jurors. Whenever provision is made by law for the payment of mileage of jurors, witnesses and other persons required to attend court, or to travel to perform any legal duty, said

CODE OF LAWS
OF
SOUTH CAROLINA

1932

IN FOUR VOLUMES

Prepared, edited, annotated, and printed under the supervision,
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VOLUME II

CIVIL CODE, §§ 2038-5806

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CHARLOTTESVILLE, VIRGINIA
1932

CHAPTER 115

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ARTICLE 1

The Sheriff and His Deputies

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§ 3473 When Election of Sheriff Held.—There shall be an election for sheriff held in each county, except in the counties of Berkeley, Cherokee and Hampton, at the general election in 1904, and on the same day in every fourth year thereafter. In the counties excepted the election shall be in 1902

Civ. C. '22, § 2022, Civ. C. '12, § 1134, Civ. C. '02, § 820, G. S. 642, R. S. 703, 1870, XIV, 225, § 4, 1862, XVII, 622, 1838, XIX, 171, 1886, XIX, 144.

See generally, State v. Cortrell, 2 Rich. 6, Ann. Cas. 1912, 933

§ 3474. How Vacancies Filled.—In the event that a vacancy shall, at any time, occur in the office of sheriff in any county of this State, whether from death, resignation, disqualification, or other cause, the Governor shall have full power to appoint some suitable person, who shall be an elector of such county, and who, upon duly qualifying, according to law, shall be entitled to enter upon and hold the office until the next general election for county sheriffs, and shall be subject to all of the duties and liabilities incident to said office, during the term of his service in said office.

Civ. C. '22, § 2023, Civ. C. '12, § 1137; Civ. C. '02, § 821, G. S. 643, R. S. 704, 1870, XIV, 274, § 1, 1877, XVI, 229, 1878, XVI, 207, 714.

For a history of this section, see § 3694 and the note thereto

§ 3475. Coroner to Act as Sheriff during a Vacancy.—The coroner, during the continuance of such vacancy, and until the office is filled by appointment or election, shall assume the office, discharge its duties, incur its liabilities, and be entitled to its fees and emoluments, and shall for, such purpose, take charge of the books and papers of the office, and occupy the apartment allowed to the sheriff for transacting the business of his office

Civ. C. '22, § 2024, Civ. C. '12, § 1138, Civ. C. '02, § 822, G. S. 644, R. S. 705, 1889, XI, 78, § 48.

§ 3476. Clerk to Act until Coroner Takes Charge or Vacancy Filled.—

In case of vacancy in the office of sheriff, and until the coroner for such county may take charge of the same, or until a sheriff shall be elected and commissioned for such county, the clerk of the court for such county shall take possession of the jail of such county, and charge of the prisoners confined therein, and, also, possession of the sheriff's office, and the papers therein

Civ. C. '22, § 2025, Civ. C. '12, § 1139, Civ. C. '02, § 823, G. S. 645, R. S. 706, 1889, XI, 118, § 89

§ 3477. Coroner to Act when Sheriff is Interested.—If the sheriff shall be a party plaintiff or defendant in any judicial process, execution, warrant, summons, or notice to be served or executed within his county, the coroner shall serve the same, and incur the liabilities of the sheriff

Civ. C. '22, § 2026, Civ. C. '12, § 1140, Civ. C. '02, § 824, G. S. 646, R. S. 707, 1889, XI, 78, § 41; 1785, VII, 215, § 9

§ 3478. Sheriff to File Bond.—When any person shall be declared duly elected to the office of sheriff, he shall be bound to file in the office of the State Treasurer his bond, duly executed and approved, within thirty days from the time he receives notice that the election is declared

Civ. C. '22, § 2027, Civ. C. '12, § 1141, Civ. C. '02, § 825, G. S. 647, R. S. 708, 1889, XI, 77, § 7

The bond is joint and several. Cohen v. Maryland Cas. Co., 4 F. (2d) 864 party Cohen v. Maryland Cas. Co., 4 F. (2d) 864 And in a suit against either principal or

§ 3479. Amount of Sheriff's Bond and Number of Sureties.—The sheriffs of the several counties, before receiving their commissions, shall enter into bonds to be executed by them, and any number of sureties, not exceeding twice as much as the sum of ten thousand dollars, except in the county of Calhoun, where the bond of the sheriff shall be in the sum of four thousand dollars, and except in the county of Charleston, where the bond of the sheriff shall be in

which funds are derived, and the accounts shall be open to public inspection at any time during office hours. Provided, That any of said funds which may now be invested or loaned out shall be paid over to the county treasurer as soon as same is collected in 1984, XXXVI, 2008

ARTICLE 7

Magistrates and Constables

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§ 3707. Appointment of Magistrates by Governor — Term of Office — Jurisdiction — Suspension. — The Governor shall have authority, by and with the advice and consent of the Senate, to appoint magistrates in each county of the State, who shall hold their office for the term of two years, and until their successors are appointed and qualified. The number of magistrates to be appointed for each county and their territorial jurisdiction shall be the same as heretofore prescribed by law for magistrates in the respective counties of the State, except as hereinafter otherwise provided. Such magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty, and the

Governor shall report any suspension, with the cause thereof, to the Senate at its next session, for its approval or disapproval

Civ. C. '22, § 2241, Civ. C. '19, § 1392, Civ. C. '02, § 955, 1897, XXII, 472. The Second Paragraph of Civ. C. '02, § 2742 has been held to be unconstitutional and is therefore omitted. McDowell v. Burnett, 92 S. C. 469, 75 S. E. 873

Jurisdiction. — Under the Constitution, S. C. 459, 75 S. E. 873, Ann. Cas. 14B, art. 5, § 23, a magistrate's jurisdiction is 125, 10 S. C. 400, 75 S. E. 733, 4 A. L. R. confined to the county for which he is appointed. Dill v. Durham, 26 S. C. 428 45 Applied in State v. Bowden, 92 S. C. 801, 75 S. E. 855, 46 L. R. A. (N. S.) 1264. See generally, McDowell v. Burnett, 92 L. R. A. 1916E, 845

§ 3708. Oath of Office — Before entering upon the discharge of the duties of his office, each magistrate must take, in writing, the oath of office prescribed in the Constitution, and also the oaths prescribed in section 3043 and 3044 before the clerk of the court of Common Pleas of the county, or, in case there be no such clerk, before any one authorized to administer an oath, and must file the same with the Secretary of State.

