

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-08-02704
Case Tracking No. 2014-001003

The State,.....Appellant,

v.

Nicholas M. Blair,.....Respondent.

FINAL BRIEF OF RESPONDENT

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State v. Johnson, 396 S.C. 424, 429, 721 S.E.2d 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)).....2

Statutes:

S.C. Code Ann. § 22-2-150 (2013).....2

STATEMENT OF ISSUES ON APPEAL

1. Did the Magistrate abuse its discretion and err in denying the State's request for a continuance and a jury trial?

STATEMENT OF THE CASE

Appellant, The State, and respondent, Nicholas M. Blair, appeared in the Berkeley Magistrate Court for a required initial hearing on November 6, 2013 regarding a citation for Driving Under the Influence bearing Uniform Traffic Ticket #G449285. (R.p. 3, lines 21-23, R.p. 4, lines 1-2; R.p. 11, lines 1-3.) Respondent entered a plea of not guilty and waived his right to a jury trial, with the approval of The State and trial judge deduced from making no objection to the same, thus respondent proceeded with a bench trial. (R.p. 56; R.p. 3, lines 3-6; R.p. 11, lines 5-10.) The State asked for a continuance or a jury trial. (R.p. 56; R.p. 4, line 5; R.p. 11, lines 6-7.) The Trial Judge denied The State's motion for a continuance and further denied The State's motion for a jury trial based upon S.C. Code Ann. § 22-2-150 (2013) whereby said statute clearly states that the arrested person is the only party that may demand a jury trial. (R.p. 56; R.p. 4, lines 14-16, R.p. lines 9-12; R.p. 11, lines 13-17; R.p. 57.) Respondent moved to dismiss the case for lack of prosecution and the Judge granted the motion with no further objection from The State. (R.p. 56; R.p. 4, lines 16-18; R.p. 11, lines 22-23.) The State appealed the ruling and the Honorable Deadra L. Jefferson heard oral arguments on March 17, 2014 and issued an Amended Order of Dismissal filed on September 3, 2014 in the Berkeley County Court of Common Pleas whereby she affirmed the magistrate's ruling and dismissed the appeal. (R.p. 2-8.) The State subsequently filed a Notice of Appeal with the South Carolina Court of Appeals.

ARGUMENT

I. THE MAGISTRATE DID NOT ABUSE ITS DISCRETION AND DID NOT ERR IN DENYING THE STATE'S REQUEST FOR A CONTINUANCE AND A JURY TRIAL.

The Magistrate did not abuse its discretion and did not err in denying the State's request for a continuance and a jury trial. This determination should be affirmed as the Trial Judge's denial of The State's motion for a continuance is within his discretion, and further, his denial of The State's motion for a jury trial based upon S.C. Code Ann. § 22-2-150 (2013) is also within his discretion as the arrested person is the only party that may demand a jury trial pursuant to said statute that he relied upon. "Motions for continuances 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.." *State v. Browder*, 277 S.C. 206, 207, 284 S.E.2d 775, 776 (1981). Further, the Trial Judge must apply the actual meaning of the words in 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 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)).

The Magistrate did not abuse its discretion and did not err in denying the State's request for a continuance and a jury trial.

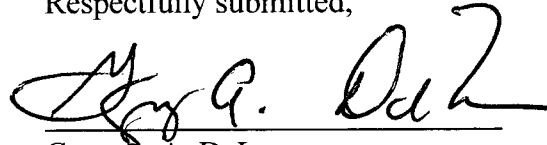
CONCLUSION

This Court should affirm the decision of the circuit court as well as affirming for any ground appearing on the record of appeal as provided by Rule 220(c) of the South Carolina Appellate Court

Rules.

May 5, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory A. DeLuca". The signature is written in a cursive style and is positioned above a horizontal line.

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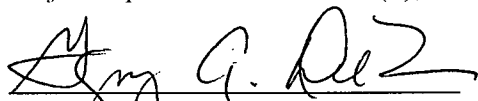
v.

Nicholas M. Blair,.....Respondent.

CERTIFICATE OF COUNSEL

I certify that the *Respondent's Final Brief* complies with Rule 211(b), SCACR.

May 7, 2015



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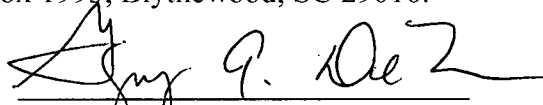
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PROOF OF SERVICE

I certify that I have served the *Respondent's Final Brief* on Marcus K. Gore and Catherine Fant, the attorneys on record for the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on May 7, 2015, addressed to Post Office Box 1993, Blythewood, SC 29016.

May 7, 2015



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