Civ. C. '22, § 2242, Civ. C. '19, § 1393, Civ. C. '02, § 954, 1897, XXII, 472

§ 3709. Jurisdiction — The civil jurisdiction of a magistrate shall be the same as that heretofore exercised by trial justices. They shall have exclusive jurisdiction in all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, except in cases of riot, assault and battery, and larceny, and the carrying of concealed weapons coupled with an offense in which such weapon is used. In criminal matters beyond their jurisdiction to try, they shall sit as examining courts, and commit, discharge and (except in capital cases) recognize persons charged with such offenses. Magistrates shall have concurrent jurisdiction only with the court of General Sessions in cases of riot, assault and battery and larceny. In counties where they are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district where the offense was committed, unless the place of trial be changed to another district in the same county in the manner prescribed by law

Civ. C. '22, § 2243, Civ. C. '19, § 1393, Civ. C. '02, § 925, 1897, XXII, 472. See generally, State v. Williams, 40 S. R. A. 256, 43 L. R. A. 47, 53, 77, 48 L. C. 273, 19 S. E. 5, 37 L. R. A. 226, 25 L. R. A. 133

§ 3710. Parties Entitled to Trial by Jury — Either party to suit before a magistrate shall be entitled to a trial by jury

Civ. C. '22, § 2244; Civ. C. '19, § 1394, Civ. C. '02, § 926; G. S. 541, R. S. 254, 265, XIV, 100, § 5

Right to Jury Trial — Jury may be empanelled on demand of the prosecution against the protest of defendant. State v. Nash, 61 S. C. 319, 26 S. E. 948, 17 L. R. A. (N. S.) 612, L. R. A. 1915B, 660, 22 A. L. R. 223. See generally, State v. Williams, 40 S. R. A. 256, 43 L. R. A. 47, 53, 77, 48 L. R. A. 152. A defendant in a magistrate's court in Charleston county is entitled to trial by jury on demand, and his refusal to pay costs of summoning and per diem of jurors in advance is not a waiver of this right. Pridmore v. Green, 57 S. C. 309, 211, 45 S. E. 203. See generally, State v. Williams, 40 S. R. A. 256, 43 L. R. A. 47, 53, 77, 48 L. R. A. 152. Applied in Xepapas v. Richardson, 146 S. C. 53, 146 S. E. 695.

§ 3711. Parties May Agree upon a Jury in Civil Cases — How Juries Are Drawn. — In civil cases the parties may agree on a jury, but when they do not agree, and also in criminal causes, a jury shall be selected in the following manner: The sheriff, constable or other officers appointed by the magistrate,

CODE OF LAWS
OF
SOUTH CAROLINA
1922

IN THREE VOLUMES

S. M. WOLFE
Attorney General
J. C. McLURE
Code Commissioner
W. W. LEWIS
*C. D. BARKSDALE
†SILAS M. WETMORE
Collaborators

VOLUME III

THE CIVIL CODE

THE R. L. BRYAN CO AND THE STATE CO
COLUMBIA, S. C.
1922

Revised
Successor to C. D. Barksdale

That the Master of Abbeville County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may hereafter come into his hands and which may hereafter come into his hands officially, the owner or claimant of which by them can not be ascertained or which shall have remained in his hands for a period of seven or more years, which shall be by the said Treasurer accredited to the general fund and to be apportioned as other school funds are apportioned; provided, That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county
 1918, XXX, 1028

ARTICLE VIII

Magistrates—Their Courts, Powers and Duties

(2241) § 1. Appointment of Magistrates by Governor—Term of Office—Jurisdiction—Removal—Vacancies.—The Governor shall have authority, by and with the advice and consent of the Senate, to appoint Magistrates in each county of the State, who shall hold their office for the term of two years, and until their successors are appointed and qualified the number of Magistrates to be appointed for each county and their territorial jurisdiction shall be the same as heretofore prescribed by law. Magistrates in the respective counties of the State, except as hereinafter otherwise provided. Such Magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty; and the Governor shall report any suspension, with the cause thereof, to the Senate at its next session, for its approval or disapproval.
 Civ. '02, § 928; 1897, XXII, 472.

The Governor shall have authority, by and with the advice and consent of the Senate, to fill any vacancy caused by death, removal or otherwise of any Magistrate for the unexpired term.
 Civ. '18, § 1291; Civ. '02, § 928; 1897, XXII, 472.

(2242) § 2 Oath of Office.—Before entering upon the discharge of the duties of his office, each Magistrate must take, in writing, the oath of office prescribed in the Constitution, and also the oaths prescribed in Sections (734) and (735) before the Clerk of the Court of Common Pleas of the county, or, in case there be no such Clerk, before any one authorized to administer an oath, and must file the same with the Secretary of State.
 Civ. '12, § 1892; Civ. '02, § 924; 1897, XXII, 472.

(2243) § 3 Jurisdiction.—The civil jurisdiction of a Magistrate shall be the same as that heretofore exercised by Trial Justices. They shall have exclusive jurisdiction in all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days.

in cases of riot, assault and battery, and larceny, and the carrying concealed weapons coupled with an offense in which such weapon is used. Criminal matters beyond their jurisdiction to try, they shall sit as examiners in the Courts, and commit, discharge and (except in capital cases) recognize persons charged with such offenses. Magistrates shall have concurrent jurisdiction only with the Court of General Sessions in cases of riot, assault and battery and larceny. In counties where they are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district where the offense was committed, unless the place of trial be changed to another district in the same county in the manner prescribed by law.
 Civ. '12, § 1892; Civ. '02, § 924; 1897, XXII, 472.

(2244) § 4 Parties Entitled to Trial by Jury.—Either party to suit before a Magistrate shall be entitled to a trial by jury.
 Civ. '12, § 1894; Civ. '02, § 928; G. S. 841, R. S. 854, 1868, XIV, 100, § 4.
 They may be exempted on demand of prosecutor against the protest of defendant. State v. ... Civ. '12, § 1894; Civ. '02, § 928; G. S. 841, R. S. 854, 1868, XIV, 100, § 4.
 Defendant in Magistrate Court in Charleston County is entitled to trial by jury on demand, and ... to pay costs of summoning and per diem of jurors in advance in each wire of right. ... v. Green, 87 S. C. 206 211, 45 S. E. 203.

(2245) § 5 Parties May Agree Upon a Jury in Civil Cases—How Jurors to be Drawn.—In civil cases the parties may agree on a jury; but when they do not agree, and also in criminal cases, a jury shall be selected in the following manner. The Sheriff, Constable or other officers appointed by the Magistrate, shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity, he shall deliver the ballots to the Magistrate, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party, and the officer shall thus proceed until he shall have drawn six who shall not have been challenged, neither party being allowed more than six challenges, but if the first twelve drawn shall be challenged, and the parties do not agree to a choice, the last six shall be the jury; and when any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided. Provided, In the trial of all civil cases in the Magistrate's Court, it shall be the duty of the Sheriff, Constable or other officer appointed by the Magistrate to furnish the parties or their attorneys with a list of eighteen of the jurors to be drawn and selected by ballot from the whole number of jurors who are drawn, the names on said lists to be numbered from one to eighteen, from which said lists the parties or their attorneys shall alternately strike, until there shall be but six left, which shall constitute the jury to try the case.
 Civ. '12, § 1895; Civ. '02, § 927; G. S. 842, R. S. 865, 1868, XIV, 100, § 6. 1914, XXVIII, 484.

Juror verbally summoned by constable to appear and sit in a case to be tried may be approached by another with view to corrupt him or bias his judgment. State v. Maddox, 80 S. C. 454, 454, 51 S. E. 244.
 City of Columbia v. Smith, 105 S. C. 246 25 S. E. 1028

(2246) § 6 Penalty for Failure to Perform Jury Duty—Service Limited.—If any juror duly summoned shall neglect or refuse to appear

that the Master of Abbeville County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may heretofore come into his hands and which may hereafter come into his hands officially, the owner or claimant of which by them can not be ascertained or which shall have remained in his hands for a period of seven or more years, which shall be by the said Treasurer accredited to the general fund and to be apportioned as other school funds to the general fund. That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county
1918, XXX, 1088

ARTICLE VIII

Magistrates—Their Courts, Powers and Duties

(2241) § 1. Appointment of Magistrates by Governor—Term of Office—Jurisdiction—Removal—Vacancies—The Governor shall have authority, by and with the advice and consent of the Senate, to appoint Magistrates in each county of the State, who shall hold their office for the term of two years, and until their successors are appointed and qualified. The number of Magistrates to be appointed for each county and their territorial jurisdiction shall be the same as heretofore prescribed by law. Magistrates in the respective counties of the State, except as hereinafter otherwise provided. Such Magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty; and the Governor shall report any suspension, with the cause thereof, to the Senate at its next session.
Civ '02, §§ 1897, XXII, 472

The Governor shall have authority, by and with the advice and consent of the Senate, to fill any vacancy caused by death, removal or otherwise of any Magistrate for the unexpired term
Civ '12, § 1891; Civ '02, § 868, 1897, XXII, 472.

Under the Constitution, Article V, Section 22, a Magistrate's jurisdiction is confined to the County for which he is appointed. *Dill v. Durham*, 54 S. C. 418, 33 S. E. 4

(2242) § 2 Oath of Office.—Before entering upon the discharge of the duties of his office, each Magistrate must take, in writing, the oath of office prescribed in the Constitution, and also the oaths prescribed in Sections (734) and (735) before the Clerk of the Court of Common Pleas of the county, or, in case there be no such Clerk, before any one authorized to administer an oath, and must file the same with the Secretary of State.
Civ '12, § 1892, Civ '02, § 864, 1897, XXII, 472

(2243) § 3 Jurisdiction.—The civil jurisdiction of a Magistrate shall be the same as that heretofore exercised by Trial Justices. They shall have exclusive jurisdiction in all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days.

in cases of riot, assault and battery, and larceny, and the carrying concealed weapons coupled with an offense in which such weapon is used. Criminal matters beyond their jurisdiction to try, they shall sit as examining Courts, and commit, discharge and (except in capital cases) recognize persons charged with such offenses. Magistrates shall have concurrent jurisdiction only with the Court of General Sessions in cases of riot, assault and battery and larceny. In counties where they are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district where the offense was committed, unless the place of trial be changed to another district in the same county in the manner prescribed by law.
Civ '12, § 1898; Civ '02, § 869; 1897, XXII, 472.

(2244) § 4. Parties Entitled to Trial by Jury.—Either party to suit before a Magistrate shall be entitled to a trial by jury
Civ '12, § 1894; Civ '02, § 868, G S 841; R. S. 824, 1888, XIV, 100, § 4.
They may be summoned on demand of prosecutor against the protest of defendant. *State v. ...*, 51 S. O. 519, 28 S. E. 346
Defendant in Magistrate Court in Charleston County is entitled to trial by jury on demand, and defendant to pay costs of summoning and per diem of jurors in advance. *See* *Water of Right*, *Waters v. Green*, 67 S. C. 856, 41 S. E. 205

(2245) § 5 Parties May Agree Upon a Jury in Civil Cases—How Juries to be Drawn.—In civil cases the parties may agree on a jury, but when they do not agree, and also in criminal cases, a jury shall be selected in the following manner. The Sheriff, Constable or other officers appointed by the Magistrate, shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity, he shall deliver the ballots to the Magistrate, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party, and the officer shall thus proceed until he shall have drawn six who shall not have been challenged, neither party being allowed more than six challenges, but if the first twelve drawn shall be challenged, and the parties do not agree to a choice, the last six shall be the jury; and when any of the six jurors so drawn cannot be sworn or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided. Provided, In the trial of all civil cases in the Magistrate's Court, it shall be the duty of the Sheriff, Constable or other officer appointed by the Magistrate to furnish the parties or their attorneys with a list of eighteen of the jurors to be drawn and selected by ballot from the whole number of jurors who are drawn, the names on said lists to be numbered from one to eighteen, from which said list the parties or their attorneys shall alternately strike, until there shall be but six left, which shall constitute the jury to try the case.
Civ '12, § 1895, Civ '02, § 867; G S 842, R. S. 825, 1888, XIV, 100, § 1. 1914, XXVIII, 484.
Juror verbally summoned by constable to appear and sit in a case to be tried may be approached by another with view to corrupt him or bias his judgment. *State v. Maddox*, 80 S. C. 457, 454, 61 S. E. 864
City of Columbia v. Smith, 105 S. C. 844, 89 S. E. 1028

(2246) § 6 Penalty for Failure to Perform Jury Duty—Service Limited.—If any juror duly summoned shall neglect or refuse to appear

CODE OF LAWS
OF
South Carolina,
1902.

IN TWO VOLUMES.

VOLUME I.

The Civil Code.

THE STATE COMPANY, STATE PRINTERS,
COLUMBIA, S. C.
1902.

A. D. 1894.

Investigations
on complaints.
Sec.

76

Rules and
regulations.

Sec. 768. When two or more reputable citizens of any County in this State notify the Chairman of the State Board of Entomology that noxious insects or plant diseases exist in their County, it shall be his duty to have the Entomologist promptly investigate the matter and take such steps as authorized and prescribed in this Article and by the State Board of Entomology

The said Board is hereby authorized and empowered to make such rules and establish such regulations to carry out the provisions of this Article as in their judgment will best promote the accomplishment of the purposes intended to be effected by this Article.

CHAPTER XX.

County Officers.

- ARTICLE 1 The County Supervisor and Board of Commissioners.
- ARTICLE 2 The Sheriff
- ARTICLE 3 The Coroner
- ARTICLE 4 The Clerk of Circuit Court
- ARTICLE 5 The Register of Meane Conveyances
- ARTICLE 6 The Judge of Probate
- ARTICLE 7 The Master
- ARTICLE 8 Magistrates.
- ARTICLE 9 Constables

ARTICLE I

THE COUNTY SUPERVISOR AND COUNTY BOARD OF COMMISSIONERS.

- Sec 758 Election of County Supervisor; term of office.
- 759 Bonds of County Supervisors.
- 760 General Jurisdiction of County Supervisors.
- 761 County Board of Commissioners, how composed, generally
- 762 County Board of Commissioners, how composed in certain Counties.

- Sec 758 The County Supervisor the chairman of such Board.
- 760 Salaries of County Supervisors.
- 760 Compensation of County Commissioners.
- 761 Special provision as to such Board in certain Counties
- 762 Bonds of County Commissioners

A. D. 1894.

- Sec. 763. Clerks of Boards of County Commissioners, salaries.
- 764. Township Commissioners in certain Counties.
- 765. Compensation of County Board of Commissioners in such Counties.
- 766. Compensation of such Township Commissioners.
- 767. Accounts to be presented for approval and payment.
- 768. Annual report to Circuit Court.
- 769. Publication of quarterly reports in certain counties.
- 770. Duplicate copies of approved claims to be furnished Representatives when required.
- 771. Right to administer oaths, &c.
- 772. Convicts may be sentenced to chain gang.
- 773. County Supervisor to have charge of chain gang.
- 774. Care of convicts.
- 775. Municipal convicts.
- 776. Hire of convicts to other Counties.
- 777. Exchange of convict labor with other Counties.
- 778. Maintenance of convicts on chain gangs.
- 779. Hire of convicts to be paid into County Treasury.
- 780. Chain gangs may be used to promote public health.
- 781. Fees for detaining prisoners.
- 782. Clothing convicts on chain gangs.
- 783. Disposition of unmanageable or disabled convicts.
- 784. Health of convicts.
- 785. Paupers and Poor House.
- 786. Regulation for Poor House.
- 787. Control of property for the poor.
- 788. Appropriation of poor, or illegitimate children.
- 789. Monies paid by Estates of bankrupts.
- 790. Contracts as to Poor House.
- 791. Claims in reference to same.
- 792. Report as to Poor House.
- 793. Seal of County.

- Sec. 794. Fees to be paid by County.
- 795. Court Dues to be paid by County.
- 796. Constables' salaries deduct from fees.
- 797. Sheriff, &c., to execute orders of Board.
- 798. Reports by County officers.
- 799. Estimate of expenses to be furnished Comptroller General.
- 800. Penalty for defaults by County Supervisor.
- 801. Salaries of Supervisors to be paid quarterly.
- 802. Records and minutes of Board open to inspection.
- 803. County funds raised by taxation not subject to levy.
- 804. Fiscal year, time and notice of annual meeting.
- 805. Fees of Magistrates and other officers; when allowed, &c.
- 806. Claims against County; how made out and verified.
- 807. Claims to be entered on File Book.
- 808. Claims when barred.
- 809. When and how orders on County Treasurer are to be drawn.
- 810. Certified copies of accounts to be given parties demanding them.
- 811. Comptroller General to prescribe forms and systems of bookkeeping.
- 812. County officers to be furnished certain necessities.
- 813. Rooms for Courts to be rented.
- 814. Extra allowance to salaried officers forbidden.
- 815. May change name of Townships, cities.
- 816. May borrow money in certain Counties.
- 817. Obligations to be given for loan.
- 818. Use of money so borrowed.
- 819. Loan to be paid by lender to County Treasurer.

Section 763 There shall be an election held at each general election for State officers in the several Counties of the State for one County Supervisor, whose term of office shall be two years, and until his successor shall have been elected and qualified. Sec. 764. The County Supervisor so elected shall, before en-

Election of County Supervisor. Term of office. Sec. 763. E. S. 69: 1894, 1895, 1896, 1897.

A. D. 1868

as heretofore prescribed by law for Magistrates in the respective Counties of the State, except as hereinafter otherwise provided. Such Magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty, and the Governor shall report any suspension, with the cause thereof, to the Senate at its next session, for its approval or disapproval.

Sec. 983. The Governor shall have authority, by and with the advice and consent of the Senate, to fill any vacancy caused by death, removal or otherwise of any Magistrate for the unexpired term.

Sec. 984. Before entering upon the discharge of the duties of his office, each Magistrate must take, in writing, the oath of office prescribed in the Constitution, and also the oaths prescribed in Sections 582 and 583 before the Clerk of the Court of Common Pleas of the County, or, in case there be no such Clerk, before any one authorized to administer an oath, and must file the same with the Secretary of State.

Sec. 985. The civil jurisdiction of a Magistrate shall be the same as that heretofore exercised by Trial Justices. They shall have exclusive jurisdiction in all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, except in cases of riot, assault and battery, and larceny, and the carrying of concealed weapons coupled with an offense in which such weapon is used. In criminal matters beyond their jurisdiction to try, they shall sit as examining Courts, and commit, discharge and (except in capital cases) recognize persons charged with such offenses. Magistrates shall have concurrent jurisdiction only with the Court of General Sessions in cases of riot, assault and battery and larceny. In Counties where they are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district where the offense was committed, unless the place of trial be changed to another district in the same County in the manner prescribed by law.

Sec. 986. Either party to suit before a Magistrate shall be entitled to a trial by jury.

Sec. 987. In civil cases the parties may agree on a jury; but when they do not agree, and also in criminal causes, a jury shall be selected in the following manner: The Sheriff, Constable, or other officer appointed by the Magistrate, shall write

Governor may suspend Magistrate for misconduct

Vacancy. Law filled.

Oaths of office.

Jurisdiction of

Parties entitled to a trial by jury

Parties may agree upon a jury in civil cases; how jury to be drawn.

Q. S. 841; R. S. 841; 1868, XL, 20.

A. D. 1868

and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity; he shall deliver the ballots to the Magistrate, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party, and the officer shall thus proceed until he shall have drawn six who shall not have been challenged, neither party being allowed more than six challenges; but if the first twelve drawn shall be challenged, and the parties do not agree to a choice, the last six shall be the jury, and when any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided.

Sec. 988. If any juror so summoned shall neglect or refuse to appear in obedience to such venire, and shall not, within forty-eight hours, render to the Magistrate who issued the venire a sufficient reason for his delinquency, he shall forfeit and pay a fine of two dollars to the treasury of the County where the cause is tried, to be assessed by such Magistrate and collected on his warrant, without other process.

Sec. 989. Every Magistrate shall have power to enforce the observance of decorum in his Court while holding the same, and for that purpose he is authorized to punish any person who shall, in the presence of the Court, offer an insult to himself or a juror, or who shall be willfully guilty of an undue disturbance of his proceedings while sitting officially, as for a contempt, by fine and imprisonment, either or both, not exceeding twenty dollars' fine and twelve hours' imprisonment.

Sec. 990. Every Magistrate shall have power to administer any oath authorized or required by law to be taken and not directed to be administered by another authority, and any oath so administered shall, to all intents and purposes, be binding and effectual in law. He may also take renunciation of dower

Sec. 991. Any Magistrate, on the application of any party to a cause depending before him, shall have power, and is required, to issue a summons citing any person whose testimony may be required in such cause to appear before him at a certain time and place, not more than twenty miles from the residence of such witness, to give evidence, which sum-

Penalty on delinquent juror.

G. S. 843; R. S. 843; 1868, XL, 27.

May punish for contempt.

G. S. 844; R. S. 844; 1868, XL, 27.

May administer oaths and take renunciation of dower.

G. S. 845; R. S. 845; 1868, XL, 20.

May take testimony on application of party.

G. S. 846; R. S. 846; 1868, XL, 20.

ACTS
AND
JOINT
RESOLUTIONS
OF
SOUTH CAROLINA

1868

LEGISLATIVE
LIBRARY

R OF DISPOSING OF LANDS PUR-
CHASE FOR TAXES

ute and House of Representatives
and sitting in General Assembly,
the case of all lands purchased
ons of Section 108 of an Act en-
ment and taxation of property,"
of the State, enter upon and take
the same in parcels not exceeding
s who are citizens of the State, and
said leases to be in such form as
eral, and subject to all the rights
y law. Said lands may be leased
cent. of the cost thereof, or for
nable and just
rented lands under the provisions
nd fulfilled the conditions of the
me during which said lands were
eemed to have acquired a right of

he redemption of any lands pur-
half of the State on account of
urer shall cause the same, or any
old, in parcels not exceeding forty
; sixty days' notice thereof, and
shall be sold to the highest bid-
o the revenue of the State. *Pro-
ve* gained a right of pre-emption
ne at a sum not less than the cost
purchase money to be paid down,
annual instalments.

all have been fully paid, together
or is authorized and required to
o any such person as may be the
transferee of such lands or tene-
ntificates of sale, or under and by
such certificate. *Provided*, That
a certificate of sale, the person ap-
ctory proof to the County Treas-
ignments.

on or before the first day of No-
e Treasurer all lands leased under
s and the terms of each lease, and
lands. Also, a report of all lands
d, and the terms of each sale. All
provisions of this Act shall be paid
inner as money received for taxes.
urd day of September, in the year
ht hundred and sixty-eight.
Senate.

Speaker House of Representatives.
ernor

AN ACT TO MAKE ADDITIONAL APPROPRIATIONS FOR THE PAYMENT
OF THE PER DIEM AND MILEAGE OF THE MEMBERS, THE SALARIES
OF SUBORDINATE OFFICERS, AND OTHER EXPENSES OF THE GEN-
ERAL ASSEMBLY, AND FOR THE PAYMENT OF THE SALARIES OF
THE STATE OFFICERS.

A D 1868
No. 40

SECTION 1. *Be it enacted* by the Senate and House of Representatives
of the State of South Carolina, now met and sitting in General Assembly,
and by the authority of the same, That the additional sum of sixty
thousand dollars, if so much be necessary to meet the expenses of the
present session of the General Assembly, be paid out of any money in the
Treasury not otherwise appropriated. *Provided*, That the pay certificates
of members and officers and the pay certificates and orders for all other
expenses shall be signed by the Clerks and countersigned by the pre-
siding officers of the respective Houses to which such officers, or mem-
bers, or expense, belongs, but that the pay certificates or orders of
officers, and expenses common to the two Houses, shall be signed by the
Speaker of the House of Representatives and countersigned by the Pres-
ident of the Senate, and collected at the Treasury for each House by
such person as the Speaker of the House may direct for the House of
Representatives, and President of the Senate may direct for the Senate,
and for officers common to both Houses, by joint order of the presiding
officers of the two Houses

Additional
appropriation
Certificate to
be signed

SEC 2. That the additional sum of twelve thousand dollars (\$12,000),
if so much be necessary to pay the salaries of the following officers, to-
wit: Governor, Adjutant and Inspector-General, the State constabulary
force, Private Secretary of the Governor, Messenger of the Governor, Sec-
retary of State, State House Keeper and Legislative Librarian, Chief
Justice of Supreme Court, two Associate Justices of Supreme Court,
three Chancellors, eight Judges of Circuit Courts, Attorney-General,
Solicitors, Clerk of Court of Appeals, Messenger of Court of Appeals,
State Reporter, Treasurer of the State, Comptroller-General, Physician
to Charleston Jail, Assessor of St Phillip's and St. Michael's Parish, Su-
perintendent of Education and School Commissioners, be paid out of any
money in the Treasury not otherwise appropriated, the same to be drawn
and paid in the manner heretofore authorized by law

Salaries of
Governor
&c

In the Senate House, the twenty-fourth day of September, in the year
of our Lord one thousand eight hundred and sixty-eight.

L. BOOZER, President of the Senate
FRANKLIN J MOSES, JR., Speaker House of Representatives.
Approved: ROBERT K. SCOTT, Governor

AN ACT TO PROVIDE FOR THE TEMPORARY APPOINTMENT OF MAG- No. 50
ISTRATES, AND TO DEFINE THEIR POWERS AND DUTIES

SECTION 1. *Be it enacted* by the Senate and House of Representatives
of the State of South Carolina, now met and sitting in General Assembly,
and by the authority of the same. Until the organization of the Court-
gistrates

Governor to
appoint
gistrates

A. D. 1868

Practice in
Magistrates
CourtsOath of of-
fice

Jurisdiction

Removal of
MagistratesParties enti-
tled to a jury
trial by jury.Selection of
juriesPenalty on
defendant
jury

contemplated by Section 21, 22 and 23, of Article fourth, of the Constitution, the Governor is hereby authorized, empowered and required to appoint a suitable number of fit and discreet persons in each County to act as Magistrates for such Counties, which persons he shall commission, and the practice in such Magistrate Courts shall conform to the law as heretofore existing, so far as the same is not inconsistent with this Act, or with the provisions of the Constitution of this State, as ratified in April, 1868

SEC 2 On receiving such commission, and before entering upon the duties of their office, such Magistrates shall take and subscribe before the Clerk of the Court of their respective Counties, the oath required by Section 30, Article II, of the Constitution, and file the same in his office, unless in Counties where such Clerks may not be qualified according to law, and in such cases the said oath shall be administered by any officer authorized to administer oaths in the County where such Magistrate may be appointed, and such oath, so administered, shall be filed in the office of the Secretary of State. And such Magistrates may immediately enter upon the discharge of their duties

SEC 3 Such Magistrates shall have original jurisdiction in cases of bastardy, and in all matters of contract and actions for the recovery of fines and forfeitures, where the amount claimed does not exceed ninety-nine dollars, and in cases of actions *ex delicto*, where the damages claimed do not exceed ninety-nine dollars, and prosecutions for assault and battery, and other penal offences less than felony, punishable by fine not exceeding ninety-nine dollars. They may also sit as examining courts, and commit, discharge or recognize (except in capital cases) persons charged with offences. They shall also have power to bind over to keep the peace, or for good behavior. For the foregoing purposes they shall have power to issue all necessary processes

SEC 4 The Governor of the State is hereby authorized and empowered, upon such evidence as may to him be satisfactory, to summarily remove any Magistrate of this State

SEC 5 Either party to a suit before a Magistrate shall be entitled to a trial by jury.

SEC 6. In civil cases the parties may agree on a jury; but when they do not agree, and also in criminal causes, a jury shall be selected in the following manner. The Sheriff, Constable, or officer appointed by the Magistrate, shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity, he shall deliver the ballots to the Magistrate, who shall put them into a box and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party, and the officer shall thus proceed until he shall have drawn six who shall not be challenged, but if the first twelve shall be challenged, and the parties do not agree to a choice, the last six shall be the jury, and when any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided

SEC 7 If any juror so summoned shall neglect or refuse to appear in obedience to such venire, and shall not, within forty eight hours render

Article fourth, of the Consti-
mpowered and required to ap-
persons in each County to act
sons he shall commission, and
ll conform to the law as here-
nconsistent with this Act, or
his State, as ratified in April,

nd before entering upon the
ll take and subscribe, before
Counties, the oath required by
and file the same in his office,
not be qualified according to
be administered by any officer
y where such Magistrate may
ed, shall be filed in the office
strates may immediately enter

iginal jurisdiction in cases of
nd actions for the recovery of
imed does not exceed ninety-
o, where the damages claimed
secutions for assault and bat-
elony, punishable by fine not
also sit as examining courts,
pt in capital cases) persons
e power to bind over to keep
oregoing purposes they shall

y authorized and empowered,
actory, to summarily remove

gistrate shall be entitled to a

ee on a jury, but when they
jury shall be selected in the
or officer appointed by the
ballots, each containing the
he shall deliver the ballots
a box and shake them to-
nd the person so drawn shall
ther party; and the officer
six who shall not be chal-
allenged, and the parties do
e jury, and when any of the
isqualified by law to act in
vacancy by agreement, the
er before directed, ballots for
h shall be disposed of and

glect or refuse to appear in
m forty-eight hours, render

to the Magistrate who issued the venire a sufficient reason for his delin-
quency, he shall forfeit and pay a fine of two dollars to the Treasury of
the County where the cause is tried, to be assessed by such Magistrate,
and collected on his warrant without other process

A D 1868
To be paid
into Treasury

SEC. 8. An appeal from the judgment of a Magistrate to the next
stated term of the Circuit Court in the County where the judgment is
rendered may be taken by either party, if claimed within two hours after
the rendition thereof

Appeals

SEC. 9. In criminal cases, the party appealing shall, at the time of the
appeal, give security, by way of recognizance, to the Treasurer of the
County where the offence is charged to have been committed, if the pros-
ecution be on complaint of an informing officer; if otherwise, to the pros-
ecutor, conditioned that the appellant shall personally appear before said
Circuit Court, and there prosecute his appeal to effect, and abide the order
of the Court thereon

In cr minal
cases

SEC. 10. In civil causes the party appealing shall, at the time of the
appeal, give security, by way of recognizance, to the adverse party that
the appellant shall prosecute his appeal to effect, and answer and pay all
intervening damages, occasioned by delay, to the appellee, with addi-
tional cost, if judgment be affirmed.

Security

SEC. 11. The appellant shall produce and enter in the Court to which
the appeal is taken attested copies of the original writ, process, record of
judgment, and all evidence filed in the Court from which the appeal was
allowed. In the Circuit Court the cause shall be heard *de novo*, or as if
no trial had been had.

Papers to be
produced

SEC. 12. The fee of each juror for trying an action shall be twenty-five
cents, to be advanced by the party praying for a jury before a venire shall
issue

Fees of ju-
rors

SEC. 13. This Act shall take effect immediately, and all Acts or parts
of Acts inconsistent herewith are repealed.

In the Senate House, the twenty-fourth day of September, in the year
of our Lord one thousand eight hundred and sixty-eight

L. BOOZER, President of the Senate
FRANKLIN J. MOSES, JR., Speaker House of Representatives
Approved. ROBERT K. SCOTT, Governor.

AN ACT TO SUPPLY TEMPORARY VACANCIES IN THE OFFICE OF THE No. 51.
GOVERNOR.

SECTION 1. *Be it enacted* by the Senate and House of Representatives
of the State of South Carolina, now met and sitting in General Assembly,
and by the authority of the same, In case of the removal, death, resigna-
tion or inability, or both, the Governor or Lieutenant-Governor, the
President of the Senate *pro tempore* shall exercise the office of Governor
until such disability shall have been removed, or until the next general
election, when a Governor shall be elected by the electors duly qualified,
as is prescribed by Section 2 of Article third of the Constitution

President of
Senate
pro

South Carolina General Assembly
117th Session, 2007-2008

A267, R314, S1221

STATUS INFORMATION

General Bill

Sponsors: Senators Hutto and Massey

Document Path. I \s-jud\billshutto\jud0062 pb doc

Introduced in the Senate on March 20, 2008

Introduced in the House on April 1, 2008

Last Amended on May 27, 2008

Passed by the General Assembly on May 28, 2008

Governor's Action June 4, 2008, Signed

Summary Magistrate court

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/20/2008	Senate	Introduced and read first time <u>SJ-5</u>
3/20/2008	Senate	Referred to Committee on Judiciary <u>SJ-5</u>
3/26/2008	Senate	Committee report Favorable with amendment Judiciary <u>SJ-16</u>
3/27/2008	Senate	Committee Amendment Adopted <u>SJ-38</u>
3/27/2008	Senate	Read second time <u>SJ-38</u>
3/28/2008		Scrivener's error corrected
4/1/2008	Senate	Read third time and sent to House <u>SJ-8</u>
4/1/2008	House	Introduced and read first time <u>HJ-15</u>
4/1/2008	House	Referred to Committee on Judiciary <u>HJ-15</u>
5/14/2008	House	Committee report Favorable Judiciary <u>HJ-3</u>
5/20/2008	House	Debate adjourned until Wednesday, May 21, 2008 <u>HJ-37</u>
5/21/2008	House	Debate adjourned <u>HJ-26</u>
5/22/2008	House	Amended <u>HJ-16</u>
5/22/2008	House	Debate adjourned <u>HJ-24</u>
5/22/2008	House	Debate adjourned until Tuesday, May 27, 2008 <u>HJ-46</u>
5/27/2008	House	Amended <u>HJ-13</u>
5/27/2008	House	Read second time <u>HJ-14</u>
5/28/2008	House	Read third time and returned to Senate with amendments <u>HJ-20</u>
5/28/2008	Senate	Concurred in House amendment and enrolled <u>SJ-121</u>
5/29/2008		Ratified R 314
6/4/2008		Signed By Governor
6/11/2008		Copies available
6/11/2008		Effective date 06/04/08
6/13/2008		Act No 267

VERSIONS OF THIS BILL

3/20/2008

3/26/2008

3/27/2008

3/28/2008
3/28/2008-A
5/14/2008
5/22/2008
5/27/2008

(A267, R314, S1221)

AN ACT TO AMEND ARTICLE 3, CHAPTER 3, TITLE 22, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CIVIL PROCEDURE IN MAGISTRATES COURT, SO AS TO REVISE THE ARTICLE SUBSTANTIALLY IN ORDER TO DELETE PROVISIONS THAT HAVE BEEN PROVIDED BY THE SOUTH CAROLINA RULES OF MAGISTRATES COURT AND TO RENAME THE ARTICLE TO CONFORM WITH THE REVISIONS, AMONG OTHER THINGS; TO AMEND SECTION 5-7-12, RELATING TO THE DESIGNATION OF SCHOOL RESOURCE OFFICERS, SO AS TO PROVIDE A STUDENT ARRESTED FOR A MISDEMEANOR BY A SCHOOL RESOURCE OFFICER MUST RECEIVE A BOND HEARING WITHIN TWENTY-FOUR HOURS OF HIS ARREST AND MAY RECEIVE A COURTESY SUMMONS.

Be it enacted by the General Assembly of the State of South Carolina

Civil procedure in magistrates courts, revision

SECTION 1 Article 3, Chapter 3, Title 22 of the 1976 Code is amended to read

“Article 3

Civil Procedure Filing
and Execution of Judgments

Section 22-3-300 A magistrate, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof which may be filed and docketed in the office of the circuit court of the county in which the judgment was rendered. The time of the receipt of the transcript by the clerk shall be noted thereon and entered in the abstract of judgments and from that time the judgment shall be a judgment of the circuit court, but no sale shall be made under any execution issued upon such judgment in the circuit court until the time for appeal from the judgment in the magistrates court has expired, nor pending such appeal. If the judgment is set aside in the magistrates court, it shall have the effect of setting aside the judgment filed and docketed in the circuit court. The filing and docketing of such transcript in the circuit court shall not affect the right of the magistrate to grant a new trial. A certified transcript of such judgment may be

filed and docketed in the clerk's office of any other county and with like effect in every respect as in the county in which the judgment was rendered

Section 22-3-310 Execution may be issued on a judgment heretofore or hereafter rendered in a magistrates court at any time within three years after the rendition thereof and shall be returnable sixty days from its date. But no sale shall be made under any such execution until after the time for appeal has expired, nor pending such appeal, and in cases for the claim and delivery of personal property when bond for the property claimed has been properly given by either party, the status of such property shall not be changed until after the expiration of the time for appealing has expired or until such appeal has terminated

Section 22-3-320 If the judgment be docketed with the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county and have the same effect and be executed in the same manner as other executions and judgments of the circuit court

Section 22-3-330 Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons ”

School resource officers, procedures for certain student arrests

SECTION 2 Section 5-7-12(A) of the 1976 Code is amended to read

“(A) The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county. The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours

of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction."

Time effective

SECTION 3 This act takes effect upon approval by the Governor

Ratified the 29th day of May, 2008

Approved the 4th day of June, 2008

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME *Nicholas* MIDDLE NAME *M* LAST NAME *Blair*

STREET AND NO *127 Thistle Rd* CITY *Goose Creek* STATE *SC* ZIP CODE *29545*

STATE LICENSED *SC* DRIVER'S LICENSE NO *102916566* CDL YES NO DRI LIC CLASS *D*

VEH LIC NO *HAM 544* STATE *SC* MAKE OF VEH *NISS* YEAR *03* COMM VEH NO 16 PSGR VEH COMB
HAZ MT MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT *CTC* STREET AND NO *223 N. Live Oak Dr*

DATE OF TRIAL *110613* TIME OF TRIAL *1400* CITY *Moncks Corner* STATE *SC* ZIP CODE *29546*

VIOLATION COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO *56-5-2930*

OWNER OF VEHICLE *W. Blair* DATE OF ARREST *10/07/13*

ADDRESS OF OWNER *Goose Creek SC* DATE OF VIOLATION *10/10/13*

BAIL DEPOSITED *941* NAME OF APPOINTING OFFICER *GM Wooten* RANK *CPL*

DESCRIPTION OF ACCUSED *WM 0509189158 BIN 190891* COUNTY *Berk* NUMBER *08*

DATE BAIL REC'D BY *11/06/13* BADGE *A174* TROOP *06*

CASE BEFORE MAGISTRATE MUN COURT CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL COURT *Goose Creek* TIME OF VIOLATION *0246* WEATHER *W*

DEFENDANT DID NOT APPEAR APPEARED I U P S O HWY NO *1 2 3 0 5 37*

NOLLE PROSSED DISPOSITION GUILTY NOT GUILTY PLED NOLO CONTENDERE MILES *1* N E S W *1 2 3 4*

TRIAL BY TRIAL JUDGE JURY *Goose Creek* CITY *Goose Creek* CODE *1*

VERDICT OF TRIAL IF ANY GUILTY NOT GUILTY DATE OF TRIAL IF ANY *11/06/13* Lat *32591610*

JAIL SUSPEND FINE AMT COLLECTED AMT SUSPENDED Long *80020190*

COMMITTED TO Vehicle Searched *Yes* Arrest as Result of Collision *No* OFFENSE CODE *99* PA LEVEL *Refused*

CERTIFIED CORRECT DATE *11/06/13* G *449285*

TRIAL COURT COPY


997 PL
707131

29545

29546

DOCKET NO

Dismissed by Mot. of Def. Attys.
Lack of Jurisdiction
He stands by Stat. (Witness not present
other than made Stat.)


1/6/13

RECEIVED
MAY 04 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No 2013-CP-08-02704

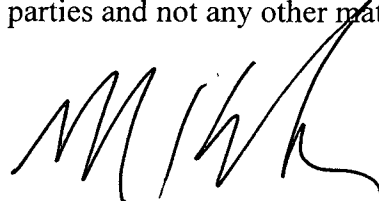
The StateAppellant,

v.

Nicholas M. Blair.Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all the material proposed to be included by any of the parties and not any other material.



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Attorneys for Appellant

Date April 21, 2015